



Multiple Listing Service, Inc.

**Tucson Association of REALTORS®
Multiple Listing Service, Inc.**

BYLAWS

**Approved by TAR/MLS Board of Directors: 12/17/10
Effective: February 3, 2011**

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ARTICLE I – NAME

Section 1. MLS Name.

The name of this organization shall be the Tucson Association of REALTORS® Multiple Listing Service, Inc., hereinafter referred to as the “MLS.” All the shares of stock of the MLS are solely and wholly-owned by the Tucson Association of REALTORS®, Inc., hereinafter referred to as the “Shareholder.”

ARTICLE II – PURPOSE

Section 1. Purpose of MLS.

A Multiple Listing Service is a means by which authorized participants make blanket unilateral offers of compensation to other Participants (acting as buyer agents, or other agency or non-agency 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 prospects, clients and customers; by which participants engaging in real estate appraisal contribute to common databases; and is a facility for orderly correlation and dissemination of listing information so participants may better serve their clients and customers and the public. Entitlement to compensation is determined by the cooperating broker’s performance as a procuring cause of the sale (or lease.)

ARTICLE III – SERVICE AREA

Section 1. Service Area of MLS.

The area within which the MLS functions shall at all times be coextensive with or within the territorial jurisdiction of the Shareholder.

ARTICLE IV – PARTICIPATION

Section 1. Participation Defined.

Any REALTOR® of this or any other association who is a principal, partner, corporate officer, or branch manager acting on behalf of a principal,

without further qualification, except as otherwise stipulated in these , shall be eligible to participate in the MLS upon agreeing in writing to conform to the rules and regulations thereof and to pay the costs incidental thereto. Any applicant for MLS participation and any licensee (including licensed or certified appraisers) affiliated with an MLS participant who has access to and use of MLS-generated information shall complete an orientation program, approved by the Board of Directors, of no more than eight (8) classroom hours that shall include the MLS bylaws, Rules and Regulations, Policy Statements and MLS structure within ninety (90) days after access has been provided. However, under no circumstances is any individual or firm, regardless of membership status, entitled to multiple listing membership or participation unless they hold a current, valid Arizona real estate broker’s license and offer and/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 an association multiple listing service is strictly limited to the activities authorized under a participant’s licensure(s) or certification and unauthorized uses are prohibited. Further, none of the foregoing is intended to convey participation or membership or any right of access to information developed by or published by an association multiple listing service where access to such information is prohibited by law. 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 these Bylaws and Rules and Regulations for the MLS by all persons affiliated with the participant who utilize the MLS.

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

agents in the MLS. “Actively” means on a continual and ongoing basis during the operation of the participant’s real estate business. The “actively” requirement is not intended to preclude MLS participation by 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 the 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 national, state and local law.

The key is that the participant or potential participant actively endeavors to make and/or accept offers of cooperation and compensation with respect to properties of the types that are listed on the MLS in which participation is sought. This requirement does not permit the 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 and/or prospects to other participants) if the participant or potential participant actively endeavors to make and/or accept offers of cooperation and compensation. The MLS may evaluate whether a participant or potential participant endeavors during the operation of its real estate business to offer and/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 in a nondiscriminatory manner to all participants and potential participants.

Section 2. 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 MLS and made available to any REALTOR® principal of this or any other association requesting it. The application form shall contain a signed statement agreeing to abide by these and any other applicable rules and regulations of the MLS as from time to time amended or adopted.

Section 3. Discontinuance of Service.

Participants of the MLS may discontinue the MLS by giving thirty (30) days’ written notice, and must reapply to the MLS after 12 months by making formal application in the manner prescribed for new applicants for participation provided all past dues and fees are fully paid.

Section 4. Subscribers.

Subscribers (or users) of the MLS include non-principal brokers, sales associates, and licensed and certified appraisers affiliated with participants.

ARTICLE V – FEES

Section 1. Application Fee.

The board of directors shall establish the amount of the application fee for participants and subscribers. The payment of the application fee shall accompany the application. Application fees are non-refundable. The Board of Directors, directly or through its Chief Executive Officer or through its written statements, may make exceptions concerning the entitlement to refunds for extraordinary circumstances which exceptions, once made, are final and binding.

Section 2. Annual Fees.

The fees for participation in the MLS shall be as determined, and as amended from time to time by the Board of Directors of the MLS.

Section 3. Fees Payable.

In the event a subscriber is dropped for nonpayment of MLS fees, and the individual remains with the participant’s firm, the fees obligation will become the responsibility of the participant.

Section 4. Nonpayment of Financial Obligation.

If fees, assessments or other financial obligations are owed to the MLS, the Board of Directors may impose such sanctions as it deems appropriate. When an account is more than thirty (30) days past due, the MLS shall provide a written notice to the delinquent participant/subscriber setting forth the amount owed, the past due date, and an indication of the potential consequences for permitting the account to remain uncollected. Unless modified, if such obligations are not paid within one (1)

month following the due date, a delinquent participant/subscriber is subject to suspension at the sole discretion of the Board of Directors. Two (2) months following the due date, the MLS access of the delinquent participant/subscriber may be automatically terminated at the discretion of the Board of Directors. Three (3) months following the due date, MLS access of the delinquent participant/subscriber shall automatically terminate unless within that time the full amount due and owing is paid. The MLS may, at its discretion, charge the legal rate of interest on past dues fees and assessments and other participant/subscriber obligations due the MLS. A participant/subscriber terminated for nonpayment of a financial obligation due the MLS may apply for reinstatement in the manner prescribed for new Applicants for Participation in Article IV, Section 2 of these Bylaws provided the full amount of the past due account plus the application fee and any other amounts which are required pursuant to Article V are paid at the time of the submission of the application for Participation. If an existing participant/subscriber initiates bankruptcy proceedings, the MLS shall require that the participant/subscriber thereafter be placed on a "cash basis" from the date that bankruptcy is initiated until one (1) year from the date that the participant/subscriber has been discharged from bankruptcy. It shall be the obligation of the participant/subscriber to timely provide evidence of the discharge of bankruptcy to the appropriate MLS staff on or after the first anniversary date of the discharge of the participant/subscriber or the participant/subscriber shall remain on a "cash basis" until such proof is provided.

ARTICLE VI – DIRECTORS

Section 1. Governance of the MLS.

The Governance of the MLS shall be vested in a Board of Directors. All Directors must be fee-paying members in good standing. The membership of the Board of Directors shall consist of 11 Directors who shall be selected as follows:

(A) The MLS Participant representing the real estate firm with the largest number of year-to-date Closed Sales, including both listing and selling sides, through August 31st for the prior 12-month period as set forth in the

MLS Market Share Report, shall appoint two (2) fee-paying members from their firm only to the Board of Directors for the following calendar year;

- (B) The four MLS Participants representing the second, third, fourth and fifth largest real estate firms, having the next highest year-to-date Closed Sales, including both listing and selling sides, through August 31st for the prior 12-month period as set forth in the MLS Market Share Report, shall each appoint one (1) fee-paying member from their firm only to the Board of Directors for the following calendar year;
- (C) There shall be four (4) Directors elected, not affiliated with the same firm, for two-year terms by the Participants not affiliated with the five (5) largest real estate firms;
- (D) Each September, the Participants of the remaining real estate firms in MLS shall elect two (2) fee-paying members to serve two-year terms on the Board of Directors beginning the next calendar year;
- (E) Each October, the Shareholder President shall designate one (1) Director, who shall be the current TAR President-elect. If the incoming TAR President-elect is unable or unwilling to serve as an MLS Director, the current TAR President shall designate a person who has been elected to serve as a TAR Officer during the next calendar year.
- (F) In the event one of the five large brokerages resigns from MLS, that Directors' appointment will cease and the brokerage with the largest number of year-to-date Closed Sales, including both listing and selling sides, for the prior 12-month period from the MLS Market Share Report run the preceding August 31, shall fill that vacancy until the end of the current term.
- (G) Should an elected Director move to a brokerage with an appointed Director(s), the elected Director must resign their Director position. Should an appointed Director move to a brokerage with an elected Director(s), the appointed Director must resign their Director position. Vacancies will be addressed as outlined in ARTICLE VI, Section 12 Vacancy of an Officer or Director.

The four (4) elected Directors may not be associated, in any capacity, with the five (5) largest real estate firms. None of the appointed

or elected Directors may contemporaneously serve as a TAR Director

Section 2. Duties of the Board of Directors.

The Board of Directors shall be charged with the responsibility of management of the MLS's business, including the adoption of necessary Rules and Regulations and written policies and the levy of fines and the enforcement thereof. Except as otherwise provided in these Bylaws and the Rules and Regulations and written policies, the action of the Board of Directors shall be final.

Section 3. Term of Office.

The appointed Directors shall serve for a term of one (1) year. The elected Directors shall serve for staggered two-year terms. There shall be no term limits for elected or appointed Director positions.

Section 4. Officer Elections.

The individuals serving on the existing Board of Directors and the individuals serving on the Board of Directors the following governance year shall elect, in October, a President, Vice President, Treasurer and any other officers deemed necessary. At no time shall the TAR appointed Director serve as an officer of the MLS.

Section 5. Officer Duties.

- (A) President. The President shall chair all meetings of the MLS. The President shall act as the representative of the MLS in all matters, public or otherwise, in accordance with these Bylaws, Rules and Regulations and written policies.
- (B) Vice President. In the absence of the President, the Vice President shall act for the President. The Vice President shall perform other such duties as requested by the President.
- (C) Treasurer. The Treasurer shall be responsible for the supervision and maintenance of the financial records of the MLS including, but not limited to, preparation of the budget, preparation of not less than quarterly financial statements and the distribution of same to the Board of Directors of the Shareholder, keeping current records of fee status of all Participants and Subscribers, making

financial statements available to Participants as requested.

Section 6. Regular Meetings of Directors.

A quorum for the transaction of business shall require one-half of the number of Directors fixed by ARTICLE VI, Section 1 of these Bylaws. At all meetings of the Board of Directors of the MLS each Director present shall be entitled to one (1) vote.

Section 7. Annual Budget.

The Board of Directors shall, prior to end of each fiscal year, prepare a budget reflecting projected costs and expenses of the MLS for the next fiscal year, indicating projected income from all sources. The budget shall be submitted to the Shareholder for approval not less than sixty (60) days prior to the first day of the next fiscal year. The TAR and MLS Budget Committees shall jointly meet at least once prior to the budget being submitted to the Shareholder for approval.

Section 8. Deposit of Funds.

The Board of Directors shall establish approved repositories for the deposit of all funds incoming to the MLS. All deposits shall be deposited to federally insured financial accounts. All monies received by the MLS from any source and for any purpose shall be expeditiously deposited to the appropriate financial account of the MLS.

Section 9. Expenditures.

The Board of Directors shall not incur any obligation in excess of \$15,000 per non-budgeted item per annum, not to exceed an aggregate amount of 5% of the approved fiscal year budget, without authorization by a two-thirds (2/3) vote of the entire Board of Directors. Funds designated as reserves may be expensed in excess of the aforementioned amount, for the applicable purpose for which the reserve was established.

Section 10. Audit.

An annual audit of the accounting books and records of the MLS shall be performed by a Certified Public Accountant selected by the Board of Directors of the Shareholder.

Section 11. Removal of Officers and Directors. An Officer or Director may be

removed from office by a majority vote of the Directors of the Shareholder.

Section 12. Vacancy of an Officer or Director.

Vacancies occurring among the MLS Officers and Directors shall be filled from the source (appointed or elected) from which they came. If the vacancy is from an elected position, the next highest vote-getter from the previous election meeting the qualifications will be offered the position. In the event there is no one to serve from the elected positions, the Board of Directors shall appoint a replacement from that source with a majority vote. Vacancies must be filled by the next Board meeting.

ARTICLE VII – MEETINGS

Section 1. Meetings of the Participants.

- (A) **Annual Meeting.** The annual meeting of the Participants shall be held immediately following the annual meeting of the Shareholder, which is currently held in March of each year.
- (B) **Other Meetings.** Meetings of the Participants may be held at any time as the President of the Board of Directors may determine, or upon written request of at least 5% of the Participants eligible to vote. A quorum for the transaction of business shall consist of those Participants present and eligible to vote.

Section 2. Regular Meetings of Directors.

- (A) The Board of Directors shall designate a regular time and place for its meetings. A quorum for the transaction of business shall be a majority of the number of Directors (not including any current vacancies). A quorum must be present for any vote to be taken by the Board of Directors. No proxy voting is permitted.

(B) **Attendance At Board Meetings.**

Members of the Board of Directors are expected to attend all Board of Directors' meetings. The failure of an individual Director Member to attend two consecutive Board meetings or a total of three scheduled Board of Directors' meetings within a calendar year shall, absent a showing of a health condition, jury duty, or catastrophic event, be deemed to be an automatic

resignation from the Board of Directors. In such event, the Board of Directors shall review the circumstances and by majority vote determine whether there was an adequate showing of such circumstances to merit the Director Member remaining on the Board of Directors. The Chief Executive Officer shall be responsible for maintaining the official record of attendance which shall be distributed at least quarterly to all Board Members.

Section 3. Special Director Meetings.

Special Meetings of the Board of Directors may be called from time to time by the President or by a quorum of the Board of Directors. Written notice stating the day, place, and hour of the meeting and the purpose(s) for which the meeting is called, shall be delivered to all Directors not less than fourteen (14) days prior to said meeting.

Section 4. Emergency Director Meetings.

In the event of an emergency as determined by the President or the Chief Executive Officer, there shall be a minimum of twenty-four (24) hours notice of an emergency meeting given to the Board of Directors. Such notice need not be in writing. A quorum for an emergency meeting shall be one-half of the Board of Directors as set by Article VI, Section 1 of these Bylaws. Telephonic or other electronic attendance is permitted for attendance at an emergency meeting provided there is proper technology present so that all parties, including the person(s) not physically present, may hear the discussions of one another and can participate in the discussion. No proxy voting is permitted.

Section 5. Open Meetings.

All meetings are open to fee-paying Participants or Subscribers unless an Executive Session is called.

ARTICLE VIII – COMMITTEES

Section 1. Standing Committees.

The President shall appoint members to the following standing committees, subject to confirmation by the Board of Directors: 1) Budget; 2) Technology; 3) Standards; 4) Business Planning; 5) Recruiting.

Section 2. Presidential Advisory Groups and Task Forces.

- (A) At the President's discretion, one or more persons may be appointed as a Presidential Advisory Group ("PAG") to investigate a matter and report to the President without the approval of the Board of Directors. The report to the President may be confidential at the discretion of the President.
- (B) A Task Force is a group of members selected by the President, and approved by the Board of Directors, for the purpose of accomplishing a specific and limited task, all subject to the approval of the Board of Directors. The report of the Task Force shall be presented to the Board of Directors.

Section 3. Committees and Organization.

- (A) All Committees shall have such duties, functions and powers as assigned by the President and approved by the Board of Directors. All committees shall have no less than three (3) members. All committee members shall be Participants or licensees affiliated with Participants except as otherwise provided herein. All committees' composition shall reflect the composition of the MLS Participants to the extent possible. Committee members are expected to attend all committee meetings to which they are appointed. The failure of a committee member to attend two consecutive committee meetings or a total of three (3) scheduled committee meetings within a calendar year shall, absent a showing of a health condition, jury duty, or catastrophic event, be deemed to be an automatic resignation from the committee. All new committee members shall be given an orientation packet (prepared by staff under the direction of the Chair), consisting of at least a copy of the previous year's committee Meeting Reports and a synopsis of any ongoing projects.
- (B) **Technology Committee.** The Technology Committee shall consist of not less than ten (10) members, reconfirmed or appointed by the Chair of that Committee, and ratified by the Board of Directors, for at least two (2) year terms. The Chairman shall be appointed by the President subject to confirmation by the Board of Directors. The Vice Chair shall be appointed by the Chair

and shall fulfill the duties of the Chair in any and all circumstances where the Chair cannot perform these functions, through the term of the Chair.

- (C) **Standards Committee.** The Standards Committee shall consist of not less than six (6) members, reconfirmed or appointed by the Chair of that Committee, and ratified by the Board of Directors, for at least two (2) year terms. The Chairman shall be appointed by the President subject to confirmation by the Board of Directors. The Vice Chair shall be appointed by the Chair and shall fulfill the duties of the Chair in any and all circumstances where the Chair cannot perform these functions, through the term of the Chair.
- (D) **Business Planning Committee.** The Business Planning Committee shall consist of members of the MLS Board of Directors and three (3) Participants-at-large appointed by the President subject to confirmation by the Board of Directors.
- (E) **Recruiting Committee.** The President shall timely appoint, subject to the confirmation of the Board of Directors, at least five (5) subscribers to serve as the Recruiting Committee. The Committee shall be responsible to recruit at least one qualified candidate for each vacant elected Director position. The Committee shall also recruit possible members for the Standing Committees.
- (F) **President Ex-Officio Member.** The President shall be an ex-officio member of all committees and shall be notified of their meetings.

ARTICLE IX – FISCAL AND ELECTIVE YEAR

Section 1. Fiscal Year.

The fiscal year of the MLS shall be the calendar year.

Section 2. Elective Year.

The elective year of the MLS shall be the calendar year. Terms of all committees shall coincide with the elective year.

Section 3. Days.

When used in these Bylaws "days" shall mean calendar days unless otherwise specified.

ARTICLE X – RULES OF ORDER & NOTIFICATION

Section 1. Rules of Order.

Robert's Rules of Order, latest edition, shall be recognized as the authority governing the meeting procedures of the MLS, its Board of Directors, and committees in all instances wherein its provisions do not conflict with these Bylaws.

Section 2. Notification. Unless otherwise specified herein, any notification requirement or “written notice” required by these Bylaws may be interpreted as printed information in or by: 1) the official Association publication; 2) electronic mail; 3) facsimile; 4) bulk mail; 5) any major national carrier such as Federal Express or United Parcel Service; or 6) regular, registered or certified United States mail.

ARTICLE XI -AMENDMENTS

Section 1. Vote.

Amendments to these Bylaws shall be by recommendation of the MLS Board of Directors or the Participants of the MLS, at a meeting in accordance with the provisions of ARTICLE VII and subject to final approval by the Board of Directors of the Shareholder. Said amendments shall be effective immediately or as stated in the amending resolution.

Section 2. Notice of Meeting.

Notice of all meetings at which amendments are to be considered shall be delivered to every Director eligible to vote at least thirty (30) days prior to the meeting.

Section 3. Approval by NAR.

Amendments to these Bylaws that are mandatory changes required by the National Association of REALTORS® shall be incorporated herein, with approval of the Board of Directors of the Shareholder with any variances to those mandatory changes__be approved by the National Association of REALTORS®.

Section 4. Changes to Rules and Regulations and Policy Statements.

Amendments to the Rules and Regulations and written policies of the MLS shall be by consideration and approval of the Board of Directors of the MLS, in accordance with the provisions of ARTICLE VI, Section 2, concerning Meetings of the Board of Directors. Said amendments shall be effective immediately or as stated in the amending resolution.

ARTICLE XII – DISSOLUTION

In the event this MLS shall at any time terminate its activities, the Board of Directors of the MLS shall adopt a plan of liquidation and dissolution with the approval of the Board of Directors of the Shareholder. Said plan shall provide for the collection of assets, the payment of liabilities, and any remaining assets shall be assigned to the parent corporation, namely the Shareholder.

ARTICLE XIII – INDEMNIFICATION

Section 1. Indemnification and Hold Harmless.

(A) Terms of Indemnification. The MLS shall indemnify any person who incurs expenses or losses by reason of the fact he or she is or was an Officer, Director, volunteer, employee, or agent of the MLS, acting on behalf of the MLS at the time of the alleged act in question (“Indemnitee”). This shall apply in all circumstances and be construed together with those circumstances where indemnity is permissible pursuant to Arizona Revised Statutes §10-3851 through §10-3858 and any subsequent amendments or additions thereto.

(B) Extent of Indemnification. The MLS shall indemnify and hold harmless all Indemnitees against all expenses and loss incurred by them and each of them including, but not limited to, legal fees, judgments, penalties and amounts paid in settlement or compromise, which may arise or be incurred, rendered, or levied in any legal action brought or threatened against any of them for or on account of any action or omission alleged to have been committed while acting within the scope of employment as an Officer, Director, volunteer, employee, Committee, Task Force or PAG member, or agent of the MLS

at the time of the alleged act in question, whether or not any action is or has been filed against them and whether or not any settlement or compromise is approved by a court or administrative body.

(C) Consideration By Board of Directors.

Whenever an Indemnitee shall advise the President or Chief Executive Officer of the MLS that he or she has incurred or may incur any such expense or loss, the Board of Directors shall consider the issue at its next regular meeting or at a special meeting held within a reasonable time thereafter.

(D) Entitlement to Indemnification.

The Indemnitee shall be indemnified against all expenses and loss if the Board of Directors at such meeting determines in good faith that with regard to the matter involved in the action or contemplated action, the Indemnitee acted reasonably and believed his actions or failure to act was done in the best interest of the MLS, and in the case of a criminal action or proceedings, the Board of Directors has no reasonable cause to believe the conduct was unlawful at the time.

(E) Notice to MLS.

As a condition of indemnification, the Indemnitee shall notify the MLS of any claim or potential claim within thirty (30) days after first becoming aware of the same, and shall permit the MLS, at its sole expense and through counsel of its choice, to represent and defend the Indemnitee in connection with such claim. Indemnitee shall fully cooperate with the MLS and its counsel in said defense.

(F) Refusal of Indemnification.

The MLS shall have the right to refuse indemnification in any instance in which the Indemnitee shall have failed to timely notify the MLS of the claim or shall have refused to cooperate with the MLS in the defense of the matter or refused to permit the MLS, at its own choosing, to defend him or her in the action.

(G) Reservation of Rights.

The MLS may, at its option and in its sole discretion, elect to provisionally retain counsel and investigate such claims or potential claims and/or defend the same reserving its right to refuse

indemnification and withdraw such defense at any time, in the event it is later determined that the Indemnitee is not entitled to indemnification under the terms of this Article XIII of these Bylaws. If the MLS elects to proceed under such a conditional basis, it shall notify the person in writing of its intent to proceed under a reservation of rights.

ARTICLE XIV – EFFECTIVE DATE

These Bylaws of the MLS shall become effective February 3, 2011.