

**EAST BAY REGIONAL DATA**

**MULTIPLE LISTING**

**SERVICE RULES**

**REVISED JANUARY, 2012**





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*East Bay Regional Data Service Center Locations*

<u><i>Antioch</i></u>	<u><i>Berkeley</i></u>	<u><i>Oakland</i></u>	<u><i>Richmond</i></u>	<u><i>Concord</i></u>
Delta Association of REALTORS®	Berkeley Association of REALTORS®	Oakland Association of REALTORS ®	West Contra Costa Association of REALTORS®	East Bay Regional Data Multiple Listing Service
3428 Hillcrest Ave, Ste 200 Antioch, CA 94532 925 757-8283 925 757-8393 – fax	1553 Martin Luther King Jr. Way Berkeley, CA 94709 510 848-4288 510 848-2439 - fax	1528 Webster St Oakland, CA 94612 510 836-3045 510 272-0661 - fax	423 46 <sup>th</sup> Ave Richmond, CA 94805 510 233-1152 510 231-0243 - fax	1000 Burnett Ave Ste 250 Concord, CA 94520 925 363-2330 925 687-7099 - fax

## EAST BAY REGIONAL DATA MULTIPLE LISTING SERVICE RULES

*UNDERLINED AREAS ARE NEW OR CHANGES TO MLS RULES*

- 1. AUTHORITY.** East Bay Regional Data, Inc. shall maintain for the use of licensed real estate brokers and salespersons and licensed or certified Appraisers, a Multiple Listing Service (hereinafter also referred to as “MLS” or “service”), which shall be subject to the bylaws of East Bay Regional Data, Inc. (hereinafter also referred to as “EBRDI”) and such rules and regulations as may be hereinafter adopted.
- 2. PURPOSE.** A Multiple Listing Service is a means by which authorized MLS Broker Participants establish legal relationships with other Participants by making a blanket unilateral contractual offer of compensation and cooperation to other Broker Participants; by which information is accumulated and disseminated to enable authorized Participants to prepare appraisals and other valuations of real property; by which Participants engaging in real estate appraisal contribute to common databases; and is a facility for the orderly correlation and dissemination of listing information among the Participants so that they may better serve their clients and the public.
- 3. NOT USED.**
- 4. PARTICIPATION AND AUTHORIZED ACCESS.**

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

**4.1.1 Broker Participant.** A Broker Participant is a Participant who meets all of the following requirements:

- a. The individual, or corporation for whom the individual acts as a broker/officer, holds a valid California real estate broker’s license;
- b. The individual is a principal, partner, corporate officer, or branch office manager acting on behalf of a principal;
- c. The individual or corporation for whom the individual acts as a broker/officer offers and/or accepts compensation in the capacity of a real estate broker;\*
- d. The individual has signed a written agreement to abide by the rules and regulations of the service in force at that time and as from time to time amended;
- e. The Participant pays all applicable fees; and
- f. The individual has completed an orientation program of no more than eight (8) classroom hours within sixty (60) days after access has been provided.

\*Note: Mere possession of a broker's license is not sufficient to qualify for MLS participation. Rather, the requirement that an individual or firm “offers and/or accepts compensation” means that the Participant actively endeavors during the operation of its real estate business to list real property of the type listed on the MLS and/or to accept offers of cooperation and compensation made by listing brokers or agents in the MLS. “Actively” means on a continual and on-going basis during the operation of the Participant's real estate business. The “actively” requirement is not intended to preclude MLS participation by a Participant or potential Participant that operates a real estate business on a part time, seasonal, or similarly time-limited

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basis or that has its business interrupted by periods of relative inactivity occasioned by market conditions. Similarly, the requirement is not intended to deny MLS participation to a Participant or potential Participant who has not achieved a minimum number of transactions despite good faith efforts. Nor is it intended to permit an MLS to deny participation based on the level of service provided by the Participant or potential Participant as long as the level of service satisfies state law.

The key is that the Participant or potential Participant actively endeavors to make or accept offers of cooperation and compensation with respect to properties of the type that are listed on the MLS in which participation is sought. This requirement does not permit an MLS to deny participation to a Participant or potential Participant that operates a Virtual Office Website (“VOW”) [See Rule No. 12.19] (including a VOW that the Participant uses to refer customers to other Participants) if the Participant or potential Participant actively endeavors to make or accept offers of cooperation and compensation. An MLS may evaluate whether a Participant or potential Participant “actively endeavors during the operation of its real estate business” to “offer and/or accept compensation” only if the MLS has a reasonable basis to believe that the Participant or potential Participant is in fact not doing so.

The membership requirement shall be applied on a nondiscriminatory manner to all Participants and potential Participants.

*For violation of this section, see Appendix A, Citable Infractions, 5.5, Non-Completion of Any Required Orientation Program within 60 Days.*

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

- a. The individual holds a valid California Appraisers certification or license; and
- b. The individual is a principal, partner, corporate officer, or branch office manager acting on behalf of a principal; and
- c. The individual has signed a written agreement to abide by the rules and regulations of the service in force at that time and as from time to time amended;
- d. The individual pays all applicable fees; and
- e. The individual has completed an orientation program of no more than eight (8) classroom hours within sixty (60) days after access has been provided.

*For violation of this section, see Appendix A, Citable Infractions, Section 1.1 Use of MLS System by Unauthorized Party and 5.5, Non-Completion of Any Required Orientation Program within 60 Days*

**4.2 Subscriber.** A Subscriber is an individual who applies and is accepted by the MLS, meets the requirements of either a real estate Subscriber or appraiser Subscriber as defined below in sections 4.2.1 and 4.2.2:

**4.2.1. Real Estate Subscriber.** A real estate Subscriber is a Subscriber who meets all of the following requirements:



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- a. The individual holds a valid California real estate Salesperson's or Broker's license;
- b. The individual is employed by or affiliated as an independent contractor with a Broker Participant;
- c. The individual has signed a written agreement to abide by the rules and regulations of the service in force at that time and as from time to time amended;
- d. The individual pays all applicable MLS fees; and
- e. The individual has completed any required orientation program of no more than eight (8) classroom hours within sixty (60) days after access has been provided.

*For violation of this section, see Appendix A, Citable Infractions, 5.5, Non-Completion of Any Required Orientation Program within 60 Days.*

**4.2.2 Appraiser Subscriber.** An Appraiser Subscriber is a Subscriber who meets all of the following requirements:

- a. The individual hold a valid California real estate appraisers certification or license;
- b. The individual is employed by or affiliated as an independent contractor with an Appraiser Participant;
- c. The individual has signed a written agreement to abide by the rules and regulations of the service in force at that time and as from time to time amended;
- d. The individual pays all applicable MLS fees; and
- e. The individual has completed any required orientation program of no more than eight (8) classroom hours within sixty (60) days after access has been provided.

*For violation of this section, see Appendix A, Citable Infractions, Section 1.1 Use of MLS System by Unauthorized Party and 5.5, Non-Completion of Any Required Orientation Program within 60 Days.*

**4.3 Clerical Users.** Individuals (whether licensed or unlicensed) under the direct supervision of an MLS Participant or Subscriber that perform only administrative and clerical tasks that do not require a real estate license or an appraisers certificate or license. Each Participant and Subscriber shall notify the MLS of all Clerical Users employed by or affiliated as independent contractors with the Participant or Subscriber and shall immediately notify the MLS of any changes, additions or deletions from the list.

**4.4 Notification of Licensees.** Each Participant shall provide the MLS with a list of all real estate licensees or certified or licensed Appraisers employed by or affiliated as independent contractors with such Participant or with such Participant's firm and shall immediately notify the MLS of any changes, additions or deletions from the list. This list shall include any licensees under any broker associate affiliated with the Participant.

*For violation of this section, see Appendix A, Citable Infractions, 1.1, Use of MLS System by Unauthorized Party.*

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**4.5 Participation Not Transferable.** Participation in the MLS is on an individual basis and may not be transferred or sold to any corporation, firm or other individual. Any reimbursement of MLS fees is a matter of negotiation between those transferring the business or determined by internal contract arrangement within the firm. However, providing the first Participant consents, EBRDI shall allow a firm to designate a different person as a Participant within the firm without additional initial participation fees. EBRDI may charge an administrative fee for this service of reassigning Participants within a firm.

**4.6 Listing Broker Defined.** For purposes of these MLS rules, a Listing Broker is a Broker Participant who is also a listing agent as defined in Civil Code § 1086(f) who has obtained a written listing agreement by which the broker has been authorized to act as an agent to sell or lease the property or to find or obtain a buyer or lessee. Whenever these rules refer to the Listing Broker, the term shall include the real estate Subscriber or a licensee acting for the Listing Broker but shall not relieve the Listing Broker of responsibility for the act or rule specified.

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

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

## 5. MLS FEES AND CHARGES.

**5.1 Service Fees and Charges.** The EBRDI Board of Directors shall set the following service fees and charges:

**5.1.1 Initial Participation Fee and/or Application Fee.** An applicant for either participation as a real estate Subscriber or a Broker Participant in the MLS shall pay an application fee.

**5.1.2 Recurring Participation Fee.** The recurring participation fee of each Broker Participant shall be an amount times the total number of (1) the Participant plus (2) the number of salespersons who have access to and use of the MLS, whether licensed as brokers or salespersons, who are employed by or affiliated as independent contractors with such Participant or the Participant's firm. If more than one principal broker in the firm elects to be a Participant, the number of salespersons in the firm will be used once in calculating the recurring participation fees. A Broker Participant is not obligated to pay recurring participation fees or other MLS fees and charges for real estate licensees affiliated with the Participant or the Participant's firm if such

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licensees work out of a branch office of the Participant or the Participant's firm that does not participate in or otherwise use the MLS.

The recurring participation fee of each Appraiser Participant shall be an amount times the total number of (1) the Appraiser Participant plus (2) the number of Appraisers who have access to and use of the MLS, who are employed by or affiliated as independent contractors with such Participant or the Participant's firm. If more than one principal Appraiser in the same firm elects to be a Participant, the number of Appraisers in the company will only be used once in calculating the recurring participation fees. An Appraiser Participant is not obligated to pay recurring participation fees or other MLS fees and charges for licensed or certified Appraisers affiliated with the Participant or the Participant's firm if such Appraisers work out of a branch office of the Participant or the Participant's firm that does not participate in or otherwise use the MLS.

**5.1.3 Listing Fee.** A Broker Participant shall pay a listing fee for each listing submitted to the MLS staff for input.

**5.1.4 Book Fee.** If applicable, the Participant shall be responsible for book fees for each MLS book the Participant wishes to lease. The Participant may not obtain more MLS books than the total number of Subscribers affiliated with the Participant.

**5.1.5 Computer Access Fees.** If applicable, the recurring computer access fee for each Participant shall be an amount times the total number of Subscribers and salespersons licensed or certified as Appraisers, brokers or salesperson, who are employed by or affiliated as independent contractors with such Participant.

**5.1.6 Certification of Non-use.** Participants may be relieved from payment under sections 5.1.2 and 5.1.5 hereunder by certifying in writing to the MLS that a licensed or certified person in the office is engaged solely in activities that do not require a real estate license or certification (clerical, etc.), or that the real estate licensee or licensed or certified Appraiser will not use the MLS or MLS compilation in any way. In the event a real estate licensee or Appraiser is found in violation of the non-use certification, the Participant shall be subject to fees dating back to the date of the certification. The Participant and Subscriber may also be subject to any other sanction imposed for violation of MLS rules including, but not limited to, a citation and suspension or termination of ultimately losing participation rights and access to the service.

*For violation of this section, see Appendix A, Citable Infractions, 1.1, Use of MLS System by Unauthorized Party.*

**5.1.7 Clerical Users.** Clerical users may be assessed application fees, computer access fees and other fees. The Participant for the clerical user shall be responsible for all such fees.

**5.1.8 Other Fees.** Other fees that are reasonably related to the operation of the MLS may be adopted.

**5.2 Responsibility for Fees.** In the event the MLS allows for direct billing or payment by a Subscriber for fees under these rules, such fees shall be the exclusive obligation of that Subscriber regardless of whether such Subscriber becomes affiliated with a different Participant. If the MLS does not allow for direct billing or payment by a Subscriber for MLS fees, such fees shall be the responsibility of the Participant

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with whom the Subscriber was affiliated with at the time the MLS fees were incurred. This section does not preclude in any way the ability of Participants to pursue reimbursement of MLS fees from current or past Subscribers or to establish agreements with Subscribers regarding payment or reimbursement of MLS fees.

### 6. REGIONAL AND RECIPROCAL AGREEMENTS.

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

### 7. LISTING PROCEDURES.

**7.1 Listings Subject to Rules and Regulations of the Service.** Any listing filed with the service is subject to the rules and regulations of the service.

**7.2 Types of Listings; Responsibility for Classification.** The service shall accept exclusive right to sell, exclusive agency, open and probate listings as defined in California Civil Code § 1086 et. seq. that satisfy the requirements of these MLS rules. Exclusive right to sell listings that contain any exceptions whereby the owner need not pay a commission if the property is sold to particular individuals shall be classified for purposes of these rules as an exclusive right to sell listing, but the Listing Broker shall notify all Participants of the exceptions. By so classifying a listing, the Listing Broker certifies that the listing falls under the legal classification designated. It shall be the responsibility of the Broker Participant and real estate Subscriber to properly classify the type of listing submitted and, if necessary, to obtain a legal opinion to determine the correct classifications; the MLS shall not have an affirmative responsibility to verify such legal classifications. The MLS shall have no affirmative responsibility to verify the listing type of any listing filed with the service. However, the MLS shall have the right to have legal counsel make a determination as to the classification of the listing type and if the Listing Broker does not reclassify it accordingly, EBRDI shall have the right to reject or remove any such listing that it determines falsely represents the classification of a listing.

*For violation of this section, see Appendix A, Citable Infractions, 3.1., Reporting and Accuracy of Information.*

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

- a. provide cooperating brokers with any additional information regarding the property not already displayed in the MLS but instead gives cooperating brokers authority to contact the seller(s) directly for further information;
- b. accept and present to the seller(s) offers to purchase procured by cooperating brokers but instead gives cooperating brokers authority to present offers to purchase directly to the seller(s);

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- 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.

Said Limited Service Listings will be identified with an appropriate code or symbol (e.g. "LS") in MLS compilations so potential cooperating brokers will be aware of the extent of the services the Listing Broker will provide to the seller(s), and any potential for cooperating brokers being asked to provide some or all of these services to Listing Broker's clients, prior to initiating efforts to show or sell the property.

**7.2.2 Scope of Service; MLS Entry-Only Listings.** MLS Entry-Only Listings are listings whereby the Listing Broker, pursuant to the listing agreement, will not provide any of the following services:

- a. provide cooperating brokers with any additional information regarding the property not already displayed in the MLS but instead gives cooperating brokers authority to contact the seller(s) directly for further information;
- b. accept and present to the seller(s) offers to purchase procured by cooperating brokers but instead gives cooperating brokers authority to present offers to purchase directly to the seller(s);
- 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. participates on the seller(s) behalf in negotiations leading to the sale of the listed property.

Said MLS Entry-Only listings will be identified with an appropriate code or symbol (e.g. "EO") in MLS compilations so potential cooperating brokers will be aware of the extent of the services the Listing Broker will provide to the seller(s), and any potential for cooperating brokers being asked to provide some or all of these services to Listing Broker's clients, prior to initiating efforts to show or sell the property.

**7.2.3 Scope of Service; Legal Obligations.** The scopes of service classifications set forth in these rules do not alter any obligations otherwise imposed on real estate licensees under California law, including Department of Real Estate regulations, statutory law and common law. The MLSs acceptance or publication of listings eligible for MLS submission in no way constitutes a validation that said obligations have been met.

**7.3 Types of Properties.** The MLS shall accept listings that satisfy the requirements of these rules on the following types of property (*see definitions in Appendix B*):

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- 7.3.1 Residential Class
- 7.3.2 Residential Income Class
- 7.3.3 Mobile Home Class
- 7.3.4 Lots & Land Class
- 7.3.5 Lease Rental Class
- 7.3.6 Commercial Residential Income Multi-Unit 5+ Class
- 7.3.7 Commercial Business Opportunity
- 7.3.8 Commercial Industrial for Sale
- 7.3.9 Commercial Industrial for Lease
- 7.3.10 Commercial Lots and Land

*See Appendix B for definitions of the above property types.*

It shall be the responsibility of the Broker Participant and real estate Subscriber to properly classify the class of property listed, and if necessary, obtain a legal opinion to determine the correct classification. By specifying the class of property listed, the Listing Broker certifies that the listing falls under the classification designated. The MLS shall have no affirmative responsibility to verify the property class of any listing filed with the service. However, the MLS shall have the right to have legal counsel make a determination as to the classification of the property class and if the Listing Broker does not reclassify it accordingly, the AOR/Regional MLS shall have the right to reject or remove any such listing that it determines falsely represents the property class of the listing. Submission of duplicate listings by the same Participant within the same property class is prohibited.

*For violation of this section, see Appendix A, Citable Infractions, 3.1.7, Submission of a Duplicate Listing within the Same Property Class.*

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

**7.5 Mandatory Submission.** Broker Participants shall input or deliver property profile sheets of exclusive right to sell or exclusive agency listings on one to four unit residential property and vacant lots located within Alameda County or Contra Costa Counties to the MLS within 72 hours (with no exception for weekends, holidays and postal holidays) after all necessary signatures of seller(s) have been obtained on the listing. Only those listings located in these two counties must be input. Open listings or listings of property located outside the service area (see § 7.7) are not required by the service, but may be input at the Broker Participant's option.

*For violation of this section, see Appendix A, Citable Infractions, 2.1, Listing Not Loaded Within 72 Hours of Start Date of Listing.*

**7.6 Exempted Listings.** If the seller refuses to permit the listing to be disseminated by the service, the Listing Broker shall submit to the service within 72 hours (with no exceptions for weekends, holidays and postal holidays) an approved certification signed by the seller that the seller does not authorize the listing to be disseminated by the service during the specified waiver period.

*For violation of this section, see Appendix A, Citable Infractions, 2.2, Listing Waiver Not Submitted to MLS within 72 Hours of Start Date of Listing.*

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**7.7 Service Area.** The MLS shall service Alameda and Contra Costa Counties. If EBRDI enters into regional MLS agreements or a regional MLS corporation with other MLSs and has enlarged the service area as part of the agreement or corporation, submission of the type of listings specified in section 7.5 is mandatory for the area covered by the combined service areas of the Associations signatory to the regional MLS agreement or part of the regional MLS corporation.

**7.8 Change of Listing Information.** Listing Brokers shall input any change in listing information, including the listed price or other change in the original listing agreement, to the MLS by the end of the next business day (with no exceptions for weekends, holidays and postal holidays) after the authorized change is received by the Listing Broker. By inputting such changes to the MLS, the Listing Broker represents that the listing contract has been modified in writing to reflect such change or that the Listing Broker has obtained other legally sufficient written authorization to make such change.

*For violation of this section, see Appendix A, Citable Infractions, 2.3, Status Changes Not Reported by Deadline.*

**7.9 Withdrawal of Listing Prior to Expiration.** The Listing Broker may withdraw listings of property from the MLS before the expiration date of the listing agreement provided the Listing Broker has received written permission from the seller to withdraw the listing. The MLS may require the Listing Broker to provide a copy of such written permission. Sellers do not have the unilateral right to require the MLS to withdraw a listing without the Listing Broker's concurrence. However, the MLS reserves the right to remove a listing from the MLS database if the seller can document that his or her listing agreement with the Listing Broker has been terminated or is invalid.

*For violation of this section, see Appendix A, Citable Infractions, 3.4., Purposely Manipulating the MLS System to Circumvent the Rules.*

**7.10 Contingencies.** Any contingency or condition of any term in a listing shall be specified and noticed to the Participants and Subscribers.

**7.11 Details on Listings Filed With the Service.** Electronically input data or a property profile sheet, when filed with the service by the Listing Broker, all listings input into the MLS shall be complete in every detail as specified on the property profile sheet including full gross listing price, listing expiration date, compensation offered to other Broker Participants and any other item required to be included as determined by the EBRDI Board of Directors. Listings that are incomplete shall be ineligible for publication in the MLS and subject to immediate removal.

*For violation of this section, see Appendix A, Citable Infractions, 3.1, Submission of Listings that Do Not Satisfy the Requirements of the MLS Rules.*

**7.12 Unilateral Contractual Offer; Sub-agency Optional.** In filing a property with the MLS, the Broker Participant makes a blanket unilateral contractual offer of compensation to the other MLS Broker Participants for their services in selling the property. Except as set forth in Rule 7.15 below or pursuant to California Civil Code Section 1087, a Broker Participant must specify some compensation to be paid to either a buyer's agent or a sub-agent and the offer of compensation must be stated in one, or a combination of, the following forms (1) a percentage of the gross selling price; or (2) a definite dollar amount. The amount of compensation offered through the MLS may not contain any provision that varies the amount of

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compensation offered based on conditions precedent or subsequent or on any performance, activity or event. Furthermore, the MLS reserves the right to remove a listing from the MLS database that does not conform to the requirements of this section. At the Broker Participant's option, a Broker Participant may limit his or her offer of compensation to buyer's agents only, to sub-agents only, or make the offer of compensation to both. Any limitations on the contractual offer of compensation must be specified on the property profile sheet. The amount of compensation offered to buyers' agents, sub-agents may be the same, or different but must be clearly specified on the property profile sheet. Broker Participants wishing to offer sub-agency to the other MLS Broker Participants must so specify on the property profile sheet.

**7.13 Acceptance of Contractual Offer.** The Broker Participant's contractual offer (with or without sub-agency) is accepted by the Participant/selling broker by procuring a buyer which ultimately results in the creation of a sales or lease contract. Payment of compensation by the Participant/Listing Broker to the Participant/cooperating broker under this section is contingent upon **either** (1) the final closing **or** (2) the Participant/Listing Broker's receipt of monies resulting from the seller or buyer's default of the underlying sales or lease contract. Notwithstanding this section, the Listing Broker and/or cooperating broker shall retain any remedies they may have against either the buyer or seller due to a default under the terms of the purchase agreement, listing agreement or other specific contract. Any dispute between Participants arising out of this section shall be arbitrated under section 16 of these rules and shall not be considered a rules violation.

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

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

**7.15.1 Estate Sale, Probate and Bankruptcy Listings.** Compensation offered through the MLS to cooperating brokers on estate sale, probate or bankruptcy listings is for the amount published therein as long as the cooperating broker produces the contract which is ultimately successful and confirmed by the court, if court confirmation is required. In the event the contract produced by the cooperating broker is overbid in court and the overbid contract is confirmed, the original cooperating broker shall receive the amount of compensation specified as "unconfirmed cooperating broker's compensation" or "u.c.b." in the property data profile sheet and on the MLS. For estate sale or probate listings, the compensation offered through the service under these rules and this section shall be considered an agreement as referred to in California Probate Code Section 10165 and will therefore supersede any commission splits provided by statute when there is not agreement. This section contemplates that estate sale; probate and bankruptcy judges have broad discretion and therefore are not intended as a guarantee of a specific result as to commissions in every probate or bankruptcy sale.

**7.15.2 Lender Approval Listings.** Compensation offered through the MLS to cooperating brokers on listings which require lender approval (commonly referred to as "short sale" listings) is for the amount published therein unless the Listing Broker indicates on the MLS the following: (a) the fact that the sale and gross commission are subject to lender approval; and (b) the amount or method by which the compensation offered through the MLS will be reduced if the lender reduces the gross commission. This section does not allow an additional reduction from the commission



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offered for items such as a short sale negotiator fee or other administrative costs of the transaction. Any reductions from the commission offered for such items should be factored in as a reduced amount the listing broker initially offers to a cooperating broker and may not be made a condition of the offer.

**7.16 Changes to Offer of Compensation by Listing Broker to All Broker Participants.** The Listing Broker may from time to time, adjust the published compensation offered to all MLS Broker Participants for their services with respect to any listing by changing the compensation offered on the MLS or providing written notice to the MLS of the change. Any changes in compensation will be effective after the change is published in the MLS, either through electronic transmission or printed form, whichever occurs first. The Listing Broker may revoke or modify the offer of compensation in advance as to an individual Broker Participant prior to acceptance in accordance with general contract principles but in no event shall the Listing Broker revoke or modify the offer later than the time the cooperating broker (a) physically delivers or transmits by fax or e-mail to the listing broker a signed offer from a prospective buyer to purchase the property for which the compensation has been offered through the MLS, or (b) notifies the Listing Broker in person or by telephone, fax or e-mail that the cooperating broker is in possession of a signed offer from a prospective buyer to purchase the property for which the compensation has been offered through the MLS and is awaiting instructions from the Listing Broker as to the manner of presentation or delivery of that offer. Any such independent advance revocations, modifications of the offer or agreements between real estate brokers are solely the responsibility of such brokers and shall not be submitted to, shall not be published by, or governed in any way by the service.

**7.17 Broker Participant or Real Estate Subscriber as Principal.** If a Listing Broker has any interest in property, the listing of which is to be disseminated through the service, that person shall disclose that interest on the MLS.

**7.18 Multiple Unit Properties.** All properties which are to be sold or which may be sold separately must be indicated individually on the MLS and will be published separately. When part of a listed property has been sold, the Listing Broker shall input the appropriate changes on the MLS.

**7.19 Expiration, Extension, and Renewal of Listings.** Listings shall be removed from the MLS database on the expiration date specified on the listing unless the listing is extended or renewed by the Listing Broker. This Listing Broker shall obtain written authorization from the seller(s) before filing any extension or renewal of a listing. Any renewals or extensions received after the expiration date of the original listing shall be treated as a new listing and will be subject to any fees applicable to new listings. At any time and for any reason, the MLS has the right to request a copy of the seller's written authorization to extend or renew a listing. If a Listing Broker is requested to provide a copy of such authorization and does not do so within twenty four (24) hours of the request, the listing shall be subject to immediate removal from the MLS.

*For violation of this section, see Appendix A, Citable Infractions, 3.4, Purposely Manipulating the MLS System to Circumvent the Rules.*

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

**7.20.1 Failure to Pay MLS Fees; Resignation.** When a Participant or Subscriber is suspended or expelled from the service for failure to pay MLS fees or charges, or if the Participant or Subscriber resigns from the service, the MLS shall cease to provide services to such Participant or

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Subscriber, including for Broker Participants the continued inclusion of listings in the MLS compilation of current listing information. In the event listings are removed from the MLS pursuant to this section, it shall be the sole responsibility of the Participant to notify the seller(s) that the property is no longer listed in the MLS.

**7.20.2 Violation of MLS Rules.** When a Participant or Subscriber is suspended or expelled for a violation of the MLS rules and regulations, the MLS shall cease to provide services except that the listings in the MLS at the time of suspension or expulsion shall, at the suspended or expelled Participant's option, be retained in the MLS compilation of current listing information until sold, withdrawn or expired, and shall not be renewed or extended by the MLS beyond the termination date of the listing agreement in effect when the expulsion became effective. In the event listings are removed from the MLS pursuant to this section, it shall be the responsibility of the Listing Broker to notify any principal that the property is no longer in the MLS.

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

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

**7.23 REO & HUD Listings.** REO and HUD listings entered into the MLS system shall have listing contracts as required under these rules and be clearly labeled as REO or HUD listings. See Section 7.11 for more information.

**7.24 Auction Listings.** Auction listings entered into the MLS system shall have listing contracts as required under these rules and be clearly labeled as auction listings. Auction listings shall further specify the following:

- a) Minimum opening or acceptable bid price;
- b) Whether the auction is being conducted with or without seller's right of reservation;
- c) The date, time and place of the auction;
- d) All required procedures for Participants/Subscribers to register their representation of a potential bidder;
- e) The compensation to be paid to the Participant representing the successful bidder;
- f) The time or manner in which potential bidders may inspect the listed property;
- g) Disclose buyer's premium charged by the auction.

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- h) Whether or not the seller will accept a purchase offer prior to the scheduled auction and if so, the compensation to be paid to the cooperating Participant in the event of such a pre-auction sale as well as any other necessary pre-auction details: and
- i) Any other material rules or procedures for the auction.
- j) The above specified in confidential remarks and/or associated docs.
- k) See section 7.11 for more information.

*For violation of this section, see Appendix A, Citable Infractions, 3.4, Purposely Manipulating the MLS System to Circumvent the Rules.*

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

**8.1 Listing Agreement and Seller's Permission.** Prior to submitting a listing to the service, the Listing Broker shall obtain the written agreement of the seller expressly granting the Listing Broker authority to: (1) file the listing with the service for publication and dissemination to those authorized by the MLS; (2) act as an agent for the seller; (3) abide by the rules of the service; (4) provide timely notice of status changes of the listing to the service; (5) provide sales information including selling price to the service upon sale of the property for publication and dissemination to those authorized by the MLS and (6) publish sales information after the final closing of a sales transaction in accordance with these MLS rules (see section 10.2).

**8.1.1 Withholding Sales Price at Principal's Request.** The principals of a transaction may mutually agree that a sale shall not be published in the MLS, in which case the listing agent will be relieved of his/her obligation to report the actual sales price. In order to be relieved of that obligation, the Listing Agent is responsible for ensuring that all of the following steps are performed, at least three business days prior to the scheduled closed of escrow date:

- a. Submittal of an EBRDI "Waiver of Publication of Sale Request", signed by all principals (buyers and sellers). Said waiver shall request that the sale information, including sales price, not be published in the MLS after closing.
- b. Submittal to EBRDI of a copy of the buyer's written instruction to the escrow company that the sale price not be entered into public record.
- c. Submittal to EBRDI of written documentation confirming scheduled closing date. (Staff must be informed of any changes to this date). In lieu of entering any closing information into the MLS database, as required in Section 10.2, the Listing Agent, or their Clerical Assistant who is registered with the MLS, is required to contact EBRDI staff within the same timeframe and confirm that escrow has closed. Staff shall change the listing to a "Withdrawn" status and insert the following in the confidential remarks field:

"Permanently Withdrawn" at Seller's & Buyer's Request. COE date is \_\_/\_\_/\_\_. A Listing Agent is not permitted to make this entry/change; staff must perform it. Failure to contact staff and confirm the closing shall carry the same penalties as "failure to report a sale". EBRDI BOD, at its sole discretion, may elect to charge a fee for this service.

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**8.2 Written Documentation.** Listing Brokers filing listings with the service shall have a written listing agreement with all necessary signatures in their possession. Only listings that create an agency relationship between the seller and the Broker Participant are eligible for submission to the service. By inputting a listing to the service, Broker Participants and real estate Subscribers represent that they have in their possession such written agreements establishing agency and the represented type of listing agreement. The service shall have the right to demand a copy of such written listing agreements and verify the listing's existence and adequacy at any time. The service shall also have the right to demand a copy of seller's written authorization required under these rules. If the Broker Participant or real estate Subscriber fails to provide documentation requested by the service within 24 hours, the service shall have the right to immediately withdraw any listings from the database in addition to disciplining the Broker Participant and real estate Subscriber for a violation of MLS rules.

**8.3 Accuracy of Information; Responsibility for Accuracy.** By inputting information into the MLS computer database, the Listing Broker represents that the information input is accurate to the best of the Listing Broker's knowledge. The Listing Broker shall use good faith efforts to determine the accuracy of the information and shall not submit or input information, which the Listing Broker knows to be inaccurate. Upon receipt of the first publication or electronic transfer by the MLS of such information, the Listing Broker shall make all necessary corrections. The MLS merely publishes the MLS information and has no affirmative responsibility to verify the accuracy of the MLS information. The MLS, however, reserves the right to require Broker Participants and real estate Subscribers to change their MLS information if the MLS is made aware of alleged inaccuracies in the MLS information and the MLS determines that such inaccuracies do in fact exist. If a Broker Participant or real estate Subscriber fails to make necessary or required corrections to their MLS information, the Broker Participant and real estate Subscriber shall indemnify and hold harmless the service for any claims, costs, damage or losses, including reasonable attorney fees and court costs, incurred by the MLS as a result of such failure. In no event will the MLS be liable to any MLS Participant, Subscriber or any other party for any indirect, special or consequential damages arising out of any information published in the MLS and all other damages shall be limited to an amount not to exceed the MLS fees paid by the Listing Broker.

*For violation of this section, see Appendix A, Citable Infractions, 3.1 Submission of Listings That Do Not Satisfy the Requirements of the MLS Rules and 3.4, Purposely Manipulating the MLS System to Circumvent the Rules.*

**8.4 Input Defined.** All references or uses of the word 'input' shall also include information which is submitted to the MLS for input in the MLS data base by the MLS staff, whether such information was provided to the MLS staff on a "property data form" or otherwise.

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

## 9. SELLING PROCEDURES.

**9.1 Showings and Negotiations.** Appointments for showings and negotiations with the seller for the purchase of listed property filed with the service 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

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- b. after reasonable effort and no less than 24 hours, the cooperating broker cannot contact the Listing Broker or his representative. However, the Listing Broker, at his option, may preclude such direct negotiations by the cooperating broker by giving notice to all Participants through the MLS.

In the event the Listing Broker is having all showings and negotiations conducted solely by the seller, the Listing Broker shall clearly set forth such fact in the listing information published by the service.

**9.1.1 Showing Access.** Properties entered into the system must be available to show within three business days unless otherwise directed by the seller in writing, which shall be noted in the confidential remarks.

*For violation of this section, see Appendix A, Citable Infractions, 5.1, Showings and Access.*

**9.2 Disclosing the Existence of Offers.** Listing brokers, in response to inquiries from buyers or cooperating brokers, shall, with the sellers' approval, disclose the existence of offers on the property. Where disclosure is authorized, the Listing Broker shall also disclose whether the listing licensee, by another licensee in the listing firm, or by a cooperating broker obtained offers.

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

**9.4 Presentation of Offers.** The Listing Broker must arrange to present the offer as soon as possible, or give the cooperating broker a satisfactory reason for not doing so. In the event a Listing Broker will not be participating in the presentation of offers, the Listing Broker shall clearly indicate this fact and it shall be disseminated to all Participants by the service.

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

**9.6 Right of Cooperating Broker in Presentation of Offer.** The cooperating broker has the right to participate in the presentation of any offer to purchase he secures. The cooperating broker does not have the right to be present at any discussion or evaluation of that offer by the seller and the Listing Broker. However, if the seller gives written instructions to the Listing Broker requesting that the cooperating broker not be present when an offer the cooperating broker secured is presented, the cooperating broker shall convey the offer to the Listing Broker for presentation. In such event, the cooperating broker shall have the right to receive a copy of the seller's written instructions. Nothing in this section diminishes or restricts the Listing Broker's right to control the establishment of appointments for offer presentations.

**9.7 Right of Listing Broker and Presentation of Counter Offers.** The Listing Broker has the right to participate in the presentation of any counter-offer made by the seller or lessor. The Listing Broker does not have the right to be present at any discussion or evaluation of a counter-offer by the purchaser or lessee (except where the cooperating broker is a sub-agent). 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.

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**9.8 Change of Compensation Offer by Cooperating Broker.** Cooperating Broker Participants and real estate Subscribers shall not use the terms of an offer to purchase to attempt to modify the Listing Broker's offer of compensation to buyer's agents nor make the submission of an executed offer to purchase contingent on the Listing Broker's agreement to modify the offer of compensation. However, failure of a cooperating broker to comply with this rule shall not relieve a Listing Broker of the obligation to submit all offers to the seller as required by section 9.5.

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

**9.10** Cooperating Broker/Buyers agent must be present on the property at all times when providing or arranging access to a listing property for customers, appraisers, etc. unless the Seller /Seller's agent has consented otherwise.

**(NOTE: Nothing in these rules shall preclude the Listing Broker and cooperating broker from entering into a mutual agreement to change cooperative compensation.)**

### 10. REPORTING SALES AND OTHER INFORMATION TO THE SERVICE.

#### 10.1 Statuses.

Active – No accepted offer  
Active Contingent – Offer accepted, contingent on sale of buyer's other property  
Pending – Offer accepted, not contingent on sale of buyer's other property and expected to close  
Pending Show for Backups – Offer accepted but back up offers welcome  
Pending Court Confirmation – Initial bid accepted but subject to overbid at court confirmation hearing  
Pending Lender Approval – Offer accepted, ratified contract exists for potential Short Sale listing  
Temporarily Withdrawn – Listing agreement is still in effect, but property is temporarily off the market  
Cancelled – Listing agreement cancelled  
Expired – Listing agreement expired  
Sold – Escrow closed

**10.2 Reporting of Sales.** Listings with accepted offers shall be reported to the MLS or input into the MLS database as "pending" by the end of next business day (with no exceptions for weekends, holidays or postal holidays) after acceptance, by the Listing Broker unless the negotiations were carried on under section 9.1 (a) or (b), in which case, the cooperating broker shall report to the MLS or input the listing in the MLS as "pending" and send a copy of the listing's changed status to the Listing Broker by the end of next business day (with no exceptions for weekends, holidays or postal holidays) after acceptance. The listing shall be published on the MLS as pending with no price or terms prior to the final closing. Upon final closing, the Listing Broker shall report or input the listing in the MLS as "sold" by the end of next business day (with no exceptions for weekends, holidays or postal holidays) of the final closing date. Listings that were not input into the MLS as result of the sellers's instructions may be input into the MLS "sold" data at the Listing Broker's option. Listings which were not input into the MLS as a result of the seller's instruction

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may be input into the MLS “sold” data at the listing broker’s option. If such a listing is entered for comparable purposes only, then “For Comp Purposes Only” shall appear in the first line of confidential remarks.

*For violation of this section, see Appendix A, Citable Infractions, 2.3, Status Changes Not Reported by Deadline and 4.1, Misuse of Remarks.*

**10.3 Reporting Cancellation of Pending Sale.** The Listing Broker shall report service to the service by the end of next business day (with no exceptions for weekends, holidays or postal holidays), the cancellation of any pending sale and the listing shall be reinstated immediately as long as there is still a valid listing.

*For violation of this section, see Appendix A, Citable Infractions, 2.3, Status Changes Not Reported by Deadline.*

**10.4 Refusal to Sell.** If the seller of any listed property filed with the service refuses to accept a written offer satisfying the terms and conditions stated in the listing, such fact shall be transmitted immediately to the service and to all Participants and Subscribers.

## 11. OWNERSHIP OF MLS COMPILATIONS AND COPYRIGHTS.

**11.1 MLS Compilation Defined.** The term “MLS compilation” includes, but is not limited to, the MLS computer database, all printouts of data from the MLS computer database, and all MLS publications.

**11.2 Active Listing MLS Compilation Defined.** “Active listing MLS compilation” shall mean that portion of the MLS compilation, which includes listings currently for sale and all other indexes and other information relating to the current listing information approved for distribution by the MLS.

**11.3 Comparable Data MLS Compilation Defined.** “Comparable data MLS compilation” shall mean that portions of the MLS compilation that includes the off market data, sold and appraisal information regarding properties that are not currently for sale and all indexes and information relating to the sold information compilation approved for distribution by the MLS.

**11.4 Authority to Put Listings in MLS Compilation.** By submitting any property listing data form to the MLS or inputting listing information into the MLS compilation, the Broker Participant and real estate Subscriber represent and warrant that they have been authorized to grant license and also thereby does grant authority for and license EBRDI to include the property listing data in its copyrighted MLS compilation. By submitting any property listing data form to the EBRDI MLS, the Broker Participant and real estate Subscriber represent and warrant that they have been authorized to report information about the sales, price and terms of a listing, have authority to grant and also thereby does grant authority for EBRDI to include the sold information in its copyrighted MLS compilation, except where excluded under section 8.1.1.

**11.5 Photographs on the MLS.** By submitting photographs to the MLS, the Participant and/or Subscriber represents and warrants that it either owns the right to reproduce and display these photographs or has procured such rights from the appropriate party, and has the authority to grant and hereby grants the MLS and the other Participants and Subscribers the right to reproduce and display the photographs in accordance with these rules and regulations.

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**11.5.1** Use of photographs by a subsequent listing agent requires prior written authorization from the originating listing agent or appropriate party with the legal right to reproduce and display such photographs.. Except by the MLS for purposes of protecting its rights under Section 11.6, branding of photographs with any information or additional images is prohibited.

**11.5.2** Properties entered into the MLS in categories: Residential, Mobile Home, Residential Income, Lease rental, Commercial Residential Multi units 5+, Commercial for Sale, and Commercial for lease must have a minimum of one photo/image of the front exterior of the property attached to the listing unless directed otherwise in writing by the seller. The photo/image must be added within three (3) days of the listing being entered into the MLS or a copy of the sellers written instruction (Seller's Certification for Waiver of MLS Publication or Photo Upload) must be submitted within the same timeframe.

*For violation of this section, see Appendix A, Citable Infractions, 3.1, Submission of Listing That Do Not Satisfy the Requirements of the MLS Rules.*

**11.6 Copyright Ownership.** All right, title, and interest in each copy of every MLS compilation created and copyrighted by EBRDI, and in the copyrights therein, shall at all times remain vested in EBRDI. The MLS shall have the right to license such compilations or portions thereof to any entity pursuant to terms agreed upon by the EBRDI Board of Directors.

**11.7 Access to MLS Compilations.** Each Participant and Subscriber shall have the right and license to access the Active Listing and Comparable Data MLS Compilations in accordance and subject to all restrictions contained in these rules. Participants and Subscribers shall acquire by such license only the right to individually use the MLS compilations, and only for purposes permitted by these rules. Clerical Users may have access to the information solely under the direction and supervision of the Participant or Subscriber. Clerical Users may not provide any MLS compilation or information to persons other than the Participant or the Subscriber under whom the Clerical User is registered.

## 12. PROHIBITIONS AND REQUIREMENTS.

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

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



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California authorized to make the determination, that the Participant or Subscriber violated a provision of the California Real Estate Law or a Regulation of the Real Estate Commissioner or law relating to Appraisers.

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

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

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

**12.5 Use of Remarks.** Participants and Subscribers may not use the remarks in a property data profile sheet or listing submitted to the MLS or inputted directly into the MLS database for purposes of disparaging other real estate agents or conveying information about other offices or for conveying any other information that does not directly relate to the marketing of this listing.

### **12.5.1 Public Remarks Restrictions and Requirements.**

- a. Information in the public remarks shall only relate to the marketing, description and condition of the property.
- b. No contact information is permitted, including names, phone or fax numbers, email addresses or website addresses (including virtual tours and transaction tracking URLs).
- c. No showing instructions are permitted, including references to lockbox, alarm, gate or other security codes, or the vacancy of the property. However, a statement that the property shall be delivered vacant is not a violation.
- d. No information directed toward real estate agents or brokers, including compensation or bonuses offered to cooperating brokers may be shown in public remarks.

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- e. No other information may be provided that goes beyond a description of the property.

*For violation of this section, see Appendix A, Citable Infractions, 4.2, Misuse of Public Remarks.*

### **12.5.2 Confidential Remarks Restrictions and Requirements.**

- a. “For Comp Purposes Only” must appear in the first line of confidential remarks when a listing is entered for that purpose.
- b. References to burglar alarm, security system or gate codes may be placed in confidential remarks only with seller’s written permission.
- c. Caution: Title or escrow information may be entered in confidential remarks; however, Participants/Subscribers should note that any verbiage, which implies a requirement to use a specific title company or escrow service, may be a violation of RESPA. You are advised to seek legal counsel for specific advice when using such verbiage.
- d. Except for reciprocal listings, no reference may be made to licensees who are not Participants or Subscribers.

*For violation of this section, see Appendix A, Citable Infractions, 4.3, Misuse of Confidential Remarks.*

**12.6 “For Sale Signs”.** Only the “For Sale” signs of the Listing Broker may be placed on the property.

**12.7 “Sold” Signs and Use of the Term “Sold”.** Only Broker Participants or real estate Subscribers who participated in the transaction as the Listing Broker or cooperating broker (selling broker) may claim to have “sold” the property. Prior to closing, a cooperating broker may post a “sold” sign on a property only with the consent of the Listing Broker. This section does not, however, prohibit any broker from advertising the addresses and prices of the properties that have sold in a neighborhood after the information regarding the properties has been published as long as the advertisement does not imply the agent was involved in the transaction unless such is the case and as long as the advertisement otherwise presents a “true picture” as is meant under Article 12 of the N.A.R. Code of Ethics, its Standards of Practice and its Case Interpretations.

**12.8 Advertising of Listing filed with the MLS.** Any Participant or Subscriber shall not advertise a listing other than the Listing Broker, without the prior consent of the Listing Broker except as provided in section 12.16 and 12.19 relating to display of listings on the internet.

*For violation of this section, see Appendix A, Citable Infractions, 5.2, Violation of IDX Rules and 5.3, Advertising of Listing Filed with the MLS (Outside scope of IDX).*

**12.9 Limitations on Use of MLS Information in Advertising.** Except as provided in sections 12.7, 12.11, 12.8 and 12.15, truthful use of information from the MLS compilation of current listing information, from the MLS’s “statistical report,” or from any “sold” or “comparable” report of the MLS for public mass media advertising by an MLS Participant or Subscriber or in other public representations for purposes of demonstrating market share is not prohibited. However, any print or non-print forms of

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advertising or other forms of public representations must clearly demonstrate the period of time over which such claims are based and must include the following, or substantially similar, notice:

**“Based on information from the East Bay Regional Data MLS for the period (date) through (date).  
Display of MLS data is not verified or guaranteed by EBRDI.”**

*For violation of this section, see Appendix A, Citable Infractions, 5.3, Advertising of Listing Filed with the MLS (outside the scope of IDX).*

**12.10 False or Misleading Advertising and Representations.** Participants and Subscribers may not engage in false or misleading advertising, including, but not limited to, advertisements or representations regarding the Participant’s or Subscriber’s relationship to the service, about the service itself, or about any property listed with the service.

**12.11 Use of MLS Information.** In recognition that the purpose of the MLS is to market properties and offer compensation to other Broker Participants and real estate Subscribers for the sole purpose of selling the property, and that sellers of properties filed with the service have not given permission to disseminate the information for any other purpose, Participants and Subscribers are expressly prohibited from using current listing information for any purpose other than to market property or to bonafide prospective purchasers or to support market evaluations or appraisals as specifically allowed by sections 12.14, 12.15, 12.16, and 12.19. Any use of MLS information inconsistent with these sections is expressly prohibited. Nothing herein shall limit EBRDI from entering into licensing agreements with third parties for use of the MLS information.

*For violation of this section, see Appendix A, Citable Infractions, 1.2, Misuse of MLS Information.*

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

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

**12.13 Access to the Compilations.** Unless subject to an executed license agreement with the MLS, only Participants, Subscribers and shareholder AOR’s are entitled to the right and license to access the Active Listing MLS Compilation and the Comparable Data MLS Compilation. Shareholder AOR’s may use the data to produce statistical, analytical and market trending information for dissemination to their AOR members and/or for public relation purposes only. Shareholder AOR’s have a right to use the data for the other purposes as allowed by and with restrictions and conditions set by the MLS.

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**12.14 Display.** Subject to section 12.15, 12.16 and 12.19, Broker Participants and real estate Subscribers shall be permitted to display the MLS compilation in either electronic or printed format to specifically identify and bonafide prospective purchasers only in conjunction with their ordinary business activities of attempting to locate ready, willing and able buyers for the properties described in said MLS compilation. Broker Participant and real estate Subscribers shall be permitted to display the MLS compilation in either electronic or printed format to sellers or prospective sellers only in conjunction with their ordinary business activities in listing properties. Appraiser Participants and Appraiser Subscribers shall be permitted to display the MLS compilation to the person requesting the appraisal only in conjunction with their ordinary business activities of producing a written appraisal. Such displays under this section shall be only in the immediate presence of the MLS Participant or Subscriber.

*For violation of this section, see Appendix A, Citable Infractions, 1.1, Misuse of MLS Information.*

**12.14.1 Clerical Users.** Clerical users are expressly prohibited from displaying MLS information to anyone other than the Participant or Subscribers under whom the Clerical User is registered.

*For violation of this section, see Appendix A, Citable Infractions, 1.1, Misuse of MLS Information.*

**12.15 Reproduction.** “Reproduction” shall include but not be limited to, making photocopies, computer printouts, electronic transfers (including e-mail), or downloading of MLS data or compilations. Participants and Subscribers or their affiliated licensees shall not reproduce any MLS compilation or any portion thereof except as provided in section 12.16, 12.19 and in the following limited circumstances:

**12.15.1 Copies for Prospective Purchasers.** Participants and Subscribers may reproduce from the MLS compilation, and distribute to prospective real estate purchasers, copies of those portions of the MLS compilation consisting only of a description of the property, including the address, features, financing and price. Such “client copies” shall also comply with the following:

- a. Permissible MLS data may be augmented with additional data not otherwise prohibited from display, provided the source of any additional data is clearly identified.
- b. No more than 100 current listings and 100 sold listing may be provided in response to any inquiry.
- c. A disclaimer statement shall be made indicating that the MLS data is not verified or guaranteed by the MLS.

*For violation of this section, see Appendix A, Citable Infractions, 1.2, Misuse of MLS Information.*

**12.15.2 Information Prohibited from Reproduction/Confidential Fields.** Unless the Participant or Subscriber obtains prior written consent from the Listing Broker, the information reproduced pursuant to this section shall not include the following:

- a. Property owner’s name, phone number, and address (if different from the listed property).

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- b. Instructions or remarks intended for cooperating brokers, including but not limited to showing instructions or security references (ex: lockbox, burglar alarm or security system, vacancies) regarding the listed property;
- c. Showing instructions including any references to a lockbox, burglar alarm or any security system, or to the vacancy of the property;
- d. Type of listing;
- e. Compensation or bonuses offered to cooperating brokers.
- f. Expired or withdrawn listings;
- g. Other information which goes beyond a description of the property.

*For violation of this section, see Appendix A, Citable Infractions, 1.2, Misuse of MLS Information.*

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

**12.15.4 Compilation Downloading.** Download of MLS information is subject to the following:

- a. Participants and Subscribers may download MLS information from the MLS user interface(s) or MLS provided applications, into a computer as along as: 1) Access to the computer receiving the information is strictly limited to authorized Participants, their Subscribers and their Clerical Users as defined in the rules; and 2) The information is only retransmitted to the Participants, Subscribers and Clerical Users authorized to access the system by these rules; and 3) The information is not reformatted or used to create another product except as may be used by the Participant who downloaded the data and such use strictly complies with sections 12.7, 12, 12.15, 12.16 and 12.19.
- b. Broker Participants may download the compilation by alternate means as made available by the service, subject to an executed license agreement and payment of any associated fees.

*For violation of this section, see Appendix A, Citable Infractions, 1.2, Misuse of MLS Information.*

**12.15.5 Sold Information.** Individuals legitimately in possession of current listing information, “sold” information, “comparables” or statistical information may utilize such information to support an estimate of value on a particular property for a particular client. However, only such information that the MLS has deemed to be non-confidential 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 not specified by section 12.16 and 12.19 is unauthorized and prohibited by these rules and regulations.

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### **12.16 Use of Active Limited Sold Listing Information on the Internet [Also know as Internet Data Exchange (IDX)].**

- a. Subject to paragraphs (b) through (o) below, and subject to an executed IDX Access Agreement with EBRDI, notwithstanding anything in these rules and regulations to the contrary, Broker Participants and real estate Subscribers may display on their public websites aggregated MLS active and limited sold listing information through either downloading and placing the data on the Participant or Subscriber's public access websites or by framing such information on the MLS or association public access website (if such a site is available). Sold listing information, if displayed, shall be limited to listings with a closing date less than three years previous. Display of sold listing data greater than three years old is prohibited.
- b. The Listing Brokers' consent for such internet display is presumed, in satisfaction of Rule 12.8, unless a Listing Broker affirmatively notifies the MLS that the Listing Broker refuses to permit display on either on a blanket or on a listing-by-listing basis. Listing Brokers that refuse to permit other MLS Broker Participants and real estate Subscribers to display their listing information on a blanket basis may not display approved IDX listing information of other brokers' listings.
- c. Broker Participants and real estate Subscribers shall not display confidential information fields, as determined by the MLS in the MLS's sole discretion, such as that information intended for cooperating brokers rather than consumers.
- d. All listings on a Broker Participants and real estate Subscribers' site displayed by framing or other electronic means, shall identify the name of the listing firm and the name of the listing agent in a manner designed to easily identify such listing firm or agent. Listing firm and listing agent name shall be displayed in a readily visible color and typeface not smaller than the median used in the display of the listing data. Each results screen, including the thumbnail or summary view, must display the Listing Firm and Listing Agent name as defined above.
- e. Broker Participants and real estate Subscribers shall not modify the information displayed pursuant to these MLS rules. However, permissible MLS data may be augmented with additional data not otherwise prohibited from display, provided the source of any additional data is clearly identified.
- f. Information displayed shall indicate the source of the information being displayed and the most recent date updated. Broker Participants and real estate Subscribers shall update all downloads and refresh all data at least once every 72 hours;
- g. Sharing of the MLS compilation with any third party not authorized by the MLS is prohibited. Broker Participants and real estate Subscribers shall indicate on their website that the information being provided is for consumers' personal, non-commercial use and may not be used for any purpose other than to identify prospective properties consumers may be interested in purchasing.
- h. Broker Participants and real estate Subscribers websites must protect MLS data from misappropriation by employing reasonable efforts to monitor for and prevent 'scraping' and other unauthorized accessing, reproduction or use of the MLS database.

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- i. Listings or property addresses of sellers who have directed their Listing Brokers to withhold their listing or their property address from display on the Internet (including but not limited to, publicly accessible websites) shall not be accessible via IDX sites. This does not preclude Listing Broker Participants or real estate Subscribers from displaying on their IDX sites or their other website(s) the listing or property address of consenting sellers.
- j. Not all listings from the MLS must be displayed as long as any exclusion from display on Participants and Subscribers IDX sites are based on objective criteria, e.g. class of property, listed price or geographical location.
- k. No portion of the MLS database shall be distributed, provided to or made accessible to any person except as provided for in these rules and/or in the National Association of REALTORS® IDX policy.
- l. When displaying listing content, a Participant or Subscriber's website must clearly identify the name of the brokerage firm under which they operate in a readily visible color and typeface.
- m. All Participant's and Subscribers shall obtain data/information from EBRDI as the sole authorized source for IDX data. Participants and Subscribers wishing to frame data via a third party must use a Consultant who is currently registered with EBRDI. A list of approved vendors can be found in Appendix B to the IDX Policy, Approved Consultants. (This document can be found at [www.ebrdi.com](http://www.ebrdi.com) in the Forms: IDX folder). Any non-principal brokers and sales licensees using IDX on their personal websites must contract for IDX data through their Principal Broker/Designated Realtor.
- n. No portion of the IDX Database shall be co-mingled with any non-MLS listings on the IDX Internet website. However, if the property in question appears in an MLS other than the EBRDI MLS, it may be co-mingled on the Participants/Subscribers IDX compliant web site.
- o. EBRDI shall establish an IDX policy for the implementation and administration of the IDX program. Approval of this policy and any revision shall be by a majority vote of the EBRDI Board of Directors.

*For violation of this section, see Appendix A, Citable Infractions, 5.2, Violation of IDX Rules.*

### **12.16.1 Notification by Authorized Broker Participants and Real Estate**

**Subscribers.** All Broker Participants and real estate Subscribers partaking in the display of MLS active listing information of other brokers' listings pursuant to section 12.16 must notify the MLS before displaying said listing information and make their website directly accessible to the MLS and other MLS Participants for purposes of monitoring/ensuring compliance with applicable rules and policies.

*For violation of this section, see Appendix A, Citable Infractions, 5.2 Violation of IDX Rules.*

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

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**12.16.3 Intention of IDX Display.** IDX is solely intended to allow Broker Participants and real estate Subscribers to display limited MLS Data on their public internet sites. Display of this information is strictly limited to internet sites accessible by the public. IDX is in no way intended to negate provisions contained within these rules that prohibit advertising of another agent's listings without permission as stated in section 12.8.

*For violation of this section, see Appendix A, Citable Infractions, 5.2, Violation of IDX Rules.*

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

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

**12.18 Use of the Terms MLS and Multiple Listing Service.** No MLS Participant or Subscriber shall, through the name of their firm, their URLs, their e-mail addresses, their website addresses, or in any other way represent, suggest, or imply that the individual or firm is an MLS, or that they operate an MLS. Participants and Subscribers shall not represent, suggest, or imply that consumers or others have direct access to MLS databases, or that consumers or others are able to search MLS databases available only to Participants and Subscribers. This does not prohibit Participants and Subscribers from representing that any information they are authorized under MLS rules to provide to clients or customers is available on their websites or otherwise.

*For violation of this section, see Appendix A, Citable Infractions, 1.2, Misuse of MLS Information*

### **12.19 Virtual Office Websites ("VOW")**

**12.19.1 (a):** A Virtual Office Website ("VOW") is a Participant's Internet website, or a feature of a Participant's website, through which the Participant is capable of providing real estate brokerage services to consumers with whom the Participant has first established a broker-consumer relationship (as defined by state law) where the consumer has the opportunity to search MLS Listing Information, subject to the Participant's oversight, supervision, and accountability. A non-principal broker or sales licensee affiliated with a Participant (i.e. Subscriber) may, with his or her Participant's consent, operate a VOW. Any VOW of a Subscriber is subject to the Participant's oversight, supervision, and accountability.

(b) As used in Section 12.19 of these Rules, the term "Participant" includes a Participant's affiliated non-principal brokers and sales licensees (i.e. Subscribers) – except when the term is used in the phrases "Participant's consent" and "Participant's oversight, supervision, and



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accountability”. References to “VOW” and “VOWs” include all VOWs, whether operated by a Participant, by a Subscriber, or by an Affiliated VOW Partner (“AVP”) on behalf of a Participant.

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

(d) As used in Section 12.19 of these Rules, the term “MLS Listing Information” refers to active listing information and sold data provided by participants to the MLS and aggregated and distributed by the MLS to Participants.

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

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

(c) Except as otherwise provided in the VOW Policy or in these Rules, a Participant need not obtain separate permission from other MLS Participants whose listings will be displayed on the Participant’s VOW.

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

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

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

(iii) The Participant must require each Registrant to have a user name and a password, the combination of which is different from those of all other Registrants on the VOW. The Participant may, at his or her option, supply the user name and password or may

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allow the Registrant to establish its user name and password. The Participant must also assure that any email address is associated with only one user name and password.

(b) The Participant must assure that each Registrant's password expires on a date certain but may provide for renewal of the password. The Participant must at all times maintain a record of the name, email address, user name, and current password of each Registrant. The Participant must keep such records for not less than 180 days after the expiration of the validity of the Registrant's password.

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

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

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

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

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

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

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

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

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

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

**12.19.5:** A Participant's VOW must employ reasonable efforts to monitor for, and prevent, misappropriation, "scraping", and other unauthorized use of MLS Listing Information. A Participant's VOW shall utilize appropriate security protection such as firewalls as long as this requirement does not impose security obligations greater than those employed concurrently by the MLS

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

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

**Seller Opt-Out Form (See MLS Forms – VOW Seller's Opt-Out Form)**

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

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

\_\_\_\_\_  
initials of seller

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

**12.19.7:** (a) Subject to subsection (b), a Participant's VOW may allow third-parties

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(i) to write comments or reviews about particular listings or display a hyperlink to such comments or reviews in immediate conjunction with particular listings, or

(ii) display an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing.

(b) Notwithstanding the foregoing, at the request of a seller the Participant shall disable or discontinue either or both of those features described in subsection (a) as to any listing of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all Participants' websites. Subject to the foregoing and to Section 12.19.8, a Participant's VOW may communicate the Participant's professional judgment concerning any listing. A Participant's VOW may notify its customers that a particular feature has been disabled "at the request of the seller."

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

**12.19.9:** A Participant shall cause the MLS Listing Information available on its VOW to be refreshed at least once every three (3) days.

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

**12.19.11:** A Participant's VOW must display the Participant's privacy policy informing Registrants of all of the ways in which information that they provide may be used.

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

**12.19.13:** A Participant who intends to operate a VOW to display MLS Listing Information must notify the MLS of its intention to establish a VOW and must make the VOW readily accessible to the MLS and to all MLS Participants for purposes of verifying compliance with these Rules, the VOW Policy set forth in Exhibit A hereto and any other applicable MLS rules or policies.

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

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**12.19.15:** A Participant's VOW may not make available for search by, or display to, Registrants any of the following information:

- a. Expired or withdrawn listings.
- b. The compensation offered to other MLS Participants.
- c. The type of listing agreement, i.e., exclusive right to sell or exclusive agency.
- d. The seller's and occupant's name(s), phone number(s), or e-mail address(es).
- e. Instructions or remarks intended for cooperating brokers only, such as those regarding showings or security of listed property.

**12.19.16:** A Participant shall not change the content of any MLS Listing Information that is displayed on a VOW from the content as it is provided in the MLS. The Participant may, however, augment MLS Listing Information with additional information not otherwise prohibited by these Rules or by other applicable MLS rules or policies as long as the source of such other information is clearly identified. This rule does not restrict the format of display of MLS Listing Information on VOWs or the display on VOWs of fewer than all of the listings or fewer than all of the authorized information fields

**12.19.17:** A Participant shall cause to be placed on his or her VOW a notice indicating that the MLS Listing Information displayed on the VOW is not verified or guaranteed by the MLS. A Participant's VOW may include other appropriate disclaimers necessary to protect the Participant and/or the MLS from liability.

**12.19.18:** A Participant shall limit the number of listings that a Registrant may view, retrieve, or download to not more than 100 current listings and not more than 100 sold listings in response to any inquiry.

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

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

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

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**12.19.22:** A Participant shall cause any listing displayed on his or her VOW obtained from other sources, including from another MLS or from a broker not participating in the MLS, to be searched separately from listings in the MLS.

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

**12.19.24:** Where a seller affirmatively directs their listing broker to withhold either the seller's listing or the address of the seller's listing from display on the Internet, a copy of the seller's affirmative direction shall be provided to the MLS within 72 hours.

**12.20 Applicability of Rules to MLS.** These rules are binding on the MLS Participants and Subscribers. Nothing in these rules shall limit the right of the MLS to enter into licensing agreements with third parties for use of the MLS compilations or any portion thereof in accordance with terms approved by the EBRDI Board of Directors.

*For violation of this section, see Appendix A, Citable Infractions, 5.7 Violation of VOW Rules*

### 13. LOCKBOXES.

**13.1 Eligibility for Lockboxes.** MLS Participants and Subscribers are eligible for lockbox privileges if they otherwise qualify under this section. Keys/Boxes shall be issued through one of EBRDI's Shareholder Operated Service Centers. Clerical Users are not eligible for lockbox privileges. MLS Participants and Subscribers shall be eligible to hold a lockbox key provided:

- a. The key holder signs an agreement with an organization (hereafter "Organization") that is a member of the Bay Area LENI/KIM Users Group. The agreement shall include and bind the Participant or Subscriber to all of the provisions of this section 13.
- b. The Participant to which the key holder is licensed cosigns the agreement with the Organization.
- c. The key holder continues to comply with all MLS rules relating to lockbox keys.
- d. The key holder and Participant to whom the key holder is licensed remain eligible for MLS services.

**13.2 Lockboxes.** An MLS Participant or Subscriber may place any type or number of lockboxes they desire on their own listing, provided that:

- a. If a Participant or Subscriber places any lockbox on a listing for the purpose of providing access to the property by other MLS Participants and Subscribers, a Kim User Group approved iBox lockbox must also be placed on the property.
- b. If a Participant or Subscriber indicates in the Showing Instructions for the listing that there is a lockbox on the property, a Kim User Group approved iBox lockbox must be placed on the property.

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- c. If Showing Instructions for the listing do not indicate there is a lockbox on the property, but a Participant or Subscriber places one on the property for the purpose of providing access to the property by MLS Participants and Subscribers, a Kim User Group approved iBox lockbox must be placed on the property.
- d. All Kim User Group approved iBox Lockboxes placed on properties in compliance with this section must contain appropriate keys for accessing the property.
- e. Where a combination lockbox is also located on the property and a Participant or Subscriber is desirous of providing the code to other agents, it may be placed only in the confidential remarks section of the MLS.
- f. Co-operating/Buyers Agents are specifically prohibited from providing lockbox combinations to prospective purchasers or other members of the public without the Listing Broker's specific permission.

*For violation of this section, see Appendix A, Citable Infractions, 5.1 Showings and Access*

### 13.3 Use of Lockbox Contents

- a. Listing Broker's Permission. No Participant or Subscriber may enter a property with or without a lockbox without the Listing Broker's permission. The Listing Broker may grant such permission by specifying permission to use the lockbox through the MLS. Appraiser Participants are expressly prohibited from using lockbox keys to enter a property without either the owner's or Listing Broker's permission.
- b. Participants and Subscribers shall at all times follow the showing instructions published in the MLS.
- c. Participants and Subscribers shall not remove contents of the lockbox for purposes other than showing the home and shall promptly return the contents to the lockbox upon exiting the property.
- d. Participants and Subscribers shall keep lockbox contents in their possession at all times after removal from the lockbox. The lockbox and/or contents shall not be removed from the property site without prior consent from the listing agent.

*For violation of this section, see Appendix A, Citable Infractions, 5.1., Showings and Access.*

**13.4 Key Use and Service.** Keys may not be used under any circumstances by anyone other than the key holder including but not limited to, lending, borrowing or sharing keys with others. The AOR is not obligated to provide service on keys or lockboxes to individuals who are not the registered lessee or owner of the component. Keys may only be used for the purpose of facilitating the sale or lease of a listed property.

**13.5 Accountability.** Key holders must account for keys at the time of any inventory conducted by the AOR or at any time requested by the AOR. Key holders who cease to participate or subscribe to the MLS shall return all keys(s) in their possession to the AOR. Failure to return a key(s) will subject the key

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holder and/or the key holder's Participant to fines and penalties and to being responsible for all costs incurred by the AOR to secure the lockbox key system as a result of the failure to return the key(s).

**13.6 Deemed Unaccountable.** Keys shall be deemed unaccounted for if a key holder refuses or is unable to demonstrate that the key is within the key holder's physical control.

*For violation of this section, see Appendix A, Citable Infractions, 5.1, Showings and Access.*

**13.7 Written Authority.** Participants and Subscribers shall not place a lockbox on a property without written authority from the seller and occupant if other than the seller.

**13.8 Removal of Lockbox.** Upon Sale of the property, the lockbox must be removed within one (1) day after the close of escrow or expiration/cancellation of the listing.

*For violation of this section, see Appendix A, Citable Infractions, 5.1, Showings and Access.*

**13.9 Unaccountable Keys.** Key holders and Participants cosigning with a key holder shall immediately report lost, stolen or otherwise unaccountable keys to the AOR.

**13.10 Deposits.** All key holders may be required to give the AOR deposits in accordance with the deposit schedule adopted by the MLS Committee and approved by the Board of Directors. Key holders shall forfeit the deposits if the key is lost, stolen or unaccounted for. Key holders shall not be entitled to any interest on their deposits. The AOR is not obligated to refund deposits to individuals who are not the registered lessee or owner of the key.

**13.11 Rules Violations.** Failure to abide by rules relating to lockboxes as set forth in this section or failure to abide by the key lease agreement may result in discipline as provided in sections 14 and of these rules, in addition to loss of or restriction on all lockbox and key privileges.

**13.12 Right to Limit Access.** The Organization reserves the right to refuse to issue a key or limit access to lockboxes if, in its sole discretion, it determines the security of the system would be compromised by issuing such keys or granting access to lockboxes.

## 14. VIOLATIONS OF RULES AND REGULATIONS.

**14.1 Grounds for Disciplinary Action and Sanctions.** After a hearing by a hearing panel, which shall be assigned to an EBRDI Shareholder's Association as provided in the California Code of Ethics and Arbitration Manual, the EBRDI Board of Directors may take disciplinary action and impose sanctions against any MLS Participant and Subscriber:

- a. For violation of any MLS rule;
- b. On the Participant's or Subscriber's being convicted, adjudged, or otherwise recorded as guilty by a final judgment of any court of competent jurisdiction of (1) a felony, or (2) a crime involving moral turpitude, or (3) on a determination by any court of competent jurisdiction, or official of the State of California authorized to make the determination, that the Participant or Subscriber violated a provision of the California Real Estate Law or a Regulation of the Real



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Estate Commissioner or the laws relating to Appraisers or a regulation of the Office of Real Estate Appraisers.

- c. For any violation of subsection (a) by any person, including but not limited to a Clerical User or a salesperson, who is not a Participant or Subscriber but is employed by or affiliated with such Participant or Subscriber and was providing real estate related services within the scope of the Participant's or Subscriber's license. Lack of knowledge by the Participant or Subscriber of such salesperson's conduct shall only go to mitigation of discipline imposed.
- d. For any violation of the N.A.R. Code of Ethics, while a member of any Association of Realtors®.

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

**14.3 Citations.** The EBRDI Board of Directors, may implement a schedule of fines for certain MLS rules violations and direct staff to issue citations for the specified MLS rules violations and implement a procedure whereby the Participant and Subscriber receiving the citation may either pay the amount specified on the citation or request a full hearing in accordance with the procedures set forth in the California Code of Ethics and Arbitration Manual.

*See Appendix A, "Citable Infractions" for a summary of known potential infractions.  
Appendix A may be revised as necessary by the Board of Directors.*

**14.4 Fines.** All fines will be paid to EBRDI MLS. EBRDI Shareholder's Associations may charge up to \$500 Administrative Fees to conduct hearings and grievances consistent with the California Code of Ethics and Arbitration Manual.

## 15. PROCEDURES FOR MLS RULES HEARINGS.

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

## 16. ARBITRATION

**16.1 Mandatory Arbitration.** By becoming and remaining a Participant or Subscriber in the MLS, each Participant and Subscriber agrees to submit disputes arising out of the real estate business which also arises out of, or is in conjunction with, any listing filed with the MLS or any appraisal, to binding arbitration which shall be assigned to an EBRDI Shareholder's Association with any other Participant or Subscriber of this MLS, or Participants or Subscribers of any other MLS who are authorized to have access to this MLS under section 6 of these rules. The California Code of Ethics shall govern such arbitrations and Arbitration Manual as from time to time amended which is hereby incorporate by reference. This shall be deemed an arbitration agreement within the meaning of Part 3, Title 9 of the California Code of Civil Procedure. Failure to submit to arbitration as provided herein shall be a violation of these MLS rules.

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**16.1.1 Administration of all Arbitrations & Hearings.** Administration of all arbitrations shall be delegated to one of the Shareholder Associations. Assignment of arbitration/rules violation responsibility shall be as follows:

- a. If respondent is a member of a Shareholder's Association, responsibility shall be assigned to that Shareholder's Association.
- b. If respondent is an MLS Only Participant, the complaint shall be assigned to the Shareholder Service Center where the respondent receives MLS services.
- c. All others shall be assigned as deemed appropriate by EBRDI.

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

**16.3 Arbitration between Association Members.** Notwithstanding any other provision of these rules:

- a. If all disputants are Participants or Subscribers of EBRDI, they shall arbitrate in accordance with 16.1.1.
- b. If the disputants are Participants or Subscribers of MLS's other than EBRDI, they shall arbitrate in accordance with any applicable regional or shared professional standards agreement. In the absence of such an agreement, the disputants remain obligated to arbitrate at the California Association of REALTORS® ("C.A.R.") in accordance with the C.A.R Inter-board Arbitration Rules.

**16.4 Arbitration Involving Non-Association Members – See 16.1.1 above**

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

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

## 17. NONPAYMENT OF MLS FEES

**17.1 Non-payment of MLS Fees.** If MLS fees, fines, charges or other amounts owed the MLS are not paid within one month after the due date, the non-paying Participant's, Subscriber's and/or clerical user's MLS services shall be subject to suspension until such outstanding amounts are paid in full. The MLS

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may suspend MLS services under this section provided the MLS gives the Participant and/or Subscriber at least twenty-(20) calendar day's prior notice of the proposed suspension date. Such notice may be included with the original billing statement for MLS fees, fines or charges or any time thereafter. In the event the amounts owed remain unpaid for two months after the due date, the non-paying Participant and/or Subscriber's MLS services shall automatically terminate regardless if notice of such termination is given.

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

**17.3 Reinstatement.** Any Participant and/or Subscriber who's MLS services have been terminated for non-payment of MLS fees may reapply for participation in the MLS. However, prior to being granted access, such Participant and/or Subscriber must pay all fees applicable to new applicants and all past due amounts owed, including paying interest at the rate of ten (10%) per annum on such past due amounts.

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

The rules and regulations of the MLS may be amended as specified in the EBRDI By-laws. Any changes to these rules and regulations which are mandated by the National Association of REALTORS® shall automatically be incorporated into these rules and regulations and do not require Board of Directors approval.

## Appendix A - Citable Infractions

*With reference to Applicable Rules, Complaint Requirements & Potential Consequences for Specific Violations  
Shaded areas are new citable infractions*

	Violation Description	Fine/Action	Applicable Rules Section(s)	Participant/Subscriber Complaint Required.	Staff Authorized to issue Citation.
<b>1</b>	<b><u>Unauthorized Access to MLS</u></b>				
1.1	<b><u>Use of MLS System by Unauthorized Party</u></b>	Refer to Hearing Panel	4, 5.1, 12.1, 12.2, 12.3	No	Yes
1.1.1	Filing of False Participation Waiver, Violation of Participation Waiver	\$500 fine per incident (in addition to 6 months MLS Fees for each sales person in violation of Waiver	4	No	Yes
1.1.2	Failure of Participant to Notify the MLS within 10 days of Termination, Transfer, or Addition of an Associate Under Participant's License	1st Violation - Notice to Comply Failure to comply - \$250	4.4	Yes	Yes
1.1.3	Failure to meet all of the requirements as a Participant or Subscriber.	Loss of MLS Services (Note: Subscriber – loss of MLS services, Participant – loss of entire office MLS Services.	4.1 4.2	No	Yes
<b>1.2</b>	<b><u>Misuse of MLS Information</u></b>				
1.2.1	Reproducing, Distributing or Displaying MLS Information for Unauthorized Purposes	\$500 fine/ Refer to Hearing Panel	12.15.2	No	No
1.2.2	Reproducing, Distributing or Displaying Unauthorized Portions of the MLS Database	1st Violation - Letter of Warning 2nd Violation - \$100 3rd Violation - \$200	12.15.1 12.19.15	Yes	Yes
1.2.3	Unauthorized Computer Download or Transmission of Data	Refer to Hearing Panel & Legal Council	12.15. 12.19.1	No	No
1.2.4	<u>Use of MLS in your website address or search name</u>	<u>Letter of warning</u> <u>1<sup>st</sup> violation 300</u> <u>2<sup>nd</sup> violation 500</u> <u>3<sup>rd</sup> violation loss of IDX &amp; MLS</u>	<u>12.18</u>	<u>No</u>	<u>Yes</u>
<b>2</b>	<b><u>Loading Listings and Reporting Status Changes By Deadline</u></b>				
2.1	<b><u>Listing Not Loaded Within 72 Hours of Start Date of Listing</u></b>	1st Violation - Letter of Warning 2nd Violation - \$100 Fine 3rd Violation - \$200 Fine	7.5	Yes	Yes
2.2	<b><u>Listing Waiver Not Submitted to MLS Within 72 Hours of Start Date of Listing</u></b>	1st Violation - Letter of Warning 2nd Violation - \$100 Fine 3rd Violation - \$200 Fine	7.6	Yes	Yes

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## Appendix A - Citable Infractions

*With reference to Applicable Rules, Complaint Requirements & Potential Consequences for Specific Violations*

*Shaded areas are new citable infractions*

	<b>Violation Description</b>	<b>Fine/Action</b>	<b>Applicable Rules Section(s)</b>	<b>Participant/Subscriber Complaint Required.</b>	<b>Staff Authorized to issue Citation.</b>
<b>2.3</b>	<b><u>Status Changes Not Reported By Deadline</u></b>				
2.3.1	Sale Not Reported by the end of the next business day after Close of Escrow	1st Violation - Letter of Warning 2nd Violation - \$100 Fine 3rd Violation - \$200 Fine	10.2	Yes	Yes
2.3.2	Pending Sale Not Reported by the end of the next business day after Ratification of Sales Contract	1st Violation - Letter of Warning 2nd Violation - \$100 Fine 3rd Violation - \$200 Fine	10.2	Yes	Yes
2.3.3	Contingent Sale or Lease Not by the end of the next business day after Ratification of Sales Contract	1st Violation - Letter of Warning 2nd Violation - \$100 Fine 3rd Violation - \$200 Fine	10.2	Yes	Yes
2.3.4	Cancellation of Pending Sale Not Reported by the end of the next business day after Written Cancellation	1st Violation - Letter of Warning 2nd Violation - \$100 Fine 3rd Violation - \$200 Fine	10.3	Yes	Yes
2.3.5	Withdrawal or Cancellation of Listing Not Reported by the end of the next business day after Written Instructions	1st Violation - Letter of Warning 2nd Violation - \$100 Fine 3rd Violation - \$200 Fine	7.8	Yes	Yes
2.3.6	Resolution of Contingencies (Court confirmation, sale of buyer property) Not Reported by the end of the next business day after Resolution	1st Violation - Letter of Warning 2nd Violation - \$100 Fine 3rd Violation - \$200 Fine	10.2	Yes	Yes
<b>2.4</b>	<b><u>Unilateral Contractual Offer</u></b>				
2.4.1	Unilateral Contractual Offer. Must make some offer of compensation	1st Violation - Letter of Warning 2nd Violation - \$200 Fine 3rd Violation - \$300 Fine	7.12	No	Yes
<b>3</b>	<b><u>Reporting and Accuracy of Information</u></b>				
<b>3.1</b>	<b><u>Submission of Listings That Do Not Satisfy the Requirements of the MLS Rules</u></b>				
3.1.1	Failure to Properly Classify Listing Type and Category	1st Violation - Letter of Warning 2nd Violation - \$200 Fine 3rd Violation - \$300 Fine	7.3	No	Yes

## Appendix A - Citable Infractions

*With reference to Applicable Rules, Complaint Requirements & Potential Consequences for Specific Violations  
Shaded areas are new citable infractions*

	<b>Violation Description</b>	<b>Fine/Action</b>	<b>Applicable Rules Section(s)</b>	<b>Participant/Subscriber Complaint Required.</b>	<b>Staff Authorized to issue Citation.</b>
3.1.2	Entry of Inaccurate or Non-Text Information Anywhere in a Listing	1st Violation - Letter of Warning 2nd Violation - \$200 Fine 3rd Violation - \$300 Fine	8.3	Yes	Yes
3.1.3	Listing Information Incomplete or Not Kept Current	1st Violation - Letter of Warning 2nd Violation - \$200 Fine 3rd Violation - \$300 Fine	7.11	No	Yes
3.1.4	Failure to Enter Accurate Information in a Required Data Field	1st Violation - Letter of Warning 2nd Violation - \$200 Fine 3rd Violation - \$300 Fine	7.11, 8.3	Yes	Yes
3.1.5	Using a Data Field for a Purpose Other Than its Intended Use	TBD	8.3		
3.1.6	Failure to Correct Incomplete or Inaccurate Information Within 24 Hours After Notification by Staff	1st Violation - \$300 Fine 2nd Violation - \$400 Fine 3rd Violation - \$500 Fine	8.2	No	Yes
3.1.7	Submission of Duplicate Listings by the Same Participant within the Same Key Property Type or Category	1st Violation - Letter of Warning 2nd Violation - \$100 Fine 3rd Violation - \$200 Fine	7.2	No	Yes
3.1.8	Entry of a Non-Property-Specific Virtual Media Link Anywhere in a Listing (with the exception of confidential remarks)	1st Violation - Letter of Warning 2nd Violation - \$100 Fine 3rd Violation - \$200 Fine	12.15.2	No	Yes
3.1.9	On Photos: Display of Agent Contact Information, such as Email Addresses, Website Addresses, or other Non-Property Descriptive Text	1st Violation - Letter of Warning 2nd Violation - \$250 Fine 3rd Violation - \$350 Fine	11.5	No	Yes
3.1.10	Use of Photographs on a Listing Without Proper Authorization	1st Violation - Letter of Warning 2nd Violation - \$250 Fine 3rd Violation - \$350 Fine	11.5	Yes	Yes
3.1.11	Failure to enter photo or submit photo/image waiver to EBRDI within 3 days of entry of listing into MLS.	1 <sup>st</sup> Violation – Letter of Warning 2 <sup>nd</sup> Violation – \$50 Fine 3 <sup>rd</sup> Violation - \$200 Fine	11.5.2	No	Yes
3.2	Failure to Withdraw a Cancelled listing by the end of the next business day after ratification of cancellation	1st Violation - Letter of Warning 2nd Violation - \$250 Fine 3rd Violation - \$350 Fine	7.9	Yes	Yes
3.3	Failure to Report the Correct Sales Price on a Closed Sale Without Either the Seller's or Buyer's Written Request to Withhold the Sales Price	1st Violation - Letter of Warning 2nd Violation - \$100 Fine 3rd Violation - \$200 Fine	8.1	Yes	Yes

## Appendix A - Citable Infractions

*With reference to Applicable Rules, Complaint Requirements & Potential Consequences for Specific Violations*

*Shaded areas are new citable infractions*

	Violation Description	Fine/Action	Applicable Rules Section(s)	Participant/Subscriber Complaint Required.	Staff Authorized to issue Citation.
3.4	<b><u>Purposely Manipulating the MLS System to Circumvent the Rules</u></b>				
3.4.1	Entry of Inaccurate or Prohibited Information	1st Violation - Letter of Warning 2nd Violation - \$100 Fine 3rd Violation - \$200 Fine	8.3	No	Yes
3.4.2	Posting of a Listing to the MLS Without Having a Written Listing Agreement	\$250 Fine for each occurrences	8.1	Yes	Yes
3.4.3	Submitting a Listing as Withdrawn/Cancelled When Not Withdrawn/Cancelled by Seller	1st Violation - Letter of Warning 2nd Violation - \$150 Fine 3rd Violation - \$300 Fine	8.3	Yes	Yes
3.4.4	Extending a Listing Without Written Authorization from the Seller	1st Violation - Letter of Warning 2nd Violation - \$150 Fine 3rd Violation - \$300 Fine	8.3	Yes	Yes
3.4.5	Failure to Report a Dual or Variable Rate Commission	1st Violation - Letter of Warning 2nd Violation - \$100 Fine 3rd Violation - \$200 Fine	7.22	No	Yes
3.4.6	Refusal to Report Accurate Information or to Correct Inaccurate Information	1st Violation - Letter of Warning 2nd Violation - \$300 Fine 3rd Violation - \$400 Fine 4th Violation - \$500 Fine	8.3	No	Yes
<b>4</b>	<b><u>Remarks</u></b>				
<b>4.1</b>	<b><u>Misuse of Remarks:</u></b>		12.5		
4.1.1	Publishing Presentation Offer Date and/or Time Without Written Instructions From Seller(s)	1st Violation - Letter of Warning 2nd Violation - \$100 Fine 3rd Violation - \$200 Fine	7.8	Yes	Yes
4.1.2	Failure to Include "For Comps Only" in First Line of Confidential Remarks of Listings Entered For That Purpose	1st Violation - Letter of Warning 2nd Violation - \$100 Fine 3rd Violation - \$200 Fine	10.2	No	Yes
4.1.3	Failure to Update Offer Date by the End of the Next Business Day After Receiving Revised Written Instructions From Seller(s)	1st Violation - Letter of Warning 2nd Violation - \$100 Fine 3rd Violation - \$200 Fine	7.8	Yes	Yes

## Appendix A - Citable Infractions

*With reference to Applicable Rules, Complaint Requirements & Potential Consequences for Specific Violations*

*Shaded areas are new citable infractions*

	Violation Description	Fine/Action	Applicable Rules Section(s)	Participant/Subscriber Complaint Required.	Staff Authorized to issue Citation.
4.2	<b><u>Misuse of Public Remarks – Publishing any of the following in public remarks:</u></b>		12.5.1		
4.2.1	Telephone Numbers	1st Violation - Letter of Warning 2nd Violation - \$250 Fine 3rd Violation - \$350 Fine	12.5.1	No	Yes
4.2.2	Names, Including Company Names	1st Violation - Letter of Warning 2nd Violation - \$250 Fine 3rd Violation - \$350 Fine	12.5.1	No	Yes
4.2.3	Email Addresses	1st Violation - Letter of Warning 2nd Violation - \$250 Fine 3rd Violation - \$350 Fine	12.5.1	No	Yes
4.2.4	Websites	1st Violation - Letter of Warning 2nd Violation - \$250 Fine 3rd Violation - \$350 Fine	12.5.1	No	Yes
4.2.5	Security Code changes	1st Violation - \$250 Fine 2nd Violation - \$350 Fine 3rd Violation - \$450 Fine	12.5.1	No	Yes
4.2.6	Lockbox Code changes	1st Violation - \$250 Fine 2nd Violation - \$350 Fine 3rd Violation - \$450 Fine	12.5.1	No	Yes
4.2.7	Virtual Tours	1st Violation - Letter of Warning 2nd Violation - \$250 Fine 3rd Violation - \$350 Fine	12.5.1	No	Yes
4.2.8	Vacancy of Property	1st Violation - Letter of Warning 2nd Violation - \$250 Fine 3rd Violation - \$350 Fine	12.5.1	No	Yes
4.2.9	Title or Escrow Instructions	1st Violation - Letter of Warning 2nd Violation - \$250 Fine 3rd Violation - \$350 Fine	12.5.1	No	Yes



## Appendix A - Citable Infractions

*With reference to Applicable Rules, Complaint Requirements & Potential Consequences for Specific Violations  
Shaded areas are new citable infractions*

	Violation Description	Fine/Action	Applicable Rules Section(s)	Participant/Subscriber Complaint Required.	Staff Authorized to issue Citation.
<b>4.3</b>	<b><u>Misuse of Confidential Remarks:</u></b>				
4.3.1	Publishing Security Codes Without Seller's Written Permission	1st Violation - Letter of Warning 2nd Violation - \$250 Fine 3rd Violation - \$350 Fine	12.5.2	Yes	Yes
4.3.2	<b>Caution:</b> Title or escrow information may be entered in confidential remarks; however, participants/subscribers should note that any verbiage, which implies a requirement to use a specific title company or escrow service, may be a violation of RESPA. You are advised to seek legal counsel for specific advice when using such verbiage.				
4.3.3	Publishing Reference to Licensed Non-Subscribers Except in the Case of Reciprocal Listings	1st Violation - \$100 Fine 2nd Violation - \$200 Fine 3rd Violation - \$350 Fine	12.5.2d	No	Yes
<b>5</b>	<b><u>Miscellaneous</u></b>				
<b>5.1</b>	<b><u>Showings and Access</u></b>				
5.1.1	Listing Not Ready for Showing Within 3 business days After Submission of listing without seller's written authorization to delay showing	1st Violation - Letter of Warning 2nd Violation - \$100 Fine 3rd Violation - \$200 Fine	9.1.1	Yes	Yes
5.1.2	Use of Lockbox Key by Someone Other than Registered Key holder.	Refer to appropriate Association	13.3	Yes	No
5.1.3	Placement of Lockbox Without Written Authority of Seller and Tenants	1st Violation - \$100 Fine 2nd Violation - \$200 Fine 3rd Violation - \$500 Fine	13.7	Yes	Yes
5.1.4	Unauthorized Entrance into a Listed Property (i.e., Failure to Follow the Showing Instructions)	1st Violation - \$100 Fine 2nd Violation - \$200 Fine 3rd Violation - \$500 Fine	13.3	Yes	Yes
5.1.5	Failure to Remove Lockbox By Close of Escrow or expiration/cancellation of listing.	1st Violation - \$100 Fine 2nd Violation - \$200 Fine 3rd Violation - \$300 Fine	13.8	Yes	Yes
5.1.6	Failure to provide a Kim Users Group <u>approved iBox</u> lockbox when other lockbox types are installed.	1 <sup>st</sup> Violation – Letter of Warning 2 <sup>nd</sup> Violation – \$100 3 <sup>rd</sup> Violation - \$200	13.2.1 13.2.2 13.2.3	No	Yes
5.1.7	Failure to comply with property access key rules	1 <sup>st</sup> Violation – Letter of Warning 2 <sup>nd</sup> Violation – \$50 3 <sup>rd</sup> Violation - \$100	13.2.4	No	Yes

## Appendix A - Citable Infractions

*With reference to Applicable Rules, Complaint Requirements & Potential Consequences for Specific Violations*

*Shaded areas are new citable infractions*

	<b>Violation Description</b>	<b>Fine/Action</b>	<b>Applicable Rules Section(s)</b>	<b>Participant/Subscriber Complaint Required.</b>	<b>Staff Authorized to issue Citation.</b>
5.1.8	Publishing lockbox information anywhere other than confidential remarks.	1 <sup>st</sup> Violation – Letter of Warning 2 <sup>nd</sup> Violation – \$50 3 <sup>rd</sup> Violation - \$100	13.2.5	Yes	Yes
5.1.9	Failure by cooperating brokers or buyers agent to obtain listing agent permission prior to sharing lockbox combinations.	1 <sup>st</sup> Violation – \$250 2 <sup>nd</sup> Violation – \$500 each occurrence thereafter	13.2.6	Yes	Yes
<b>5.2</b>	Violation of IDX rules	1st Violation - Letter of Warning 2nd Violation - \$250 Fine 3rd Violation - Loss of IDX Privileges 4- Loss of MLS Privileges	12.16	No	Yes
<b>5.3</b>	Advertising of Listing Filed with the MLS (Outside the scope of IDX)	1st Violation - Letter of Warning 2nd Violation - \$200 Fine 3rd Violation - \$300 Fine	12.8	No	Yes
<b>5.4</b>	Failure to Provide Adequate Informational Notice on Print or Non-Print Forms of Advertising or Other Forms of Public Representations	1st Violation - Letter of Warning 2nd Violation - \$100 Fine 3rd Violation - \$200 Fine	12.9	No	Yes
<b>5.5</b>	Non-Completion of Any Required MLS Orientation Program Within 60 Days	1st Violation - Letter of Warning 2nd Violation - \$100 Fine	4.1.1f, 4.1.2e, 4.2.1e	No	Yes
<b>5.6</b>	Failure to Pay Any MLS Fees, Fines or Charges	Suspension Until Paid	17.1	No	Yes
<b>5.7</b>	Violation of VOW rules	1st Violation - Letter of Warning 2nd Violation - \$250 Fine 3rd Violation - Loss of IDX Privileges 4- Loss of MLS Privileges	12.19	No	Yes

## Appendix B – Definition of Residential Property Types/Classes

### 7.3.1 Residential

#### *Property Class*

- |                            |  |
|----------------------------|--|
| a. Single Family Detached  | A single-unit residential property not attached to another living unit. Properties with party or common walls are not permitted in this category.  |
| b. Apt-Condo               | An individual living unit contained within a larger building or group of buildings. Typically have shared responsibility for maintenance of the property. Includes co-operatives.  |
| c. Townhome                | Typically attached individual living units with no other units above or below. Category does include patio homes. Usually have shared responsibility for maintenance of the property.  |
| d. Duet Home               | An attached property with only two residences in the structure, usually side by side.  |
| e. Loft-Condo              | An individual living unit often contained within a larger building or group of buildings, usually having high ceilings and modern architectural features. Often found in neighborhoods where live/work is permitted or required.                                     |
| f. Manufactured            | A detached individual residential unit that has been transported to the site in a finished or partially finished state and is supported by a full foundation.  |
| g. Floating Home           | An individual living unit floating on water without a means of self-propulsion and connected to public sewer and water systems. Has been assigned an APN. If in the San Francisco Bay Area, is recognized by the Bay Conservation and Development Commission (BCDC). |
| h. Tenants in Common (TIC) | Undivided interest in a multi-unit building where rights to the use of individual units are marketed separately. Typically have shared responsibility for maintenance of the property.   |
| i. Lease Rental            | A residential property available to rent or lease.   |

### 7.3.2 Residential Income

Two or more legally permitted living units on a single or adjacent lots being marketed as a single property. Five or more units can be cross-classed as commercial.

### 7.3.3 Mobile Homes

Independent living units that can or could be moved; equipped, or originally equipped, with axles and wheels. Only those that may be sold by real estate licensees. Typically licensed as a vehicle, but may also be real property in some cases. Must have a DOH number prior to listing on the MLS.

### 7.3.4 Lots & Land

Includes:

- Residential undeveloped land or under-developed parcels being marketed primarily for the value of the land.
- Commercial undeveloped land or under-developed parcels being marketed primarily for the value of the land.
- Agricultural - Ranches and farms



## Request for Exclusion from MLS Subscription and 'Certificate of Non-use'

Effective \_\_\_\_\_

Date

\_\_\_\_\_

Name

\_\_\_\_\_

User ID

Real Estate Licensee associated with my office is not involved in real estate listing and/or selling. I request exclusion from MLS subscription for him/her.

- I understand that such an exemption, if granted, shall be automatically revoked upon his/her utilization of the service.
- I understand further that an assessment of up to \$1000 may be levied for unauthorized use of the MLS.

If this exclusion is granted, both the licensee and I acknowledge and agree that he/she is not to use the MLS services or products nor make them available to others.

The real estate function that he/she will be performing, if any, shall be as follows:

\_\_\_\_\_

\_\_\_\_\_

Should this licensee return to the listing and/or selling of real estate, I agree to immediately re-establish his/her subscription to the MLS Service of East Bay Regional Data, Inc.

'Participants may be relieved from payment by certifying to the MLS that a licensed or certified person in the office is engaged solely in activities that do not require a real estate license or certification (clerical, etc.), or that the real estate licensee or licensed or certified appraiser will not use the MLS or MLS compilation in any way. In the event a real estate licensee or appraiser is found in violation of the non-use certification, the Participant shall be subject to fees dating back to the date of the certification. The Participant and Subscriber may also be subject to any other sanction imposed for violation of MLS rules including ultimately losing participation rights and access to the service.' EBRD MLS Service Rules: Sec. 5.1.6

\_\_\_\_\_

Broker Name (Print)

\_\_\_\_\_

Broker Signature

Date: \_\_\_\_\_

\_\_\_\_\_

Firm Name and Address

\_\_\_\_\_

Excluded Licensee Name (Print)

DRE Number

\_\_\_\_\_

Excluded Licensee Signature

Date: \_\_\_\_\_

**This form must be submitted to:**  
East Bay Regional Data, 1000 Burnett Avenue #250, Concord, CA 94520 or FAX (925) 687-7099

**Office Use Only**

( ) Approved Date \_\_\_\_\_ ( ) Declined Date \_\_\_\_\_



# Seller's Certification For Waiver of MLS Publication or Photo Upload

East Bay Regional Data maintains a Multiple Listing Service (MLS). It is available to its broker and appraiser participants and subscribers and their associates who agree to abide by the rules and regulations of the MLS. MLS rules require the participants and subscribers to submit all of their listings within 48 hours. MLS rules also require that each listing must have a minimum of one main photo/image of the exterior of the property attached to the listing unless directed otherwise in writing by the seller. The main photo/image must be added within (5) days of the listing being entered into the MLS. The listing information, once entered, is immediately available to all participants and subscribers of both MLS's serving Alameda and Contra Costa counties. This provides exposure of your listing to potentially 15,000 real estate agents. MLS listing information is also populated to public Internet sites, providing unlimited exposure to the general public.

If a seller refuses to permit the listing to be entered into the MLS or does not want the photo to be published in the MLS, the listing broker shall submit a *Seller's Certification for Waiver of MLS Publication or Photo Upload (MLS Waiver)*, signed by the seller, indicating that the seller does not authorize the listing to be entered into the MLS or publish a photo of the property.

**PLEASE PRINT CLEARLY**

FULL Property Address: \_\_\_\_\_

Listing Agent Info \_\_\_\_\_ (city)

Name: \_\_\_\_\_ User ID: R \_\_\_\_\_

Phone # (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ Email: \_\_\_\_\_

Office Name: \_\_\_\_\_

Listing Date: \_\_\_\_/\_\_\_\_/\_\_\_\_ Listing Expiration Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

### Waiver of MLS Publication

I understand that the East Bay Regional Data Multiple Listing Service provides a valuable service to sellers and buyers by dissemination of the real property information to all agents who participate in the MLS.  
I further understand that the sales price may be negatively affected by the execution of this waiver. It significantly reduces the exposure of the property to the greatest number of agents and buyers. The undersigned acknowledges that the MLS will not publish and/or distribute any information with respect to this property to the MLS Participants and Subscribers.  
EBRD permits the following two choices as valid waivers. Please choose the appropriate box and provide the dates that this waiver will be in effect:

- PERMANENT WAIVER: Listing cannot be entered in the MLS at any time during the listing agreement contract dates above, or
- TEMPORARY WAIVER: during Market Preparation: From \_\_\_\_\_ To \_\_\_\_\_  
No MLS entry during the temporary waiver period.

*I hereby certify that it is our intent that the property not be placed on the Multiple Listing Service*

### Waiver of Photo Upload

I hereby certify that I have instructed my agent not to publish any photos of this property in the MLS

Seller Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Seller Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Listing Agent: \_\_\_\_\_ Date: \_\_\_\_\_

Broker Approval: \_\_\_\_\_ Date: \_\_\_\_\_

**Note:** This form must be signed by all owners of record. No substitute waiver form may be submitted.

This form must be submitted within 48 hours of execution of the Listing Agreement to:  
East Bay Regional Data, 1000 Burnett Ave, #250, Concord, CA 94520 or FAX (925) 687-7099



# REPORT OF ALLEGED MLS RULES VIOLATION OR INACCURATE INFORMATION

To report an alleged violation, please contact East Bay Regional Data in one of the following ways:  
fax this Alleged Violation Form to (925) 687-7099 or email to: 'ebrd@ebrdi.com'.

### PERSONAL AND CONFIDENTIAL

The purpose of this form is for you, the MLS Subscriber or Participant, to report ANY inaccurate information about any listing in the MLS system or an alleged MLS Rule violation. When a report is received, your part is complete. Please be assured that your name will not be disclosed.

All reports are investigated in a timely manner and some violations may incur an assessment. East Bay Regional Data's only objective is to maintain an accurate, reliable database to better serve your needs. You can help by mailing or faxing this form to us.

Date and Time of this report: \_\_\_\_\_

MLS #: \_\_\_\_\_ Property Address: \_\_\_\_\_

Please explain your concerns: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Reporting Agent's Name: \_\_\_\_\_  
**(Confidential – Will Not Be Disclosed)**

Contact Phone Number: \_\_\_\_\_

East Bay Regional Data  
1000 Burnett Ave, Suite 250 • Concord, CA 94520 925-363-2330 • Fax 925-687-7099



EAST • BAY • REGIONAL • DATA

VOW Seller's Opt-Out Form

MLS Rule Section 12.19.6

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

This form must be signed by the seller and indicate what the seller does not want displayed on the Internet or the VOW.

Property Address: \_\_\_\_\_

Listing Office: \_\_\_\_\_ Listing Agent Name: \_\_\_\_\_

Listing Date: \_\_\_\_\_ Listing Expiration Date: \_\_\_\_\_

Please check your Option(s)

- Options A and B regarding listing display on Internet or VOW.

Yes No - A Participant's VOW may allow third-parties to write comments for this particular listing.

Yes No - Allow AVM display (Automated Valuation Display)

I understand and acknowledge that, if I have selected Option A, my listing will not be sent to any Internet, IDX or VOW sites and 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

I hereby certify that it is our intent that the above information is true and correct:

Sellers Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Sellers Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Listing Agent: \_\_\_\_\_ Date: \_\_\_\_\_

Broker Approval: \_\_\_\_\_ Date: \_\_\_\_\_

Note: all owners of record must sign this form.

This form must be submitted within 72 hours of execution of the Listing Agreement to: East Bay Regional Data, 1000 Burnett Ave, Suite 250, Concord, CA 94520 or FAX (925) 687-7099