

# **The Multiple Listing and Information Service, Inc. Bylaws**

**Amended: October 2006  
Approved by NAR 2/22/07  
Amended February 2009**

## **ARTICLE 1: NAME**

The name of this corporation is The Multiple Listing and Information Service, Inc., which is a New Mexico business corporation, (the Service) all the shares of stock of which are wholly-owned by Las Cruces Association of REALTORS, Inc., a New Mexico nonprofit corporation (LCAR).

## **ARTICLE 2: PURPOSE**

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

To offer computerized information services to Boards/Associations who opt to purchase such services from this corporation, and to any other entity deemed appropriate by the Board of Directors.

To develop and offer other programs and services which are deemed desirable and/or necessary to real estate related organizations and firms to the public.

## **ARTICLE 3: SERVICE AREA**

The area within which the corporation shall function shall at all times be coextensive with or within the territorial jurisdiction of the Las Cruces Association of REALTORS®, Inc. and that of any Board/Association which opts to purchase services from or signs an agreement with the corporation.

## **ARTICLE 4: PARTICIPATION DEFINED**

Any REALTOR® of this or any other Board who is a principal, partner, corporate officer, or branch office manager acting on behalf of a principal, without further qualification,

except as otherwise stipulated in these bylaws, shall be eligible to participate in multiple listing upon agreeing in writing to conform to the rules and regulations thereof and to pay the costs incidental thereto. However, under no circumstances is any individual or firm, regardless of membership status, entitled to multiple listing service membership or participation unless they hold a current, valid real estate broker's license and offer or accept compensation to and from other participants or are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property. Use of information developed by or published by a Board multiple listing service is strictly limited to the activities authorized under a participant's licensure(s) or certification and unauthorized uses are prohibited. Further, none of the foregoing is intended to convey participation or membership or any right of access to information developed by or published by a Board multiple listing service where access to such information is prohibited by law. (amended 11/08)

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 or accepts cooperation and compensation means that the Participant actively endeavors during the operation of its real estate business to list real property of the type listed on the MLS and/or to accept offers of cooperation and compensation made by listing brokers or agents in the MLS. "Actively" means on a continual and on-going basis during the operation of the Participant's real estate business. The "actively" requirement is not intended to preclude MLS participation by a Participant or potential Participant that operates a real estate business on a part time, seasonal, or similarly time-limited basis or that has its business interrupted by periods of relative inactivity occasioned by market conditions. Similarly, the requirement is not intended to deny MLS participation to a Participant or potential Participant who has not achieved a minimum number of transactions despite good faith efforts. Nor is it intended to permit an MLS to deny participation based on the level of service provided by the Participant or potential Participant as long as the level of service satisfies state law.

The key is that the Participant or potential Participant actively endeavors to make or accept offers of cooperation and compensation with respect to properties of the type that are listed on the MLS in which participation is sought. This requirement does not permit an MLS to deny participation to a Participant or potential Participant that operates a Virtual Office Website ("VOW") (including a VOW that the Participant used to refer customers to other Participants) if the Participant or potential Participant actively endeavors to make or accept offers of cooperation and compensation. An MLS may evaluate whether a Participant or potential Participant "actively endeavors during the operation of its real estate business" to "offer or accept cooperation and compensation" only if the MLS has a reasonable basis to believe that the Participant or potential participant is in fact not doing so. The membership requirement shall be applied on a nondiscriminatory manner to all Participants and potential Participants. (Adopted 11/08)

## **ARTICLE 4.1: APPLICATION**

Application for participation shall be made in such manner and form as may be prescribed by the board of directors of the service and made available to any REALTOR® principal of this or any other association requesting it. The application form shall contain a signed statement agreeing to abide by these bylaws and any other applicable rules and regulations of the service as from time to time amended or adopted.

## **ARTICLE 4.2: DISCONTINUANCE**

Participants of the service may discontinue the service by giving the service five days' written notice and may reapply to the service after one month by making formal application in the manner prescribed for new applicants for participation provided all past dues and fees are fully paid.

## **ARTICLE 4.3: SUBSCRIBERS**

Subscribers (or users) of the MLS include non-principal brokers, sales associates, and licensed and certified appraisers affiliated with participants. Subscribers also include affiliated unlicensed administrative and clerical staff, personal assistants, and individuals seeking licensure or certification as real estate appraisers who are under the direct supervision of an MLS Participant or the Participant's licensed designee.

## **ARTICLE 5: SERVICE CHARGES**

The charges made for participation in the service shall be as determined, and as amended from time to time by the board of directors of the service, and specified in the rules and regulations of the service.

## **ARTICLE 6: GOVERNING BODY**

**Government of the Service:** The government of the Service shall be vested in a Board of Directors nominated and elected by the Las Cruces Association of REALTORS, Inc.

### **ARTICLE 6.1: OFFICERS OF THE SERVICE:**

Officers of the Service shall be elected by a majority vote of the Board of Directors of the Service at the first meeting in January of each calendar year. These Officers shall be President (President Elect of last year will be President), President Elect (who will serve as President the following year) and Treasurer. The Chief Staff Executive will act as Secretary. If no President Elect was voted on the previous year or if the President Elect is unavailable or ineligible to serve, a new President will be elected by the Board of Directors. The same person may hold any two (2) or more offices. No person may serve for more than two (2) consecutive terms in the same office. All officers, other than the executive officer, must also be directors at the time they are elected. All officers and

agents of the corporation, as between themselves and the corporation, shall have the authority and shall perform the duties in the management of the corporation as provided in these Bylaws, or as determined by the resolution of the Board of Directors not inconsistent with these Bylaws.

## **ARTICLE 6.2: BOARD OF DIRECTORS**

The number of the directors of the corporation shall be a Board of Directors consisting of the elected officers, the immediate past President of the Association, MLIS immediate past President and one (1) director elected for every one hundred (100) association members or portion thereof as of May 1<sup>st</sup> annually (beginning with the 2008 elections) . Directors shall be elected to serve for terms of three years, except that at organization, one-third of the elected Directors shall be elected for terms of one, two, and three years, respectively, or for lesser terms as may be necessary to complete the first fiscal year. Thereafter, as many Directors shall be elected each year as are required to fill vacancies. No vacancy will exist for an expiring director term that is in excess of the one (1) director per one hundred (100) members. However, at no time will an elected director have their term shortened as a result of the membership count as of May 1<sup>st</sup>.

1. Term Limits. No director shall serve for more than two consecutive three year terms. (Adopted 1/05) If the Immediate Past President is unable to serve or fulfill their term, a member at large will be appointed by the President and approved by the Board of Directors.

2. Restrictions. No one company shall have representation on the governing body greater than twenty-five percent (25%) of the total governing body, rounded up or down using .5 (point five) as the rounding center (beginning with the 2008 elections)

## **ARTICLE 6.3: NOMINATION AND ELECTION OF DIRECTORS**

Directors of the Service shall be elected in accordance with the nomination and election procedures of LCAR.

## **ARTICLE 6.4: DUTIES OF OFFICERS AND DIRECTORS**

The President shall be the chief executive officer of the Service and shall preside at its meetings and those of the Board of Directors, and shall perform all the duties of the President subject to declared policies and, as required, subject to confirmation of the Board of Director

The Vice President shall, in the absence of the President, perform all of the duties of the President.

The Secretary shall be the custodian of the funds of the service and shall keep and accurate record of all receipts and disbursements. The Secretary shall provide to all members of the Board of Directors a quarterly statement of all accounts and financial affairs for the Service, and shall have charge of the corporate seal and affix the name of all documents properly requiring such seal.

The Board of Directors shall have control and management of the business and affairs of the corporation. The directors shall in all cases act as a Board, regularly convened. The directors may adopt such rules and regulations for the conduct of their meetings and the management of the corporation as they may deem proper, not inconsistent with law or these Bylaws. The Board of Directors shall authorize all expenditures of funds needed for the operation of the corporation. The Board of Directors shall, prior to the end of each fiscal year, prepare a budget reflecting projected costs and expenses of the corporation for the next fiscal year, indicating projected income from all sources. The Board of Directors shall have the right to employ any office personnel it deems necessary to care for and maintain the property of the corporation and otherwise conduct the administrative business of the corporation. The Board of Directors shall have the right to make an audit of all books and accounts at any time without notice. The Board of Directors shall have the power from time to time to adopt such Rules and Regulations that it may deem appropriate.

#### **ARTICLE 6.5: REMOVAL OF OFFICERS AND DIRECTORS**

In the event that an Officer or Director of the Service is deemed to be incapable of fulfilling the duties for which elected, but will not resign from office voluntarily, the Officer or Director may be removed from office under the following procedure.

1. A petition requiring the removal of an Officer or Director and signed by not less than one-third of the Participants or a majority of all Directors of the Service shall be filed with the President of the Service, or if the President is the subject of the petition, with the next-ranking officer, and shall specifically set forth the reasons the individual is deemed to be disqualified from further service.
2. Upon receipt of the petition, and not less than twenty (20) days or more than forty-five (45) days thereafter, a special meeting of the Participants of the Service shall be held, and the sole business of the meeting shall be to consider the charge against the Officer or Director, and to render a decision on such petition.
3. The special meeting shall be noticed to all Participants at least ten (10) days prior to the meeting, and shall be conducted by the President of the Service unless the President's continued service in office is being considered at the meeting. In such case, the next-ranking officer will conduct the meeting or the hearing by the Participants. Provided a quorum is present, a three-fourths vote of Participants present and voting shall be required for removal from office.

4. Any vote taken by the Participants to remove an Officer or Director must ultimately be confirmed by a majority vote of the Directors of the shareholder(s). Notwithstanding the foregoing, the shareholder(s) may remove an Officer or Director by a majority vote of the Directors of the shareholder(s).

## **ARTICLE 6.6: INDEMNIFICATION OF OFFICERS AND DIRECTORS**

The Service will indemnify any director, officer, Chief Staff Executive or former director, officer or Chief Staff Executive of the Service against expenses, cost and attorney's fees actually and reasonable incurred in connection with the defense of any action, suit or proceeding, civil or criminal, in which the director, officer or Chief Staff Executive is made a party by reason of being or having been a director, officer or Chief Staff Executive. The indemnification may include any amounts paid to satisfy a judgment or to compromise or settle a claim. The director, officer or Chief Staff Executive shall not be indemnified if the director, officer or Chief Staff Executive has breached or failed to perform the duties of office and the breach or failure to perform constitutes willful misconduct or recklessness. Advance indemnification may be allowed of a director, officer or Chief Staff Executive for expenses to be incurred in connection with the defense of the action, suit or proceeding. Provided, that the director, officer or Chief Staff Executive must reimburse the Service if it is subsequently determined that the director, officer or Chief Staff Executive was not entitled to indemnification by reason of negligence or misconduct in the performance of any duties as an director, officer or Chief Staff Executive. The Service may make any other indemnification as authorized by the Articles of Incorporation, Bylaws or by a resolution adopted after notice by the shareholder of the Service.

## **ARTICLE 7: MEETINGS**

**Annual Meetings:** The annual meeting of Participants of the Service shall be held in conjunction with the annual meeting of the Las Cruces Association of REALTORS, Inc.

1. **Special Meetings of the Service:** Special meetings of Participants of the Service may be called from time to time by the President, the Board of Directors, or by 25 % of the Participants of the Service. Written notice stating the day, place, and hour of the meeting, the purpose or purposes for which the meeting is called, shall be delivered to all REALTORS® who are Participants in the service not less than 10 days prior to said meeting.

2. **Quorum and Voting at Special Meetings of the Service:** For the transaction of business, 20% of the Participants of the Service shall be considered a quorum. A

majority vote by such Participants present and voting at a meeting attended by a quorum shall be required for passage of motions.

**3. Meeting of the Board of Directors:** The Board of Directors may meet at any time it deems advisable on the call of the President or fifty-one percent (51%) of the Members of the Board of Directors. Fifty-one percent (51%) of the Directors shall constitute a quorum. A majority vote by the Directors present and voting at a meeting attended by a quorum shall be required for passage of motions.

**4. Presiding Officer:** At all meetings of the Participants of the Service, or of the Board of Directors, the President or, in the absence of the President, the President Elect shall serve as presiding officer. In the absence of the President and President Elect, the President shall name a temporary Chairperson or, upon the President's failure to do so, the Board of Directors of the Service shall appoint a temporary Chairperson.

**5. Electronic Transaction of Business.** To the fullest extent permitted by law, the Board of Directors or membership may conduct business by electronic means. (Adopted 1/05), in accordance with procedures established by the Board of Directors.

**6. Action without Meeting.** Unless specifically prohibited by the articles of incorporation, any action required or permitted to be taken at a meeting of the board of directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors. The consent shall be evidenced by one or more written approvals, each of which sets forth the action taken and bears the signature of one or more directors. All the approvals evidencing the consent shall be delivered to the Chief Staff Executive to be filed in the corporate records. The action taken shall be effective when all the directors have approved the consent unless the consent specifies a different effective date. (Adopted 1/05)

**Meetings by Telephone Conference Calls:** Directors of any members of any committee designated by the directors may participate in a meeting of the Board of Directors or such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in such a meeting by the aforesaid means shall constitute presence in person at such meeting.

**Written Consent:** Any action required by the New Mexico Business Corporation Act to be taken at a meeting of the directors of the corporation, or any action which may be taken at a meeting of the directors or of a committee, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, or all of the members of the committee, as the case may be. The consent shall have the same effect as a unanimous vote.

## **ARTICLE 8: COMMITTEES**

The President, with the approval of the Board of Directors, shall create such standing or Ad Hoc Committees as the President deems desirable and shall appoint their members. Each committee shall consist of not less than three (3) Multiple Listing Participants and /or members of the Board of Directors, but may also include Multiple Listing Subscribers, employed by or affiliated as independent contractors with an Multiple Listing Participant serving as representatives of said Multiple Listing Participants and with their consent, and who may serve either as a chairperson or member of a committee. Three unexcused absences from committee meetings shall, at the discretion of the committee chair, constitute reason for dismissal. Each committee, to the extent provided in the resolution approving the creation of such committee, shall have and may exercise all the authority of the Board of Directors, but no such committee shall have the authority of the Board of Directors in reference to (a) declare dividends or authorize distributions; (b) approve or recommend to shareholders actions or proposals required by the New Mexico Business Corporation Act to be approved by shareholders; (c) designate candidates for the office of director, for purposes of proxy solicitation or otherwise, or fill vacancies on the Board of Directors or any committee thereof; (d) amend these Bylaws; (e) approve a plan of merger not requiring shareholder approval; (f) authorize or approve the reacquisition of shares unless pursuant to general formula or method specified by the Board of Directors; (g) authorize or approve the issuance or sale of, or any contract to issue or sell, shares or designate the terms of a series of a class of shares. The designation of any such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any member thereof, of any responsibility imposed by law.

#### **ARTICLE 9: FISCAL YEAR**

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

#### **ARTICLE 10: AMENDMENTS TO BYLAWS**

These bylaws may be amended by the Multiple Listing and Information Service, Inc. Board of Directors and reviewed for concurrence by the Participants and shall further be subject to the approval of the Board of Directors of the Las Cruces Association of REALTORS®, Inc.

When amendments to the bylaws of the Service have been approved by the Board of Directors of the Las Cruces Association of REALTORS® Inc., said amendments shall be effective immediately or as stated in the amending resolution.

If the proposed amendments to the Bylaws of the Service fail approval of the Board of Directors of the Las Cruces Association of REALTORS® Inc., the Service shall be informed, and advised that the proposed amendment or amendments to the bylaws be

further considered and resubmitted to the shareholder as approved by the Participants of the Service.

**Amendments to Rules and Regulations:** Amendments to the rules and regulations of the Service shall be by consideration and approval of the Board of Directors of the Service in accordance with the provisions of Article 7, Section 3, concerning Meetings of the Board of Directors, subject to final approval by the Board of Directors of the Las Cruces Association of REALTORS®, Inc.

When approval by the Board of Directors of the Las Cruces Association of REALTORS® Inc. as described, the amendments to the rules and regulations of the Service shall be effective immediately or as stated in the amending resolution.

If the proposed amendments of the Service rules and regulations fail approval by the Board of Directors of the shareholder, the Board of Directors of the Multiple Listing Service shall be informed, and advised that the proposed amendment or amendments must be further considered and resubmitted as approved by the Board of Directors of the Service to the Board of Directors of the Las Cruces Association of REALTORS® Inc.

#### **ARTICLE 11: DISSOLUTION**

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