

# **BYLAWS OF THE VAIL BOARD OF REALTORS®, INC.**

(Adopted 06/26/84, Revised September 2020)

## **ARTICLE I Name**

Section 1. Name. The name of this organization shall be the Vail Board of REALTORS®, Inc., (hereinafter referred to as the "Board").

Section 2. REALTORS®. Inclusion and retention of the Registered Collective Membership Mark REALTORS® in the name of the Board shall be governed by the Constitution and Bylaws of the NATIONAL ASSOCIATION OF REALTORS® (hereinafter referred to as the "National Association"), as from time to time amended.

## **ARTICLE II Objectives**

The objectives of the Board are:

Section 1. To unite those engaged in the recognized branches of the real estate profession for the purposes of exerting a beneficial influence upon the profession and related interests.

Section 2. To promote and maintain high standards of conduct in the real estate profession as expressed in the Code of Ethics of the National Association.

Section 3. To provide a unified medium for real estate owners and those engaged in the real estate profession whereby their interests may be safeguarded and advanced.

Section 4. To further the interests of home and other real property ownership.

Section 5. To unite those engaged in the real estate profession in this community with the COLORADO ASSOCIATION OF REALTORS® (hereinafter referred to as the "State Association") and the National Association, thereby furthering their own objectives throughout the State of Colorado and the United States, its insular possessions and the Commonwealth of Puerto Rico, and obtaining the benefits and privileges of membership therein.

Section 6. To designate, for the benefit of the public, those individuals authorized to use the terms REALTOR® and REALTORS® as licensed, prescribed, and controlled by the National Association.

## **ARTICLE III Jurisdiction**

Section 1. The territorial jurisdiction of the Board as a member of the National Association is: all of Eagle County, Colorado, less section 7 and 8, Township 8 south, range 86 west (Aspen Board) and beginning at the NW corner of sec 18, T8S, R86W, thence northerly along the western boundary of R86W to the NE corner of sec 12, T7S, R87W, and then westerly along the northern boundary of sec 12, 11, 10 & 9 to the Eagle County line, thence south to the Pitkin County line and then east to the point of beginning (Glenwood Springs Board).

Section 2. The Board shall have the right and duty to control the use of the terms REALTOR® and REALTORS®, subject to the conditions set forth in these Bylaws and those of the National Association, in

return for which the Board agrees to protect and safeguard the property rights of the National Association in the terms.

## **ARTICLE IV – Membership**

Section 1. There shall be five classes of Memberships, as follows:

(a) REALTOR® Members. REALTOR® Members, whether primary or secondary shall be:

(1) Individuals who, as sole proprietors, partners, corporate officers, or branch office managers, are engaged actively in the real estate profession, including buying, selling, exchanging, renting or leasing, managing, appraising for others for compensation, counseling, building, developing or subdividing real estate, and who maintain or are associated with an established real estate office in the State of Colorado or a state contiguous thereto or in compliance with the Colorado Real Estate Commission Rules and Regulations relating to License Recognition of Jurisdictions (hereinafter referred to as a “Recognized Jurisdiction”). All persons who are partners in a partnership, or all officers in a corporation who are actively engaged in the real estate profession within the State of Colorado or a state contiguous thereto or a Recognized Jurisdiction shall qualify for REALTOR® Membership only, and each is required to hold REALTOR® Membership in a Board of REALTORS® within the state or a state or contiguous thereto or a Recognized Jurisdiction unless otherwise qualified for Institute Affiliate Membership as described in Section 1 (b) of Article IV. In the case of a real estate firm, partnership, or corporation, whose business activity is substantially all commercial, only those principals actively engaged in the real estate business in connection with the same office, or any other offices within the jurisdiction of the Board in which one of the firm’s principals holds REALTOR® membership, shall be required to hold REALTOR membership unless otherwise qualified for Institute Affiliate Membership as described in Section 1 (b) of Article IV.

NOTE: REALTOR® Members may obtain membership in a "secondary" board in another state.

(2) Individuals who are engaged in the real estate profession other than as sole proprietors, partners, corporate officers, or branch office managers and are associated with a REALTOR® Member and meet the qualifications set out in Article V.

(3) Corporate officers (who may be licensed or unlicensed) of a real estate brokerage franchise organization with at least one hundred fifty (150) franchises located within the United States, its insular possessions and the Commonwealth of Puerto Rico, elected to membership pursuant to the provisions in the National Association Constitution and Bylaws. Such individuals shall enjoy all of the rights, privileges and obligations of REALTOR® membership (including compliance with the Code of Ethics) EXCEPT: obligations related to Board mandated education, meeting attendance, or indoctrination classes or other similar requirements; the right to use the term REALTOR® in connection with their franchise organization’s name; the right to hold elective office in the Board, State Association and National Association.

(4) Primary and secondary REALTOR® Members. An individual is a primary member if the Board pays State and National dues based on such Member. An individual is a secondary Member if State and National dues are remitted through another board. One of the principals in a real estate firm must be a Designated REALTOR® Member of the Board in order for licensees affiliated with the firm to select the Board as their "primary" Board.

(5) Designated REALTOR® Members. Each firm shall designate in writing one REALTOR® Member who shall be responsible for all duties and obligations of Membership, including the duty to mediate and/or arbitrate pursuant to Article 17 of the Code of Ethics and the payment of Board dues as established in Article X of these Bylaws. The "Designated REALTOR®" must be a sole proprietor, partner, corporate officer or

branch office manager acting on behalf of the firm's principal(s) and must meet all other qualifications for REALTOR® Membership established in Article V, Section 2, of these Bylaws.

(b) Institute Affiliate Members. Institute Affiliate Members shall be individuals who hold a professional designation by an Institute, Society, or Council affiliated with the National Association that addresses a specialty area other than residential brokerage or individuals who otherwise hold a class of membership in such Institute, Society or Council that confers the right to hold office. Any such individual, if otherwise eligible, may elect to hold REALTOR® or REALTOR-ASSOCIATE membership, subject to payment of applicable dues for such membership.

(c) Affiliate Members. Affiliate Members shall be real estate owners and other individuals or firms who, while not engaged in the real estate profession as defined in paragraphs (a) or (b) of this Section 1, have interests requiring information concerning real estate, and are in sympathy with the objectives of the Board.

(d) Honorary Members. Honorary Members shall be individuals not engaged in the real estate profession who have performed notable service for the real estate profession, for the Board, or for the public. Application fees and dues shall be waived.

(e) Colorado Association of REALTORS® Chair: The Chair of the Colorado Association of REALTORS®, if not otherwise a member of the Association, shall be a non-dues paying member during their term of office. The CAR Chair shall not have the right to vote or hold elective office in the Association, but shall, when given the authority by the Association to cast the number of votes, be allowed as the Association's voting delegate at the Delegate Body meeting of the National Association of REALTORS®.

## **ARTICLE V - Qualification and Election**

### Section 1. Application.

(a) An application for Membership shall be made in such manner and form as may be prescribed by the Board of Directors and made available to anyone requesting it. The application form shall contain the following agreements to be signed by the applicant that applicant agrees as a condition to membership to the following:

(1) to complete the orientation course of the Board and on the applicant's own initiative to thoroughly familiarize himself/herself with the Code of Ethics of the National Association, including the duty to arbitrate business disputes in accordance with the Code of Ethics and Arbitration Manual of the National Association, and to familiarize himself/herself with all applicable governing documents, including the Bylaws, of the Board, the State Association and the National Association.

(2) that the applicant's act of paying dues shall evidence the applicant's initial and continuing commitment to abide by the aforementioned Code of Ethics, Bylaws, and duty to arbitrate, all as from time to time amended; and

(3) that the applicant consents and authorizes the Board, through its Board of Directors, to invite and receive information and comments about the applicant from any member or other person, and the applicant agree that any information and comment furnished to the Board by any member or other person in response to any such invitation shall be conclusively deemed to be privileged and not form the basis of any action by the applicant for slander, libel, or defamation of character.

The applicant shall, upon the submission to the Board of a completed and signed application, have access to a copy of the aforementioned Bylaws and Code of Ethics, as provided by the Board.

## Section 2. Qualification.

(a) An applicant for REALTOR® Membership who is a sole proprietor, partner, corporate officer, or branch office manager of a real estate firm shall supply evidence satisfactory to the Board of Directors that the applicant is actively engaged in the real estate profession, and maintains a current, valid real estate broker's license or is licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property, has a place of business within the State of Colorado or a state contiguous thereto or a Recognized Jurisdiction, has no record of recent or pending bankruptcy (\*), has no record of official sanctions involving unprofessional conduct (\*\*), agrees to complete a course of instruction covering the Bylaws of the Board, the Bylaws of the State Association, and the Constitution and Bylaws and Code of Ethics of the National Association, and shall pass such reasonable and nondiscriminatory written examinations thereon as may be required by the Board of Directors, and shall agree that if elected to membership, the applicant will abide by such Constitution, Bylaws and Code of Ethics.

(\*) NO RECENT OR PENDING BANKRUPTCY is intended to mean that the applicant or any real estate firm in which the applicant is a sole proprietor, general partner, corporate officer, or branch manager is not involved in any pending bankruptcy or insolvency proceedings or, has not been adjudged bankrupt in the past (3) years. If a bankruptcy proceeding as described above exists, membership may not be rejected unless the Board establishes that its interests and those of its members and the public could not be adequately protected by requiring that the bankrupt applicant pay cash in advance for Board and MLS fees for up to one (1) year from the date that membership is approved or from the date that the applicant is discharged from bankruptcy (whichever is later). In the event that an existing member initiates bankruptcy proceedings, the member may be placed on a "cash basis" from the date that bankruptcy is initiated until one (1) year from the date that the member has been discharged from bankruptcy.

(\*\*) No record of official sanctions involving unprofessional conduct is intended to mean that the association may only consider that:

- a. An applicant must have no record of civil judgments imposed within the past seven (7) years involving judgments of civil rights laws, real estate license laws, or other laws prohibiting unprofessional conduct rendered by the course or other lawful authorities; and
- b. An applicant who has a record of criminal conviction(s) within the past seven (7) years involving a crime that reasonably relates to the real estate business or puts clients, customers, or other real estate professionals at risk, must provide and the association must consider mitigating factors relating to that criminal history.

(b) Individuals who are actively engaged in the real estate profession other than as sole proprietors, partners, corporate officers, or branch office managers in order to qualify for REALTOR® Membership, shall at the time of application be associated either as an employee or as an independent contractor with a Designated REALTOR® Member of the Board or as an employee or as an independent contractor with a Designated REALTOR® Member of another board (if a secondary member). Applicant must maintain a current, valid real estate broker's or salesperson's license or be licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property, shall complete a course of instruction covering the Bylaws of the Board, the Bylaws of the State Association, and the Constitution and Bylaws and Code of Ethics of the National Association, and shall pass such reasonable and nondiscriminatory written examinations thereon as may be required by the Board of Directors, and shall agree in writing that if elected

to membership, applicant will abide by the Code of Ethics of the National Association, and by the Bylaws of the State Association and the Constitution and Bylaws of the National Association.

(c) Any applicant for membership (regardless of whether such application is for a REALTOR® or a non-REALTOR® membership, and regardless of whether such application is from a new member or a reinstatement of a prior member) who was delinquent in paying sums due the Board or any other Realtor association at the time of termination, will not be qualified for reinstatement unless and until fully paying all such sums. The forgoing condition of reinstatement applies regardless of whether the legal obligation of the former Member to pay the sums due has been extinguished by a bankruptcy, a state of limitations, or has otherwise been extinguished by the law.

(d) Any applicant for membership (regardless of whether such application is for a REALTOR® or a non-REALTOR® membership, and regardless of whether such application is from a new member or a reinstatement of a prior member) who was delinquent in satisfying the sanctions of a Professional Standards Hearing Panel imposed by this Board or any other Realtor association at the time of termination, will not be qualified for reinstatement unless and until satisfying such sanctions.

### **Section 3. Election.**

The procedure for election to membership shall be as follows.

- (a) Applicants for REALTOR® membership shall be granted provisional membership immediately upon submission of a completed application form and remittance of applicable association dues and any application fee. Provisional members shall be considered REALTORS® and shall be subject to all of the same privileges and obligations of membership. Provisional membership is granted subject to subsequent review of the application by the board of directors. If the board of directors determines that the individual does not meet all of the qualifications for membership as established in the association's Bylaws, or, if the individual does not satisfy all of the requirements of membership within ninety (90) days from the association's receipt of their application, membership may, at the discretion of the board of directors, be terminated.
- (b) Dues shall be computed from the date of application and shall be non-refundable unless the association's board of directors terminates the individual's membership in accordance with Subsection (a) above. In such instances, dues shall be returned to the individual less a prorated amount to cover the number of days that the individual received association services and any application fee.
- (c) The board of directors may not terminate any provisional membership without providing the provisional member with advance notice, an opportunity to appear before the board of directors, to call witnesses on his/her behalf, to be represented by counsel, and to make such statements, as he/she deems relevant. The board of directors may also have counsel present. The board of directors shall require that written minutes be made of any hearing before it or may electronically or mechanically record the proceedings.
- (d) If the board of directors determines that provisional membership should be terminated, it shall record its reasons with the Association Executive. If the board of directors believes that termination of provisional membership may become the basis of litigation and a claim of damage by a provisional member, it may specify that termination shall become effective upon entry in a suit by the association for a declaratory judgment by a court of competent jurisdiction of a final judgment declaring that the termination violates no rights of the individual.



#### Section 4. New Member Code of Ethics Orientation

Applicants for REALTOR® membership shall complete an orientation program on the Code of Ethics of not less than two hours and thirty minutes of instructional time. This requirement does not apply to applicants for REALTOR® membership who have completed comparable orientation in another association, provided that REALTOR® membership has been continuous, or that any break in membership is for one year or less.

Failure to satisfy this requirement within ninety (90) days of the date of application will result in denial of the membership application.

#### Section 5. Continuing Member Code of Ethics Training

Effective January 1, 2019, through December 31, 2021 and for successive three year periods thereafter, each REALTOR® member of the association (with the exception of REALTOR® members granted REALTOR® Emeritus status by the National Association) shall be required to complete ethics training of not less than two (2) hours and thirty (30) minutes of instructional time. This requirement will be satisfied upon presentation of documentation that the member has completed a course of instruction conducted by this or another REALTOR® association, the State Association of REALTORS®, or the NATIONAL ASSOCIATION OF REALTORS®, which meets the learning objectives and minimum criteria established by the NATIONAL ASSOCIATION OF REALTORS® from time to time. REALTOR® members who have completed training as a requirement of membership in another association and REALTOR® members who have completed the New Member Code of Ethics Orientation during any three year cycle shall not be required to complete additional ethics training until a new three year cycle commences.

Failure to satisfy the required periodic ethics training shall be considered a violation of a membership duty. Failure to meet the requirement in any three year cycle will result in suspension of membership for the first two months (January and February) of the year following the end of any two (2) cycle or until the requirement is met, whichever occurs sooner. On March 1 of that year, the membership of a member who is still suspended as of that date will be automatically terminated. (Adopted 1/01, Amended 11/08, Amended 11/2016, Amended 1/2020)

#### Section 6. Status Changes

(a) A REALTOR® who changes the conditions under which he holds membership shall be required to provide written notification to the Board within thirty (30) days. A REALTOR® (non-principal) who becomes a principal in the firm with which he has been licensed or, alternatively, becomes a principal in a new firm which will be comprised of REALTOR® principals may be required to satisfy any previously unsatisfied membership requirements applicable to REALTOR® (principal) Members but shall, during the period of transition from one status of membership to another, be subject to all of the privileges and obligations of a REALTOR® (principal).

A REALTOR® who is transferring their license from one firm comprised of REALTOR® principals to another firm comprised of REALTOR® principals shall be subject to all of the privileges and obligations of membership during the period of transition. If the transfer is not completed within thirty (30) days of the date the board is advised of the disaffiliation with the current firm, membership will terminate automatically unless otherwise so directed by the Board of Directors.

(b) Any application fee related to a change in membership status shall be reduced by an amount equal to any application fee previously paid by the applicant.

(c) Dues shall be prorated from the first day of the month in which the member is notified of election by the Board of Directors and shall be based on the new membership status for the remainder of the year.

## **ARTICLE VI - Privileges and Obligations**

Section 1. The privileges and obligations of Members, in addition to those otherwise provided in these Bylaws, shall be as specified in this Article VI.

Section 2. Any Member of the Board may be reprimanded, fined, placed on probation, suspended or expelled by the Board of Directors for a violation of these Bylaws after a hearing as provided in the Code of Ethics and Arbitration Manual of the National Association. Although Members other than REALTORS® are not subject to the Code of Ethics nor its enforcement by the Board, such Members are encouraged to abide by the principles established in the Code of Ethics of the National Association and conduct their business and professional practices accordingly. Further, Members other than REALTORS® may, upon recommendation by a hearing panel of the Professional Standards Committee, be subject to discipline as described above, for any conduct, which in the opinion of the Board of Directors, applied on a nondiscriminatory basis, reflects adversely on the terms REALTOR® or REALTORS®, and the real estate industry, or for conduct that is inconsistent with or adverse to the objectives and purposes of the Board, the State Association, and the National Association.

Section 3. Any REALTOR® Member of the Board may be disciplined by the Board of Directors for violations of the Code of Ethics or other duties of Membership, after a hearing as described in the Code of Ethics and Arbitration Manual of the National Association, provided that the discipline imposed is consistent with the discipline authorized by the Professional Standards Committee of the National Association as set forth in the Code of Ethics and Arbitration Manual of the National Association.

Section 4. Resignations of Members shall become effective when received in writing by the Board of Directors, provided, however, that if any Member submitting the resignation is indebted to the Board for dues, fees, fines, or other assessments of the Board or any of its services, departments, divisions, or subsidiaries, the Board may condition the right of the resigning Member to reapply for Membership upon payment in full of all such monies owed. If a member resigns or otherwise causes membership to terminate, the duty to submit to arbitration continues in effect even after membership lapses or is terminated, provided that the dispute arose while the former member was a REALTOR.

Section 5. If a member resigns from the association or otherwise causes membership to terminate with an ethics complaint pending the complaint shall be processed until the decision of the association with respect to disposition of the complaint is final by this association (if respondent does not hold membership in any other association) or by any other association in which the respondent continues to hold membership. If an ethics respondent resigns or otherwise causes membership in all Boards to terminate before an ethics complaint is filed alleging unethical conduct occurred while the respondent was a REALTOR®, the complaint, once filed, shall be processed until the decision of the association with respect to disposition of the complaint is final. In any instance where an ethics hearing is held subsequent to an ethic respondent's resignation or membership termination, any discipline ratified by the Board of Directors shall be held in abeyance until such time as the respondent rejoins an association of REALTORS®.

(a) If a member resigns or otherwise causes membership to terminate, the duty to submit to arbitration (or to mediation if required by the association) continues in effect even after membership lapses or is terminated, provided that the dispute arose while the former member was a REALTOR®. (Amended 1/00 and 11/11)

## Section 6. REALTOR® Members.

- (a) REALTOR® Members, whether primary or secondary, in good standing and whose financial obligations to the Board are paid in full, shall be entitled to vote and to hold elective office in the Board.
- (b) REALTOR® Members may use the terms REALTOR® and REALTORS®, which use shall be subject to the provisions of Article VIII.
- (c) REALTOR® Members has the responsibility to safeguard and promote the standards, interests, and welfare of the Board and the real estate profession.
- (d) If a REALTOR® Member is a principal in a firm, partnership, or corporation and is suspended or expelled, the firm, partnership, or corporation shall not use the terms REALTOR® or REALTORS® in connection with its business during the period of suspension, or until readmission to REALTOR® Membership, or unless connection with the firm, partnership, or corporation is severed, whichever may apply. The Membership of all other principals, partners, or corporate officers shall suspend or terminate during the period of suspension of the disciplined Member, or until readmission of the disciplined Member, or unless connection of the disciplined Member with the firm, partnership, or corporation is severed, whichever may apply. Further, the Membership of REALTORS® other than principals who are employed by or affiliated as independent contractors with the disciplined Member shall suspend or terminate during the period of suspension of the disciplined Member or until readmission of the disciplined Member, or until connection of the disciplined Member with the firm, partnership, or corporation is severed, or unless the REALTOR® Member (non-principal) elects to sever his connection with the REALTOR® and affiliate with another REALTOR® Member in good standing in the Board, whichever may apply. If a REALTOR® Member who is other than a principal in a firm, partnership, or corporation is suspended or expelled, the use of the terms REALTOR® or REALTORS® by the firm, partnership, or corporation shall not be affected.
- (e) In any action taken against a REALTOR® Member for suspension or expulsion under Section 6(d) hereof, notice of such action shall be given to all REALTORS® employed by or affiliated as independent contractors with such REALTOR® Member and they shall be advised that the provisions in Article VI, Section 6(d) shall apply.

Section 7. Institute Affiliate Members. Institute Affiliate Members shall have rights and privileges and be subject to obligations prescribed by the Board of Directors consistent with the Constitution and Bylaws of the National Association.

NOTE: Local associations establish the rights and privileges to be conferred on Institute Affiliate Members except that no Institute Affiliate Member may be granted the right to use the term REALTOR®, REALTOR-Association®, or the REALTOR® logo; to serve as Chair of the local association; or to be a participant in the local association's Multiple Listing SERVICE.

Section 8. Affiliate Members Affiliate Members shall have rights and privileges and be subject to obligations prescribed by the Board of Directors.

Section 9. Honorary Members Honorary Members shall confer only the right to attend General Membership Meetings and participate in discussions.

Section 10. State Association President. State Association President, during his/her term in office, shall have rights and privileges and be subject to obligations as prescribed by the Board of Directors.



Section 11. Certification by Designated REALTOR® Designated REALTOR® Members of the Board shall certify to the Board prior to November 1 of each year on a form provided by the Board, a complete listing of all individuals licensed in the Designated REALTOR'S office(s) and shall designate a primary Board for each individual who holds Membership. Designated REALTORS® shall also identify any non-member licensees in the Designated REALTOR'S office(s) and if Designated REALTOR® Dues have been paid to another board based on said non-member licensees, the Designated REALTOR® shall identify the board to which dues have been remitted. These declarations shall be used for purposes of calculating dues under Article X, Section 2(a) of these Bylaws. Designated REALTOR® Members shall also notify the Board of any additional individual(s) licensed with the firm(s) within thirty (30) days after the date of affiliation or severance of the individual.

Section 12. Training

Every three years Designated REALTORS® are required to complete the then current Procuring Cause course.

Section 13. Harassment.

Any member of the Board may be reprimanded, placed on probation, suspended or expelled for harassment of an association or MLS employee or Board Officer or Director after an investigation in accordance with the established procedures of the Board. As used in this Section, harassment means any verbal or physical conduct including threatening or obscene language, unwelcome sexual advances, stalking, actions including strikes, shoves, kicks or other similar physical contact, or threats to do the same, or any other conduct with the purpose or effect of unreasonably interfering with an individual's work performance by creating a hostile, intimidating or offensive work environment. The decision of the appropriate disciplinary action to be taken shall be made by the investigatory team comprised of the Chairs, and Chair-elect and one member of the Board of Directors selected by the highest ranking officer not named in the complaint, upon consultation with legal counsel for the Board. Disciplinary action may include any sanction authorized in the Board's Code of Ethics and Arbitration Manual. If the complaint names the Chair, Chair-elect or the Immediate Past Chair or, alternatively, by another member of the Board of Directors selected by the highest ranking officer not named in the complaint.

**ARTICLE VII - Professional Standards and Arbitration\***

Section 1. The responsibility of the Board of Directors and its REALTOR® Members relating to the enforcement of the Code of Ethics, the disciplining of Members, the arbitration of disputes, and the organization and procedures incident thereto, shall be governed by the Code of Ethics and Arbitration Manual of the National Association with the Addendum of the State Association, as amended from time to time, which by this reference is made a part of these Bylaws.

Section 2. It shall be the duty and responsibility of every REALTOR® Member of this Board to abide by the Bylaws of the Board, the Bylaws of the State Association, the Constitution and Bylaws of the National Association, and to abide by the Code of Ethics of the National Association, including the duty to mediate and/or arbitrate controversies arising out of real estate transactions as specified by Article 17 of the Code of Ethics, and as further defined and in accordance with the procedures set forth in the Code of Ethics and Arbitration Manual of the National Association, as from time to time amended.

**ARTICLE VIII – Use of the Terms REALTOR® and REALTORS®\***

Section 1. Use of the terms REALTOR® and REALTORS® by Members shall, at all times, be subject to the provisions of the Constitution and Bylaws of the National Association, and to the Rules and Regulations

prescribed by its Board of Directors. The Board shall have authority to control, jointly and in full cooperation with the National Association, use of the terms within its jurisdiction. Any misuse of the terms by members is a violation of a membership duty and may subject members to disciplinary action by the Board of Directors after a hearing as provided for in the National Associations of REALTORS Code of Ethics and Arbitration Manual.

Section 2. REALTOR® Members shall have the privilege of using the terms REALTOR® and REALTORS® in connection with their places of business within the State of Colorado or a state contiguous thereto or a Recognized Jurisdiction, so long as they remain REALTOR® Members in good standing. No other class of Members shall have this privilege.

Section 3. A REALTOR® Member who is a principal of a real estate firm, partnership, or corporation may use the terms REALTOR® or REALTORS® only if all of the principals of such firm, partnership, or corporation who are actively engaged in the real estate profession within the State of Colorado or a state contiguous thereto or a Recognized Jurisdiction are REALTOR® Members of the Board or Institute Affiliate Members as described in Section 1(b) of Article IV.

(a) In the case of a REALTOR® member who is a principal of a real estate firm, partnership, or corporation whose business activity is substantially all commercial, the right to use the term REALTOR® or REALTORS® shall be limited to office locations in which a principal, partner, corporate officer, or branch office manager of the firm, partnership, or corporation hold REALTOR® membership. If a firm, partnership, or corporation operates additional places of business in which no principal, partner, corporate officer, or branch office manager holds REALTOR® membership, the term REALTOR® or REALTORS® may not be used in any reference to those additional places of business.

Section 4. Institute Affiliate Members shall not use the terms REALTOR® or REALTORS®, nor the imprint of the emblem seal of the National Association.

## **ARTICLE IX - State and National Memberships\***

Section 1. The Board shall be a member of the National Association and the State Association. By reason of the Board's membership, each REALTOR® Member of the Board shall be entitled to membership in the National Association and the State Association without further payment of dues. The Board shall continue as a member of the State Association and the National Association, unless by a majority vote of all of its REALTOR® Members, decision is made to withdraw, in which case the State Association and National Association shall be notified at least one month in advance of the date designated for the termination of such membership.

Section 2. The Board recognizes the exclusive property rights of the National Association in the terms REALTOR® and REALTORS®. The Board shall discontinue use of the terms in any form in its name, upon ceasing to be a member of the National Association, or upon a determination by the Board of Directors of the National Association that the Board has violated the conditions imposed upon the terms.

Section 3. The Board adopts the Code of Ethics of the National Association and agrees to enforce the Code of Ethics among its REALTOR® Members. The Board of Directors and all of its Members agree to abide by the Constitution, Bylaws, Rules and Regulations and policies of the National Association and the State Association.

## ARTICLE X - Dues and Assessments

Section 1. Application Fee. The Board of Directors may adopt an application fee for REALTOR® Membership in a reasonable amount, not in excess of three times the amount of the annual dues for REALTOR® Membership. Such application fee shall be required to accompany each application for REALTOR® Membership and shall become the property of the Board upon final approval of the application.

Section 2. The annual dues of Members shall be as follows:

(a) REALTOR® Members. The annual dues for REALTOR® members other than Designated Realtors shall be an amount established annually by the Board of Directors. The annual dues of each Designated REALTOR® Member shall be in such an amount as established annually by the Board of Directors, plus an amount established annually by the Board of Directors times the number of real estate Licensees (\*) or certified appraisers who are employed by or affiliated as independent contractors, or who are otherwise directly or indirectly licensed with such Designated REALTOR® Member. In calculating the dues payable to the Board by a Designated REALTOR® Member, non-member licensees (\*\*\*) shall not be included in the computation of dues if the Designated REALTOR® has paid dues based on said non-member licensees in another board in the State of Colorado or a state contiguous thereto or a Recognized Jurisdiction, provided the Designated REALTOR® notifies the Board in writing of the identity of the board to which dues have been remitted. In the case of a designated REALTOR® member in a firm, partnership, or corporation whose business activity is substantially all commercial, any assessments for non-member licensees shall be limited to licensees affiliated with the designated REALTOR® (as defined in (1) and (2) of this paragraph) in the office where the designated REALTOR® holds membership, and any other offices of the firm located within the jurisdiction of this association.

(\*) A real estate licensee shall be deemed to be licensed with a Designated REALTOR® if the license of the individual is held by the Designated REALTOR®, or by any broker who is licensed with the Designated REALTOR®, or by any entity in which the Designated REALTOR® has a direct or indirect ownership interest, or in the case in which is engaged in other aspects of the real estate business (except as provided for in Section 2 (a) hereof) provided that such licensee is not otherwise included in the computation of dues payable by the principal, partner or corporate office of the entity.

(\*\*\*) For the purpose of this Section 2, a “non-member licensee” shall be held to be any Member who has a place or places of business within the State of Colorado or a state contiguous thereto or a Recognized Jurisdiction and who, as a principal, partner, or corporate officer, or branch office manager of a real estate firm, partnership, or corporation, is actively engaged in the real estate profession as defined in Article III, Section 1, of the Constitution of the National Association.

A REALTOR® with a direct or indirect ownership interest in an entity engaged exclusively in soliciting and/or referring clients and customers to the REALTOR® for consideration on a substantially exclusive basis shall annually file with the association on a form approved by the association a list of the licensees affiliated with that entity and shall certify that all of the licensees affiliated with the entity are solely engaged in referring clients and customers and are not engaged in listing, selling, leasing, managing, counseling or appraising real property. The individuals disclosed on such form shall not be deemed to be licensed with the REALTOR® filing the form for purposes of this Section and shall not be included in calculating the annual dues of the Designated REALTOR®.

Membership dues shall be prorated for any licensee included on a certification form submitted to the association who during the same calendar year applies for REALTOR® or REALTOR-ASSOCIATE®

membership in the association. However, membership dues shall not be prorated if the licensee held REALTOR® or REALTOR-ASSOCIATE® membership during the preceding calendar year.

(b) Affiliate Members. The annual dues of each Affiliate Member shall be in such an amount as established annually by the Board of Directors.

(c) Institute Affiliate Members. The annual dues of each Institute Affiliate Member shall be as established in Article II of the Bylaws of the National Association.

Note: The Institutes, Societies and Councils of the National Association shall be responsible for collecting and remitting dues to the National Association for Institute Affiliate Members (\$75). The National Association shall credit \$25.00 to the account of a local association for each Institute Affiliate Member whose office address is within the assigned territorial jurisdiction of the association, provided, however, if the office location is also within the territorial jurisdiction of a Commercial Overlay board (COB), the \$25.00 amount will be credited to the COB, unless the Institute Affiliate Member directs that the dues be distributed to the other board. The National Association shall also credit \$25.00 to the account of state associations for each Institute Affiliate Member whose office address is located within the territorial jurisdiction of the state association. Local and state associations may not establish any additional entrance, initiation fees or dues for Institute Affiliate Members, but may provide service package to which Institute Affiliate Members may voluntarily subscribe.

(d) Honorary Members. The annual dues of Honorary Members shall be waived.

(e) State Association President. The annual dues of the State Association President (during his/her term in office) shall be waived.

(f) Board of Directors. The local annual dues of the Board of Directors may be waived.

Section 3. Dues Payable Dues for all Members shall be payable annually in advance on the first day of December. Dues shall be computed from the first day of the month in which a Member is notified of election to Membership and shall be prorated for the remainder of the year. In the event a REALTOR® Member is dropped from Membership for non-payment of Board dues, and the individual remains with the Designated REALTOR'S firm, the dues obligation of the Designated REALTOR® (as set forth in Article X, Section 2(a)) will be increased to reflect the addition of a non-member licensee. Dues shall be calculated from the first day of the current fiscal year and are payable within 30 days after the notice of termination.

Section 4. Nonpayment of Financial Obligations If dues, fees, fines, or other assessments including amounts owed to the Board are not paid within one (1) month after the due date; the nonpaying Member will be suspended. Two (2) months after the due date, Membership of the nonpaying Member will be terminated; however, no action shall be taken to suspend or expel a Member for nonpayment of disputed amounts until the accuracy of the amount owed has been confirmed by the Board of Directors. A former Member who has had his/her Membership terminated for nonpayment of dues, fees, fines, or other assessments duly levied in accordance with the provisions of these Bylaws or the provisions of other rules and regulations of the Board or any of its services, departments, divisions or subsidiaries, may apply for reinstatement in a manner prescribed for new applicants for Membership, after making payment in full of all accounts due as of the date of termination.

Section 5. Deposit All money received by the Board for any purpose shall be deposited to the credit of the Board in a financial institution or institutions selected by resolution of the Board of Directors.

Section 6. Expenditures The Board of Directors shall govern the finances of the Board, but shall not incur any obligation in excess of 25% over the net assets of the Vail Board of REALTORS® without authorization by vote of 20% of all REALTOR® Members.

Section 7. Notice of Dues, Fees, Fines, Assessments or Other Financial Obligations of Members. All dues, fees, fines, assessments, or other financial obligations to the Board shall be noticed to the delinquent Member in writing setting forth the amount owed and due date.

## **ARTICLE XI- Officers and Directors**

Section 1. Officers. The appointed officers of the Board shall be a Chair, a Chair-Elect and a Secretary. They shall be elected for terms of one year.

Section 2. Duties. Duties of Officers shall be as follows:

(a) Chair. The Chair shall be the chief governing officer of the Board and shall preside at its meetings and those of the Directors; shall appoint people to serve on special committees established by the Board of Directors unless otherwise directed in these Bylaws or by the Board of Directors; shall be an ex-officio member of all such committees without vote; shall represent the Board at all REALTOR® Conferences (State and National) and at civic meetings; shall perform all other duties as prescribed by the Board of Directors.

The Chair shall serve as the Chief Governing Officer of the Board and, unless otherwise specifically directed, shall be the official spokesperson for the official policy of the Board. The Chair's authority to speak and/or make decisions on behalf of the Board is subject to the direction of the Board of Directors, as stated in its Governing Policies. The Chair shall be the presiding officer at meetings of the membership and of the Board of Directors. The Chair shall also have such rights and responsibilities provided by the National Association to the holder of the highest elective office of the Board.

(b) Chair-Elect. In the event the Chair is absent or incapacitated, the Chair-Elect shall fulfill the duties of the Chair. The Chair-Elect shall also fulfill other responsibilities as may be delegated by the Board of Directors in its Governing Policies.

(c) Secretary. It shall be the duty of the Secretary to ensure the records of the Board are kept and to verify that the Association Executive prepares all necessary correspondence with the National Association and the State Association.

Section 3. Election of Directors. The governing body of the Vail Board of REALTORS®, Inc. shall be Board of Directors. The Members of the Vail Board of REALTORS Board of Directors consists of: three (3) Officers appointed by the Board of Directors (e.g. Chair, Chair-Elect, and Secretary); one (1) MLS Chair appointed by the Board of Directors, and the Immediate Past Chair who serves as a fifth Director for one (1) year after completing his/her term as Chair. The remaining six (6) Directors shall be elected to serve for terms of two years, with the exception that the Board shall, if necessary to maintain two even "classes" of Directors (those with terms expiring in even numbered years and odd numbered years), establish specific Board positions for one-year terms in order to create evenly staggered classes of Directors. The Association Executive is a non-voting Officer on the Board. The Affiliate Liaison is a non-voting Member (not an Officer or a Director). The total number of the Vail Board of REALTORS Board of Directors is thirteen (13).

(a) At least three (3) months prior to the annual election, a Nominating Committee consisting of three (3) REALTOR® Members shall be appointed by the Chair with the approval of the Board of Directors. The



Nominating Committee shall select one candidate for each place to be filled on the Board of Directors. The report of the Nominating Committee shall be delivered to the Chair at least 30 days preceding the election and delivered to each Member eligible to vote at least three (3) weeks preceding the election. Additional candidates for the positions to be filled may be placed in nomination by petition signed by at least 10% of the Members eligible to vote. The petition shall be filed with the Secretary at least two (2) weeks prior to the election. The Secretary shall send notice of such additional nominations to all Members eligible to vote before the election.

(b) Beginning with the elections in 2004, the officers of the Board, with the exception of the Association Executive, shall be elected by the Board of Directors. The elected officers of the Board shall be REALTOR® members of the Board of Directors and shall consist of: a Chair, Chair-Elect and a Secretary. They shall be elected for terms of one year or until their respective successors are duly elected. The Chair-Elect shall automatically succeed to the office of Chair of the Board after the completion of his or her term as Chair-Elect. The Officers of the Board shall not be eligible to serve more than two consecutive terms of that office.

The Chair Elect for the following elective year shall be elected at a regularly scheduled Board of Director's meeting two (2) months prior to the end of each elective year. The Secretary shall be elected at the first regularly scheduled Board of Director's meeting to serve for that elective year.

(c) The Chair, with the approval of the Board of Directors, shall appoint an Election Committee consisting of three (3) REALTOR® Members to conduct the election. In the case of a tie vote, the winner shall be determined by lot.

(d) The election of Officers and Directors shall take place at the annual meeting. Election shall be by ballot and shall be cast in person or by proxy. The ballots shall contain the names of all candidates.

(e) Where permitted by state law, and in accordance with applicable state requirements, election of officers may be conducted by electronic means, in accordance with procedures established by the Board of Directors.

#### Section 4. Vacancies.

(a) In the event of a vacancy in the office of the Chair, the Chair Elect shall fill the vacancy and complete the unexpired term. The Chair Elect who fills a vacancy in the office of Chair shall automatically become Chair for a full term after completion of the unexpired term.

(b) In the event of a vacancy in the office of Immediate Past Chair, the Chair, with the approval of the remaining members of the Board of Directors, may appoint a former Chair who meets the qualifications for service on the Board of Directors.

(c) In the event of a vacancy among the Officers and Directors, the Chair, with the approval of the remaining members of the Board of Directors, may appoint a new Director who meets the qualifications for service on the Board of Directors.

Section 5. Executive Committee. The Executive Committee consists of the Chair, Chair Elect, Immediate Past Chair, and the MLS Chair. The duties of the Executive Committee are to make decisions in lieu of the Board of Directors as needed between board meetings. The Executive Committee functions as the personnel committee; conducts Association Executive performance appraisal and makes salary and bonus recommendations to the Board of Directors.

Section 6. Removal of Officers and Directors. In the event that an Officer or Director is deemed to be unfit or incapable of fulfilling the duties for which elected, but refuses to resign from office voluntarily, such Officer or Director may be removed from office under the following procedure:

(a) A petition requiring the removal of an Officer or Director and signed by not less than one-third of the voting Membership or a majority of all Directors shall be filed with the Chair, or if the Chair is the subject of the petition, with the next-ranking officer, and shall specifically set forth the reasons the individual is deemed disqualified from further service.

(b) Upon receipt of the petition, and not less than twenty (20) days nor more than forty-five (45) days thereafter, a special meeting of the voting Membership 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.

(c) The special meeting shall be noticed to all voting Members at least ten (10) days prior to the meeting, and shall be conducted by the Chair of the Board unless the Chair's continued service in office is being considered at the meeting. In such case, the next ranking officer shall conduct the meeting. Provided a quorum is present, a three-fourths vote of Members present and voting shall be required for removal from office.

## **ARTICLE XII - Meetings**

Section 1 - Annual Meeting. The annual meeting of the Board shall be held during October of each year. The date, place and hour shall be designated by the Board of Directors at least 60 days in advance.

Section 2. Meetings of Directors. The Board of Directors shall designate a regular time and place of meetings. Absence from **three consecutive regular meetings** or four total meetings in one year without a valid excuse as determined by the Board of Directors shall be deemed to be the resignation by such Director. A Director that is withdrawn from the Board of Directors for missing three consecutive regular meetings or four total meetings in one year without a valid excuse may not run for re-election the following year.

Section 3. Other Meetings. Meetings of the Members may be held at such other times as the Chair or the Board of Directors may determine, or upon the written request of at least 25% of the Members eligible to vote.

Section 4. Notice of Meetings. Written notice shall be given to every Member entitled to participate in the meeting at least one (1) week prior to a meeting. If a special meeting is called, it shall be accompanied by a statement of the purpose of the meeting.

Section 5. Quorum. A quorum for the transaction of business for a General Membership Meeting shall consist of 10% of the Members eligible to vote represented in person or by proxy. For Board of Directors' meetings and all other meetings, a quorum for the transaction of business shall consist of at least a majority (i.e., over 50%) of Members eligible to vote.

Section 6. Proxies.

(a) At all meetings of Members, a Member may vote by proxy by signing an appointment form or similar writing, either personally or by his or her duly authorized attorney in fact. A Member may also appoint a proxy by electronic transmission providing a written statement of the appointment to the proxy, a proxy solicitor, proxy support service organization, or other person duly authorized by the proxy to receive appointments as agent for the proxy, or to the Board. The transmitted appointment shall set forth or be

transmitted with written evidence from which it can be determined that the Member transmitted or authorized the transmission of the appointment. The proxy appointment form or similar writing shall be filed with the Secretary or other officer or agent authorized to tabulate proxy votes before or at the time of the meeting. The appointment of a proxy is effective when received by the Board and is valid for eleven months unless a different period is expressly provided in the appointment form or similar writing.

- (b) Any complete copy, including an electronically transmitted facsimile of an appointment or a proxy, may be substituted for or used in lieu of the original appointment for any purpose for which the original appointment could be used.
- (c) An appointment of a proxy is revocable by the Member. An appointment of proxy shall be revoked:
  - (i) If the person appointing the proxy attends any meeting and votes in person, or
  - (ii) If the person appointing the proxy signs and delivers to the Secretary or other officer or agent authorized to tabulate proxy votes either (A) a writing stating that the appointment of the proxy is revoked or (B) a subsequent appointment form.
- (d) The death or incapacity of the Member appointing a proxy does not affect the right of the Board to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his or her authority under the appointment.

#### Section 7. Action by written ballot.

- (a) Any action that may be taken at any annual, regular, or special meeting of Members may be taken without a meeting if the Board delivers a written ballot to every Member entitled to vote on the matter.
- (b) A written ballot shall:
  - (i) Set forth each proposed action; and
  - (ii) Provide an opportunity to vote for or against each proposed action.
- (c) Approval by written ballot shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.
- (d) All solicitations for votes by written ballot shall:
  - (i) Indicate the number of responses needed to meet the quorum requirements;
  - (ii) State the percentage of approvals necessary to approve each matter other than election of directors;
  - (iii) Specify the time by which a ballot must be received by the Board in order to be counted; and
  - (iv) Be accompanied by written information sufficient to permit each Member casting such ballot to reach an informed decision on the matter.
- (e) A written ballot may not be revoked.
- (f) Any action taken under this section has the same effect as action taken at a meeting of Members and may be described as such in any document.

Section 8. Electronic Transaction of Business. To the fullest extent permitted by law, the Board of Directors or membership may conduct business by electronic means.

### **ARTICLE XIII - BOARD COMMITTEES**

Section 1. Standing Board Committees. Unless specified otherwise in these Bylaws or the then-in-effect governing policies of the Board, the Chair shall appoint from among the REALTOR® Members, subject to confirmation by the Board of Directors, the chair of each of the following standing committees. The committee chair shall then appoint committee members, subject to confirmation by the Board of Directors:

Finance Committee  
Education Committee  
Public Relations Committee  
Government Affairs Committee  
Membership Linkage Committee

Standing committee members shall serve until their successors are duly appointed.

Section 2. Other Board Committees. The Board of Directors may establish, from time to time, such additional committees as it may deem necessary to assist it in its work. The resolution establishing such committees shall state the purpose, time line and authority of each committee. Unless stipulated otherwise in these Bylaws or the Board's governing policies, the Chair is authorized to appoint a Chairperson and the members of each Board Committee, subject to confirmation by the Board of Directors.

Section 3. Organization. All board committees shall be of such size and shall have duties, functions, and powers as assigned by the Board of Directors except as otherwise provided in these Bylaws.

Section 4. Chair. The Chair shall be an ex-officio member of all board committees.

Section 5. Action without Meeting. Any committee may act by *unanimous* consent in writing without a meeting. The consent shall be evidenced by one or more written approvals, each of which sets forth the action and bears the signature of one or more of the members of the committee.

Section 6. Attendance by Telephone. Members of a committee may participate in any meeting through the use of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Such participation shall be at the discretion of the Committee Chair and shall constitute presence at the meeting.

### **ARTICLE XIV - Fiscal and Elective Year**

Section 1. The fiscal year of the Board shall be January 1 to December 31.

Section 2. The elective year of the Board shall be December 1 to November 30.

### **ARTICLE XV - Rules of Order - Rules of Order\***

Section 1. Robert's Rules of Order. Robert's Rules of Order, latest edition, shall be recognized as the authority governing the meetings of the Board, its Board of Directors, and committees, in all instances wherein its provisions do not conflict with these Bylaws.

## **ARTICLE XVI - Amendments**

**Section 1. Amendments to Bylaws.** These Bylaws may be amended by a majority vote of the Members present and qualified to vote at any meeting at which a quorum is present, provided the substance of such proposed amendment or amendments shall be plainly stated in the call for the meeting, except that the Board of Directors may, at any regular or special meeting of the Board of Directors at which a quorum is present, approve amendments to the Bylaws which are mandated by the National Association policy, including changes in the recommended Model Bylaws of the National Association.

**Section 2. Notice of Meetings to Amend Bylaws.** Notice of all meetings at which amendments are to be considered shall be delivered to every Member eligible to vote at least one (1) week prior to the meeting.

**Section 3. National Association Approval of Certain Amendments.** Amendments to these Bylaws affecting the admission or qualification of REALTOR® and Institute Affiliate Members, the use of the terms REALTOR® and REALTORS®, or any alteration in the territorial jurisdiction of the Board shall become effective upon their approval as authorized by the Board of Directors of the National Association.

## **ARTICLE XVII Dissolution\***

**Section 1. Dissolution of the Board.** Upon the dissolution or winding up of affairs of the Board, the Board of Directors, after providing for the payment of all obligations, shall distribute any remaining assets to the State Association or, within its discretion, to any other non-profit tax exempt organization.

## **ARTICLE XVIII - Multiple Listing Service**

**Section 1. Authority.** The Board shall maintain for the use of its Members a Multiple Listing Service which shall be a lawful corporation of the state of Colorado, all the stock of which shall be owned by the Vail Board of REALTORS.

**Section 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).

**Section 3. Governing Documents.** The Board of Directors shall cause any Multiple Listing Service established by it pursuant to this Article to conform its corporate charter, bylaws, rules, regulations, and policies, practices, and procedures at all times to the Constitution, Bylaws, Rules, Regulations, and Policies of the National Association of REALTORS®.

**Section 4. Participation.** Any REALTOR® of this or any other Board who is a principal, partner, corporate officer, or branch officer manager acting on behalf of the principal, without further qualification, except as otherwise stipulated in these bylaws, shall be eligible to participate in Multiple Listing Service 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 to access to information developed by or published by a Board of Multiple Listing Service where access to such information is prohibited by law.

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 uses to refer customers to other Participants) if the Participant or potential Participant actively endeavors to make or accept offers of cooperation and compensation. An MLS may evaluate whether a Participant or potential Participant “actively endeavors during the operation of its real estate business” to “offer or accept cooperation and compensation” only if the MLS has a reasonable basis to believe that the Participant or potential Participant is in fact not doing so. The membership requirement shall be applied on a nondiscriminatory manner to all Participants and potential Participants.

Section 5 Subscribers and Users. Subscribers of the MLS include non-principal brokers, sales associates and licensed and certified appraisers affiliated with Participants. Users of the MLS 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 Participant’s licensed designee.