



**BAY AREA REAL ESTATE SERVICES, INC. (BAREIS)**

**MLS REGULATIONS**

**AS REFERENCED BY THE**

**MLS RULES**

**BAREIS MLS REGULATIONS**  
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**All Members hereby agree to abide by these Rules and Regulations by virtue of their application to and/or their use of the BAREIS Multiple Listing Service system.**

## NOTICE

**The regulations (“The regulations”) of the Bay Area Real Estate Information Services, Inc. (“BAREIS”) are solely for the use and benefit of the members of BAREIS and permitted licensees thereof. The regulations govern only the relationship among the members and BAREIS regarding the Multiple Listing Service operated by BAREIS and used by its members and certain licensees. The regulations set forth, among other things, operating requirements necessary for the creation and maintenance of BAREIS’ databases. Except as provided in Section 16.3 of these regulations, nothing in these regulations is intended to confer any rights, benefits or remedies on any persons other than the members of BAREIS, its licensees and their respective successors and permitted assigns. These regulations do not, are not intended to, and shall not be deemed to establish Professional Standards or models for the conduct of the Real Estate brokerage business with the public by the members of BAREIS or others.**

### **1. AUTHORITY**

Bay Area Real Estate Information Services, Inc., a California nonprofit mutual benefit corporation (“BAREIS”), shall maintain for the use of its Members a real estate information service that shall be subject to the Bylaws of BAREIS (the “Bylaws”) and such Rules and Regulations (these “Rules and Regulations”) as may be hereinafter adopted from time to time by the Board of Directors (the “Board”).

The Rules and Regulations may be amended at any time and from time to time by the Board.

### **2. PURPOSE**

BAREIS maintains a Multiple Listing Service (the “MLS”) that is a means by which: (a) authorized broker Participants establish legal relationships with other Participants by making blanket unilateral contractual offers of compensation and cooperation to other broker Participants; (b) information is accumulated and disseminated to enable authorized Participants to prepare appraisals and other valuations of real property; (c) Participants engaging in real estate appraisal contribute to common databases; and (d) the orderly correlation and dissemination of listing information among the Participants is facilitated so that they may better serve their clients and customers. BAREIS does not regulate commissions, commission splits, or the business models of its Members.

### **3. DEFINITIONS**

3.1 “Member” means a Member, as defined in the Bylaws, and, for purposes of these Rules and Regulations, includes a broker Participant, an appraiser Participant, a real

estate Subscriber, an appraiser Subscriber, or an administrative user. See Regulation 5 for a definition of each membership type under these Regulations.

3.2 “Buyer” shall also include a lessee as well as an exchangee in a real property exchange, as the case may be. “Seller” shall also include a lessor as well as an exchanger in a real property exchange, as the case may be. All references to a “sale” shall also include a lease or exchange.

3.3 “Filed with BAREIS” means any listing (or change to a listing) submitted for input to the MLS Database on a listing input form (or listing change form) to be input by BAREIS staff if directed to do so by the listing broker, or listing information entered directly into the MLS Database by the listing broker. BAREIS does not retain a hard copy of the listing input form.

3.4 “Business Days” means Monday through Friday, excepting California and federal holidays.

3.5 “MLS Database” means BAREIS’ copyrighted multiple listing service database and computer software, whether in tangible or electronic form, in whole or in part, including all copyrighted photographs and images in such database.

3.6 “MLS Data” includes, but is not limited to, the MLS Database, all data submitted by Members to BAREIS, all membership contact information, and all copyrighted BAREIS publications, instructions, training materials and similar matter, whether in print or electronic form.

3.7 “On Market MLS Data” means that section of the MLS Database that includes listings of real property that are currently for sale, as well as all indexes and other information relating to the current listing inventory.

3.8 “Comparable MLS Data” means that portion of the MLS Database that includes the off-market data and sold information regarding properties that are not currently for sale, as well as all indexes and other information relating to sold listings.

3.9 “Suspension of Membership” means suspension of (i) BAREIS membership rights, preferences and privileges, including voting rights, and (ii) MLS Privileges, on terms and conditions expressly stated for a period of time of not more than one year as determined by the applicable committee or person authorized by the Board. In the event the suspension is for a remediable violation, the suspension shall be in effect for the period that the violation remains uncorrected. “Remediable violations” are those that can be corrected by the Member, such as completion of mandatory training, nonpayment of fees, or other curable violations. At the end of the applicable suspension period reinstatement of a suspended Member’s membership and MLS Privileges shall be automatic, provided that the Member is current on all amounts owed to BAREIS and has kept all fees current during the period of suspension. (4/16/10)

3.10 “MLS Privileges” means all privileges and services provided by the MLS to any of its Participants or Subscribers, including, but not limited to, access to the MLS

Database, lockbox privileges and technical support, and the ability to submit new listings or extensions of current listings. (4/16/10)

3.11 “Termination of Membership” means termination of (i) BAREIS membership rights, preferences and privileges, including voting rights, and (ii) MLS Privileges, for an indefinite period of time without reinstatement to membership except by application as a new member, with the application considered by BAREIS on its merits. (4/16/10)

3.12 “Expulsion” means termination of (i) BAREIS membership rights, preferences and privileges, including voting rights, and (ii) MLS Privileges, for a period of not less than one, but not more than three years, with reinstatement to membership only by application as a new member after the end of the period of expulsion, with the application considered by BAREIS on its merits. (4/16/10)

#### **4. OWNERSHIP OF MLS DATABASE AND COPYRIGHTS**

4.1 Authority to Put Listings in the MLS Database. By filing a listing with BAREIS, the Participant represents that he or she has been authorized to grant, and he or she does thereby grant, an irrevocable perpetual royalty-free license (with right to sub-license) to BAREIS to use, copy, and publish information relating to, the listing in the MLS Database and to report information and other data about the sale, price, and terms of the listing in the MLS Database, as well as in other information sources.

4.2 Copyrighted Ownership. All right, title, and interest in the MLS Data created and copyrighted by BAREIS shall at all times remain vested exclusively in BAREIS.

4.3 License to Access the MLS Database. Through maintaining active membership in BAREIS, each Member is granted a non-exclusive, non-transferable license to access the MLS Database, without the right to sub-license. The license granted to an active Member provides only the right to use the MLS Database in accordance with these Rules and Regulations and the Bylaws.

#### **5. TYPES OF MEMBERS AND MEMBERSHIP REQUIREMENTS**

5.1 Member Requirements. All BAREIS Members (as defined in the Bylaws) must:

- (a) Sign a written agreement to abide by the Bylaws and these Rules and Regulations in force at that time, and as amended from time to time; Members are responsible for adhering to these Rules and Regulations as a condition of their membership, and are responsible for being aware of all current Rules and Regulations;
- (b) Complete any orientation program required by BAREIS within 60 days after access to the MLS Database has been provided;
- (c) Pay all applicable fees;
- (d) Provide full and current contact information, including a valid email address and facsimile number, to BAREIS, and agree to accept all communications by electronic means from BAREIS; and
- (e) Conduct themselves in a professional manner, according to the policy of the Board that expects and requires professional behavior in

dealings with the staff of BAREIS, the service centers, or reciprocal MLS's. Abusive, threatening or harassing behavior towards administrators or employees is not acceptable. Upon receiving a complaint of such behavior towards a staff member, the Board, or a committee of the Board, shall cause the accusation to be investigated and conduct a hearing if necessary. The Board may levy a fine against an offending Member, and, in the case of repeat offenses, may suspend or expel the Member from BAREIS membership and MLS Privileges. (4/16/10)

5.2 Participant. A Participant is any Member that continues to meet all of the requirements of either a broker Participant or an appraiser Participant as defined below:

5.2.1 Broker Participant. A broker Participant is an individual who holds a valid California real estate broker license and who is either a sole proprietor or is a principal, partner, corporate officer, or broker manager acting on behalf of a business entity and is authorized to offer and accept compensation in the capacity of a real estate broker.

5.2.2 Appraiser Participant. An appraiser Participant is an individual who holds a valid California appraisal license or certificate and who is either a sole proprietor or is a principal, partner, corporate officer, or branch manager acting on behalf of a business entity for or through which his or her services are provided.

5.3 Subscriber. A Subscriber is an individual who meets the requirements of either a real estate Subscriber or appraiser Subscriber as defined below:

5.3.1 Real Estate Subscriber. A California real estate licensee or broker who is employed by or affiliated as an independent contractor with a broker Participant or a business entity holding a valid California real estate broker license.

5.3.2 Appraiser Subscriber. A California licensed or certified appraiser who is employed by or affiliated as an independent contractor with an appraiser Participant.

5.4 Administrative Users. Administrative users are individuals under the direct supervision of a Participant or Subscriber who perform only administrative and clerical tasks that do not require a real estate license or an appraiser's certificate or license. Administrative users are assigned unique and individual administrative access to the MLS Database. Each Participant and Subscriber shall provide BAREIS with a list of all administrative users employed by the Participant or Subscriber and shall immediately notify BAREIS of any changes, additions, or deletions from the list. Administrative users without an active real estate license or appraiser's certificate or license are subject to a special dues rate established by the Board. Administrative users with an active real estate license or appraiser's certificate or license are billed at the Subscriber rate. Administrative users may not provide any MLS Data to persons other than the Participant or the Subscriber under whom the administrative user is registered.

5.5 Listing Broker. A listing broker is a licensed real estate broker who has obtained a written listing agreement by which the broker has been authorized to act as an agent to sell, lease or exchange real property or to find or obtain a buyer, lessee or exchangee pursuant to California Civil Code §1086. Whenever these Rules and Regulations refer to the listing broker, the term shall include the Subscriber or licensee acting for the listing broker, but shall not relieve the listing broker of responsibility for the act or Rule specified.

5.6 Cooperating Broker or Selling Broker. A cooperating broker or selling broker is a licensed real estate broker who acts in cooperation with a listing broker to accept an offer of compensation to find or obtain a buyer, lessee or exchangee for property pursuant to California Civil Code §1086. Whenever these Rules and Regulations refer to the cooperating broker or selling broker, the term shall include the Subscriber or licensee acting for the cooperating or selling broker, but shall not relieve that broker of responsibility for the act or Rule specified.

5.7 Appraiser. An appraiser is a Participant or Subscriber who is a certified or licensed appraiser, or is a certified or licensed appraiser acting for a Participant or a Subscriber. Whenever these Rules and Regulations refer to an appraiser, the term shall include the appraiser Subscriber or a certified or licensed appraiser employed by or affiliated as an independent contractor with the Participant who employs the appraiser, but shall not relieve that Participant of responsibility for the act or Rule specified.

5.8 Affiliate. An affiliate Member is an individual or business entity who or which is neither a real estate licensee nor a licensed or certified appraiser, who or which can demonstrate a legitimate need for the information, and who or which may qualify, upon approval of the Board, to receive MLS Data, on such terms and conditions as may be determined by the Board.

5.9 Membership Not Transferable. Membership in BAREIS is on an individual basis and may not be transferred or sold to any other individual, corporation, or business entity. Any reimbursement of the participation fee is a matter to be negotiated by those transferring a business, or determined as a matter of contract within the business entity. However, provided the first Participant consents, BAREIS shall allow a business entity to designate a different person within the business entity as a Participant without requiring the payment of an additional participation fee. BAREIS may charge an administrative fee for reassigning Participants within a business entity.

## **6. BAREIS FEES AND CHARGES**

6.1 Service Fees and Charges. The Board shall set the following fees and charges, as listed in **Exhibit A-2**:

6.1.1 Initial Application Fee: An applicant for Participant or Subscriber shall pay an initial application fee.

6.1.2 Monthly User Fee: Each Participant and Subscriber shall pay a monthly user fee.

- 6.1.3 Administrative Users: The Participant or Subscriber shall pay the applicable fees for computer access and a special password for his or her administrative users.
- 6.1.4 Book Subscription Fees: BAREIS does not currently publish a listing book.
- 6.1.5 Certification of Non-use: Participants and Subscribers may be excused from paying their monthly user fees by certifying to BAREIS that a real estate licensee or certified or licensed appraiser in the business entity is engaged solely in activities that do not require a real estate license (i.e., clerical activities), or that the real estate licensee or certified or licensed appraiser will not use the MLS Database in any way (“Certification of Non-use”). In the event a real estate licensee or certified or licensed appraiser is found to be using the MLS Database in violation of Certification of Non-use, the Participant shall be subject to fees dating back to the date of the certification or affiliation of the real estate licensee with the Participant’s business entity.

6.2 Suspension of BAREIS membership and MLS Privileges for Failure to Pay Service Fees, Fines, and Charges. Following 15 days’ written notice of the delinquency, a Member’s BAREIS membership and MLS Privileges shall be suspended, for failure to pay any amounts due within 30 days following the date due, until the amounts due are paid in full, including a delinquency fee. Failure to pay service or delinquency fees, fines or charges for one year will result in termination of membership and reinstatement of BAREIS membership and MLS Privileges will require application as a new member. When any Member is suspended or terminated, including by reason of expulsion or resignation, the Member shall immediately return all materials relating to BAREIS, including all forms and other supplies, within 48 hours after such suspension or termination. (4/16/10)

## **7. NOTIFICATION**

7.1. Notice. Whenever notice of any matter is required to be given to BAREIS, it must be given in writing, within the time specified, by mail, email, or facsimile.

7.2 Notification of California Department of Real Estate (DRE) or California Office of Real Estate Appraisers (OREA) Action. Members are required to notify BAREIS within 24 hours of any final action taken by the DRE or the OREA against the Member, including but not limited to any final decisions restricting, suspending, or revoking the real estate license or appraiser’s certificate or license of a Participant or Subscriber, the business entity under which the Participant or Subscriber acts, or any real estate licensee affiliated with the Participant or the Participant’s business entity, or any certified or licensed appraiser who was affiliated with the Participant or the Participant’s business entity at the time of the underlying act.

7.3 Supervision of Licensees. In addition to the notification requirements of Regulation 7.2, a broker Participant may not allow any real estate licensee under the broker Participant’s license whose license has been revoked, suspended, or restricted by either the DRE or the OREA to use the MLS Data in any manner while the DRE or the OREA

discipline is in effect, except that the real estate licensee may be able to use MLS Data under a restricted license, provided such use is consistent with and does not violate such license restrictions.

7.4 Notification of Licensees. On January 15<sup>th</sup> of each year, each Participant shall provide BAREIS with a list of all real estate licensees or brokers, or certified or licensed appraisers employed by or affiliated as independent contractors with such Participant's business entity, and shall immediately notify BAREIS of any changes, additions, or deletions to the list. This list shall include any real estate licensees under any broker associate affiliated with the Participant. The Participant must file a "MLS Participation Fee Waiver Request Form & Certificate of Non-use" for any real estate licensee with the firm that will not be accessing the MLS Database. The Participant is responsible for insuring that any non-Member real estate licensee in any way affiliated with such Participant will not access the MLS Database.

7.5 Violation of Certificate of Non-use. In the event a real estate licensee or broker, administrative assistant, or certified or licensed appraiser is found to be using the MLS Database in violation of the Certificate of Non-use, the Participant shall be subject to fees dating back to the date of the certification or affiliation of the real estate licensee with the Participant's business entity. Listings associated with a real estate licensee subject to a waiver filed with BAREIS shall not be included in the MLS Database, and references to a waived real estate licensee shall not be included anywhere in the MLS Data. The Member also may be subject to any other sanctions that can be imposed for violation of these Rules and Regulations and ultimately lose access to the MLS Data.

7.6 Violations of the Law. A Member shall not commit a felony or a crime involving moral turpitude or violate the real estate law, including the rules and regulations of the California Department of Real Estate, or the laws relating to appraisers. However, a Member shall not be found to have violated this Regulation 7.6 unless the Member: (a) has been convicted, adjudged, or otherwise recorded as guilty by a final judgment of any court of competent jurisdiction of a felony or a crime involving moral turpitude, or (b) it is determined by any court of competent jurisdiction or an official of the State of California authorized to make the determination that the Member violated a provision of the California real estate law, including the rules and regulations of the California Department of Real Estate relating to appraisers.

## **8. REGIONAL AND RECIPROCAL AGREEMENTS**

The Board may approve and enter into reciprocal or regional agreements with other MLS organizations to allow their participants and subscribers to place a listing with BAREIS or access to BAREIS in exchange for their providing similar service to Members of BAREIS on such terms and conditions as the Board may approve. In the event agreements are entered into, the other participants and subscribers shall be bound by these Rules and Regulations, and the Participants and Subscribers shall be bound by the rules and regulations of the reciprocating MLS database.

BAREIS has entered into special reciprocal agreements with MetroList®, The San Francisco Association of REALTORS® MLS, and MLSListings® in which the participants and subscribers of each organization will be granted as a professional courtesy open access to each

others' MLS databases and access to data from all the participating MLSs into a merged database called Quattro. By utilizing one of the reciprocating databases, Participants and Subscribers agree to abide by and are bound by the respective rules of the other MLSs including, but not limited to, submission of listings, accuracy of information and status, offer of compensation, confidentiality, advertising, transfer of data, lockbox regulations, and the sanctions and/or fines for violating those rules. (2/19/10)

## 9. LISTING PROCEDURES

9.1 Listings Subject to Rules and Regulations. MLS listings may be filed with BAREIS only by broker Participants. Any listing filed with BAREIS by a broker Participant is subject to these Rules and Regulations.

9.2 Compliance with California and Federal Law. BAREIS shall accept any listing that it is required to accept under California or federal law.

9.3.1 Type and Classification of Listings. BAREIS shall accept exclusive right to sell, exclusive agency, open, and probate listings as defined in the California Civil Code § 1086 et seq. Listings that contain any exceptions whereby the owner need not pay a commission if the property is sold to particular individuals or under special situations shall be classified according to their proper legal contract form. The listing broker shall explain all exceptions in the confidential remarks. It shall be the responsibility of the listing broker to classify each listing submitted. BAREIS shall not have an affirmative responsibility to verify such legal classifications. However, BAREIS shall have the right to make a determination as to the classification. If a determination is made that the listing has been falsely classified, and the listing broker refuses to reclassify it, BAREIS shall have the right to issue a fine and to reject or remove the listing. (4/20/09)

9.3.2 Auctions. BAREIS shall not accept listings of properties that are for sale solely at or through an auction. A listing on the MLS shall expire on the date the listed property is sold at an auction.

If a seller intends to sell a property through an auction, BAREIS shall, nevertheless, accept a listing of the property on the MLS if the property is also available under the listing agreement for sale prior to the auction, conditioned upon the listing meeting the following requirements:

- (a) There must be a binding listing agreement between the seller and listing broker for the sale of the property prior to the subject auction, that contains the date of the auction of the property, which date shall serve as the expiration date of the MLS listing;
- (b) If a seller grants a listing to the listing broker for such a property, all listing information in connection with the listing of the property on the MLS shall comply in all respects with these Regulations, including Regulation 9.11 and Regulation 9.12.1; however, the date of auction must be disclosed in the first sentence of the confidential remarks field **and shall serve as the only allowable auction information in the listing or attachments**; and

- (c) If a property listed in the MLS is sold at auction, it shall not be deemed sold for purposes of these Regulations, and shall not be an element in any comparable sales data. (*Effective 7/19/10*)

9.4 Types of Properties. BAREIS shall accept listings for the following types of property:

- Single-Family Homes
- Condominiums/Stock Cooperatives/Tenancies in Common/PUD
- Modular and Manufactured Homes
- 2-4 Units (Residential)
- 5+ Units (Residential)
- Business Opportunities
- Lots and Acreage
- Farms and Ranches
- Commercial/Industrial
- Floating and Mobile Homes
- Rentals

9.5 Separate Listings. All properties that can be sold separately must be listed separately, except as otherwise approved by the Board. Properties may not be filed in more than one property category or in more than one county or area, unless the property meets at least one of the following specific criteria:

For approval in two property categories:

- (a) Parcels with mixed-use zoning are being sold together; or
- (b) A residential and commercial or land subdivision is pre-approved. Proof of pre-approval from municipality must be provided; or
- (c) A lot where new home construction plans are approved and the list price includes all completed improvements.

For approval in multiple counties or areas:

- (a) The property's footprint overlaps two counties;
- (b) The principal access road to the property is in a different county; or
- (c) The mailing address of the property is different from the property's location.

9.6 Listing Agreement and Seller's Permission. Prior to filing a listing with BAREIS, the listing broker must possess a written, valid listing agreement. Listing agreements utilized by listing brokers must contain all of the following:

- (a) The agreement must establish and define the agency relationship and grant the listing broker authority to act as an agent of the seller;
- (b) The agreement must grant the listing broker authority to enter the listing in the MLS Database;
- (c) The agreement must include instructions to post or not post the listing on Internet sites, and, if permitted to post the listing to the Internet, instruction to disclose or not disclose the address of the property on Internet sites;

- (d) The agreement must grant the listing broker authority to post sales information in the MLS Database upon sale of the property; and
- (e) The agreement must grant the listing broker authority to make a unilateral offer of compensation to other Members through the MLS Database.

It is the responsibility of the listing broker to explain these Rules and Regulations to the seller. A seller's or buyer's request of a Member not to report a sale or to violate any other Rule or Regulation does not relieve the Member from his, her or its obligations under these Rules and Regulations.

9.7 **Mandatory Inclusion.** Participants shall include in the MLS Database all accepted listing types located within the service area of BAREIS, within three Business Days after all necessary signatures have been obtained on the subject listing or on the effective date of the contract, whichever is later. Listings of property located outside BAREIS' service area are not required to be included. Commercial/Industrial, 5+ Units, Business Opportunities, or Rental categories are not required to be included in the MLS Database.

9.8 **Excluded Listings.** If the seller does not permit the listing or final reporting of sales data to be included in the MLS Database at the time the listing is taken, or at any time during the listing, the listing may not be entered into the MLS Database. The listing broker must provide an "Authorization to Exclude Listing from MLS" to BAREIS within three Business Days of the effective date of the contract.

9.9 **Written Documentation.** BAREIS shall have the right at any time and from time to time to demand a copy of agreements and authorizations to verify the listing's existence and adequacy. If a Member fails to provide documentation within 24 hours, BAREIS shall have the right, in addition to fining the Member, to immediately withdraw any listings from the MLS Database for a violation of these Rules and Regulations.

9.10 **Accuracy of Information.** By filing a listing with BAREIS, the listing broker shall be responsible for the truth of all representations and statements of which the listing broker had knowledge or should have had knowledge, as required by California Civil Code § 1088. The listing broker shall immediately review the listing, verify its correctness, and correct any error. If the broker is unable to correct the error, he or she shall notify BAREIS in writing. BAREIS' sole responsibility shall be to correct the error as presented by the listing broker.

9.11 **Detail on Listings.** Listing information filed with BAREIS by the listing broker shall be complete in every detail, including the listing price, the termination date, the compensation offered to other Participants, and any other item required to be included as determined by the Board. A listing broker who is notified by any third party, including the seller or BAREIS, that the data has an error or omission or requires a correction, must complete or correct the information within three Business Days from the date the listing broker is so notified. (1/16/09)

9.12 **Special Provisions.** Any special circumstance, provision, contingency or condition of any type in a listing agreement that would materially affect the buyer or the decision of the buyer to purchase the subject property, or a condition within or outside of the

listing agreement that would materially and adversely affect the compensation of a representative of any party to the transaction (such as the commission or other compensation in a probate sale, short sale, sale with a pending notice of default, or other similar circumstance) shall be specified in the confidential remarks. (1/16/09)

9.13 Member as Principal. If a listing broker through one or more intermediaries has any interest, whether direct or indirect, in the property, other than the listing broker's rights under the subject listing agreement, the listing broker shall clearly indicate this fact in the confidential remarks.

9.14 Correct Use of Data Fields. Data fields may be used only for their specified purpose, including:

- 9.14.1 General. Members may not use the remarks section or any MLS Database field for the purpose of disparaging other real estate agents or brokers, conveying information about other offices, or for conveying any information that does not directly relate to the marketing of the subject listing.
- 9.14.2 Confidential Remarks.
- (a) The confidential remarks data field is intended to contain agent-to-agent remarks, showing instructions, financing or escrow information, contact information, and any information deemed confidential pursuant to these Rules and Regulations.
  - (b) No reference may be made to licensees who are not members (participants or subscribers) of BAREIS MLS®.
  - (c) "For Comp Purposes Only" must appear in the first line of confidential remarks when a listing is entered for that purpose.
  - (d) Caution: Title or escrow information may be entered into confidential remarks; however, members 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.
  - (e) See also Regulations 9.3, 9.12, 10.2, 10.4 and 10.10 (for more regulations regarding Confidential Remarks).
- 9.14.3 Property Description/Public Remarks. The property description/public remarks field is restricted solely to the physical description and condition of the property and its amenities. Amenities are any tangible or intangible benefits of a property, especially those that increase the attractiveness or value of the property or that contribute to its comfort or convenience. Tangible amenities might include parks, swimming pools, health club facilities, party rooms, bike paths, community centers, or garages, for example. Intangible benefits might include a "pleasant view" or aspect, good schools, easy access to public transportation which add to the living comforts of the property. Among information that is not permitted in Property Description/Public Remarks is:

- (a) Contact information such as names, addresses, model home office information, phone or fax numbers, email addresses or website addresses or URL's of any kind (including such information relating to the listing Broker or agent);
- (b) Showing instructions, such as references to lockbox, alarm, gate or other security codes, or the vacancy of the property;
- (c) Information directed toward real estate agents or brokers, including compensation or bonuses offered to cooperating brokers;
- (d) Personal information relating to the seller of the property; or
- (e) Information relating to the purchase price of the property or the financing thereof.

9.14.4 Photograph Areas and Virtual Media. Photograph areas, including photo remarks, may be used only for their specified purpose of displaying the subject property. Virtual tours should be pointed directly to a virtual tour, and not to a company or agent's website. Members may not use photographs or virtual media from another listing without the prior permission of the previous listing agent.

9.14.5 HUD Discriminatory Terms. Federal and state law and Housing and Urban Development regulations prohibit the use of certain discriminatory terms and actions. Members are expected to be aware of these terms, and are prohibited from the use of these terms in the MLS Database.

9.15 Change of Listing Information. Listing brokers shall report any change in the original listing agreement to BAREIS within three Business Days. By reporting changes, the listing broker represents that the seller has authorized the listing modification in writing or that the listing broker has obtained other legally sufficient written authorization to make the changes.

9.16 Processing of Changes in Listings. Changes in listings may be submitted to BAREIS on change forms, or directly entered by the Member into the MLS Database. Change forms must be complete. Incomplete change forms will be returned to the listing broker for completion. Change forms covering listings originally loaded by BAREIS into the MLS Database are processed by BAREIS at no charge. Change forms covering listings originally loaded into the MLS Database by Members are processed by BAREIS for a fee.

9.17 Reporting of Sales. Contingent sales, pending sales, failed sales, closed sales and referred sales shall be reported to BAREIS by the listing broker as soon as practicable, but in no event later than three Business Days after their occurrence.

9.17.1 Contingent Sales. Listings with accepted offers by the seller with contingencies or conditions (ie: lender's approval, inspections, release clauses, etc.) shall be reported to the MLS as "Contingent" by the listing broker with no final selling price or terms prior to the final closing.

- 9.17.2 Pending Sales. Listings with accepted offers without contingencies shall be reported to the MLS as “Pending” by the listing broker with no final selling price or terms prior to the final closing.
- 9.17.3 Failed Sales. The listing broker shall report immediately to BAREIS the cancellation of any contingent or pending sale and the listing shall be reinstated immediately as long as there is still a valid listing.
- 9.17.4 Closed Sales. “Closed Sales” (“Sold”) is defined as completed transactions where escrow has closed and title to the property has been transferred, or, in the case of a lease, where the lease agreement has been signed by the lessor and the lessee.
- 9.17.5 Referred Sales. When a listing offers referral fees instead of selling commissions, the Member that introduces the resulting buyer to the listing broker shall be deemed the selling Member for reporting purposes.

9.18 Comparable Listings. A listing excluded from the MLS under Regulation 9.8, or a property sold under a single party compensation agreement, may be entered for comparable purposes. The listing broker or cooperating broker must secure written approval from the seller and buyer to provide the sales information in the MLS Database. The listing broker and cooperating broker/office will be entered only in the Confidential Remarks. The listing must be entered into the MLS Database and a completed copy of the written approval of the seller and buyer must be transmitted to BAREIS within 10 days of close of escrow. (7/20/09)

9.19 Withdrawal of Listing Prior to Expiration. Listings of property may be withdrawn from the MLS Database by the listing broker before the expiration date of the listing agreement, provided notice is obtained by the listing broker from the seller authorizing the withdrawal. BAREIS reserves the right upon request to receive a copy of written authorization from the listing broker.

9.20 Expiration, Extension and Renewal of Listings; Days On Market.

- 9.20.1 Extensions and Renewals. The listing broker shall obtain written authorization from the seller before filing any extension or renewal of a listing.
- 9.20.2 Days on Market. For the purpose of determining days on market, any renewal or extension filed with BAREIS fewer than 10 calendar days after the expiration date of the original listing shall be treated as an existing listing.
- 9.20.3 Cumulative Days on Market (CDOM). CDOM applies to the total length of time a property is on the market, whether pursuant to a single listing or multiple listings, and continues to accumulate days on market for the property until the property is sold. For the purpose of determining CDOM, if the property is withdrawn/cancelled or expired

for 30 days or more, CDOM will reset to zero if replaced with a new listing.

9.21 Solicitation of Listing Filed with BAREIS. Members shall not solicit a listing with respect to properties listed in the MLS Database during the term of a valid existing listing agreement, provided that this prohibition shall in no way limit the right of any Member to solicit listings through general advertising.

9.22 Listings of Members Suspended or Terminated. When a Participant is suspended or terminated, including by reason of resignation or expulsion, the Participant's listings in the MLS Database at the time of such suspension or termination shall, at BAREIS's option, be retained in the MLS Database until sold, withdrawn, or expired, but shall not be renewed or extended by BAREIS beyond the expiration date of the listing agreement in effect when the suspension or termination became effective. All change orders for pre-existing listings shall be in writing and mailed, sent by facsimile, emailed or hand-carried to the appropriate BAREIS Service Center to be sent to BAREIS for input into the MLS Database. Suspension of MLS Privileges of a Participant extends to all Subscribers affiliated with that Participant. It shall be the responsibility of the listing broker to notify any principal that the listings are no longer in the MLS Database. (4/16/10)

## **10. SELLING PROCEDURES AND PRESENTATION OF OFFERS**

10.1 Showings and Negotiations. Appointments for showings and negotiations with the seller for the purchase of listed property filed in the MLS Database shall be conducted through the listing broker except under the following circumstances:

- (a) The listing broker gives the cooperating broker specific authority to show or negotiate directly, or, if 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 confidential remarks filed with BAREIS; or
- (b) After reasonable effort and for no less than 24 hours the cooperating broker cannot contact the listing broker or his or her representative. However, the listing broker, at his or her option, may preclude such direct negotiations by the cooperating broker by giving notice to all Participants through the MLS Database.

The cooperating broker shall notify the listing broker of the sale as soon as possible, and shall mail or deliver a copy of the sale contract to the listing broker within three Business Days after the contract has been fully signed.

10.2 Submitted Listings with "Do Not Show" Instructions. If a property is listed in the MLS Database with an active status containing remarks that instruct cooperating brokers not to show the property for more than three Business Days, an "Authorization to Exclude from MLS," signed by the seller, must be submitted to BAREIS within three Business Days of the listing date. The confidential remarks must indicate if offers are being accepted during the "do not show" period, and, if not, when offers will be accepted.

10.3 Listing Broker's Permission. No Member may physically enter a property, with or without a lockbox, without the listing broker's permission and without following the listing broker's instructions. Permission to use the lockbox may be granted by the listing broker through the MLS Database. Appraiser Participants are expressly prohibited from using lockbox keypads to enter a property without either the owner's or the listing broker's permission. Showing instructions contained in the MLS Database do not satisfy the appraiser-permission requirement.

10.4 Procedures for Presentation of Offers. The listing broker must make arrangements to present an 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 in the confidential remarks in the listing information filed with BAREIS.

10.5 Submission of Offers. Unless precluded by law, governmental regulation, or instruction by the seller, the listing broker shall submit all offers to purchase to the seller until the closing of the sale, or expiration or termination of the listing agreement.

10.6 Right of Cooperating Broker in Presentation of Offer. The cooperating broker has the right to participate in the presentation of any offer to purchase that he or she secures, but does not have the right to be present at any discussion or evaluation of that offer by the seller and the listing broker. The cooperating broker shall convey the offer to the listing broker for presentation if the seller gives written instructions to the listing broker requesting that the cooperating broker not be present during offer presentation. The cooperating broker has the right to receive a copy of the seller's written instructions from the listing broker in that regard. Nothing in this Regulation 10.6 shall diminish or restrict the listing broker's right to control the establishment of appointments for offer presentations.

10.7 Right of Listing Broker and Presentation of Counteroffers. The listing broker has the right to participate in the presentation of any counteroffer made by the seller. The listing broker does not have the right to be present at any discussion or evaluation of a counteroffer by the buyer. However, if the buyer gives written instructions to the cooperating broker that the listing broker not be present when a counteroffer is presented, the listing broker has the right to a copy of the buyer's written instructions in that regard.

10.8 Delayed Offer Presentation. A listing broker at the direction of the seller may establish a date for presentation and review of all offers. The listing broker must accept/receive all offers for presentation up to and on the specified date. If an offer is presented and accepted prior to the date, the listing broker must notify in writing all brokers submitting offers, and may be subject to disciplinary action for violation of Rule 9.10 Accuracy of Data.

10.9 Member as a Buyer. If a Member wishes to acquire through one or more intermediaries an interest, direct or indirect, in a property listed with another listing broker, such contemplated interest shall be disclosed by such Member to the listing broker in writing prior to the time an offer to purchase is submitted to the listing broker.

10.10 Refusal to Sell. If the seller of any listed property in the MLS Database refuses to accept a written offer satisfying the terms and conditions stated in the listing, such fact shall be included in the confidential remarks section of the listing.

## **11. COMPENSATION**

11.1 No Control of Commission Rates or Fees Charged by Participants. BAREIS shall not fix, control, recommend, suggest, or maintain commission rates or fees for services to be rendered by Participants. Further, BAREIS shall not fix, control, recommend, suggest, or maintain the division of commissions or fees between cooperating Participants or between Participants and non-Participants. BAREIS shall not be a party to the settlement of any dispute over compensation.

11.2 Unconditional Unilateral Contractual Offer. By making a compensation offer in the MLS Database, the listing broker is making a blanket unconditional unilateral contractual offer of compensation to the other Participants and, through the Participants, other Members for their service in selling the property. A listing broker must specify, in either a dollar amount or as a percentage of the sales price, the compensation to be paid. Any offer of a referral fee in addition to or in lieu of a commission, and any requirements, limitations, or restrictions to receive or to qualify for the unilateral contractual offer of compensation, for example, estate sale, probate, bankruptcy, and lender approval listings, must be specified clearly in the confidential remarks in the listing. All offers of compensation are unconditional, except that entitlement to compensation is determined (i) by the cooperating broker's performance as the procuring cause of a ready, able and willing buyer of the listed property on terms acceptable to the seller, as evidenced by the execution and delivery of a binding contract of sale between the buyer and the seller, (ii) by the cooperating broker's introducing the buyer to the seller within the terms of a listing that offers a referral fee, as evidenced by the execution and delivery of a binding contract of sale between the buyer and the seller, or (iii) as otherwise provided for in these Rules and Regulations. The listing broker's obligation to compensate any cooperating broker as the broker procuring the sale may be excused if it is determined through arbitration or other proceeding that, through no fault of the listing broker and in the exercise of good faith and reasonable care, it was impossible or financially unfeasible for the listing broker to collect a commission pursuant to the listing agreement.

11.3 Acceptance of Contractual Offer. The listing broker's blanket unconditional unilateral contractual offer pursuant to Regulation 11.2 is accepted by the cooperating broker when he or she procures a buyer, lessee or exchangee and a sale contract or lease agreement is entered into. Payment of compensation by the listing broker to the cooperating broker under this Regulation 11.3 is contingent upon either (a) the final closing or (b) the listing broker's receipt of monies resulting from the seller's or buyer's default under the underlying sale contract or lease agreement. Notwithstanding this Regulation 11.3, the listing broker or cooperating broker shall still retain any remedies they may have against either the buyer or seller due to a default under the terms of the sale contract, listing agreement, or other specific contract. Any dispute between the Participants arising out of this Regulation 11.3 shall be arbitrated under applicable Rules and Regulations, CAR interboard arbitration rules, or Regulation 16.5, and shall not be considered a Rules and Regulations violation.

11.4 Changes to Unilateral Offer of Compensation of All Participants. The listing broker may, from time to time, adjust the published compensation offered in the MLS Database. Any change in compensation shall be effective when published in the MLS Database. The listing broker may revoke or modify the offer of compensation in advance to any individual broker Participant in accordance with general contract principles, but in no event shall the listing broker revoke or modify the offer of compensation without the cooperating broker's consent after the cooperating broker (a) physically delivers or transmits by fax or email 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 Database, or (b) notifies the listing broker in person or by telephone, facsimile or email 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 Database and is awaiting instructions from the listing broker as to the manner of presentation or delivery of that offer. Any independent advance revocations, modifications of the offer, or agreements between brokers are solely the responsibility of such brokers, and shall not be filed with, published by, or governed in any way by, BAREIS.

11.5 No Change of Compensation as a Condition of Offer. Neither the listing nor the cooperating broker shall use the terms of an offer to purchase to attempt to modify the unilateral offer of compensation or the cooperating broker's right to receive such compensation, nor make the submission of an executed offer to purchase contingent on an agreement to modify the offer of, or the right to receive, such compensation. Failure of a listing or cooperating broker to comply with this Regulation 11.5 shall not relieve a listing broker of the obligation to submit all offers to the seller as required by California law. BAREIS shall not be a party to the settlement of any dispute over compensation.

11.6 Dual- or Variable-Rate Commission Arrangements. The existence of a dual- or variable-rate commission arrangement in the listing agreement shall be disclosed by the listing broker by a key, code or symbol, as required by BAREIS. A dual- or variable-rate commission arrangement is one in which, for example, (a) the seller 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 (b) a different commission if the sale results through the efforts of the seller. If the cooperating broker is representing a buyer, the cooperating broker must then disclose such information to his or her client before the client makes an offer to purchase. 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.

## **12. CONFIDENTIALITY, DISPLAY, USE, AND DOWNLOADING OF MLS DATA**

12.1 Confidentiality of MLS Data. MLS Data is confidential and exclusively for the use of Members. Members shall protect such confidential information and use it only for the purposes set forth in these Rules and Regulations. Members shall use their best efforts to prevent unauthorized disclosure of such confidential information to others. Members shall at all times maintain control over and responsibility for any copyrighted data provided to them by BAREIS. Members are responsible for the security of their BAREIS login name and password, and Members shall not give or allow use of or make available their login name and

password to anyone. Members are expected to maintain the confidentiality of the contact information of other Members. Any communication with other Members must be within the guidelines and opt-out provisions of the legislation governing email, facsimile, and telephone solicitation. Selling, transmitting or providing non-Members with the contact information of other Members is a violation of the Rules and Regulations.

12.2 Display and Use of MLS Data. Members are hereby granted a limited non-exclusive terminable license to use and copy the MLS Database and display the MLS Database to prospective buyers and sellers only in conjunction with their ordinary business activities of attempting to locate ready, willing, and able sellers or buyers for properties. See Regulations 13.1 through 14.4 for advertising and internet advertising limitations.

Presentation of the MLS Database to a Member's client shall be only in the immediate presence or "virtual" presence (by electronic means) of the Member with his, her or its client. Members are prohibited from using the MLS Database for any purpose other than to market property or to support a sales presentation or a written appraisal or estimate of value on a particular property to a client, and in no event may confidential information be presented to a client to support an estimate of value.

12.3 Use of Listing Broker's Data. Nothing in these Rules and Regulations prohibits a Member from transmitting, or re-transmitting electronically, or by any other means, his, her or its own listing data to any party.

12.4 Confidential Listing Data. Any information from the MLS Database presented to a Member's client or to the general public shall not include the following confidential information (which the Member shall keep confidential pursuant to Regulation 12.1) unless the Member obtains prior written consent from the listing broker:

- (a) Property owner's name, phone number, and address (if different from the listed property);
- (b) Instructions or remarks intended for cooperating brokers, including but not limited to showing instructions, including any references to a lockbox, burglar alarm or any security system, or to the vacancy of the property;
- (c) Type of listing agreement and expiration date;
- (d) Compensation or bonuses offered to cooperating brokers; and
- (e) Any other information that goes beyond a description of the property.

12.5 Downloading MLS Data. Participants may download the MLS Database into a computer as long as:

- (a) Access to the computer receiving the data is strictly limited to authorized Members and administrative users as defined in these Rules and Regulations;
- (b) The data is re-transmitted only to the Member authorized to access the system by these Rules and Regulations; and
- (c) The data is not reformatted or used to create another product except as may be used by the Member who downloaded the data and such use strictly complies with Regulation 12.2.

### **13. USE OF MLS DATA IN ADVERTISING**

13.1 “For Sale” Signs. Only the “For Sale” signs of the listing broker may be placed on the property.

13.2 “Sold” Signs and Use of the Term “Sold.” Prior to closing, only the “sold” or “in escrow” signs of the listing broker may be placed on a property, unless the listing broker authorizes the cooperating broker to post such signs. After closing, “sold” signs of the listing broker or the cooperating broker may be placed on a property, and the listing broker or the cooperating broker may advertise the property as “sold”. Only Members who participated in the transaction as the listing broker or cooperating broker may claim to have “sold” the property.

13.3 Use of On Market MLS Data in Advertising. Except as provided in Regulations 14.2 and 14.3, without the prior written consent of the listing broker, any advertising of On Market MLS Data is prohibited by any Member other than the listing broker.

13.4 Use of Comparable MLS Data in Advertising. Except as provided in Regulations 12.2 and 13.2, any advertising of comparable MLS data is prohibited except for use in a Member’s marketing materials that are designed to promote the Member’s services as a real estate broker, agent or appraiser, generally. Comparable MLS Data obtained from BAREIS and used in such marketing materials must contain the following disclaimer:

“This information is based on sales reported in Bay Area Real Estate Information Services, Inc. (BAREIS) and is not verified and is subject to change. Listings represented may not have been listed or sold by (agent/firm name).”

13.5 Use of MLS Data in Market Share Advertising. Advertising of statistical data for the purpose of demonstrating market share is permitted; provided, however, any use of MLS data for demonstrating market share must include the following notice:

“Based on information from Bay Area Real Estate Information Services, Inc. (BAREIS) for the period [date] through [date]. Information has not been verified, is not guaranteed, and is subject to change.”

13.6 False or Misleading Advertising and Representations; Unfair Competition. Members may not engage in false or misleading advertising or any other conduct that violates the provisions of California Business and Professions Code, § 17200, et seq., including, but not limited to, advertisements or representations regarding the Member’s relationship to BAREIS, BAREIS itself, or any property listed in the MLS Database. It shall not be BAREIS’ responsibility to mediate or resolve conflicts between or among Members with respect to false or misleading advertising or other unfair business practices.

13.7 Use of the terms MLS and Multiple Listing Service. California Civil Code § 1087 defines a multiple listing service as: “a facility of cooperation of agents and appraisers, operating through an intermediary which does not itself act as an agent or appraiser, through which agents establish express or implied legal relationships with respect to listed properties,

or which may be used by agents and appraisers, pursuant to the rules of the service, to prepare market evaluations and appraisals of real property.”

No Participant, Subscriber or licensee affiliated with any Participant shall, through the name of his, her or its firm, URLs, e-mail addresses, website addresses, or in any other way represent, suggest or imply that the individual or firm is a multiple listing service, an “MLS,” or that he, she or it operates a multiple listing service. Participants, Subscribers and licensees affiliated with Participants shall not represent, suggest or imply that consumers or others have direct access to the BAREIS MLS<sup>®</sup> databases, or that consumers or others are able to search BAREIS MLS<sup>®</sup> databases available only to participants and subscribers. This does not prohibit Participants and Subscribers from representing that any information they are authorized under the Rules and these Regulations to provide to clients or consumers is available on their websites or otherwise.

Provisions in the Department of Real Estate Regulations Article Five, § 2731 of the Regulations of the Real Estate Commissioner governs fictitious business names and prohibits the use of any names that are misleading or would constitute false advertisement.

#### **14. LISTING DATA ON THE INTERNET**

14.1 Virtual Office – for the Member’s Client Access. A Participant may do in the virtual presence of his, her or its client anything permitted under these Rules and Regulations that is allowed in their physical presence. A virtual office website (a “VOW”) is defined as a Member’s Internet office website (other than a public access IDX site through which members of the general public receive certain real estate listing information) that includes the opportunity for a Member’s clients to search for MLS Data conditional on the Participant’s oversight, supervision and responsibility. In order to have a VOW, a Participant must obtain a separate license agreement with BAREIS to establish a VOW, and must also have its VOW vendor obtain a separate license agreement from BAREIS pursuant to Regulation 14.4. A VOW must operate in a manner consistent with the following guidelines:

- (a) Confirmation and Verification. Members can provide access to a client only after (i) obtaining the name and valid email address of such client, and (ii) sending an email to such client in order to confirm that the client has a valid address and has received and agreed to the VOW’s terms of use.
- (b) Terms of Use. Terms of use shall include the following: (i) that the client acknowledges entering into a client-broker relationship with the Participant; (ii) that all data obtained from the VOW is only for the client’s personal, non-commercial use; (iii) that the client 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 client will not copy, redistribute or retransmit any of the MLS Data or information provided; and (v) that the client acknowledges BAREIS’ ownership of and the validity of the copyright in the MLS Data.
- (c) User Name and Password. Members must obtain from or supply to each client a user name and a password, the combination of which

must be different from those of all other clients on the VOW, before being permitted to search and retrieve information from the MLS Database using the VOW.

- (d) Protection for Misappropriation. Members' VOWs 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.
- (e) Seller Withholding. 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 shall not be accessible in any display directed to the general public. This does not preclude listing Participants from displaying the listings or property address to their clients on their VOW site.
- (f) Distribution of Database. No portion of the MLS Database shall be distributed to, provided to or made accessible to any person, except as provided for in these Rules and Regulations.
- (g) Privacy Policy. All VOWs must display the Members' privacy policies informing clients how information they provide may be used.

14.2 Listing Data on the Internet – BAREIS Website. Members are not restricted from downloading, displaying or reproducing their own listing information on the Internet. This Regulation 14.2 does not prohibit Members from linking their own Internet sites to other Internet sites where other brokers' listings may be advertised. Members may link or "frame" from their public-access website, any public-access website owned and operated by BAREIS (currently GreatHomes.org), provided the BAREIS website and data is displayed in its entirety. Display of the BAREIS public website in its entirety shall not be considered a violation of Regulation 13.3. Members may not frame the MLS Member's site (currently Rapattoni).

14.3 Internet Data Exchange (IDX) Listing Data for the General Public Access – Member Websites. Members may not download, display or reproduce listings in the MLS Database of other Members on the Internet without the prior written consent of the listing broker, or through both Participants' enrollment in the IDX program.

- (a) Subject to paragraphs (b) through (j) below, and notwithstanding anything in these Rules and Regulations to the contrary, Members may display on their public websites aggregated active MLS Data identified through the listing process by the listing broker as "permitted to be advertised by other Brokers" (IDX Internet data) and identified as permissible to "pass to Internet." There is no "presumed consent" for such Internet display, and both of the permissions above are granted through listing input.
- (b) A Member may not advertise IDX listings of other brokers granting permission to do so on the Internet until the broker Participant has

signed and agreed to the terms of an IDX license agreement provided by BAREIS. As a part of that agreement, the broker Participant must commit to making all of his, her or its listings available for transmission through the MLS Database to other brokers participating in IDX license agreements for display on the Internet.

- (c) A broker Participant that is not advertising the listings of other brokers on the Internet, but wishes to grant permission to other Members to advertise his, her or its listings, is required to sign a BAREIS IDX license agreement.
- (d) Subscribers may not advertise IDX active MLS Database listings of other brokers on the Internet unless their Participant has signed an IDX license agreement.
- (e) Members may not display confidential information fields as determined by BAREIS in BAREIS' sole discretion that would normally be information for cooperating brokers rather than consumers.
- (f) All listings on a Member's IDX website shall identify the firm name of the listing brokerage and listing agent in a manner designed to easily identify such listing brokerage or agent.
- (g) Members shall not modify the information displayed pursuant to these Rules and Regulations.
- (h) IDX Information displayed shall indicate the source of the information being displayed, and the most recent date the data was updated. Members shall update all downloads and refresh all data at least once every seventy-two (72) hours. (2/19/10)
- (i) Sharing of the MLS Database with any third party, or permitting a third-party vendor not authorized by a BAREIS IDX license agreement to access the MLS Database, is prohibited.
- (j) Members shall indicate on their websites that the information being provided is for the consumer's personal, non-commercial use, and may not be used for any purpose other than to identify prospective properties consumers may be interested in purchasing.
- (k) Members must adhere to the seller's instructions regarding use of "address on Internet (full/partial)" flags on the listing.

14.4 Third-Party Access. Each Participant is responsible for all actions of each vendor, consultant, agent, or other third party (each a "Third Party") employed or engaged by such Participant who gains access to any data from the MLS Database, regardless of whether the MLS Database is displayed on a free-standing Internet site or through a link to the Participant's Internet site. Each such Third Party is required to sign an agreement with

BAREIS, prior to any access to or transmission of such MLS Database, that restricts the Third Party's use of the MLS Database; and each such Third Party is required to acknowledge and adhere to these Rules and Regulations. No Third Party employed or engaged to develop or operate any Internet site for a Participant, or utilizing a Participant's site through a link, may utilize the MLS Database in any manner, including, but not limited to, capturing names and personal information of visitors to the site for any other purpose than that permitted in such agreement with BAREIS. Links to the Participant's Internet site by unrelated Internet sites may be established with the permission of the Participant. The host sites of links to a Participant's Internet site shall be considered Third Parties of such Participant and are subject to these Rules and Regulations. Failure to adhere to these Rules and Regulations by a Participant's Third Parties shall be considered prohibited access to or transmission of the MLS Database in violation of these Rules and Regulations, and may result in sanctions against such Third Parties and/or such Participant.

## **15. ELECTRONIC LOCKBOX AND KEYPAD RULES**

15.1 Eligibility for Lockboxes. Lockboxes and keypads are administered by an Administrator in the BAREIS service territory. BAREIS Participants and Subscribers in good standing are eligible for lockbox privileges. Clerical users are not eligible for lockbox privileges. BAREIS Participants and Subscribers shall be eligible to hold an electronic lockbox and keypad provided:

- (a) The keypad holder signs a lease agreement with his/her local keypad administrator.
- (b) The Participant to which the keypad holder is licensed cosigns the lease agreement (if necessary under your lease agreement).
- (c) The keypad holder continues to comply with all BAREIS rules relating to lockboxes and keypads and all terms of the lease agreement and user's guide provided by the issuing entity.
- (d) The Participant and Subscriber remain eligible for BAREIS MLS services.

15.2 Keypad Use. Keypads may not be used under any circumstances by anyone other than the keypad holder. Permitting the unauthorized use of a keypad is subject to the fine listed in Attachment A. If a keypad user loses a keypad, or the keypad is stolen and the access codes are stored with a keypad, this shall be considered permitting unauthorized use.

15.3 Accountability. Keypad holders must account for keypads at the time of any inventory conducted by the issuing keypad administrator, or its designated representative.

15.4 Deemed Unaccountable. Keypads shall be deemed unaccounted for if a keypad holder refuses or is unable to demonstrate that the keypad is within the keypad holder's physical control.

15.5 Written Authority. Participants and Subscribers shall not place a lockbox on a property without written authorization from the seller and without advising the seller of the

seller's duty to secure permission for broker access from the occupant, if the occupant is not the seller. The Listing Broker must remove the lockbox from the property upon close of escrow, termination, or unless instructed otherwise in writing by the buyer or the buyer's agent.

15.6 Listing Broker's Permission. No MLS Participant or Subscriber may enter a property with or without a lockbox without the listing broker's permission. Such permission may be granted by the listing broker specifying permission to use the lockbox through the MLS Database. Appraiser Participants are expressly prohibited from using lockbox keypads to enter a property without either the owner's or listing broker's permission. Showing instructions contained in the database does not satisfy the appraiser permission requirement.

15.7 Unaccountable Keypads. Keypad holders and Participants cosigning with a keypad holder shall immediately report lost, stolen, or otherwise unaccountable keypads to its local keypad administrator or its designated representative in accordance with the lease agreement.

15.8 Failure to Abide by Rules and Regulations. Failure to abide by these Rules and Regulations and the usage requirements of the entity issuing the lockbox and keypad may result in disciplinary sanctions as provided within these Rules and Regulations, in addition to loss of or restriction on all lockbox and keypad privileges.

15.9 Right to Limit Access. BAREIS reserves the right to refuse or limit access to lockboxes if, in its sole discretion, it determines the security of the system would be compromised by granting access to lockboxes.

15.10 Protection of Property. Extreme care shall be used by a Member to ensure that all doors to the listed property to which the Member has had access and the lockboxes thereon are locked. Upon exiting the property, Member shall return key or device to access property to the lockbox. (2/19/10)

15.11 Compatible Lockboxes; Multiple Lockboxes. If a lockbox is present on a property that is located in a Principal County (Sonoma, Marin, Napa, Solano or Mendocino) and that is listed for sale in the BAREIS MLS® database, that lockbox must be a BAREIS approved electronic lockbox or a lockbox that is compatible with the BAREIS approved system or that is otherwise approved in writing by BAREIS. The lockbox must include a key or device to access property. This rule does not prohibit the placement of additional lockboxes. (2/19/10)

## **16. VIOLATIONS OF RULES AND REGULATIONS, AND DISPUTES**

16.1 Citations. The Board may impose fines and/or sanctions for violation of any Rule or Regulation. Additionally, the Board may implement a schedule of fines and other sanctions (see Exhibit A-1) for certain violations of these Rules and Regulations. The Board may direct staff to issue citations for the specified violations and implement a procedure for payment. Any Member receiving the citation must pay the amount specified on the citation and complete the BAREIS Online Orientation class within 14 days of receiving the citation. If the Member does not complete the BAREIS Online Orientation class on time, the fine shall be doubled.

16.1.1 Citation Notice. The citation, also referred to as a “fine letter,” shall be in writing, may be given as follows, and shall be deemed to have been received by the Member when:

- (a) Hand-delivered to the Member;
- (b) Sent by email or facsimile at the address or number on record for the Member, provided:
  - (i) A copy of the notice is promptly mailed with first-class postage prepaid to the Member; or
  - (ii) BAREIS receives a written confirmation of receipt either by email, facsimile or any other method permitted under this Regulation 16.1.1.
- (c) Three business days after the notice has been deposited in a United States post office with first-class, postage prepaid and addressed to the Member; or
- (d) The next business day after the notice has been deposited with a national overnight delivery service, delivery fees prepaid, addressed to the Member with next-business-day delivery guaranteed, provided that BAREIS receives a confirmation of the delivery from the delivery-service provider.

16.1.2 Appealing the Citation. A Member receiving a citation may request an appeal according to the policy as set forth in Exhibit B. The purpose of the appeal shall be limited to explaining why the fine was incorrectly levied, and not to discuss any other item, including the intent or integrity of the rule or fine, or to propose rule changes.

16.1.3 Board Initiated Hearing. If any Member commits three violations within a 12-month period that result in either fines or warnings requiring corrections, the Board may, at its discretion, direct the Grievance Committee to initiate an investigation into the Member’s conduct, which may result in a disciplinary hearing for further action. If a Subscriber, who is under the supervision of a single Participant, commits four violations within a 12-month period that results in either fines or warnings requiring corrections, the Board may, at its discretion, direct the Grievance Committee to initiate an investigation into the Participant’s conduct, which may result in a disciplinary hearing for further action. (See Regulation 16.4.2(c).) (4/16/10)

16.2 Grounds for Disciplinary Action and Sanctions. After a hearing by a hearing panel as provided in the *California Code of Ethics and Arbitration Manual*, the Board may take disciplinary action and impose sanctions against any BAREIS Participant or Subscriber:

- (a) For violation of any Rule or Regulation;

- (b) Upon the Member being convicted, adjudged, or otherwise recorded as guilty by a final judgment of any court of competent jurisdiction of a felony or a crime involving moral turpitude;
- (c) Upon a determination by any court of competent jurisdiction or an 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 California Real Estate Commissioner or laws or regulations relating to appraisers or, with respect to the conduct of business as a real estate broker or appraiser, has engaged in unfair business practices, including false or misleading advertising, in violation of California Business and Professions Code, § 17,200 through § 17,210;
- (d) For any violation of Regulation 16.2(a) by a non-Member sales agent or broker who is affiliated with the Participant where the Participant is the broker through which the sales agent or broker has access to the MLS Database;
- (e) For any violation of Regulation 16.2(a) by an administrative user who is registered under a Member.

16.3 Sanctions. Sanctions or disciplinary action for violation of a Rule or Regulation may consist of one or more of those specified in the *California Code of Ethics and Arbitration Manual*. Anyone may file a disciplinary complaint against a Member or reciprocating Member for any Rule or Regulation violation.

#### 16.4 Procedures for Disciplinary Hearings, Expulsion and Suspension.

16.4.1 Procedures for Disciplinary Hearings. All Rules and Regulations disciplinary 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 Rules and Regulations.

16.4.2 Procedures for Expulsion and Suspension. If grounds appear to exist for expulsion or suspension of a Member under Section 3.6 of the Bylaws, the procedure set forth below shall be followed:

- (a) The Member shall be given 15 days' prior notice of the proposed expulsion or suspension and the reasons for the proposed expulsion or suspension. Notice shall be given by any method reasonably calculated to provide actual notice in any manner permitted by Section 16.1.1.
- (b) The Member shall be given an opportunity to be heard, either orally or in writing, at least five days before the effective date of the proposed expulsion or suspension. The Member shall be

heard orally, or the written statement considered, by the Board or by a committee or person authorized by the Board to determine whether the expulsion or suspension should take place.

- (c) The Board, or the committee or person authorized by the Board to make such a determination, shall decide whether or not the Member should be expelled or suspended. The decision of the Board, or the committee or person authorized by the Board to make such a determination, shall be final.

16.4.3 Limitations on Challenges. Any action challenging a termination or suspension of membership, including termination by reason of expulsion, or a claim alleging defective notice, must be commenced within one year after the date of the suspension or termination. (4/16/10)

16.5 Mandatory Arbitration. By becoming and remaining a Member in BAREIS, each Member agrees to submit to binding arbitration disputes arising out of real estate business, or in conjunction with any listing set forth in the MLS Database, or any appraisal, with (a) any other Participant or Subscriber of BAREIS, or (b) participants and subscribers of any other MLS who are authorized to have access to the MLS Database under Regulation 8 of these Rules and Regulations, or (c) a client arising out of an agency relationship with the Participant or Subscriber, if the client elects to arbitrate the dispute and agrees to be bound by the arbitration award. Such arbitrations shall be governed by the *California Code of Ethics and Arbitration Manual*, as from time to time amended, which is hereby incorporated 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 Rules and Regulations.

16.5.1 Other Arbitration Agreements. Notwithstanding any other provision of these Rules and Regulations, 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-BAREIS facilities, such persons are not bound to arbitrate the dispute covered by such agreement under these Rules and Regulations utilizing BAREIS facilities.

16.5.2 Arbitration Between Class B (Association) Members.

Notwithstanding any other provision of these Rules and Regulations;

- (a) If all disputants are Members of the same Class B Association, they shall arbitrate under that Class B Association in accordance with its rules.
- (b) If the disputants are Members of different Class B Associations, they remain obligated to arbitrate in accordance with the CAR interboard arbitration rules or under a regional or shared professional standards agreement.
- (c) Arbitration between persons affiliated with the same firm is not mandated by these Rules and Regulations and will not be

accepted unless there is a written agreement to submit such disputes to the Class B Association for arbitration.

16.5.3 Timing. For purposes of this Regulation 16.5, 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 a BAREIS Participant or Subscriber when facts giving rise to the dispute occurred. Termination of BAREIS participation or a subscription shall not relieve the arbitration duty under this Regulation 16.5.3 for disputes that arose when the person was a BAREIS Participant or Subscriber. Requests for arbitration must be filed within 180 days after the closing of the transaction, or after the facts constituting the matters in dispute could have been known in the exercise of reasonable diligence, whichever is later.

16.6 Indemnification. In connection with, conditioned upon and in consideration of BAREIS' granting of rights to use the MLS Database pursuant to these Rules and Regulations, each Participant, listing broker and Subscriber (each an "Indemnifying Party") shall, and does hereby agree to, indemnify, defend and hold BAREIS and its service center operators and all officers, directors, employees and agents thereof (collectively, the "Indemnified Parties," and, individually without distinction, an "Indemnified Party"), harmless from and against and in respect of any and all damages, losses, deficiencies, liabilities, fines, judgments, assessments, costs and expenses, including reasonable legal fees, and expenses and costs and expenses incurred by BAREIS in administering any mediation or arbitration involving the Indemnifying Party, incurred or suffered by an Indemnified Party as a result of, relating to or arising out of any and all actions, suits, claims, proceedings, investigations, demands, assessments and audits incident to or in any way connected to (A) the use or publication by BAREIS (including electronic publication) of any listing information, or any part thereof, submitted by or through an Indemnifying Party, or (B) any one or more breaches by the Indemnifying Party of any representation and warranty made thereby to BAREIS, or (C) any one or more failures by the Indemnifying Party to abide by BAREIS' Bylaws and BAREIS' MLS Rules and Regulations, as the same may be amended from time to time, in all respects, including any failure to provide full, true, complete and accurate listing information for inclusion in the MLS Database or BAREIS' publication of such listing information. If any action is brought to enforce the terms of this indemnity clause, the prevailing party shall be entitled to recover its reasonable attorneys' fees.

(1/16/09)

**EXHIBIT A-1****CITATIONS FOR RULES AND REGULATIONS VIOLATIONS**

Rules & Regulations No(s).	Violation Summary	Amount
5.1	Failure to keep contact information current.	\$100
7.3, 7.4, 7.5, 12.1	Permitting unauthorized use of login and password. First offense = Fine; Second offense = Suspension of MLS Privileges	\$1,000
9.5	Filing a listing in more than one category or in more than one territory without obtaining pre-approval from BAREIS.	\$100
9.7	Failure to enter a listing before the three-Business Day deadline.	\$500*
9.8	Failure to file an excluded listing certification before the three-Business Day deadline.	\$250 **
9.6, 9.15, 9.19, 9.20	Failure to obtain written authorization for a listing entry, withdrawal, or extension.	\$500*
9.9	Failure to supply listing documentation to BAREIS within 24 hours after requested by BAREIS.	\$250
9.10, 9.11	Failure to file accurate or complete information.	\$100
9.12	Failure to specify any special condition of any term in a listing in the confidential remarks.	\$500
9.14	Incorrect use of data fields and remarks.	\$500
9.15	Failure to file a change of listing information before the three-Business Day deadline.	\$500*
9.17	Failure to report sales before the three-Business Day deadline.	\$500*
9.18	Failure to obtain authorization to enter a comparable listing.	\$100
9.21	Solicitation of a valid listing.	\$500*
10.1, 10.3	Failure to follow showing instructions.	\$500
10.2	Failure to submit an "Authorization to Exclude" for submitted listings with Do Not Show instructions.	\$250
12.1-12.5	Unauthorized display, use or downloading of MLS Data.	\$100 per listing
13.1-13.7	Advertising the listing of another broker without permission.	\$100 per listing
13.7	Use of the terms MLS and Multiple Listing Service.	\$100 per incident
14.1-14.4	Failure to follow Internet advertising Rules and Regulations.	\$100 per listing
15.2	Permitting unauthorized use of keypad; Storing access codes with a keypad.	\$500
15.5	Unauthorized placement or non-removal of a lockbox.	\$500
15.6	Unauthorized entry to a property without listing broker's permission.	\$500
15.11	Lockbox on property without a BAREIS Supra iBox present.	\$100***
16.5	Failure to submit to arbitration. First offense = Fine; Second offense = Suspension of MLS Privileges	\$1,000

\* Increases for each offense beyond the first in a 12-month period. First offense = \$500; Second offense = \$750; Third offense = \$1,000.

\*\* Increases for each offense beyond the first in a 12-month period. First offense = \$250; Second offense = \$500; Third offense = \$1,000.

\*\*\* Increases for each offense beyond the first in a 12-month period. First offense = \$100; Second offense = \$250; Third offense = \$500.

**EXHIBIT A-2**  
**BAREIS FEES AND CHARGES**

6.1	Billing Dates: Quarterly, 45 days prior to the start of the quarter, due 15 days prior to the start of the quarter.	N/A
6.1.1	Initial Application Fee (Broker)	\$300.00
	Initial Application Fee (Agent)	\$50.00
6.1.2	Monthly User Fee	\$34.00
6.1.5	Monthly Administrative User Fee	\$21.00
6.2	Late Fee per Participant or Subscriber	\$25.00
	Reconnect Fee – if within one year of suspension of MLS Privileges	\$25.00

## **EXHIBIT B WARNINGS, CITATION AND APPEALS POLICY**

This “Citation and Appeals Policy” is implemented pursuant to the Bay Area Real Estate Information Services, Inc. (“BAREIS”), MLS Rules and Regulations, Regulation 16, “Violations of Rules and Regulations,” and covers the violations outlined in **Exhibit A-1**, “Citations for Rules and Regulations Violations.” The Citations may be amended at any time and from time to time by the Board.

### Process

#### 1. Warnings

Certain violations or repeat violations are not subject to a warning and/or may be subject to immediate citation. For violations of the Rules and Regulations that are subject to a warning, the Member will be given the warning to correct the violation by phone call or email contact. If a Subscriber has repeat violations of the Rules or Regulations that are subject to a warning, the Subscriber’s supervising Participant will receive notice of the third repeat violation by phone call or email contact. (4/16/10)

#### 2. Citations

If a Member fails to correct the violation within the time allotted in the warning, the citation for the offense will be issued and will become due and payable. Any Member receiving the citation must pay the amount specified on the citation and complete the BAREIS Online Orientation class within 14 days of receiving the citation. If a Member does not complete the class on time, the fine shall be doubled. (4/16/10)

#### 3. Citation Payment

If the Member fails to pay the citation within the initial 14 day period, the citation balance will be added to the Member’s account. The total balance must be paid by the next statement due date, or BAREIS membership and MLS Privileges will be suspended for that Member. (4/16/10)

#### 4. Member Request for Appeal

Pursuant to Regulation 16.1, “Citations,” of the Rules and Regulations, a BAREIS Member may request an appeal for a Rules and Regulations violation citation to the Rules and Regulations Committee. If the Member desires to appeal the citation, the Member must pay the citation, complete the BAREIS Online Orientation class per Item 2 above, and provide documentation together with a letter explaining why the fine was incorrectly levied. The request for appeal must be received by BAREIS within 14 days of the Notice of Citation letter date (date postmarked or date of notification by electronic mail, facsimile transmission, and/or agent notice). (4/16/10)

#### 5. Member-Requested Appeal Hearing

If a Member timely makes a complete request to appeal the decision of the Rules

and Regulations Committee, as provided by Paragraph 4 of this Exhibit B, the Member shall be entitled to a final hearing by an Appeals Panel of the Board of Directors of BAREIS, which Appeals Panel shall consist of three Members of the Board of Directors, who shall be appointed by and who shall serve at the pleasure of the Chair of the Board of Directors. At the sole discretion of the Appeals Panel, the Appeals Panel may either hear the appeal by reviewing documentation only, or request the personal appearance of the appealing Member. The decision of any two members of the Appeals Panel shall be final.

#### 6. Board Initiated Hearing

If any Member commits three violations within a 12-month period that result in either fines or warnings requiring corrections, the Board may, at its discretion, direct the Grievance Committee to initiate an investigation into the Member's conduct, which may result in a disciplinary hearing for further action. If a Subscriber, who is under the supervision of a single Participant, commits four violations within a 12-month period that results in either fines or warnings requiring corrections, the board may, at its discretion, direct the Grievance Committee to initiate an investigation into the Participant's conduct, which may result in a disciplinary hearing for further action (See Regulation 16.4.2(c)).

Definitions of the terms, "suspension," "termination," "MLS Privileges," and "expulsion" are provided in Section 3 of the MLS Regulations. (4/16/10)