

BAREIS MLS RULES

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

NOTICE

The rules (“The rules”) 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 rules 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 rules 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 rules 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 rules 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.

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”). See Regulation 1

PURPOSE

BAREIS is a Multiple Listing Service (“MLS”) and a means by which: a) authorized broker Participants establish legal relationships with other Participants by making a blanket unilateral contractual offer 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. See Regulation 2

OWNERSHIP OF BAREIS DATABASE AND COPYRIGHTS

Authority to Put Listings in Compilation. 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. See Regulations 4.1, 9.6 and 9.18

License to Access 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. See Regulations 4.3, 12.1-12.5, 13.3, 13.4, 13.5 and 14.1-14.4

TYPES OF MEMBERSHIP

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

- (a) Sign a written agreement to abide by the Bylaws and Rules and Regulations of BAREIS in force at that time, and as amended from time to time; Members are responsible for adhering to the 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 such Member from BAREIS membership and MLS Privileges. See Regulation 5.1

Participant. A Participant is any Member that continues to meet all of the requirements of either a broker Participant or an appraiser Participant. See Regulations 5.2.1 and 5.2.2

Subscriber. A Subscriber is an individual who meets the requirements of either a real estate Subscriber or appraiser Subscriber or Administrative Users who are licensed. See Regulations 5.3.1, 5.3.2 and 5.4

Administrative Users. Administrative users are individuals (whether licensed or unlicensed) 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 appraisers certificate or license. Licensed Administrative Users with a real estate license are considered Subscribers. See Regulation 5.4

Listing Broker Defined. 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. See Regulation 5.5

Cooperating Broker or Selling Broker Defined. 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. See Regulation 5.6

Appraiser Defined. 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. See Regulation 5.7

Affiliate Defined. 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. See Regulation 5.8

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. See Regulation 5.9

BAREIS FEES AND CHARGES

Suspension of BAREIS Membership and MLS Privileges for Failure to Pay Service Fees, Fines and Charges. Members must pay all fees and charges to maintain access to the MLS Database. Failure to pay any amounts due will result in suspension of BAREIS membership and MLS Privileges until the amounts due are paid in full, including a delinquency fee. See Regulation 6.1, 6.2 and Exhibit A-2

NOTIFICATIONS

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. See Regulation 7.1

Notification of California Department of Real Estate (DRE) or California Office of Real Estate Appraisers (OREA) Action. Members are required to notify BAREIS within twenty-four (24) hours of any final action taken by the DRE or the OREA against the Member. See Regulation 7.2 and 7.3

Notification of Licensees. Each Participant shall provide BAREIS with a list of all real estate licensees/brokers, administrative assistants, or certified/licensed appraisers employed by or affiliated as independent contractors with such Participant's firm on January 15th of each year and notify BAREIS of any changes, additions, or deletions to the list. Each real estate licensee, assistant, or appraiser shall be a member of BAREIS unless specifically excluded. See Regulations 5.4, 7.3 and 7.4

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. See Regulation 8

LISTING PROCEDURES

Listings Subject to Rules and Regulations of BAREIS. Any listing data filed with BAREIS by a Member is subject to the Rules and Regulations of BAREIS. See Regulation 9.1

Types of and Classification of Listings. BAREIS shall accept exclusive right to sell, exclusive agency, open and probate listings. It shall be the responsibility of the listing broker to classify each listing submitted. See Regulation 9.2 and 9.3

Auction Listings. BAREIS shall not accept listings of properties that are for sale solely at or through an auction. See Regulation 9.3.2

Separate Listings. All properties which can be sold separately must be listed separately. Properties may not be duplicated unless the property meets the criteria in Regulation 9.5

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 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 the Rules and Regulations of BAREIS 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 the Rules and Regulations. See Regulation 9.6 and 9.9

Written Documentation. Members must secure written authorization from the Seller for any submission or change to listing information. See Regulations 9.7, 9.8, 9.9, 9.15, 9.18, 9.19, 9.20

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. Commercial/Industrial, 5+ Units, Business Opportunities, or Rental categories are not required to be included in the MLS Database. See Regulation 9.7 and 9.8

Excluded Listings. Excluded Listings may not be included in the database. The listing broker must secure an "Authorization to Exclude Listing from MLS". See Regulation 9.8

Accuracy of Information. All information entered into the database must be true, accurate and complete. See Regulations 9.10 and 9.11

Special Provisions. Any special circumstance, provision, contingency or condition of any type within or outside of the listing agreement that would materially affect the buyer shall be specified and noticed to the Members. See Regulation 9.12

Correct Use of Data Fields. Data fields may be used only for their specified purpose. The public remarks data field is restricted to the property description and amenities and cannot contain security or agent contact information. See Regulation 9.14.1 through 9.14.5

Change of Listing Information. Listing brokers shall report any change in the original listing agreement to BAREIS within three business days after the authorized change is received by the listing broker. See Regulations 9.15 and 9.16

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. See Regulations 9.17.1 through 9.17.4

Comparable Listings. Properties entered for comparable purposes only must be entered within 10 days of close of escrow. The listing or cooperating broker must secure written authorization from the buyer and seller. See Regulation 9.18

Solicitation of Listing Filed with BAREIS. Members shall not solicit a listing on properties filed with BAREIS during the term of an existing listing. See Regulation 9.21

SELLING PROCEDURES AND PRESENTATION OF OFFERS

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 unless otherwise specified in Regulation 10.1

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 included in the confidential remarks and showing instructions. See Regulation 10.3

Procedures for Presentation of Offers. The listing broker must make arrangements to present the offer as soon as possible, or give the cooperating broker a satisfactory reason for not doing so. In the event a listing broker will not be participating in the presentation of offers, the listing broker shall clearly indicate this fact in the confidential remarks in the listing information filed with BAREIS. See Regulation 10.4

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. See Regulation 10.5

Right of Cooperating Broker in Presentation of Offer and Counter Offers. The cooperating broker has the right to participate in the presentation of any offer to purchase he/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. See Regulation 10.6 and 10.7

Refusal to Sell. If the seller of any listed property filed with BAREIS refuses to accept a written offer satisfying the terms and conditions stated in the listing, such fact shall be input in the confidential remarks section of the listing. See Regulation 10.10

COMPENSATION

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 will not be a party to the settlement of any dispute over compensation. See Regulation 11.1

Unconditional Unilateral Contractual Offer. In filing a listing with BAREIS, the listing broker makes a blanket unilateral contractual offer of compensation to the other Participants for their service in selling the property. A listing broker must specify the compensation to be paid in either a dollar amount or a percentage of the sales price. 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 procuring party may be excused if it is determined through arbitration 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. See Regulation 11.2

Changes to Unilateral Offer of Compensation. The blanket contractual offer of compensation may be revoked or modified by the listing broker at any time but only within the Rules and Regulations. See Regulation 11.4

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. See Regulation 11.5

CONFIDENTIALITY, DISPLAY, USE AND DOWNLOADING OF DATA

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. See Regulation 12.1

Display and Use of BAREIS 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. See Regulation 12.2 and 12.4

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. See Regulation 12.3

Confidential Listing Data. Confidential information that can not be transmitted without the listing broker's consent:

- (a) Property owner's name, phone number, and address (if different from the listed property);
- (b) Instructions or remarks intended for cooperating brokers, including showing instructions, any references to a lockbox, burglar alarm or any security system, or to the vacancy of the property;
- (c) Type of listing;
- (d) Compensation or bonuses offered to cooperating brokers;
- (e) Other information which goes beyond a description of the property. See Regulation 12.4

Downloading MLS Data. Participants may download BAREIS data 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 Section 12.2. See Regulation 12.5

USE OF BAREIS DATA IN ADVERTISING

“For Sale” and “Sold” Signs and Use of the Term “Sold”. Only the “For Sale” signs of the listing broker(s) may be placed on the property. Only Members who participated in the transaction as the listing broker or cooperating broker (selling broker) may claim to have “SOLD” the property. See Regulations 13.1 and 13.2

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. See Regulation 13.3, 14.2 and 14.3

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. A disclaimer is required that states:

“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).

See Regulation 13.4

Use of MLS Data in Market Share Advertising. Advertising of statistical data for the purpose of demonstrating market share is permitted. A notice is required that states:

“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.”

See Regulation 13.5

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, Section 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. See Regulation 13.6

Use of the terms MLS and Multiple Listing Service. 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 or imply that consumers or others have direct access to the BAREIS MLS databases. See Regulation 13.7

INTERNET ADVERTISING

Virtual Office – for the Members' Client Access. A virtual office web site is restricted to the internal use of the Participant and his/her agents and the clients of the Participant. See Regulation 14.1

Listing Data on the Internet – BAREIS' Website. 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. Members may not frame the MLS Member's site (currently Rapattoni). See Regulation 14.2

Internet Data Exchange (IDX) Listing Data for the General Public – Member Web Sites. 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. See Regulation 14.3

Third Party Access. Each Participant is responsible for all actions of each vendor, consultant, agent, or other third party employed or engaged by such Participant who gains access to any data from the BAREIS MLS Database, regardless of whether the MLS Data is displayed on a free standing Internet site or through a link to the Participant's Internet site. See Regulation 14.4

ELECTRONIC LOCKBOX AND KEYPADS

Keypad Use. Keypads may not be used under any circumstances by anyone other than the keypad holder. Access codes may not be stored with a Keypad. See Regulation 15.2

Written Authority. Members shall not place a lockbox on a property without written authorization from the seller and must remove the lockbox upon close of escrow or termination unless otherwise instructed by the buyer's agent. See Regulation 15.5

Listing Broker's Permission. No Member may enter a property without the listing broker's permission. See Regulation 15.6

Protection of Property. Extreme care shall be used by a Member to ensure that all doors and lockboxes are locked. Upon exiting the property, Member shall return key or device to access property to the lockbox. See Regulation 15.10

Compatible Lockboxes; Multiple Lockboxes. If a lockbox is placed on a property, it must be a BAREIS Supra iBox. Upon exiting the property, Member shall return key or device to access property to the lockbox. Additional lockboxes may be placed in addition to the BAREIS Supra iBox. See Regulation 15.11

VIOLATIONS OF RULES & REGULATIONS AND DISPUTES

Citations. A Member may be fined for violation of these Rules and Regulations. See Regulation 16.1, Exhibit A-1 and Exhibit B

Mandatory Arbitration. By becoming and remaining a Member in BAREIS, each Member agrees to submit to binding arbitration for certain disputes. See Regulations 16.5 through 16.5.3