

# Office Notice of Bylaw Change Proposal

(new language is underlined; language to remove is stricken)

All REALTOR® members of the NDAR are hereby notified of the General Membership Meeting as follows:  
Wednesday, October 23, 2013, 12:00pm – Grand International Inn, Minot, ND to vote on the proposed bylaw change below.

## ARTICLE VII, COMMITTEES

Section 1(b). MLS as a Committee of an All REALTOR® Board

Section 1—Authority: The North Dakota Association of REALTORS® shall maintain for the use of its members a Multiple Listing Service, which shall be subject to the bylaws of the North Dakota Association of REALTORS® and such rules and regulations as may be hereinafter adopted.

Section 2—Purpose: A Multiple Listing Service is a means by which authorized Participants make blanket unilateral offers of compensation to other Participants (acting as subagents, buyer agents, or in other agency or nonagency capacities defined by law); by which cooperation among participants is enhanced; by which information is accumulated and disseminated to enable authorized Participants to prepare appraisals, analyses, and other valuations of real property for bona fide clients and customers; by which Participants engaging in real estate appraisal contribute to common databases; and is a facility for the orderly correlation and dissemination of listing information so participants may better serve their clients and the public. Entitlement to compensation is determined by the cooperating broker's performance as a procuring cause of the sale (or lease).

Section 3—Participation: Any REALTOR® of this or any other Board who is a principal, partner, corporate officer, or branch office manager acting on behalf of a principal, without further qualification, except as otherwise stipulated in these bylaws, shall be eligible to participate in Multiple Listing upon agreeing in writing to conform to the rules and regulations thereof and to pay the costs incidental thereto. However, under no circumstances is any individual or firm, regardless of membership status, entitled to Multiple Listing Service "membership" or "participation" unless they hold a current, valid real estate broker's license and are capable of offering and accepting compensation to and from other Participants or are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property. Use of information developed by or published by a Board Multiple Listing Service is strictly limited to the activities authorized under a Participant's licensure(s) or certification and unauthorized uses are prohibited. Further, none of the foregoing is intended to convey "participation" or "membership" or any right of access to information developed by or published by a Board Multiple Listing Service where access to such information is prohibited by law.

### Section 3

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

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

Note 1: The requirements of (1) no record of recent or pending bankruptcy; (2) no record of official sanctions involving unprofessional conduct; and (3) completion of a course of instruction on the MLS rules and regulations.

Note 2: The MLS Committee shall consider the following in determining an applicant's qualifications for MLS participation or membership:

1. all final findings of Code of Ethics violations and violations of other membership duties in any other Association within the past three (3) years
2. pending ethics complaints (or hearings)
3. unsatisfied discipline pending
4. pending arbitration requests (or hearings)
5. unpaid arbitration awards or unpaid financial obligations to any other Association or Association MLS.

Section 4—Supervision: The activity shall be operated under the supervision of the Multiple Listing Committee in accordance with the rules and regulations, subject to the approval of the Board of Directors of the North Dakota Association of REALTORS®.

Section 5 (under Section 1(b))

Appointment of Committee: The President shall appoint, subject to confirmation by the Board of Directors, a Multiple Listing Committee of 5 REALTOR® members. (1 from the Board of Directors plus 4 broker members at large) The Committee members so named shall serve three-year staggered terms. The committee shall select its chairperson from among the members thereof. (The chairperson may be designated by the president.)

Section 6—Vacancies: Vacancies in unexpired terms shall be filled as in the case of original appointees.

Section 7—Attendance: Any Committee member who fails to attend three (3) consecutive regular or special meetings of the Committee, without excuse acceptable to the Chairperson of the Committee, shall be deemed to have resigned from the Committee and the vacancy shall be filled as herein provided for original appointees.

Section 8 (under Section 1(b))

~~Access to Comparable and Statistical Information: Board members who are actively engaged in real estate brokerage, management, mortgage financing, appraising, land development, or building, but who do not participate in the MLS, are nonetheless entitled to receive, by purchase or lease, all information other than current listing information that is generated wholly or in part by the MLS including "comparable" information, "sold" information, and statistical reports. This information is provided for the exclusive use of Board members and individuals affiliated with Board members who are also engaged in the real estate business and may not be transmitted, retransmitted, or provided in any manner to any unauthorized individual, office, or firm except as otherwise specified in the MLS rules and regulations. Board members who receive such information, either as a Board service or through the Board's MLS, are subject to the applicable provisions of the MLS rules and regulations whether they participate in the MLS or not.~~

Section 9 (under Section 1(b))

Section 9 8—Subscribers: Subscribers (or users) of the MLS include non-principal brokers, sales associates. Licensed and certified appraisers may be subscribers and full members of the MLS if they are REALTOR® members. (Optional provision: Subscribers also include affiliated unlicensed administrative and clerical staff, personal assistants, and individuals seeking licensure or certification as real estate appraisers who are under the direct supervision of an MLS participant or the participant's licensed designee.)

## RATIONALE

This bylaw change will bring the ND Association of REALTORS® Bylaws current with NAR requirements. Changes were approved by the NDAR Executive Committee and being forwarded by the NDAR Board of Directors.

## ABSENTEE BALLOT

Any REALTOR® member who will **not** be able to attend the General Membership Meeting on October 23, 2013 at 12:00pm at the Grand International Inn, Minot, ND may vote by Absentee Ballot. A vote on this Bylaw change proposal is scheduled at that time.

**ALL ABSENTEE BALLOTS MUST BE RECEIVED AT THE NDAR OFFICE NO LATER THAN OCTOBER 13, 2013.**

### Bylaws Change Proposal

#### Article VII. Section 1(b), Sections 3, 5, 8, and 9

Approve all as Presented     NO                       YES

#### Or per Article

#### Article VII. Section 1(b)

Section 3             NO                       YES

Section 5             NO                       YES

Section 8             NO                       YES

Section 9             NO                       YES

I hereby certify that I am a REALTOR® in good standing.

\_\_\_\_\_  
*Print Name*

\_\_\_\_\_  
*Local Board*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

**Ballots must be received at the NDAR office no later than October 13, 2013.**

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