

Rules & Regulations

September 15, 2016

505 York Boulevard, Hamilton, Ontario L8R 3K4
T: 905.529.8101 F: 905.529.4349 E: info@rahb.ca
www.rahb.ca

MLS[®] RULES & REGULATIONS

DEFINITIONS

Act means the *Real Estate and Business Brokers Act* (Ontario) and all regulations promulgated there under as such legislation and regulations may be amended or replaced from time to time.

Amendment to Listing Agreement means the Association's standard form agreement used by Members to amend the information within, or provisions of, a Listing Agreement.

Association means the REALTORS[®] Association of Hamilton-Burlington and its successors and assigns, from time to time.

Association's MLS[®] System means the cooperative selling system for real estate operated by or on behalf of the Association in association with the MLS[®] Marks.

Board Load means the entry of information pertaining to an MLS[®] Listing by Association staff onto the Association's MLS[®] System, including, but not limited to, information from the Property Information Form and the reporting of sales and conditional sales.

Broker Load means the entry of information pertaining to an MLS[®] Listing by a Member onto the Association's MLS[®] System, including, but not limited to, information from the Property Information Form and the reporting of sales and conditional sales.

Broker of Record means a person registered as a broker under the Act, who is a director, officer, and shareholder, in the case of an incorporated Brokerage Member; the sole proprietor, in the case the Brokerage Member is a sole proprietorship; or a partner, in the case of the Brokerage Member is a partnership; and who is or has been designated as the "broker of record" of the Brokerage Member for the purposes of the Act, the Bylaws of the Association and/or these Rules.

Brokerage means a Person that, on behalf of others and for compensation or reward or the expectation of such, Trades in real estate and holds themselves out as such, registered under the Act as a broker and which is a Member of the Association.

Buyer means a Person acquiring or attempting to acquire an interest in real estate through a Purchase.

Buyer Representation Agreement means a Services Agreement entered into between a Buyer and a Buyer Representative.

Buyer Representative means the Member or Members representing a Buyer under a Buyer Representation Agreement.

Client means a Buyer or a Seller whom a Member is representing, or providing services to, pursuant to a Services Agreement.

Commission Trust has the meaning ascribed to such term in Section 14 of these Rules.

Co-operating Brokerage means a Brokerage which effects a Trade in real estate as a Buyer Representative.

CREA means The Canadian Real Estate Association and its successors and assigns, from time to time.

Exclusive Listing means a Listing that is not listed on the Association's MLS[®] System.

HST means the tax commonly known as the Harmonized Sales Tax as imposed by the *Excise Tax Act* (Canada), as such legislation may be amended or replaced from time to time.

Listing means the Offer of real estate the right of which has been granted pursuant to a Listing Agreement.

Listing Agreement means the Services Agreement entered into between a Seller and a Seller Representative in respect of a Listing, including, but not limited to, the Association's standard form listing agreement.

MLS® RULES & REGULATIONS

DEFINITIONS (cont'd)

Listing Brokerage means a Brokerage which has listed real estate for Sale through the Association's MLS® System pursuant to a Listing Agreement.

Listing REALTOR® means the individual REALTOR® employed or contracted by the Listing Brokerage to act as a Seller Representative under a Listing Agreement.

Mandatory Fields means the dark shaded fields on the Property Information Form which are required to be completed.

Member shall mean any member of the Association who is either a Brokerage member, broker member or salesperson member, all as further described in Article 2 of the Bylaws of the Association.

MLS® Data means any text, images, data, or information gathered, compiled, stored or published as part of the Association's MLS® System sheltered in computerized, electronic or other form, including, but not limited to, all dailies, catalogues and sold sheets.

MLS® Listing means a Listing on the Association's MLS® System.

MLS® Marks means the trademarks and certification marks owned and licensed by CREA to the Association, including, but not limited to, the words REALTOR® and REALTOR® Link, the REALTOR® and REALTOR® Link logos, and the words Multiple Listing Service® and MLS® and the related MLS® logos.

Offer means any offer relating to a Trade in real estate.

Person includes, where applicable, an individual, a partnership, a corporation and any other entity legally capable of buying and selling real estate or otherwise receiving services from a Member.

Property Information Form means the data input form entitled "Property Information Form" attached to the Association's standard form of Listing Agreement.

Purchase includes an actual or proposed exchange, option, lease or other acquisition of an interest in real estate.

REALTOR® refers to a person who is a real estate practitioner licensed under the Act and a member of CREA.

REALTOR® Code means the code of ethics to which all REALTORS® are subject to as adopted and amended, from time to time, by CREA.

RECO means the Real Estate Council of Ontario and its successors and assigns, from time to time.

Rules means the set of rules and regulations set out herein, and any additions or amendments thereto as may be adopted, from time to time, by the Association.

Sale includes an actual or proposed exchange, option, lease or other disposition of an interest in real estate.

Seller means a Person disposing of or attempting to dispose of an interest in real estate by Sale.

Seller Representative means the Member or Members representing a Seller under a Listing Agreement.

Services Agreement means any agreement, written or otherwise, that establishes a relationship between a Member and a Person which identifies the responsibilities of each party and includes the services to be performed by the Member and any compensation payable, in connection with a Trade in real estate, including, but not limited to, a Buyer Representation Agreement and a Listing Agreement.

Trade includes a disposition or acquisition of or transaction in real estate by Sale, Purchase, agreement for purchase and sale, exchange, option, lease, rental or otherwise and any offer or attempt to list real estate for the purpose of such a disposition, acquisition or transaction, and any act, advertisement, conduct or negotiation, directly or indirectly, in furtherance of any disposition, acquisition, transaction, Offer or attempt, and the verb "trade" has a corresponding meaning.

MLS® RULES & REGULATIONS

SECTION 1 - MLS®

- 1.01 Only properties with a real estate component may be listed on the Association's MLS® System.
- 1.02 For the purpose of these Rules, "real estate" means
- real property;
 - a leasehold or other interest in real property other than fee simple;
 - a time share agreement with regard to real or leasehold property;
 - a movable dwelling that is designed for use as a permanent residence;
 - a business, including an interest or share of a business, with or without premises, and the fixtures, stock-in-trade, good and chattels associated with the business, provided such items are sold in bulk as part of the business operation.
- 1.03 Acceptance of Listings
- (a) Only Listings that comply with the following three (3) pillars of the MLS® Marks may be placed on the Association's MLS® System.
- (b) The Three Pillars of the MLS® Marks are:
- (i) Membership
Only REALTORS® may place a Listing on the Association's MLS® System.
 - (ii) Agency
A Listing REALTOR®/Listing Brokerage must act as agent for the Seller in order to post, amend or remove a property listing on the Association's MLS® System. The nature of any additional services to be provided by the Listing REALTOR®/Listing Brokerage to the Seller is determined by agreement between the Listing Brokerage and the Seller.
 - (iii) Compensation to Co-operating Brokerage
The Listing REALTOR®/Listing Brokerage agrees to pay to the Co-operating Brokerage compensation for the co-operative selling of the property. An offer of compensation of zero is not acceptable.
- (c) The Interpretations are:
- (i) The Listing REALTOR®/Listing Brokerage shall be available to provide professional advice and counsel to the Seller on all Offers and counter Offers unless otherwise directed by the Seller in writing.
 - (ii) The Listing REALTOR®/Listing Brokerage is responsible and accountable for the accuracy of information submitted to the Association for inclusion in the Association's MLS® System, and the Association is responsible for ensuring that the data submitted to it meets reasonable standards of quality.
 - (iii) Only REALTORS® are permitted to display the MLS® Marks in signage, advertising, etc.
 - (iv) Where the Seller directs the Listing REALTOR®/Listing Brokerage in writing to do so, the Seller's contact information may appear in the REALTOR® only remarks (non-public) section of a Listing on the Association's MLS® System. The Seller's contact information shall not appear on REALTOR.ca or in the general (public) remarks section of a Listing on the Association's MLS® System. The Listing REALTOR® may include a direction in the General Description section on REALTOR.ca or on websites operated by CREA or the Association to visit the REALTOR® website to obtain additional information about the Listing (but the nature of such additional information shall not be specified).
 - (v) Where the Seller has reserved the right to sell the property themselves, that fact shall be specified in the Association's MLS® System.

MLS® RULES & REGULATIONS

SECTION 1 - MLS® (cont'd)

1.04 Responsibilities / Penalties

- (a) All Members of the Association shall abide and be governed by these Rules.
- (b) The Association reserves the right to deal with complaints against Members in accordance with the Article 9 of the Bylaw, notwithstanding the Member's Services Agreement or other arrangement with the Client.
- (c)
 - (i) The Listing Brokerage and the Listing REALTOR® are responsible for the accuracy and correctness of an MLS® Listing and for submitting the Listing Agreement to the Association as requested. The Listing Brokerage and the Listing REALTOR® are required to ensure that all information in the MLS® Listing provided to the Association, including, but not limited to, the District/Neighbourhood Code, Address (street and municipality), Property Type and the Tax Roll Number, is accurate and correct. All Listings shall comply with the REALTOR® Code, the Act, the Bylaws of the Association, these Rules, and any other rule or regulation or policy of the Association.
 - (ii) The Listing Brokerage and Listing REALTOR® are responsible for reporting sales in accordance with Section 9 of these Rules, and are required to ensure that all information provided to the Association on the report of Sale is correct including, but not limited to, name of the Member(s) who represented the Buyer and the selling price and further that the information be in accordance with the information recorded on the Trade Record Sheet as required by RECO.
 - (iii) The Listing REALTOR®/Listing Brokerage, by placing an MLS® Listing on the Association's MLS® System, shall indemnify and save the Association harmless from any loss to the Association arising out of any claim in respect of or in connection with the Listing Agreement, the Property Information Form and /or publication of the MLS® Listing on the Association's MLS® System.
- (d)
 - (i) The Association shall conduct audits of MLS® Listings to ensure that MLS® Listings comply with these Rules. These audits will assist with the process of verifying information and adherence to these Rules by its Members. Areas which are checked include, but are not limited to, the property address, the listing price, commencement date, expiry date of the listing. The Brokerage and Member whose listing has been selected for audit shall, if required, provide a copy of the Listing Agreement and other documentation that comprises the Listing to the Association, with the information on compensation agreed to between the Seller and the Brokerage removed. Failure to provide the requested Listing Agreement or to make any corrections requested will result in the matter being referred to the Professional Standards Committee of the Association.
 - (ii) If necessary, the Association will make any correction to an MLS® Listing on the Association's MLS® System to mirror the information shown on the Listing Agreement pertaining to such MLS® Listing which is subject to an audit conducted by the Association as contemplated above.
 - (iii) Failure to comply with these Rules shall render the Listing Member liable to fines or suspensions of access to, or the use of, the Association's MLS® System in accordance with these Rules.
 - (iv) Members are responsible to ensure that the necessary consent has been obtained from their Client to collect, use and disclose the Client's personal information on MLS® Listings.

SECTION 2 - MLS® LISTINGS

- 2.01 The Association's standard form of Listing Agreement shall consist of: a Property Information Form page and/or Signature Report Form and a listing contract page.

MLS® RULES & REGULATIONS

SECTION 2 - MLS® LISTINGS (cont'd)

- 2.02 All documentation for Listings to be processed on the Association's MLS® System shall be submitted on the Association's approved MLS® forms, signed and dated by all Seller(s) or their legally authorized representatives. Such Listing must give all data available and as full and accurate description of the property as possible. The price, date of expiry, Seller(s) name, name of the Listing Brokerage, Listing REALTOR® and Listing Brokerage phone number, are to be shown on the MLS® Listing. In addition, the commencement date must display on the data page and the commencement date and signing date must be on the Listing Agreement page. Any listing taken on a standard MLS® form is subject to these MLS® Rules upon signature of the Seller(s).
- 2.03 (i) In all instances when any Listing Agreement or Amendment to Listing Agreement is obtained, the Listing Brokerage shall submit to the Association or process through Broker Load such information through the Association's MLS® System within two (2) Association business days immediately following the commencement date of the Listing Agreement, or the date the Amendment to Listing Agreement takes effect, as applicable.
- The Listing Brokerage shall be responsible for all Listing Agreements or Amendments to Listing Agreements submitted or processed through Broker Load regardless of who submits or broker loads such forms on its behalf, including, but not limited to, by the Broker of Record, the Manager, or other Registrants or persons employed by the Listing Brokerage
- (ii) Commencement date shall be the date the listed property becomes available for Sale.
- 2.04 (i) An MLS® Listing may be extended to a new expiry date provided the Seller has signed an Amendment to Listing Agreement or has given written notification prior to the original expiry date and such notification has been received in accordance with Subsection 2.03.
- (ii) A Listing price may be changed provided the Seller has signed the Amendment to Listing Agreement and such notification has been received by the Association in accordance with Subsection 2.03.
- 2.05 The Listing Brokerage and Listing REALTOR® are responsible for the accuracy of all information submitted by the Listing Brokerage to the Association's MLS® System, whether Board Loaded or Broker Loaded.
- 2.06 Upon request of the Seller, the Association shall provide to the Seller a copy of the MLS® Listing as such Listing appears on the Association's MLS® System.
- 2.07 All properties which are to be sold separately must be listed individually.
- 2.08 The applicable Association processing fee for an MLS® Listing shall be as set by the Association.
- 2.09 Should a change to Mandatory Fields be required on an MLS® Listing, the Listing Brokerage is required to Broker Load or submit to the Association an Amendment to Listing Agreement signed by the Seller within two (2) Association business days of the signing date of the Amendment to Listing Agreement.
- 2.10 No Member shall Broker Load or submit an MLS® Listing that contravenes these Rules, the Bylaws of the Association or the code of ethics of RECO. The Association may, in its sole discretion, deem any such MLS® Listing to be invalid. The Association may either remove an MLS® Listing from the Association's MLS® System or refuse to publish such MLS® Listing, and without limiting the generality of the other provisions contained in these Rules, a Listing shall not be accepted by the Association as an MLS® Listing:
- (i) if it excludes any Member(s) from showing or inspecting the property;
 - (ii) if it excludes any Member(s) from acting as a Co-operating Brokerage; or
 - (iii) if all Mandatory Fields have not been completed accurately.

For all MLS® Listings which contravene these Rules, the Association shall send written notice to the Listing Brokerage who shall, within two (2) Association business days, remedy the information through initialed corrections on the original Listing Agreement, submit an Amendment to Listing Agreement, or process a cancellation for such Listing. Notwithstanding the forgoing, if an MLS® Listing requires changes to Mandatory Fields, the Listing Brokerage shall process an Amendment to Listing Agreement by the date specified in the notification to the Listing Brokerage provided by the Association.

MLS® RULES & REGULATIONS

SECTION 2 - MLS® LISTINGS (cont'd)

- 2.11 For Broker Loaded MLS® Listings, Listing Brokerages are not required to forward copies of the Listing Agreement and completed Property Information Form to the Association at the time of submission of such MLS® Listing to the Association. However, MLS® Listings are subject to audit by the Association, and the Listing Brokerage may from time to time, be required to forward to the Association a copy of the Listing Agreement and completed Property Information Form, and any other documentation that comprises the Listing. Failure to provide such paperwork when requested by the Association by the time stipulated will result in the Listing being automatically removed from the Association's MLS® System.
- 2.12 The information relating to an MLS® Listing which has commenced but has yet to be processed or published by the Association shall be given forthwith by the Listing Brokerage to any Co-operating Brokerage, upon request.
- 2.13 A new Listing Agreement shall not commence before the expiry of an existing Listing Agreement, subject to the provisions of Section 4 (Power of Sale Listings) of these Rules.
- 2.14 No MLS® Listing shall appear on the Association's MLS® System that is not immediately available for inspections, showings and, subject to the provisions of Subsection 2.15, the registration of Offers.
- 2.15 If an MLS® Listing indicates that Offers are not to be presented for a period of time, the Listing Brokerage shall complete, as part of the Listing, the Seller's written direction on the OREA Form "Seller's Direction re: Property/Offer" and disclose all particulars of such direction in the "Remarks" field of the MLS® Listing. Should the Seller rescind a restriction pertaining to the presentation of Offers, the Listing Brokerage shall immediately, and with reasonable notice to all parties:
- (a) complete, as part of the MLS® Listing, the Seller's written direction on the Association's form entitled "Amendment to Listing Agreement" and make the necessary changes to the "Remarks" field for such MLS® Listing; and
 - (b) if the Listing Brokerage is representing the Seller in the negotiation of Offers, notify by telephone, all Co-operating Brokerages, who requested and/or registered Offer presentations, that such restriction is removed and arrange for the presentation of all Offers to the Seller, without delay.
- 2.16 Save and except where an MLS® Listing includes the Seller's contact information, when requested by a Co-operating Brokerage, the Listing Brokerage shall immediately make available all information regarding the MLS® Listing necessary for preparing an Offer.
- 2.17 Members shall ensure that lock boxes provided for the purposes of access to the property which is the subject of an MLS® Listing are set with a unique code for the security of their Seller's property. Further, Members shall change the lock box combinations, as required during the course of the Listing to maintain reasonable security, and not use any preset manufacturer's codes.

SECTION 3 - SUSPENSIONS, CANCELLATIONS AND TRANSFERS

- 3.01 An MLS® Listing may be suspended from the Association's MLS® System before its expiration date provided that a copy of the Association's standard form entitled "Suspension of Listing Agreement" has been submitted to the Association or processed through Broker Load through the Association's MLS® System within two (2) Association business days immediately following the date the Suspension of Listing Agreement is signed by the Seller who signed the original Listing Agreement or by his/her/their lawfully authorized representative and by the Broker of Record or Manager of the Listing Brokerage. Such Suspension of Listing Agreement shall not constitute a cancellation of the terms and conditions of the original Listing Agreement. The Listing Brokerage shall be responsible for all Suspension of Listing Agreements submitted or processed through Broker Load regardless of who submits or Broker Loads such forms on its behalf, including, but not limited to, by the Broker of Record, the Manager, or other Registrants or persons employed by the Listing Brokerage.
- 3.02 An MLS® Listing may be cancelled by filing the Association's standard form entitled "Cancellation of Listing Agreement" signed by the Seller who signed the original Listing Agreement or the Seller's lawfully authorized representative and by the Broker of Record or manager of the Listing Brokerage and a copy of such Cancellation of Listing Agreement shall be submitted to the Association or processed through Broker Load through the Association's MLS® System within two (2) Association business days immediately following the date the Cancellation of Listing Agreement is signed by all such parties. The Listing Brokerage shall be responsible for all Cancellation of Listing Agreements submitted or processed through Broker Load regardless of who submits or broker loads such forms on its behalf, including, but not limited to, by the Broker of Record, the Manager, or other Registrants or persons employed by the Listing Brokerage.

MLS® RULES & REGULATIONS

SECTION 3 - SUSPENSIONS, CANCELLATIONS AND TRANSFERS (cont'd)

- 3.03 An MLS® Listing may be transferred from one (1) office to a branch office within the same Listing Brokerage by written transfer, signed by the Listing Brokerage and a copy of such transfer forwarded to the Association. Such transfer shall not constitute an amendment to the Listing, only a change in computer information.
- 3.04 The expiry date may be amended provided the Seller has given written authorization. If the amended expiry date is prior to the existing date, the Amendment to Listing Agreement must be signed by the Listing Brokerage and a copy forwarded to the Association, in accordance with Subsection 2.03.

SECTION 4 - POWER OF SALE LISTINGS

- 4.01 A mortgagee exercising a power of sale, by virtue of the terms of a mortgage, or under the provisions of the *Mortgages Act* (Ontario), or a Condominium Corporation exercising a sale under provision of the *Condominium Act* (Ontario), may list the mortgaged or defaulted premises on the Association's MLS® System with a Listing Brokerage.
- 4.02 A statement from the Listing Brokerage shall accompany the submitted MLS® Listing and shall state that, by reason of a default existing under the mortgage or default under the *Condominium Act* (Ontario) on the subject property, the Person signing the Listing Agreement has the power and authority to list the property for sale.

SECTION 5 - MLS® SERVICES

- 5.01 Every Member shall subscribe to the Association's MLS® System electronically.
- 5.02 The monthly subscription fee for access to the Association's MLS® System shall be as set by the board of directors of the Association.

SECTION 6 - SOLICITATION

- 6.01 No Member shall directly or indirectly solicit another Member's Client for the purpose of offering to provide the same type of real estate services.
- 6.02 Members shall make a reasonable enquiry to determine that a prospective Seller or Buyer is not subject to an existing Services Agreement to ensure that they are not offering the same type of real estate services.
- 6.03(A) If, prior to expiry of an existing Listing Agreement, the Seller initiates communication with a Member for the purpose of Listing or discussing the Listing of the property then, despite the provisions of Subsection 6.03 (B) and 6.03(C), the Member may enter into a Listing Agreement with the Seller for the property if, and only for so long as, the following conditions are met:
- (i) such contact and communication for the purpose of Listing or discussing the Listing of the property between the Member and the Seller was initiated by the Seller;
 - (ii) communication must not interfere with the current contractual relationship between another Member and the Seller; nor counsel breach of contract; and
 - (iii) any new Listing Agreement for the property that the Member and Seller enter into shall not commence until the existing Listing Agreement for the property has expired
- 6.03(B) A Member shall not allow a Listing Agreement for the same Trade function to commence knowing another MLS® Listing from the same Seller regarding the same property is in effect. A Member shall be deemed to know of another MLS® Listing if it appears either as active or suspended on the Association's MLS® System, when the Member's subsequent MLS® Listing is taken.

MLS® RULES & REGULATIONS

SECTION 6 – SOLICITATION (cont'd)

- 6.03(C) A Member may only communicate with a Seller of a current MLS® Listing with respect to the listed property if:
- (i) the MLS® Listing for such Seller includes the Seller's contact information; or
 - (ii) in all other cases, such Member receives the express written consent of the Listing Brokerage in each instance.
- 6.04 Members are not prohibited from contacting another Member's Client for the purpose of offering a different type of real estate service, provided the service being offered is unrelated to the type of service currently provided for in the pre-existing Services Agreement
- 6.05 Notwithstanding the foregoing provisions, under no circumstances shall the following sources be used by a Member to identify prospective Clients:
- (i) the Association's MLS® System;
 - (ii) Members' real estate signs; and
 - (iii) other Member generated sources of information such as, but not limited to, printed and television advertising, office window displays, and the Internet.

SECTION 7 - MLS® DATA AND OTHER BOARD PUBLICATIONS

Ownership

- 7.01 The Association is the owner of all copyright in the Association's MLS® System and all data contained therein. The Association's MLS® System and all MLS® Data contained therein are a licensed product for the exclusive use of Members and other authorized users and any use of the Association's MLS® System or of the MLS® Data contained therein for any unauthorized purpose is prohibited. The right to use, reproduce or download all MLS® Data is at the discretion of the Association and is limited to the specific uses permitted by the Association.
- 7.02 Members shall comply with, observe and be bound by all restrictions, copyright notices or other limitations of access to the Association's MLS® System and the MLS® Data contained therein and use thereof as may be adopted by the board of directors of the Association from time to time.
- 7.03 The Members shall advise and obtain their Client's authorization that:
- (a) all information concerning this Client's Listing and the Listing Agreement, the properties affected thereby and the transactions thereunder shall be made available not only to all other Members and their respective Clients, but also third party users authorized by the Association;
 - (b) the Association may, at its option, advertise in any medium, including the Internet, any properties listed on the Association's MLS® System; and
 - (c) the Association may compile, retain and distribute the Listing information indefinitely and may compile, retain and publish any statistical analyses including historical MLS® Data based on such information.
- 7.04 The Association shall not be responsible for any indirect, special or consequential damages or any other obligations or liability arising out of, or in any way connected with the Association's MLS® System or the use of the MLS® Data contained therein, including but not limited to, computer failure or interruption, or negligence.

Authorized and Unauthorized Use

- 7.05(a) The information contained on the Association's MLS® System is confidential and shall not be distributed to unauthorized persons or used in any unauthorized manner.
- (b) For the purposes of these Rules, authorized use of the Association's MLS® System or MLS® Data means:
- (i) the extraction of MLS® Data from the Association's MLS® System by Members of the Association in good standing necessary to assist them in representing their Clients in the Trade of real estate; and
 - (ii) any other specific use authorized in writing by the Association.

MLS® RULES & REGULATIONS

SECTION 7 - MLS® DATA AND OTHER BOARD PUBLICATIONS (cont'd)

- (c) In addition, the authorized uses described in Subsection 7.05(b) shall also:
 - (i) reflect accurate and current information as contained in the MLS® Database;
 - (ii) include the name of the Listing Brokerage; and
 - (iii) include the registered MLS® Marks.
- (d) For the purposes of these Rules, unauthorized use of the Association's MLS® System or MLS® Data is any use not expressly described in Subsection 7.05(b) and (c) hereof and includes, but is not limited to:
 - (i) the extraction of MLS® Data for the purposes of creating a book or for the population of another database;
 - (ii) reproduction of MLS® Data beyond that necessary to prepare presentations to a Client;
 - (iii) the alteration, modification or reformatting of the MLS® Data on the Association's MLS® System in any form whatsoever, electronic or otherwise; and
 - (iv) the sale or distribution of any portion of MLS® Data to any third parties.

Access

- 7.06 Personal computer access codes, log-on account number and/or passwords issued to a Member in order to provide access to the Association's MLS® System or the MLS® Data contained therein and/or other Association information and services (collectively, the "Access Codes") are for the Member's sole and exclusive use and their sale to, distribution or disclosure to, or use by, any other person is prohibited.
- 7.07 Any computer software or hardware provided by the Association to any Member to access the Association's MLS® System and the MLS® Data contained therein and/or other Association information (regardless of whether such software or hardware is provided with or without a cost to the Member) (collectively, the "Access Program") are for the Member's sole and exclusive use and their sale to, distribution or disclosure to, or use by, any other person is prohibited.
- 7.08 Personal computer access codes are the sole responsibility of the Member and disclosure to anyone is prohibited.
- 7.09 The Member who is the Broker of Record of each Brokerage shall ensure that any individual who has been provided with Access Codes and/or Access Programs complies with the Association's Bylaws and these Rules while Employed (as defined in the Association's Bylaw) by such Brokerage.
- 7.10 The Broker of Record of each Brokerage shall notify the Association within forty eight (48) hours after any individual who has been provided with Access Codes and/or Access Programs ceases to be Employed by the Brokerage.

Remedies

- 7.11 Any theft, sabotage, unauthorized use of, or unauthorized access to the Association's MLS® System or the MLS® Data constitutes a breach of these Rules and shall be dealt with in accordance with the provisions of the Association's Bylaws. Notwithstanding any sanctions or penalties imposed by the Association, the Association reserves the right to seek any and all redress and remedies available to it in a civil action against the unauthorized person (whether such person is a Member or non-Member) and/or any Member permitting the unauthorized access or to unauthorized use of the Association's MLS® System or the MLS® Data contained therein by an unauthorized person. In the event it is discovered there is a breach of these Rules by a Member, such Member's access to the Association's MLS® System shall be immediately suspended pending investigation by the Association.
- 7.12 In addition to the Association's rights and remedies set out in Subsection 7.11, the Association reserves the right to immediately terminate a Brokerage's or an individual Member's Access Codes and/or Access Programs, without notice, in the event of any unauthorized use of, or granting unauthorized access to, the Association's MLS® System or any MLS® Data contained therein or any other breach of the provisions of this Section 7.

MLS® RULES & REGULATIONS

SECTION 7 - MLS® DATA AND OTHER BOARD PUBLICATIONS (cont'd)

Association's Website

- 7.13 Members may “link” to the public portion of the Association's website from their own websites, provided the link is connected to the home page of the Association's website (i.e. such link takes users from Member's website to the Association's website using an icon on the Member's website for this purpose).
- 7.14 The Association's MLS® System or any portion thereof shall not be used as a “frame” on a Member's website (i.e. the Association's MLS® System or the MLS® data contained therein must not appear to reside on the Member's website, making it look as if the Association's MLS® System is the Member's). The only exception to the foregoing rule is that a Member's website shall be permitted to cause any of the MLS® Data to appear within full feature frames of their own design provided the property information taken from the Association's MLS® System which is displayed on the Member's website is only for properties listed by that Member's Brokerage.
- 7.15 The Association is not responsible for the contents of any off-site pages or any other sites linked to or from the Association's MLS® System. Maintenance of the Member's website is the sole responsibility of the Member.
- 7.16 All of the restrictions contained in this Section 7 that relate to the authorized and unauthorized use of and access to the Association's MLS® System, apply equally to any portion of the MLS® Data which can be obtained from the Association's MLS® System.
- 7.17 Any form of advertising based in whole or in part on the MLS® Data supplied by the Association, including but not limited to, current Listing information and sold information, must clearly demonstrate the period of time over which the claims are based and must include the following notice: “Based in whole or in part on information supplied by the REALTORS® Association of Hamilton-Burlington for the period of (insert applicable date) through (insert applicable date)”; or other substantially similar notice.
- 7.18 The Association is a signatory to one or more agreements with other real estate boards and associations in the Province of Ontario. Pursuant to these agreements, Members may have the right, on an individual basis, to obtain property information from such other boards and associations and/or to obtain other services from such other boards and associations (such as the right to place Listings on the MLS® of such other boards and associations). The Association recognizes that in order for its Members to obtain such information or service from other boards and associations, Members will enter into contracts, on an individual basis, with such other boards and associations. Such contracts will provide rules for the use of MLS® data and MLS® services provided by such other boards or associations. If a Member of this Association breaches the terms of any contract(s) with such other boards or associations, the breach will be deemed to be a breach of these Rules and shall be dealt with in accordance with the provisions of Article 12 of the Association's Bylaws.
- 7.19 All multimedia links on REALTOR.ca, namely alternate feature sheet – field 63; virtual tour – field 64; sound bites – field 65; sales brochure – field 66; additional photos – field 67; and Board preferred map service to locate property – field 84, must be limited to property specific information and advertisement of private sales is not permitted on those links. Further, webpages linked directly from REALTOR.ca through multimedia links must not indicate where private sale information can otherwise be located. Webpages linked directly from REALTOR.ca through multimedia links or “REALTOR® Website” links cannot automatically redirect users to a third party site. In accordance with The Canadian Real Estate Associations' MLS® Technology Council's Policy, multimedia links are to be limited to their respective fields. This ensures that REALTOR.ca displays information that consumers expect to see on the link they wish to use. MLS® Systems are member to member cooperative systems and members who participate on REALTOR.ca (which is a member developed and financed site) must respect the member to member facet in all multimedia links provided in association with REALTOR.ca. Seller contact information must not be displayed on webpages that are linked directly from REALTOR.ca through multimedia links. The listing REALTOR®/ brokerage website may be linked directly from REALTOR.ca through the “REALTOR® Website” link that appears on REALTOR.ca feature sheets, but this specific webpage of the REALTOR®/brokerage website must not display seller contact information. As well, members can include in the General Description – field 27 (public remarks, known as field – 31 in the French version) a comment to “see my website for further information” without specifying the nature of such additional information.

MLS® RULES & REGULATIONS

SECTION 8 - SELLING PROCEDURES

- 8.01 Members shall co-operate with each other in a professional manner when carrying out negotiations in the best interests of their respective Clients. A Member shall not negotiate with or make Offers to the Client of another Member respecting matters in which the other Member is representing the Client unless:
- (i) the MLS® Listing for such Client of another Member includes the Seller's contact information; or
 - (ii) in all other cases, without the knowledge, consent and involvement of the other Member.
- 8.02 A Member shall present all written Offers, including counter Offers, received by such Member as objectively and as quickly as possible. A Member shall establish a system to ensure that all Offers the Member receives from another Member are received and presented to their Client on a timely basis, including in the absence of the Member.
- 8.03 Unless the applicable MLS® Listing provides for the Seller's contact information, appointments to inspect or show an MLS® Listing must be made through the Listing Brokerage, or directly with the Seller, with the prior permission of the Listing Brokerage. If a request for an appointment is received from a Co-operating Brokerage directly, Listing Brokerages shall make appointments for Co-operating Brokerages without delay.
- 8.04 If a Member is unable to keep an appointment, the Member shall:
- (i) where the appointment was made directly with the Listing Brokerage, advise the Listing Brokerage, or if direct contact with the Listing Brokerage is not possible, advise the Seller directly; or
 - (ii) where the appointment was made directly with Seller as permitted under these Rules, advise the Seller directly.
- 8.05 Appointments to inspect property relating to an MLS® Listing shall be continued even after an Offer to Purchase is received, or until requested by the Seller to discontinue appointments.
- 8.06 The Co-operating Brokerage may have the right to be present when their Client's Offer is presented by the Listing Brokerage to the Seller and the Listing Brokerage may have the right to be present when any counter Offer is presented by the Co-operating Brokerage to the Buyer subject to the direction of the Seller and/or Buyer. The forgoing provision only permits a Member to accompany the presentation of Offers to another Member's Client, it does not, however, give any authority to negotiate during this time and does not mean that the Member may be present during subsequent discussions between the other Brokerage and their Client.

SECTION 9 - REPORTING OF SALES

- 9.01 An important part of the inherent value of the Association's MLS® System is the transaction data accumulated for sales of listed properties. Therefore, it is the responsibility of all Members to ensure, regardless of their business model, that property sold information for properties listed on the Association's MLS® System, including the reporting of conditionally sold properties and sale prices, be reported to the Association. Members are not permitted to avoid these reporting responsibilities to the Association by, for example, cancellation of a Listing between receipt (or anticipated receipt) and acceptance of an Offer, or encouraging a Seller to do so. Accordingly, the Listing Brokerage will report by Broker Load all sales and conditional sales for Broker Loaded MLS® Listings effected during the Listing term and during the holdover period of an MLS® Listing, within two (2) Association business days following written acceptance of any Offer by the Seller. If the MLS® Listing is Board Loaded, the sale or conditional sale must be submitted in writing within two (2) Association business days following written acceptance of any Offer by the Seller. Power of Sale and commercial sales shall be reported not later than two (2) Association business days after closing.
- 9.01 In the event an unconditional sale or a conditional sale falls through, the Listing Brokerage will notify the Association in writing or by Broker Load, within two (2) Association business days. If services are to be resumed, the Listing Brokerage shall so notify the Association.
- 9.03 When a property with an MLS® sign has been reported sold firm, a member shall, within two (2) RAHB business days, place a `sold` sign on the property or remove the `for sale` sign.

MLS® RULES & REGULATIONS

SECTION 10 - ADVERTISING

- 10.01 Subject to the provisions of Section 6 of these Rules, no Brokerage may advertise another Brokerage's Listed property unless permission is granted by the Seller in writing. The forgoing sentence shall not prohibit the other Brokerage from publicly displaying pictures of Listings on such Brokerage's premises, provided that there is no indication of the address of the Listed property.
- 10.02 No Brokerage shall advertise any real estate or other property listed on the Association's MLS® System at any price other than the listed price.
- 10.03 Signs giving notice of sale, rent, lease, development, exchange or open house shall not be placed on any property by more than one Brokerage, unless authorized by the Seller. Signs may only be erected on locations that conform with Municipal and Provincial sign legislation, all applicable laws, regulations, codes and bylaws. A Member shall not interfere with another Brokerage's sign, unless such property is subsequently listed by said Member.
- 10.04 Brokerages which list real estate on the Association's MLS® System which is not located within the jurisdiction of the Association shall not, by sign or other advertisement in that outside area, indicate that such property is listed on the MLS® system of such other jurisdiction unless the Listing has been submitted and accepted by the board or association in whose jurisdiction the property is located, or such advertisement indicates specifically that the property is listed on the Association's MLS® System.
- 10.05 No marketing of any property, including placing a sign on any property, is permitted until the commencement date of the Listing Agreement pertaining to such property.

SECTION 11 - BROKERAGE COMMISSION

- 11.01 Listings being submitted through the Association's MLS® System shall contain the amount of commission the Listing Brokerage shall pay to the Co-operating Brokerage expressed either as a percentage of the selling price, or a specified amount.
- 11.02 No Member shall attempt to negotiate the distribution of commission between Members in the presence of the Seller or Buyer.
- 11.03 A Co-operating Brokerage shall not use the terms of an agreement of purchase and sale or an offer to lease or other agreement in respect of a Trade to modify the Listing Brokerage's commission rate or fee, or amount that the Listing Brokerage shall pay to the Co-operating Brokerage, nor make the submission of an executed Offer, contingent on the Listing Brokerage's agreement to modify the Listing Brokerage's commission rate or fee, or amount that the Listing Brokerage shall pay to the Co-operating Brokerage.
- 11.04 If representing a Seller in the negotiation of Offers, a Listing Brokerage with a competing Offer must disclose the details of any commission reduction or other inducement to any Person who makes a written Offer to Purchase to such Listing Brokerage, at the earliest practicable opportunity and before any Offer is presented.
- 11.05 The Co-operating Brokerage may be paid a lower commission than that specified on the Association's MLS® System if an agreement in writing has been reached between the Listing Brokerage and the Co-operating Brokerage, or their authorized representatives. No attempt may be made to negotiate such an agreement in the presence of the Seller.
- 11.06 Should the Co-operating Brokerage initiate any suggestion of a reduction in commissions, the Listing Brokerage shall be permitted to retain an amount equal to that as shown on the Listing Agreement, which they would have retained had such action not been taken.

MLS® RULES & REGULATIONS

SECTION 11 - BROKERAGE COMMISSION (cont'd)

- 11.07 All commissions payable to the Co-operating Brokerage are due on the closing date of the Sale or when the commission has been received. If the Listing Brokerage fails to pay the commission due to the Co-operating Brokerage within five (5) Association business days of receipt of such commission by the Listing Brokerage, then the Co-operating Brokerage may notify the Association in writing of such default and the Association shall, on three (3) days written notice by registered mail, courier, or hand delivery to the Listing Brokerage, suspend access to the Association's MLS® System by that Brokerage until the payment due to the Co-operating Brokerage has been made, unless in the opinion of the board of directors of the Association, there are circumstances which would excuse the Listing Brokerage's failure to pay the Co-operating Brokerage. Where access to the Association's MLS® System has been suspended, there shall be a one thousand dollar (\$1,000) service charge (or such other amount as set by the board of directors of the Association from time to time) levied to re-instate such access.
- 11.08 Where the full commission is not received by the Listing Brokerage, the Listing Brokerage shall pay to the Co-operating Brokerage the proportionate amount of such commission actually received. The proportionate amount shall be determined by the Listing Brokerage with reference to the ratio with which the commission payable to the Co-operating Brokerage as indicated on the MLS® Listing was to the total commission as set out in the Listing Agreement between the Listing Brokerage and the Seller. In the event of a dispute then the Listing Brokerage shall provide to the Co-operating Brokerage, documentation verifying proportions.
- 11.09 Where a reduced commission or no commission is received by the Listing Brokerage after completion of a Trade, it shall be the duty of the Listing Brokerage, within five (5) business days of the closing date, to collect such commission or balance of commission owing.
- 11.10 Any collection costs incurred by the Listing Brokerage in complying with Subsection 11.09 of these Rules, shall be deducted from the commission received, and the balance shall be distributed in accordance with Subsection 11.08 of these Rules.
- 11.11 In the event that the Listing Brokerage decides not to take legal action against the Seller to recover the commission, the Co-operating Brokerage may do so and the Listing Brokerage agrees to an assignment of its rights under the Listing Agreement to give effect to this provision. Unless the Listing Brokerage and Co-operating Brokerage otherwise agree, any monies so collected shall be dealt with in the same manner as if collected by the Listing Brokerage under 11.08 hereof, except, all collection costs shall be deducted from the Listing Brokerage's portion of the commission.
- 11.12 In the event of any commission being payable as a result of the holdover period in the Listing Agreement, such commission shall be dealt with in accordance with Section 11.

SECTION 12 - TRADING PROCEDURES

- 12.01 Contacts with Client's solicitors about the closing of sales will be the responsibility of the respective Brokerages and/or their Clients. No Member shall contact the other Member's Client or their solicitor directly, except with the other Member's or Member's Client's permission, as applicable.
- 12.02 Under no circumstances may the terms of an Offer be disclosed to anyone other than the parties to the Offer or their authorized representatives. The Brokerage must not disclose these terms to its own salespeople, other Brokerages, or other prospects. An Offer is a confidential document and must be treated as such.

MLS® RULES & REGULATIONS

SECTION 12 - TRADING PROCEDURES (cont'd)

- 12.03 Showing means introducing and accompanying a prospective Buyer to a property by the act of examining the property; or by causing such examination of the property by the prospective Buyer under arrangement made directly with the Seller as permitted under these Rules, or by the Listing Brokerage or its representative, as applicable.

The following shall not in themselves constitute a showing:

- (a) The placing of a sign or advertising by any means;
- (b) The attendance of a prospective Buyer at an open house; or
- (c) A prospective Buyer attending a listed property without a Member.

Inspection means previewing of the property by Members only.

- 12.04 Where a listed property is shown by one Member and is sold by another Member to the same Buyer, the Brokerage that obtained the accepted Offer shall be the one by whom the commission shall be deemed to be earned, provided that no unethical practice was performed in the process of procuring the accepted Offer.

- 12.05 Where a listed property has been shown by one Member, no other Member shall attempt to obtain an Offer to Purchase on the same property from the same prospective Buyer by unethical practice. This does not preclude a Member from entering into a Buyer Representation Agreement with such Buyer, provided the Member did not engage in any unethical act or obtain the agreement by unethical means.

- 12.06 Where a property has been shown by a Member to a prospective Buyer, the following shall be deemed to be unethical actions:

(a) It shall be unethical for a Member to persuade or try to persuade such prospective Buyer to leave a Member from another Brokerage for the purpose of dealing with such Member regarding the same property or by suggesting the Buyer can obtain the property more cheaply through such Member or to offer to such prospective Buyer any form of inducement.

(b) It shall be unethical for a Member to suggest to a prospective Buyer, that such Buyer be shown properties with Members from other Brokerages, with the intention or instruction, or implied instruction to return to that Member for the submission of any Offer to Purchase on any one of such properties.

- 12.07 With the knowledge and authority of the Listing Brokerage, keys or other entry systems may only be used by Members for the purpose of inspecting properties or showing properties. The making of duplicate keys from the one obtained, the action of failing to return the key to the Listing Brokerage within a reasonable time, or the turning over of the key or information on the entry system to any Person not authorized by the Listing Brokerage, is an unauthorized use.

The member conducting the showing or inspection will remain on the premises during the entire period of access unless permission in writing has been obtained from the Listing Brokerage and will ensure that all security precautions are taken.

- 12.07a) Keys shall be re-deposited in a lockbox immediately upon exiting the property and the lockbox shall be properly secured.

- 12.07b) The member conducting the showing or inspection is solely responsible to ensure that all security precautions are taken prior to departing the property.

- 12.08 To the extent of a conflict between the RECO code of ethics, the REALTOR® Code or any applicable laws, and any provision of these Rules, the RECO code of ethics, the REALTOR® Code and such laws shall prevail.

MLS® RULES & REGULATIONS

SECTION 13 – CONVEYING OFFERS

- 13.01 Subject to the provisions of Section 8, a Member shall convey any written Offer received by the Member to the Member's Client at the earliest practicable opportunity.
- 13.02 A Member shall establish a method ensuring that
- (a) any written Offers sent to the Member are received by someone on behalf of such Member, if the Member is not available at the time an Offer is submitted;
 - (b) written Offers received by the Member are conveyed to their Client at the earliest practicable opportunity, even if the Member is not available at the time an Offer is submitted; and
 - (c) in the case of multiple Offers, all Co-operating Brokerages or Members of such Co-operating Brokerages with Offers registered with such Member are informed of the existence of all other signed Offers. Communication of this information shall be made by the Listing Brokerage to all Co-operating Brokerages without delay, after being notified of other signed Offers and prior to their presentation.

Without limiting the generality, Sections 13.01 and 13.02 apply regardless of the identity of the person making the Offer, the contents of the Offer or the nature of any arrangements for commission or other remuneration.

SECTION 14 - COMMISSION TRUST

- 14.01 **Commission Trust Account** means a trust account maintained at a Canadian chartered bank or trust company and designated as a "Commission Trust Account". The Commission Trust Account shall be used only for the receipt and disbursement of the Commission Trust Amount in connection with a Trade, or any amounts the Brokerage has otherwise agreed to receive in trust for a REALTOR® for remittance to a third party on behalf of a REALTOR®, and kept separate and apart from the statutory trust account that a Brokerage is required to maintain for consumer funds.

Commission Trust Agreement means the clause added to the agreement of purchase and sale or other agreement entered into to effect a Trade in real estate.

Commission Trust Amount in any Trade shall mean the commission trust amount indicated on the Commission Trust Agreement for that Trade, provided that if no such amount is indicated on the Commission Trust Agreement, the Commission Trust Amount shall be calculated in accordance with the commission rate or fee or amount that the Listing Brokerage shall pay to the Co-operating Brokerage, as shown on the most recent Property Information Form filed with the Association MLS® System in accordance with Subsections 12.01, 12.02 and 12.03, as the case may be, or as agreed to by the Listing Brokerage and Co-operating Brokerage, as provided for in Subsection 12.05 of these Rules.

- 14.02 All deposits and other monies received by or due to the Listing Brokerage directed to satisfy commission payable or damages or other compensation in lieu of commission, plus applicable HST on any of the foregoing amounts, in connection with a Trade shall be received and held by the Listing Brokerage in trust and shall constitute a commission trust (the "Commission Trust"). The beneficiaries of the Commission Trust shall be the Co-operating Brokerage to the extent of the Commission Trust Amount, and the Listing Brokerage as to the balance after payment of the Commission Trust Amount.
- 14.03 When an Offer for a Trade procured by a Co-operating Brokerage is accepted, the Listing Brokerage shall execute and deliver to the Co-operating Brokerage a Commission Trust Agreement for the Trade.

MLS® RULES & REGULATIONS

SECTION 14 - COMMISSION TRUST

- 14.04 Following the completion of the Trade no funds shall be transferred or paid from the Listing Brokerage's Commission Trust Account to or for the benefit of the Listing Brokerage or any third party until the Commission Trust Amount has been disbursed to the Co-operating Brokerage. All such disbursements shall be made directly from the Listing Brokerage's Commission Trust Account. Where the Listing Brokerage has more than one trust account, funds deposited with the Commission Trust may be transferred from one trust account maintained by the Listing Brokerage to the Commission Trust Account maintained by the Listing Brokerage, and such funds shall at all times, notwithstanding any such transfer, continue to be deposited with the Commission Trust. Provided that where the full commission is not received by the Listing Brokerage, the provisions of Section 11 shall apply.
- 14.05 The Listing Brokerage and Co-operating Brokerage shall each retain a copy of any Commission Trust Agreement for a period of at least six (6) months following the completion of a Trade and shall provide the Association with a copy of any such Commission Trust Agreement within fifteen (15) days of a request for a copy of such agreement.
- 14.06 Subject to the provisions of the Act, the Listing Brokerage shall maintain proper books and records with respect to all Trades concerning the Commission Trust Account. Commission or other compensation payable by Clients shall be known as a receivable due to the Commission Trust and not as a receivable due to the Listing Brokerage. Amounts due to a Co-operating Brokerage and the Listing Brokerage for a particular Trade shall be shown as payables of the Commission Trust.
- 14.07 The following provisions are deemed to be included in all Commission Trust Agreements:
- "All monies received by or due to the Listing Brokerage in connection with the transaction including, without limitation, any deposit, damages, other considerations or amounts in lieu of damages received or due from the Seller/Landlord or other person, or other compensation received or due from the Seller/Landlord or other person, shall be held by the Listing Brokerage in trust for the benefit of the Co-operating Brokerage and Listing Brokerage as herein provided for and all funds received on account of the Commission Trust shall be deposited directly to the Listing Brokerage's Commission Trust Account. The obligation of the Listing Brokerage as trustee under the Commission Trust shall be discharged by the Listing Brokerage paying, following the completion of or other termination of the Transaction, the following amounts in the following order:
- (a) first to the Co-operating Brokerage the Commission Trust Amount; and
 - (b) next to the Listing Brokerage the balance of the Commission Trust."

SECTION 15 - PRIVACY COMPLIANCE

- 15.01 In addition to all other requirements contained in these Rules, when dealing with any property that is the subject of an MLS® Listing, all Listing Brokerages and Co-operating Brokerages must obtain the consent of each and every Client in order for the Association to collect, use and disclose the information regarding such Client's property and the transaction on the Association's MLS® System.
- 15.02 Immediately upon request of the Association, a Member shall provide the Association with proof of the consent described in Subsection 15.01 from the Member's Client in regard to any property that is the subject of an MLS® Listing for which the Member's Client is the Seller or Buyer.