

Summary of Revisions to the 2009 NAR Model Bylaws for Local Member Boards

Following is a summary of the **mandatory** amendments to the NAR *Model Bylaws for Local Member Boards*, provided in legislative style for ease of reference (underscoring indicates additions; ~~strike-throughs~~ indicate deletions). For more details about these changes, please refer to the Membership Policy and Board Jurisdiction Committee's actions for 2008, available on line at REALTOR.org: <http://realtor.org/mempolweb.nsf/comnameweb?openview>.

MANDATORY: 2008 Revisions to Definition of MLS Participant

Definition of "Participant": In connection with the settlement of the lawsuit filed by the United States Department of Justice, the National Association has amended MLS Policy Statement 7.9 Definition of MLS Participant to clarify that MLS participants must actively endeavor to list properties of the type listed on the MLS and/or actively endeavor to accept offers of cooperation and compensation made by listing brokers in the MLS. Explanatory language has been added to the policy statement to facilitate implementation and enforcement of the revised eligibility criteria for MLS participation.

The revised definition applies to participants, upon adoption. If there is any question as to whether a participant meets the requirement, he or she should be given an opportunity to demonstrate compliance. If he or she is found not to be in compliance under the revised rule, termination may not be effective until May 27, 2009. New participants may, however, be required to comply immediately as a condition of admission.

These revisions affect:

- NAR *Model Bylaws for Local Member Boards*, Article XVIII – Multiple Listing, Section 3 – Participation
- NAR *Model Bylaws for Local Member Boards*, Article XVIII – Multiple Listing, Section 3 – Participation (a) Non-member Participation (Open MLS)
- NAR Model MLS Bylaws, Article 4 – Participation Defined

All associations/MLSs must amend the appropriate section(s) of their association Bylaws and/or MLS Bylaws to incorporate the amendments to the definition of MLS "participation", as shown below (underscoring indicates additions; strikeouts indicate deletions).

Any REALTOR® of this or any other association 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 offer or accept~~ accept compensation to and from other participants or are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property.** Use of information developed by or published by an association 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 an association multiple listing service where access to such information is prohibited by law. (Amended 11/08)*

Mere possession of a broker's license is not sufficient to qualify for MLS participation. Rather, the requirement that an individual or firm offers or accepts cooperation and compensation means that the participant actively endeavors during the operation of its real estate business to list real property of the type listed on the MLS and/or to accept offers of cooperation and compensation made by listing brokers or agents in the MLS. "Actively" means on a continual and 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. (Adopted 11/08)

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. (Adopted 11/08)

Note that if an association's MLS is separately incorporated, the revisions outlined above should be made to both the association's Bylaws and MLS Bylaws. For more information about the VOW settlement and the actions that all MLSs must take to comply with the settlement, visit http://realtor.org/law_and_policy/doj/nar_doj on line.

2009 Revisions to Harassment Policy for Local Associations

Article VI – Privileges and Obligations, Section 14. Harassment: During the 2008 Midyear Legislative Meetings and Expo, the NAR Board of Directors approved amendments to Article VI, Section 14. Harassment of the NAR *Model Bylaws for Local Member Boards*. These amendments clarify the process used by associations to consider complaints about member harassment of an association or MLS employee or an association officer or director. The following revisions are **mandatory** and **must** be implemented by all local associations that have adopted this optional section (underscoring indicates additions; strikeouts indicate deletions):

Section 14. Harassment

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

NOTE: Suggested procedures for processing complaints of harassment are available on line at <http://www.REALTOR>