

SOUTHERN NEW MEXICO



Bylaws

The Multiple Listing & Information Service, Inc.
dba Southern New Mexico Multiple Listing Service

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**The Multiple Listing and Information Service, Inc.
dba Southern New Mexico Multiple Listing Service**

Bylaws

Approved

ARTICLE 1: NAME

The name of this corporation is The Multiple Listing and Information Service, Inc., which is a New Mexico business corporation, (hereinafter referred to as "the Service") all the shares of stock of which are solely and wholly owned by Las Cruces Association of REALTORS, Inc., a New Mexico nonprofit corporation (hereinafter referred to as "LCAR"). [NAR Mandated]

ARTICLE 1.1: USE OF DBA(S)

The Multiple Listing and Information Service, Inc., is authorized to do business as Southern New Mexico Multiple Listing Service.

ARTICLE 2: PURPOSE

A Multiple Listing Service is a means 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. [NAR Mandated]

To offer digitized information services to Boards/Associations who opt to purchase such services from this corporation, and to any other entity deemed appropriate by the board of directors. Including mass distribution entities to obtain permissible data that approved for online viewing to the public for accurate and up to date information.

To provide state of the art technologies, programs and services which are deemed desirable and/or necessary to practice real estate. [NAR Mandated]

ARTICLE 3: SERVICE AREA

The area within which the corporation shall function shall at all times be coextensive with or within the territorial jurisdiction of the Las Cruces Association of REALTORS®, Inc., or Doña Ana County, New Mexico and any place the participant and subscribers list property within New Mexico. Together with any naturally existing market areas lying within any contiguous county (ies) and, further, that of any Board/Association which opts to purchase services from or signs an agreement with the corporation.

ARTICLE 4: PARTICIPATION DEFINED

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 cooperate, or are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property. Cooperation is the obligation to share information on listed property and to make property available to other brokers for showing to prospective purchasers and tenants when it is in the best interest of their clients. 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. The REALTOR® principal of any firm, partnership, corporation, or the branch office manager designated by said firm, partnership, or corporation as the participant shall have all rights, benefits, and privileges of the service, and shall accept all obligations to the service for the participant's firm, partnership, or corporation, and for compliance with the bylaws and rules and regulations of the service by all persons affiliated with the participant who utilize the service.

Mere possession of a broker's license is not sufficient to qualify for MLS participation. Rather, the requirement that an individual or firm cooperates 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, share information on listed property and make property available to other brokers for showing to prospective purchasers and tenants when it is in the best interests of their client(s) "Actively" means on a continual and on-going 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 cooperate with respect to properties of the type that are listed on the MLS in which participation is sought. Cooperation is the obligation to share information on listed property and to make property available to other brokers for showing to prospective purchasers and tenants when it is in the best interest of their clients. 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 cooperate. An MLS may evaluate whether a participant or potential participant "actively endeavors during the operation of its real estate business" to cooperate 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 on a nondiscriminatory manner to all participants and potential participants.

Note: An association may also choose to have the membership committee consider the following when determining a nonmember applicant's qualifications for MLS participation or membership:

- all final findings of Code of Ethics violations and violations of other membership duties in any other association within the past three (3) years
- pending ethics complaints (or hearings)
- unsatisfied discipline pending
- pending arbitration requests (or hearings)
- unpaid arbitration awards or unpaid financial obligations to this or any other association or association MLS [NAR Mandated 8/24]

ARTICLE 4.1: APPLICATION

Application for participation shall be made in such manner and form as may be prescribed by the board of directors of the service and made available to any REALTOR® principal of this or any other association requesting it. The application form shall contain a signed statement agreeing to abide by these bylaws and any other applicable rules and regulations of the service as from time to time amended or adopted. [NAR Mandated 2/94]

ARTICLE 4.2: DISCONTINUANCE

Participants of the service may discontinue the service by giving the service five days' written notice and may reapply to the service after one month by making formal application in the manner prescribed for new applicants for participation provided all past dues and fees are fully paid. [NAR Mandated]

ARTICLE 4.3: SUBSCRIBERS

Subscribers (or users) of the MLS include non-principal brokers, sales associates, and licensed and certified appraisers affiliated with participants. 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. [NAR Mandated 4/92]

ARTICLE 5: SERVICE CHARGES

The charges made for participation in the service shall be as determined and amended from time to time by the board of directors of the service and specified in the rules and regulations of the service. [NAR Required]

ARTICLE 6: GOVERNMENT OF THE SERVICE

The government of the service shall be vested in a board of directors composed of the elected officers and directors nominated and elected by the Las Cruces Association of REALTORS, Inc. [NAR Mandated]

Any conflict between the SNMMLS Bylaws and the LCAR Bylaws, the LCAR Bylaws govern.

ARTICLE 6.1: OFFICERS OF THE SERVICE

The officers of the service, who shall also be directors, shall be a president, a vice president, and a treasurer, and shall have such duties as described in this article. [NAR Mandated]

The association executive will act as secretary. The elected officers shall serve a one-year term moving to the next higher position the following year except as otherwise noted in these bylaws. All officers, other than the association executive, must also be directors at the time they are elected. All officers and agents of the corporation, as between themselves and the corporation, shall have the authority and shall perform the duties in the management of the corporation as provided in these Bylaws, or as determined by the resolution of the board of directors not inconsistent with these bylaws.

ARTICLE 6.1.1: VACANCIES OF OFFICERS

- a. If the president is unable to serve or fulfill their term, the vice president elect will become the president.
- b. If the vice president elect is unable to serve or fulfill their term, the treasurer will become the vice president-elect.
- c. If the treasurer is unable to serve or fulfill their term, the AE will notify the SNMMLS president of the vacancy.
- d. The LCAR President will fill the vice president/treasurer vacancy under the provisions of Section 5, Article XI, of the LCAR bylaws

ARTICLE 6.1.2 VACANCIES OF DIRECTORS

Vacancies among the directors shall be appointed by the LCAR president with the approval of the board of directors and only require a simple majority vote. Any such appointments shall be for the remaining term of the vacancy.

ARTICLE 6.2: BOARD OF DIRECTORS

There shall be a total of seven elected directors, including the president, vice president, and treasurer of the service, to be elected from among the Participants of the service, except that not more than four directors may be elected from among Realtors® other than Participants or from Realtor - Associates who are affiliated with Participants and serve with consent of the Participants as representatives of the Participants with whom they are affiliated. In addition to the elected directors, the current president of the LCAR Association of Realtors® or a person appointed by the president. [NAR Mandated]

- 1. Term Limits. At no time can the consecutive service of officers or directors exceed six (6) years. As such no officer or director can be nominated or appointed for a new position that would create a situation in which they would, by virtue of election or appointment, exceed the maximum of six (6) years of consecutive service.
- 2. Restrictions. No one company shall have representation on the governing body, committees, or meeting quorum greater than forty percent (40%) of the total body, rounded up or down using .5 (point five) as the rounding center.

ARTICLE 6.3: NOMINATION AND ELECTION OF DIRECTORS

The officers and directors of the service shall be nominated by a vote of the Participants in the service in accordance with the provisions of Article 7, meetings, of these bylaws and as set forth below. 1. Nominating Committee: The president of the service shall appoint a nominating committee each year, which shall be comprised of 5 Participants of the service. The appointment of the nominating committee shall be made by such a date as to enable the committee to meet and select a proposed slate of officers and directors of the service not more than 60 nor less than 30 days prior to the date of the meeting of the Participants of the service at which nominees shall be selected by vote of the Participants. The proposed slate of officers and directors shall be reported to the president and Secretary of the service.

1. Nominating Committee: The president of the service shall appoint a nominating committee each year, which committee shall be comprised of 5 Participants of the service. The appointment of the nominating committee shall be made by such a date as to enable the committee to meet and select a proposed slate of officers and directors of the service not more than 60 nor less than 30 days prior to the date of the meeting of the Participants of the service at which nominees shall be selected by vote of the Participants. The proposed slate of officers and directors shall be reported to the president and Secretary of the service.

2. Notice of Proposed Nominees: The president shall cause a list of the proposed nominees selected by the nominating committee to be forwarded to the Participants of the service, setting forth the time, place, and other pertinent conditions of the meeting to select the final list of nominees by vote of the Participants of the service. The notice to the Participants of the service concerning the meeting to select nominees for officers and directors shall be mailed on a date at least 10 days prior to the proposed meeting.

3. Rights of Participants to Select Additional Nominees: The names of additional proposed nominees may be added to the list selected by the nominating committee by a petition submitted to the Secretary of the service by 20% of the Participants of the service, with said petition received not less than 7 days prior to the date of meeting of the Participants to select nominees for officers and directors. The names contained in such petition, if duly received and certified, shall be presented in writing to the Participants at the meeting to select nominees as additional nominees for consideration for such office as specified in the petition. In addition, nominations may be made from the floor at the duly noticed meeting of the Participants to select nominees for officers and directors and, if seconded, shall be added to the list of proposed nominees.

4. Voting by Written Secret Ballot: Voting for selection of nominees, if other than on a motion to cast a unanimous vote for the original proposed slate shall be by secret ballot, and said ballot shall contain blank spaces for writing in additional names proposed by petition or from the floor at the meeting to select nominees.

5. Vote to Select Nominees: Voting shall be in accordance with provisions of Article 7.1 of these bylaws.

6. Nominees Submitted to Shareholder for Election: When nominees for officers and directors of the service for the forthcoming fiscal year have been selected by vote of the Participants of the service, such nominees shall be submitted to the board of directors of the Las Cruces Association of Realtors® (shareholder) for election. Upon election by the board of directors of the Las Cruces Association of Realtors® (shareholder), the individuals so elected shall be considered officers-elect and directors-elect and shall assume their respective offices on (date office is effective). The term of office for officers and directors of the service shall be on a calendar year basis. In the event one (1) or more nominee(s) is/are not elected by the board of directors of the Las Cruces Association of Realtors® (shareholder), and upon notice of such failure of election, the president of the service shall select a proposed Participant or Participants, as required, subject to confirmation by the board of directors, for submission as nominee(s) to the board of directors of the Las Cruces Association of Realtors® (shareholder) to be considered for election to fill the vacancy or vacancies existing.

In the event that nominees are not duly and timely provided by the service to the board of directors of the Las Cruces Association of Realtors®, as provided in these bylaws, then the board of directors of the Las Cruces Association of Realtors® shall exercise rights as sole and exclusive shareholder to elect a Participant or Participants of the service to fill any existing vacancy or vacancies as officers or directors of the service. [NAR Mandated]

ARTICLE 6.4: TERMS OF OFFICE

The officers shall serve for a one-year term. The elected directors shall serve for staggered three-year terms with one-third of the terms expiring each year. The elected officers and directors shall take office in accordance with the elective year, stated in Article 9. Officers and Directors shall be nominated, elected, qualified, and installed annually. No Officer or Directors shall be nominated and elected to the same office for more than two consecutive terms. [NAR Mandated]

Section 1. Officers. The elected officers of the service shall be: A President, a Vice President Elect, and a Treasurer. The Secretary will be the AE. The elected officers shall serve a one-year term moving to the next higher position the following year except as otherwise noted in these bylaws.

Section 2. Directors. The elected directors of the service shall consist of the LCAR Elected Officers and elected directors elected to serve for terms of three years and expire on December 31st of the term ending year.

Section 3. All restrictions and limits imposed by Section 2, Article XI, of the Las Cruces Association of REALTORS® Bylaws apply to Officers and Directors of the service.

ARTICLE 6.5: DUTIES OF OFFICERS AND DIRECTORS

The president shall preside at its meetings and those of the board of directors and shall perform all the duties of the president subject to declared policies and, as required, subject to confirmation of the board of directors.

The president elect shall, in the absence of the president, perform all of the duties of the president

The secretary shall be the custodian of the funds of the service and shall keep an accurate record of all receipts and disbursements. The secretary shall provide to all members of the board of directors no less than a quarterly statement of all accounts and financial affairs for the service and shall have charge of the corporate seal and affix the name to all documents properly requiring such seal.

The board of directors of the service shall be the governing body of the service and shall have control of all the affairs of the service and shall authorize all expenditures of funds. The board of directors shall, prior to the end of each fiscal year, prepare a budget reflecting projected cost and expenses of the service for the next fiscal year, indicating projected income from all sources. The budget shall be submitted to the participants of the service for approval on a date not less than 30 days prior to the first day of the next fiscal year. The board of directors shall not incur an obligation in excess of 20% over the total budget without the authorization by vote of a two-thirds majority of REALTOR® participants of the service present and voting unless such excess is the result of an increase in the volume of listings processed by the service over that projected in preparing the annual budget. The board of directors shall employ such executive, legal and office personnel it deems necessary to care for and maintain the properties of the services and otherwise conduct the administrative business of the service. The board of directors shall have the right to make an audit of all the books and accounts at any time without notice. The board of directors shall have the power from time-to-time to adopt such rules and regulations that they may deem appropriate subject to final approval of the board of directors of the Las Cruces Association of REALTORS® (shareholder). Except as otherwise provided in these bylaws and rules and regulations, the action of the board of directors shall be final. [NAR Mandated]

There shall be an association executive, employed by the board of directors, who shall be the administrative officer of the corporation. The association executive shall be the sole authority to hire, supervise, evaluate and terminate other staff, if any, and shall perform such other duties as prescribed by the board of directors.

ARTICLE 6.6: INDEMNIFICATION OF OFFICERS AND DIRECTORS

The service will indemnify any director, officer, association executive or former director, officer or association executive of the service against expenses, cost and attorney's fees actually and reasonable incurred in connection with the defense of any action, suit or proceeding, civil or criminal, in which the director, officer or association executive is made a party by reason of being or having been a director, officer or association executive. The indemnification may include any amounts paid to satisfy a judgment or to compromise or settle a claim. The director, officer or association executive shall not be indemnified if the director, officer or association executive has breached or failed to perform the duties of office and the breach or failure to perform constitutes willful misconduct or recklessness. Advance indemnification may be allowed of a director, officer or association executive for expenses to be incurred in connection with the defense of the action, suit or proceeding. Provided that the director, officer or association executive must reimburse the service if it is subsequently determined that the director, officer or association executive was not entitled to indemnification by reason of negligence or misconduct in the performance of any duties as a director, officer or association executive. The service may make any other indemnification as authorized by the Articles of Incorporation, Bylaws or by a resolution adopted after notice by the shareholder of the service.

ARTICLE 7: ANNUAL MEETING

The annual meeting of Participants of the service shall be held during the month of September at the time and place specified by the board of directors. [NAR Mandated]

ARTICLE 7.1: SPECIAL MEETINGS OF THE SERVICE

Special meetings of participants of the service may be called from time to time by the president, the board of directors, or by twenty-five (20%) of the participants of the service. Written notice stating the day, place, and hour of the meeting, the purpose or purposes for which the meeting is called, shall be delivered to all REALTORS® who are participants in the service not less than seven (7) days prior to said meeting. [NAR Mandated]

ARTICLE 7.2: QUORUM AND VOTING AT MEETINGS OF THE SERVICE

For the transaction of business, twenty percent (20%) of the participants count as of May 1st annually shall be considered a quorum. A majority vote fifty-one percent (51%) by such participants present and voting at a meeting attended by a quorum shall be required for passage of any motion. [NAR Mandated]

ARTICLE 7.3: MEETINGS OF THE BOARD OF DIRECTORS

The board of directors may meet at any time it deems advisable on the call of the president or fifty-one percent (51%) of the members of the board of directors. Fifty-one percent (51%) of the directors shall constitute a quorum. A majority vote by the directors presents and voting at a meeting attended by a quorum shall be required for passage of any motion. Written notice stating the day, place, and hour of the meeting, the purpose or purposes for which the meeting is called, shall be delivered to all REALTORS® who are participants in the service not less than seven (7) days prior to said meeting. [NAR Mandated]

ARTICLE 7.4: PRESIDING OFFICER

At all meetings of the participants of the service, or of the board of directors, the president or, in the absence of the president, the vice president elect shall serve as presiding officer. In the absence of the president and first vice president/ president elect, the president shall name a temporary chairperson or, upon the president's failure to do so, the board of directors of the service shall appoint a temporary chairperson. [NAR Mandated]

ARTICLE 7.5: ELECTRONIC TRANSACTION OF BUSINESS

To the fullest extent permitted by law, the board of directors and membership may conduct business by electronic means in accordance with procedures established by the board of directors.

Meetings by Electronic means as used in these bylaws is participation utilizing conference telephone or other communications equipment (video conference) whereby all persons participating in the meeting can hear each other. Further, participation in a meeting by such means shall constitute presence in person at the meeting.

Electronic notice as used in the bylaws shall be deemed a written notice when sent by email message to the electronic mail addressed specified by the receiving member and shall be deemed received at the time the electronic notice is sent.

Email message as used in these bylaws means a message sent to a unique electronic mail address submitted by the recipient.

Electronic delivery means the delivery of documents by facsimile, or electronic mail, the internet or other electronic means.

ARTICLE 7.6: ACTIONS WITHOUT MEETING

Unless specifically prohibited by the articles of incorporation, any action required or permitted to be taken at a meeting of the board of directors may be taken without a meeting, with consent in writing, setting forth the action so taken, shall be signed by all of the officers and directors. The consent shall be evidenced by one or more written approvals, each of which sets forth the action taken and bears the signature of one or more officer or director(s). All the approvals evidencing the consent shall be delivered to the association executive to be filed in the corporate records. The action taken shall be effective when all the officers and directors have approved the consent unless the consent specifies a different effective date.

ARTICLE 7.7: WRITTEN CONSENT

Any action required by the New Mexico Business Corporation Act to be taken at a meeting of the directors of the corporation, or any action which may be taken at a meeting of the directors or of a committee, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, or all of the members of the committee, as the case may be. The consent shall have the same effect as a unanimous vote.

ARTICLE 7.8: NOTICE OF MEETING

Written or electronic delivery shall be given to every member entitled to participate in the meeting not less than seven (7) days prior to that meeting. All notices of any such meetings shall be accompanied with a statement of the meeting purpose.

ARTICLE 8: COMMITTEES

The president, with the approval of the board of directors, shall create such standing or ad hoc committees as the president deems desirable and shall appoint their members. Each committee shall consist of not less than three (3) participants in the service but may also include REALTOR® or REALTOR-ASSOCIATE®s, employed by or affiliated as independent contractors with a REALTOR® participant serving as representatives of said REALTOR® participants and with their consent, and who may serve either as a chairperson or member of a committee. [NAR Mandated]

ARTICLE 9: FISCAL and ELECTIVE YEAR

Section 1. The fiscal year of the service shall commence on January 1 and shall end on December 31

[NAR Mandated]

Section 2. The elective year of the service shall be January 1 to December 31

ARTICLE 10: AMENDMENTS TO BYLAWS

Amendments to these bylaws shall be by the participants of the service and be determined at an annual meeting or special meetings of the service in accordance with the provisions of Article 7, concerning meetings of the service. Amendments to the bylaws of the service approved by the participants shall further be subject to approval of the board of directors of the Las Cruces Association of REALTORS® Inc. (shareholder). When amendments to the bylaws of the service have been approved by the board of directors of the Las Cruces Association of REALTORS® (shareholder), said amendments shall be effective immediately or as stated in the amending resolution. If the proposed amendments to the bylaws of the multiple listing service fail approval of the board of directors of the shareholder, the board of directors of the multiple listing service shall be informed and advised that the proposed amendment or amendments to the bylaws be further considered and resubmitted to the shareholder as approved by the participants of the multiple listing service. [NAR Mandated]

ARTICLE 10.1: AMENDMENTS TO RULES AND REGULATIONS

Amendments to the rules and regulations of the service shall be by consideration and approval of the board of directors of the multiple listing service, in accordance with the provisions of Article 7.3, concerning meetings of the board of directors, subject to final approval by the board of directors of the Las Cruces Association of REALTORS® Inc. (shareholder).

When approved by the board of directors of the Las Cruces Association of REALTORS® Inc. (shareholder) as described, the amendments to the rules and regulations of the multiple listing service shall be effective immediately or as stated in the amending resolution.

If the proposed amendments of the multiple listing service rules and regulations fail approval by the board of directors of the shareholder, the board of directors of the multiple listing service shall be informed, and advised that the proposed amendment or amendments must be further considered and resubmitted as approved by the board of directors of the multiple listing service to the board of directors of Las Cruces Association of REALTORS® Inc. (shareholder). [NAR Mandated]

ARTICLE 11: DISSOLUTION

In the event this service shall at any time terminate its activities, the board of directors of the service shall consider and adopt a plan of liquidation and dissolution with the approval of the participants thereof and of the board of directors of the Las Cruces Association of REALTORS® Inc. Said plan shall provide for the collection of all assets, the payment of all liabilities, and that the remaining portions thereof be assigned to the parent corporation, namely, Las Cruces Association of REALTORS® Inc. [NAR Mandated]