

# TRIAD MULTIPLE LISTING SERVICE, INC. RULES AND REGULATIONS

Adopted October 1994

Amended and approved, NAR: November 1995  
March 1996  
June 1997  
July 1998  
June 1999  
June 2000  
February 2002  
September 2002  
May 2004  
October 2006

November 2007  
March 2010

## LISTING PROCEDURES

**Section 1 LISTING PROCEDURES:** Listings of real property of the mandatory types listed below, which are listed subject to a real estate broker's license and are located within the territorial jurisdiction of the Multiple Listing Services, and are taken by Participants\* must be submitted to the Triad Multiple Listing Service, Inc., hereinafter called the "Service" or "MLS," by entry into the on-line system and noticed to all Participants within five (5) business days if the property tax information is available in the on-line system and within ten (10) business days if the property tax information is not available in the on-line system after all necessary signatures of seller(s) have been obtained. The listing agreement must include the seller's authorization to submit the agreement to the Service. The Service shall accept exclusive right to sell listing contracts, exclusive right to sell with prospect reservations (exclusive right to sell listings with named prospects exempted), exclusive agency listing contracts, and may accept other forms of agreement which make it possible for the listing broker to offer cooperation and compensation to the other participants of the Service acting as subagents, buyer agents, or both. Exclusive agency listings and exclusive right to sell listings (with or without reservations) must be noticed to all Participants in the on-line system by the following method in the Listing Type field by entering: ERS=exclusive right to sell, ERR=exclusive right to sell with reservations, EA=exclusive agency, AP=auCTION property, LS=limited service (as defined in Section 1.2.1). The Service does not accept net listings or open listings. Participants shall not establish, directly or indirectly, any contractual relationship between the Service and the client (buyer or seller). If the listing broker also intends to cooperate and/or compensate subagents, buyer agents, or both, the listing agreement shall contain the seller's written authorization.

<sup>1</sup> Shareholders in the Triad Multiple Listing Service, Inc.:  
Greensboro Regional REALTORS® Association, Inc.  
High Point Multiple Listing Service, Inc.  
Winston-Salem Regional Association of REALTORS®, Inc.

\* Participants are defined in Article IV of the Bylaws of the Triad Multiple Listing Service, Incorporated.

**MANDATORY PROPERTY TYPES:** The following property types must be submitted to the Service:

1. Residential Single family homes
2. Residential vacant lots and acreage tracts.
3. Two-family, three-family, and four-family residential buildings

**OPTIONAL PROPERTY TYPES:**

- |                                    |                            |
|------------------------------------|----------------------------|
| 1. Subdivided Non-Residential Lots | 5. Manufactured Homes*     |
| 2. Land and Farms                  | 6. Manufactured Home Parks |
| 3. Business Opportunity            | 7. Commercial Income       |
| 4. Motel-Hotel                     | 8. Industrial              |
|                                    | 9. Residential Rental      |

**Section 1.1 LISTINGS SUBJECT TO RULES AND REGULATIONS OF THE SERVICE:**

Any listing contract which allows the property to be entered into the Service is subject to the Rules and Regulations of the Service upon signature of the seller(s).

**Section 1.2 DETAIL ON PROPERTIES ENTERED INTO THE SERVICE:**

A Property Data Form, when entered into the Service by the listing broker, shall be complete in every detail which is ascertainable as specified on the Property Data Form. The Property Data Form is defined as any format developed for inputting data into the computerized MLS. (For additional details reference Exhibit 1.)

Photos or renderings are required for all residential listings. Photos or plats are required for all land listings. Photos of new construction shall be submitted as soon as the exterior of the building is complete. No additions or alterations may be made to the photos, ie: company logos, banners, advertising verbiage, etc. Media links are limited to property photos, property images or property tours.

The remarks and/or directions sections of the Property Data Form shall not contain any contact information or hyperlinks. The agent only section is for any contact information and additional agent remarks. The directions section is a required field and must only contain directions to the property.

Actual square footage should not be disclosed on any active type listing in the online system, IDX site or any other third party site. The actual square footage will only be displayed on closed listings.

If the county tax office has not yet assigned a tax ID number, the Tax ID field should be left blank, with a zero entered in the Tax Value field, and "Tax Value Not Available" entered in the "Remarks" field.

---

\* Manufactured homes must have the wheels removed and the chassis placed on a permanent foundation. Further, each agent is urged to verify facts concerning the Certificate of Origin and/or Certificate of Title. Reference: [NCREC Bulletin article found on www.ncrec.state.nc.us](http://www.ncrec.state.nc.us), (copy attached as exhibit #4).

The Service adopts and hereby incorporates by reference the recommendations of the North Carolina Real Estate Commission in regards to the measuring of all properties as from time to time amended. The current policy of the N.C. Real Estate Commission is attached as exhibit #2.

**Section 1.2.1—Limited Service Listings:** Listing agreements under which the listing broker will not provide one, or more, of the following services:

- (a) arrange appointments for cooperating brokers to show listed property to potential purchasers but instead gives cooperating brokers authority to make such appointments directly with the seller(s);
  - (b) accept and present to the seller(s) offers to purchase procured by cooperating brokers but instead gives cooperating brokers authority to present offers to purchase directly to the seller(s);
  - (c) advise the seller(s) as to the merits of offers to purchase;
  - (d) assist the seller(s) in developing, communicating, or presenting counter-offers; or
  - (e) participate on the seller(s) behalf in negotiations leading to the sale of the listed property
- will be identified with a list type of “LS” in MLS compilations so potential cooperating brokers will be aware of the extent of the services the listing broker will provide to the seller(s), and any potential for cooperating brokers being asked to provide some or all of these services to listing brokers’ clients, prior to initiating efforts to show or sell the property.

**Section 1.2.2 Use of content from listing records relating to other brokers’ contractual agreements:** If a listing broker takes a contractual agreement on a property for which another broker previously submitted photos to a listing record in the service, the new listing broker may not copy or otherwise use the previously submitted photographs to market the property under the new contractual agreement without the permission of the listing broker who originally submitted the photographs. The foregoing notwithstanding, participants are entitled to reproduce the photographs appearing in listings of other brokers under the terms of Section 12.2.

**Section 1.3 EXEMPTED LISTINGS:** If the seller refuses to permit the listing to be disseminated by the Service, the Participant may then take the listing ("office exclusive"). Upon demand, the Board of Directors of each Shareholder or of those Associations of REALTORS<sup>®</sup> who subscribe to the Service shall have the right to review the original listing contract and, if applicable, any other written authorization signed by the seller that the property not be entered into the Service.

**Section 1.4 CHANGE OF LISTING AGREEMENT TERMS:** Any change in listed price or other change in the original listing agreement shall be made only when authorized in writing by the seller and shall be entered into the Service within one (1) business day after the authorized change is received by the listing broker.

**Section 1.5 WITHDRAWAL OF LISTING PRIOR TO EXPIRATION:** Listings of property may be withdrawn from the Service by the listing broker before the expiration date of the listing agreement, provided the seller authorizes the withdrawal. Sellers do not have the unilateral right to require the Service to withdraw a listing without the listing broker’s concurrence. However, when a seller(s) can document that his or her exclusive relationship with the listing broker has been terminated, the Service may remove the listing at the request of the seller.

**Section 1.6 CONTINGENCIES APPLICABLE TO LISTINGS:** Any contingency or conditions of any term in a listing shall be specified and noticed to the Participants by entry into the on-line system within one (1) business day.

**Section 1.7 LISTING PRICE SPECIFIED:** The full gross listing price must be stated on the Property Data Form. The listing price on auction properties shall be entered in as \$1 or fair market value and listed as Auction Property in the Listing Type field.

**Section 1.8 LISTING MULTIPLE UNIT PROPERTIES:** All properties which are to be sold or which may be sold separately must be indicated individually on the Property Data Form. When part of a listed property has been sold, proper notification must be given to the Service by entry into the on-line system.

**Section 1.9 NO CONTROL OF COMMISSION RATES OR FEES CHARGED BY PARTICIPANTS:** The Service shall not fix, control, recommend, suggest, or maintain commission rates or fees for services to be rendered by Participants. Further, the Service shall not fix, control, recommend, suggest, or maintain the division of commissions or fees between cooperating Participants or between Participants and non-participants.

**Section 1.10 EXPIRATION, EXTENSION, AND RENEWAL OF LISTINGS:** Listings filed with the Multiple Listing Service will automatically be removed from the compilation of current listings on the expiration date specified in the agreement, unless prior to that date the MLS receives notice that the listing has been extended or renewed.

If notice of renewal or extension is received the listing has been removed from the compilation of current listings, the extension or renewal will be published in the same manner as a new listing. Extension and renewals of listings must be signed by the seller(s) and filed with the Service.

**Section 1.11 TERMINATION DATE ON LISTINGS:** All properties entered into the Service must bear a definite and final termination date as negotiated between the listing broker and the seller.

**Section 1.12 – JURISDICTION:** Only listings of the designated types of property located within the jurisdiction of the MLS are required to be submitted to the Service. Listings of property located outside of the MLS's jurisdiction will be accepted if submitted voluntarily by a Participant, but cannot be required by the Service. Jurisdiction is hereby designated as the state of North Carolina. Notwithstanding the foregoing, Outlying Members (as defined in Section 19.1) shall only be required to submit listings of property within the following counties: Guilford, Forsyth, Davidson, Randolph, Davie, Surry and Stokes.

**Section 1.13 LISTINGS OF SUSPENDED PARTICIPANTS:** When a Participant of the Service is suspended from the MLS for failing to abide by a membership duty (i.e., violation of the Code of Ethics, Association Bylaws, MLS Bylaws, MLS Rules and Regulations, or other membership obligation except failure to pay appropriate dues, fees, or charges), all listings currently entered into the MLS by the suspended Participant shall, at the Participant's option, be retained in the Service until sold, withdrawn, or expired, and shall not be renewed or extended by the MLS beyond the termination date of the listing agreement in effect when the suspension became effective. If a Participant has been suspended from the Association (except where participation without Board membership is permitted by law) or MLS (or both) for failure to pay appropriate dues, fees, or charges, the MLS is not obligated to provide MLS services, including continued inclusion of the suspended Participant's listings in the MLS compilation of current listing information. Prior to any removal of suspended Participant's listings from the MLS, the suspended Participant should be advised in writing of the intended removal so that the suspended

Participant may advise his or her clients.

**Section 1.14 LISTINGS OF EXPELLED PARTICIPANTS:** When a Participant of the Service is expelled from the MLS for failing to abide by a membership duty (i.e., violation of the Code of Ethics, Association Bylaws, MLS Bylaws, MLS Rules and Regulations, or other membership obligations except failure to pay appropriate dues, fees, or charges), all listings currently entered into the MLS shall, at the expelled Participant's option, be retained in the Service until sold, withdrawn, or expired, and shall not be renewed or extended by the MLS beyond the termination date of the listing agreement in effect when the expulsion became effective. If a Participant has been expelled from the Association (except where MLS participation without Board membership is permitted by law) or MLS (or both) for failure to pay appropriate dues, fees, or charges, the MLS is not obligated to provide MLS services, including continued inclusion of the expelled Participant's listings in the MLS compilation of current listing information. Prior to any removal of an expelled Participant's listings from the MLS, the expelled Participant should be advised in writing of the intended removal so that the expelled Participant may advise his or her clients.

**Section 1.15 LISTINGS OF RESIGNED PARTICIPANTS:** When a Participant resigns from the MLS, the MLS is not obligated to provide services, including continued inclusion of the resigned Participant's listings in the MLS compilation of current listing information. Prior to any removal of a resigned Participant's listings from the MLS, the resigned Participant should be advised in writing of the intended removal so that the resigned Participant may advise his or her clients.

**Section 1.16 Co-Listing Procedures:** Co-listed properties shall be reported to the service by entry of a "list agent" and a "co-list agent" in the online system. At the time of a co-list, Participants will decide in writing which Participant will be the primary list agent and that person shall receive the production credit for that listing at closing.

Co-listings will not be accepted into Triad MLS when one of the co-listing agents or their licensed broker/appraiser principal is not a participant (principal) or "subscriber/user" of the Triad MLS. Violation of this rule will result in a six month termination from Triad MLS.

**Section 1.17 Data Entered for Comp Purposes Only:** In order for sold data to be entered into the system for the sole purpose of comparable information a Triad MLS subscriber/participant must represent at least one side of the transaction.

## SELLING PROCEDURES

**Section 2 SHOWINGS AND NEGOTIATIONS:** Appointments for showings are required. All appointments for showings and all negotiations with the seller for the purchase of listed property entered into the Service shall be conducted through the listing broker except under the following circumstances:

- (A) **SHOWINGS:** The listing broker gives cooperating brokers or his or her licensee specific authority to show the property subject to any showing instructions contained in the on-

line system. If after reasonable effort, the cooperating broker cannot contact the listing broker or his or her licensee(s), then cooperating broker may contact seller directly, in which case the cooperating broker shall, at the earliest opportunity, report to the listing broker any showing of property. The listing broker, at his option, may preclude such direct showing by subagents, buyer's agents or both by noticing such intent in his remarks on the property data form in the on-line system. If a key is obtained from the broker, the cooperating broker or his or her licensee shall return the key immediately. If access is gained to a vacant property via a lockbox, the licensee shall notify the listing broker at the earliest opportunity.

- (B) **NEGOTIATIONS:** If after reasonable effort, the cooperating broker or his or her licensee cannot contact the listing broker or his or her representative or one of the licensee(s) in that firm, then the cooperating broker or his or her licensee shall contact the Shareholder's corporate office or the corporate office of those Associations of REALTORS® who subscribe to the Service to which the listing broker belongs for assistance. The listing broker, at his or her option, may preclude such direct negotiations by noticing such intent in the remarks on the Property Data Form in the on-line system.

**Section 2.1 PRESENTATION OF OFFERS:** The listing broker must make arrangements to present the offer as soon as possible or give the cooperating broker or his or her licensee(s) a satisfactory reason for not doing so.

**Section 2.2 SUBMISSION OF WRITTEN OFFERS:** The listing broker shall submit to the seller all written offers until closing unless precluded by law, government rule, regulation, or agreed otherwise in writing between the seller and the listing broker. Unless the subsequent offer is contingent upon the termination of an existing contract, the listing broker shall recommend that the seller(s) obtain the advice of legal counsel prior to acceptance of the subsequent offer. Participants representing buyers or tenants shall submit to the buyer or tenant all offers and counter-offers until acceptance, and shall recommend that buyers and tenants obtain legal advice where there is a question about whether a pre-existing contract has been terminated.

**Section 2.3 RIGHT OF COOPERATING BROKER IN PRESENTATION OF OFFER:** The cooperating broker or his or her licensee(s) has the right to participate in the presentation to the seller or lessor of any offer he secures to purchase or lease. The cooperating broker or his or her licensee(s) does not have the right to be present at any subsequent discussion or evaluation of that offer by the seller(s) or lessor and the listing broker. However, if the seller or lessor gives written instructions to the listing broker that the cooperating broker not be present when an offer the cooperating broker secured is presented, the cooperating broker has the right to a copy of the seller's or lessor's written instructions. None of the foregoing diminishes the listing broker's right to control the establishment of appointments for such presentations.

**Section 2.4 RIGHT OF LISTING BROKER IN PRESENTATION OF COUNTER-OFFERS:** The listing broker or his or her licensee has the right to participate in the presentation of any counter-offer made by the seller or lessor. He does not have the right to be present at any discussion or evaluation of a counter-offer by the purchaser or lessee (except where the cooperating broker is a subagent). However, if the purchaser or lessee gives written instructions to the cooperating broker that the listing broker not be present when a counter-offer is presented, the listing broker has the right to a copy of the purchaser's or lessee's written instructions.

**Section 2.5 REPORTING SALES TO THE SERVICE:** Final closing of sales shall be reported to the service by the listing broker within three (3) business days after they have occurred. If negotiations were carried on under Section 2(A) or (B) hereof, the cooperating broker shall report accepted offers to the listing broker within one (1) business day after occurrence and the listing broker shall report them to the service within two (2) business days after receiving notice from the cooperating broker.

In the event Participants have co-listed a property, the primary listing agent (as defined in Section 1.16) shall report the sale to the service.

For new construction listings, a valid street address must be reported to the Service by entry into the on-line system as soon as possible and no later than the close of the sale.

**NOTE:** The listing agreement of a property entered into the Service must include a provision expressly granting the listing broker authority to advertise; to enter the listing with the Service; to provide timely notice of status changes of the listing to the Service; and to provide sales information including selling price to the Service upon transfer of title. Since the Service desires to publish the contract date prior to transfer of title, the listing agreement should also include a provision expressly granting the listing broker the right to authorize dissemination of this information by the Service to its Participants.

**Section 2.6 REPORTING CONTINGENCIES/PENDINGS/TEMPORARILY OFF MARKET:**

- (A) The listing broker shall report to the Service within one (1) business day any change of status; (i.e., Pending, Pending AB [Accepting Backup], Temporarily Off Market).
- (B) The listing broker shall report a contingent status (when a contingent sale addendum is part of the offer) in the online system with a sub status of “contingent” and a status of “active”.
- (C) The listing broker shall report to the Service within one (1) business day that a contingency previously entered into the Service has been fulfilled or renewed or the agreement canceled.
- (D) Any listing temporarily removed from market shall be notified to the service as Temporarily Off Market (TOM). Days on market will continue to accrue until the listing expires or closes.

**Section 2.7 ADVERTISING OF PROPERTY ENTERED INTO THE SERVICE:** A listing shall not be advertised by any Participants, other than the listing broker, without the prior consent of the listing broker with the exception of Internet Data Exchange (IDX), in which case, the participant must follow the IDX Rules and Regulations (see Section 18)

**Section 2.8 REPORTING CANCELLATION OF PENDING SALE:** The listing broker shall report immediately to the Service the cancellation of any pending sale, and the property shall be reinstated immediately.

**REFUSAL TO SELL**

**Section 3 REFUSAL TO SELL:** If the seller of any listed property entered into the Service refuses to accept a written offer satisfying the terms and conditions stated in the listing contract, such fact shall be transmitted immediately to the Service and to all Participants.

## **PROHIBITIONS**

**Section 4 INFORMATION FOR PARTICIPANTS ONLY:** Any property entered into the Service shall not be made available to any broker or firm not a Participant of the Service without the prior consent of the listing broker.

**Section 4.1 "FOR SALE" SIGNS:** Only the "For Sale" signs of the listing broker(s) may be placed on a property.

**Section 4.2 "SOLD SIGNS":** Prior to closing, only the "Sold" sign of the listing broker shall be placed on a property, unless the listing broker authorizes the cooperating (selling) broker to post such a sign.

**Section 4.3 SOLICITATION OF PROPERTY ENTERED INTO THE SERVICE:** Participants shall not solicit a listing on a property entered into the Service unless such solicitation is consistent with **ARTICLE 16** of the REALTORS<sup>®</sup> **CODE OF ETHICS**, its **STANDARDS OF PRACTICE**, and its **CASE INTERPRETATIONS**.

**NOTE 1:** This **Section** is to be construed in a manner consistent with the **CODE OF ETHICS STANDARD OF PRACTICE 16-4**. This **Section** is intended to encourage sellers to permit their properties to be entered into the Service by protecting them from being solicited, prior to expiration of the listing, by brokers and salespersons seeking the listing upon its expiration.

Without such protection, a seller could receive hundreds of calls, communications and visits from brokers and salespersons who have been made aware by a filing with the Service of the date that the listing will expire and desire to substitute themselves for the present broker.

This **Section** is also intended to encourage brokers to participate in the Service by assuring them that other Participants will not attempt to persuade the seller to breach the listing agreement or to interfere with their attempts to market the property. Absent the protections afforded by this **Section**, listing brokers would be most reluctant to generally disclose the identity of the seller or the availability of the property to other brokers.

This **Section** does not preclude solicitation of listings under the circumstances otherwise recognized by the **STANDARDS OF PRACTICE** related to **ARTICLE 16** of the **CODE OF ETHICS**.

**Section 4.4 Use of the Terms MLS and Multiple Listing Service:** No MLS participant, subscriber or licensee affiliated with any participant shall, through the name of their firm, their URLs, their e-mail addresses, their website addresses, or in any other way represent, suggest, or imply that the individual or firm is an MLS, or that they operate an MLS. Participants, subscribers and licensees affiliated with participants shall not represent, suggest or imply that consumers or others have direct access to MLS databases, or that consumers or others are able to search MLS databases available only to participants and subscribers. This does not prohibit participants and subscribers from representing that any information they are authorized under MLS rules to provide to clients or customers is available on their websites or otherwise.

## **DIVISION OF COMMISSIONS**

**Section 5 COOPERATIVE COMPENSATION SPECIFIED ON EACH PROPERTY:** The

listing broker shall specify, on each property entered into the Service, the compensation offered to other Participants for their services in the sale of such property. Such offers are unconditional except that entitlement to compensation is determined by the cooperating broker's performance as the procuring cause of sale (or lease) or as otherwise provided for in this rule. The listing broker's obligation to compensate any cooperating broker as the procuring cause of sale (or lease) may be excused if it is determined through arbitration that, through no fault of the listing broker and in the exercise of good faith and reasonable care, it was impossible or financially unfeasible for the listing broker to collect a commission pursuant to the listing agreement. In such instances, entitlement to cooperative compensation offered through MLS would be a question to be determined by an arbitration hearing panel based on all relevant facts and circumstances including, but not limited to, why it was impossible or financially unfeasible for the listing broker to collect some or all of the commission established in the listing agreement; at what point in the transaction did the listing broker know (or should have known) that some or all of the commission established in the listing agreement might not be paid; and how promptly had the listing broker communicated to cooperating brokers that the commission established in the listing agreement might not be paid.

**NOTE 1:** In entering a property with the Service, the Participant is making blanket unilateral offers of compensation to the other Participants, and must, therefore, specify on each property entered into the Service, the compensation being offered to the other Participants. Specifying the compensation on each property is necessary because the cooperating broker has the right to know what his or her compensation shall be prior to his or her endeavor to sell.\*

The listing broker retains the right to determine the amount of compensation offered to other Participants (acting as subagents, buyer agents, or in any other agency or non-agency capacities defined by law) which may be the same or different.

This shall not preclude the listing broker from offering any Participant compensation other than the compensation indicated on any property published by the Service provided the listing broker informs the other broker in writing in advance of their producing an offer to purchase and provided that the modification in the specified compensation is not the result of any agreement among all or any other Participant(s) in the Service. Any superseding offer of compensation must be expressed as either a percentage of the gross sales price or as a flat dollar amount.

The Service shall not have a rule requiring the listing broker to disclose the amount of the total negotiated commission in his or her listing contract, and the Service shall not publish the total negotiated commission on a property which has been entered into the Service by Participants. The Service shall not disclose in any way the total commission negotiated between the seller and the listing broker.

\*The compensation specified on properties entered into the Service shall appear in one of two forms. The essential and appropriate requirement by the Service is that information to be published shall clearly inform the Participants as to the compensation they will receive in cooperative transactions unless advised otherwise by the listing broker in writing in advance of their producing an offer to purchase. The compensation specified on listings published by the Service may be shown in one of the following forms:

1. By showing a percentage of the gross selling price.
2. By showing a definite dollar amount.

**NOTE 2:** The listing broker may, from time to time, adjust the compensation offered to other Participants for their services with respect to any property by advance published notice to the Service so that all Participants will be advised.

**NOTE 3:** The Service shall make no rule on the division of commissions between Participants and non-participants. This remains solely the responsibility of the listing broker.

**NOTE 4:** The Service, as its discretion, may adopt rules and procedures enabling Participants to communicate to potential cooperating brokers that gross commissions established in listing contracts are subject to court approval; and that compensation payable to cooperating brokers may be reduced if the gross commission established in the listing contract is reduced by a court. In such instances, the fact that the gross commission is subject to court approval and either the potential reduction in compensation payable to cooperating brokers or the method by which the potential reduction in compensation will be calculated must be clearly communicated to potential cooperating brokers prior to the time they produce an offer that ultimately results in a successful transaction.

**NOTE 5:** Nothing in these MLS rules precludes a listing participant and a cooperating participant, as a matter of mutual agreement, from modifying the cooperative compensation to be paid in the event of a successful transaction.

**NOTE 6:** Multiple Listing Services must give participants the ability to disclose to other participants any potential for a short sale. As used in these rules, short sales are defined as a transaction where title transfers; where the sale price is insufficient to pay the total of all liens and costs of sale; and where the seller does not bring sufficient liquid assets to the closing to cure all deficiencies. Multiple Listing Services may, as a matter of local discretion, require participants to disclose potential short sales when participants know a transaction is a potential short sale. In any instance where a participant discloses a potential short sale, they must also be permitted to communicate to other participants how any reduction in the gross commission established in the listing contract required by the lender as a condition of approving the sale will be apportioned between listing and cooperating participants. All confidential disclosures and confidential information related to short sales must be communicated through dedicated fields or confidential "remarks" available only to participants and subscribers.

**Section 5.0.1 Short Sales:** Participants must disclose potential short sales (defined as a transaction where title transfers, where the sale price is insufficient to pay the total of all liens and costs of sale and where the seller does not bring sufficient liquid assets to the closing to cure all deficiencies) when reasonably known to the listing participants. When disclosed, participants may, at their discretion, advise other participants whether and how any reduction in the gross commission established in the listing contract, required by the lender as a condition of approving the sale, will be apportioned between listing and cooperating participants.

**Section 5.1 PARTICIPANT AS PRINCIPAL:** If a Participant or any licensee (or licensed and/or certified appraiser) affiliated with a Participant has any interest in any property entered into the Service, that person shall disclose that interest when the property is entered into the Service and such information shall be disseminated to all Participants.

**Section 5.2 PARTICIPANT AS PURCHASER:** If a Participant or any licensee (or licensed and/or certified appraiser) affiliated with a Participant wishes to acquire an interest in property listed with another Participant, such contemplated interest shall be disclosed in writing to the listing broker prior to the time an offer to purchase is submitted to the listing broker.

**Section 5.3 DUAL OR VARIABLE RATE COMMISSION ARRANGEMENTS:** The existence of a dual or variable rate commission arrangement (i.e., one in which the seller/landlord agrees to pay a specified commission if the property is sold/leased by the listing broker without assistance and a different commission if the sales/lease results through the efforts of a cooperating broker; or one in which the seller/landlord agrees to pay a specified commission if the property is sold/leased by the listing broker either with or without the assistance of a cooperating broker and a different commission if the sale/lease results through the efforts of a seller/landlord) shall be disclosed by the listing broker by a key, code, or symbol as required by the MLS. The listing broker shall, in response to inquires from potential cooperating brokers, disclose the differential that would result in either a cooperative transaction or, alternatively, in a

sale/lease that results through the efforts of the seller/landlord. If the cooperating broker is a buyer/tenant representative, the buyer/tenant representative must disclose such information to their client before the client makes an offer to purchase or lease.

## SERVICE CHARGES

### **Section 6 SERVICE FEES AND CHARGES FOR ASSOCIATIONS OF REALTORS®:**

The following service charges for operation of the Service are in effect to defray the costs of the Service and are subject to change from time to time in the manner prescribed:

- (A) **Initial Participation Fee:** When service is sold to other Associations, this fee shall be paid to the Triad Multiple Listing Service, Inc., as prescribed by the Board of Directors.
- (B) **Recurring Participation Fee:** The monthly participation fee of each Shareholder or other subscriber to this Service shall be in such amount as established annually by the Board of Directors after approval in accordance with Article V and VI, (F)(4) of the Bylaws.  
The number of users (as defined above) shall be determined on the first business day of the following months: March, June, September, and December. These shall be prorated on a monthly basis. New billing amounts will be noticed to each Shareholder on the first business day of the following months: January, April, July, and October. The bill shall be paid on or before the last day of the month in which it is billed. In the event the bill is unpaid by the twentieth day of the month in which it is billed, an additional notice will be sent via fax. Unlicensed individuals or those whose real estate or appraisal licenses are inactive and who are solely engaged in soliciting business as a relocation coordinator or employed as a secretary are not considered users but must have an approved Waiver Request on file with the Triad MLS. Waived users may not be performing any acts requiring licensure as outlined in Articles 1&2, as approved by the North Carolina Real Estate Commission. Any individual, having either a broker or salesman license or who is licensed or certified as an appraiser, is considered a user. Any disputed amount shall be paid until otherwise overturned at a Board of Directors meeting.
- (C) **Recurring Participation Fee for Outlying Participants:** Exemptions will be made for licensed agents affiliated with Outlying Participants (as defined in Section 19) who do not wish to have access to the service.

Provided, that no waivers will be granted to Outlying Participants for any agents' assistants or office help from their office. Anyone using the system, or listing property in Triad MLS, will have to be a subscriber/user in good standing.

Please reference Section 1.16 regarding co-listings.

- (D) **Exemptions:** Other than as set forth in (C) above, Participants of the Service may be exempted by approved written waiver (copy attached as exhibit #3) from the payment of a recurring participation fee for an unlicensed individual or individual whose appraisal or real estate license is inactive.  
If the broker-in-charge who signs the Triad MLS Waiver Request Application resigns from his or her Association, the waiver application is null and void and must be

resubmitted to Triad MLS.

If the waived user either obtains an active real estate or appraisal license or begins performing acts requiring licensure, the Participant must notify both the Association and the Triad MLS Board of Directors in writing within ten (10) business days and the waived user must become a dues-paying user of the Triad MLS. If the Participant does not notify the Association and the Triad MLS Board of Directors, he or she will be subject to penalties imposed by the Board of Directors. Violators will be billed for MLS access from the date (plus 10 days) they obtained an active real estate or appraisal license.

(E) **Waiver Request Procedure:**

1. Triad MLS Waiver Request Applications must be submitted to Triad MLS on the form shown as Exhibit 3a.
2. Upon receipt of the waiver, user will be assigned a 14 day password. The user must attend training class prior to the expiration of the password.
3. If the Triad MLS Board of Directors denies the Waiver Request Application, the staff from the Shareholder or from the Association of REALTORS<sup>®</sup> who subscribe to the Service shall notify the Participant Member as to the reason(s) why the waiver was denied.
4. The decision of the Triad MLS Board of Directors is final.

(F) **Temporary Waiver Request Procedure:**

1. Triad MLS Waiver Request Applications must be submitted to Triad MLS on the form shown as Exhibit 3b.
2. Triad MLS will assign a 14 day password. If the temporary person will need the password longer than 14 days, they must attend training class.

## COMPLIANCE WITH RULES

**Section 7 COMPLIANCE WITH RULES:** The following action may be taken for noncompliance with the rules:

- (A) For failure to pay any service charges, fees or fines as provided under **Section 6 (b)** and provided that at least ten days notice has been given by registered mail with return receipt requested, the service to the Shareholder or to those Associations of REALTORS<sup>®</sup> who subscribe to the Service shall be suspended and a 1 ½% service charge added to the unpaid balance.
- (B) For failure to comply with any other rule, the provisions of **Sections 9 and 9.1** shall apply.
- (C) At no time may any Shareholder or any Participant sign any agreement, contract, license, etc., which in any way allows access to any person(s) who downloads the data for the purpose of manipulating the raw data into any other form other than those specifically licensed by the Board of Directors of the Triad Multiple Listing Service, Inc.
- (D) When the Associations bill users for fines, Triad MLS does not expect Associations to remit payment of fines until collected from the user.

## MEETINGS

**Section 8 MEETINGS OF THE BOARD OF DIRECTORS OF THE TRIAD MULTIPLE LISTING SERVICE:** Meetings shall be held in accordance with Article VII of the Bylaws.

**Section 8.1 MEETINGS OF THE TRIAD MULTIPLE LISTING SERVICE COMMITTEE:** Meetings shall be held in accordance with Article VII of the Bylaws.

## ENFORCEMENT OF RULES OR DISPUTES

**Section 9 CONSIDERATION OF ALLEGED VIOLATIONS:** The Triad MLS Board of Directors shall give consideration to all written complaints having to do with violations of the Rules & Regulations.

### **Section 9.1 VIOLATIONS OF RULES AND REGULATIONS:**

- (A) **PARTICIPANT WHOSE ASSOCIATION IS A SHAREHOLDER:** If the Participant is a member of a Shareholder, then the body duly authorized by the Board of Directors shall administratively consider and determine whether a violation may have occurred. If they determine that a violation may have occurred, a letter will be sent to the president of the Shareholder outlining the circumstances surrounding the complaint along with all applicable materials available. Each Shareholder agrees to enforce such violation locally in accordance with their own procedures without the requirement of the Participant-Complainant having to file additional documents. If a violation is determined and a sanction is imposed, the recipient of said sanction may request a hearing of the Professional Standards Committee of the Shareholder Association. The policies and procedures for complainant attendance or lack of attendance will be consistent with the procedures established in the NAR Code of Ethics and Arbitration Manual.
- (B) **PARTICIPANT WHOSE ASSOCIATION IS NOT A SHAREHOLDER:** If the alleged offense is a violation of the Rules and Regulations of the Service and does not involve a charge of alleged unethical conduct or request for arbitration, it may be administratively considered and determined by a body duly authorized by the Board of Directors, and if a violation is determined, may direct the imposition of sanction, provided that the recipient of said sanction(s) may request a hearing before the Board of Directors following procedures outlined for ethics hearings in the Professional Standards Manual of the National Association of REALTORS®.
- (C) **PASSWORD SECURITY VIOLATIONS:**
1. When users receive training from Triad MLS a document must be signed regarding the security of passwords and penalties for violations.
  2. The penalty for password security violations are as follows: First Offense - \$1,000 fine; Second Offense - \$3,000 fine; Third Offense – Six month suspension from MLS.
  3. All fines levied for password violations shall be billed as agreed upon by the individual Shareholders.

**Section 9.2 COMPLAINTS ON PROFESSIONAL CONDUCT:** All other complaints of unethical conduct shall be referred by the Board of Directors or such body duly authorized by them to the Association of REALTORS® to which the Participant belongs for appropriate action in accordance with the usual procedures of that Association.

Nothing in any part of **Section 9** shall be construed to **require** that a Participant who holds membership in a Shareholder Association file the complaint only through the procedures outlined above. Such Participant may elect to file the complaint directly with his or her own Association/MLS or with the Association/MLS of another Shareholder.

## **CONFIDENTIALITY OF SERVICE INFORMATION**

**Section 10 CONFIDENTIALITY OF SERVICE INFORMATION:** Any information, exclusive of tax data, provided by the Service to the Participants, or others who access the system, shall be considered official information of the Service. Such information shall be considered confidential and exclusively for the use of the Participants and real estate licensees affiliated with such Participants and those Participants who are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property and licensed or certified appraisers affiliated with such Participants directly related to the Participants' attempting to locate ready, willing, and able buyers for the properties in the compilations or the preparation of appraisals for prospective purchasers of the properties described in the MLS compilation and authorized under a Participant's licensure(s) or certification. Any unauthorized uses are prohibited.

**Section 10.1 SERVICE NOT RESPONSIBLE FOR ACCURACY OF INFORMATION:** The information published and disseminated by the Service is communicated verbatim, without change by the Service, as entered into the Service by the Participants. The Service does not verify the information provided and disclaims any responsibility for its accuracy. Each Participant agrees to hold the Service harmless against any liability arising from any inaccuracy or inadequacy of the information such Participant provides.

**Section 10.2 ACCESS TO COMPARABLE AND STATISTICAL INFORMATION:** The National Association's Board of Directors approved consolidation of five (5) Statements of Multiple Listing Policy on comparable and statistical information into a single Statement of MLS Policy (Statement 7.3 – Statistical Reports). This Statement of Multiple Listing Policy shown in the 2006 Handbook on Multiple Listing Policy as at Part Two: Policies, D. Data, Statistical Reports, Section 1 – Statistical Reports now provides that only MLS Participants are entitled to receive statistical reports, sold information, and other informational reports derived from the MLS. Associations may, at their discretion, make this information available to REALTORS® or others who do not participate in the MLS.

## **OWNERSHIP OF SERVICE COMPILATIONS\* AND COPYRIGHTS**

**Section 11 AUTHORIZATION:** By the act of submission of any real property listing content to the Service, the Participant represents that he has been authorized to grant and also thereby does grant authority to the Service and to each Shareholder and Association of REALTORS® who subscribe to the Service permission to include the listing content in its copyrighted "Compilation," as that term is defined herein, and also in any statistical report on "Comparables." The term "Compilation," as used in **Section 11** and **12** herein, shall be

construed to mean any collection or assembling of real property facts, content, and information disseminated hereunder to the Participants in the Service without regard to the medium or form of presentation including, but not limited to, bound book, loose-leaf binder, computer database, card file, or any other format. Listing content includes, but is not limited to photographs, images, graphics, audio and video recordings, virtual tours, drawings, descriptions, remarks, narratives, pricing information, and other details or information related to listed property.

**Section 11.1 OWNERSHIP OF COMPILATION:** All rights, title, and interest in each listing of each Shareholder and Association of REALTORS<sup>®</sup> who subscribe to the Service submitted for inclusion in the Compilation shall at all times remain vested in such Shareholder or Association of REALTORS<sup>®</sup>; however, all rights, title and interest in new material added to such listings and subsequently incorporated into the Compilation by the Service and all rights, title and interest to the Compilation and in the copyright accruing to the Compilation, but not the individual listings, shall at all times remain vested in the Service.

**Section 11.2 ACCESS TO COMPILATION:**

- (A) Each Participant shall be entitled to lease from any Shareholder or of those Associations of REALTORS<sup>®</sup> who subscribe to the Service at the same costs charged to its own members a number of copies of each active Compilation sufficient to provide the Participants and each person affiliated as a licensee (including licensed or certified appraisers) with such Participants with one copy of such Compilation. The Participants shall pay for each such copy the rental fee as established by the Board of Directors of each Shareholder or of those Associations of REALTORS<sup>®</sup> who subscribe to the Service as determined from time to time. Participants shall acquire by such lease only the right to use the Compilations in accordance with these rules.
- (B) Nothing in this section should be construed to require the Participants to lease a copy of the compilation for any licensee (including licensed or certified appraiser) affiliated with the Participant who is engaged exclusively in a specialty of the real estate business other than listing, selling, or appraising the types of properties which are required to be filed with the Service and who does not, at any time, have access to or use of the information or facilities of the Service.

## **USE OF COPYRIGHTED COMPILATIONS**

**Section 12 DISTRIBUTION:** Participants shall at all times maintain control over and responsibility for each copy of any Compilation leased by them from any Shareholder or from those Associations of REALTORS<sup>®</sup> who subscribe to the Service and shall not distribute such copies to persons other than users who are affiliated with such Participants as licensees or to those individuals who are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property, or to other authorized users. Use of information developed by or published by the Service is strictly limited to the activities directly related to the Participants attempting to locate ready, willing, and able buyers for the properties in the compilations or the preparation of appraisals for prospective purchasers of the properties described in the Compilation and authorized under a Participant's licensure(s) or certification. Any other is unauthorized and prohibited. Further, none of the foregoing is intended to convey participation or membership in or any right of access to information developed by or published by the Service where access to such information is prohibited by law.

**Section 12.1 DISPLAY:** Participants and those persons affiliated as licensees with such

Participants shall be permitted to display the Compilation to prospective purchasers only in conjunction with their ordinary business activities of attempting to locate ready, willing, and able buyers for the properties described in said MLS compilation.

**Section 12.2 REPRODUCTION:**

- (A) Participants or their affiliated licensees shall not reproduce any compilation or any portion thereof except for the reproduction and distribution to prospective customers and clients of a reasonable number of single copies of listing data contained in the Compilation relating to any properties in which prospective purchasers are, or may, in the judgment of the Participant or their affiliated licensees, be interested. The term “reasonable,” as used herein, should be construed to permit only limited reproduction of listing data as required to facilitate the prospective customer’s or client’s decision-making process with respect to properties in which the customer or client has a bona fide interest or in which the Participant is seeking to promote interest. Factors which shall be considered in deciding whether the reproductions are reasonable in number shall include, but are not limited to, the total number of properties in the Compilation, how closely the types of properties contained in such listings accord with the prospective purchaser’s expressed desires and ability to purchase, whether the reproductions were made on a selective basis, and whether the type of properties contained in the listing data is consistent with a normal itinerary of properties which would be shown to the prospective purchaser.
- (B) Reproductions made in accordance with this section shall be prepared in such a fashion that the listing data of properties other than those in which the prospective purchaser has expressed interest, or in which the Participant or the affiliated licensees are seeking to promote interest, does not appear on such reproduction.
- (C) Nothing contained herein shall be construed to preclude any Participant from utilizing, displaying, distributing, or reproducing property listing sheets or other presentations of data pertaining exclusively to properties currently listed for sale with the Participant.
- (D) Any real property listing information submitted to the Service, whether submitted in written or printed form, electronically, or in any other form or format, is provided for the exclusive use of the Participant and those licensees affiliated with the Participant who are authorized to have access to such information. Such information may not be transmitted, retransmitted, or provided in any manner to any unauthorized individual, office, or firm.
- (E) None of the foregoing shall be construed to prevent any individual legitimately in possession of current listing information, "sold" information, "comparables," or statistical information from utilizing such information to support an estimate of value on a particular property for a particular client. However, only information as each Shareholder or those Associations of REALTORS® who subscribe to the Service, or the Triad Multiple Listing Service, Inc. has deemed to be non-confidential and necessary to support the estimate of value may be reproduced and attached to the report as supporting documentation. Any other use of such information is unauthorized and prohibited by these Rules and Regulations.

**Section 12.3 No modification of other Participants’ content.** A Participant shall not change

the content of any MLS Listing Information (as that term is defined in Section 20.1(d) of these rules) of any other Participant from the content as it is provided in the Service, without regard to the means by which it is disclosed, including oral disclosure or disclosure through a VOW. A Participant may, however, augment MLS Listing Information with additional information not otherwise prohibited by these rules as long as the source of such other information is clearly identified. This rule does not otherwise restrict the format of display of MLS Listing Information or the display of fewer than all of the listings or fewer than all of the authorized information fields

**Section 12.4 Disclaimer of liability.** In any display or disclosure of MLS Listing Information (as that term is defined in Section 20.1(d) of these rules), including oral disclosure and display on a VOW, a Participant shall include a notice indicating that the MLS Listing Information is deemed reliable but is not guaranteed accurate by the Service. A Participant's display or disclosure may include other appropriate disclaimers necessary to protect the Participant and the Service from liability.

**Section 12.5 Confidential Data Fields.** A Participant shall not disclose to any consumer, whether orally, on a VOW or IDX web site, or via any other means, any of the following data fields, which the service has classified as confidential. The preceding sentence notwithstanding, a Participant may disclose the contents of any of these fields only to the extent, and only at the time, that the Code of Ethics or state or federal law gives rise to an obligation to do so.

Agent Only Remarks

Owner Name

Showing Instructions (This is not the 'Show Instr' field that has a required default value of 'Appointment Required'. It is the field in Add/Edit labeled 'Showing Directions' which is a free form text field. On reports, this field is labeled 'Showing Instructions').

Lock Box Info

Appointment Center Phone Number (This is the field that is entered by MLS staff in the office record which then populates to every listing belonging to that office)

Compensation Type (Values in this field are: \$, %, Different, Fixed, Minimum)

Compensation (Values in this field are entered as free form text and only allows numeric entry)

List Type (AP, EA, ERR, ERS or LS)

Agency Type (Both, Buyer Agent Only, or Sub Agent Only)

Contract Date

Withdrawn Date

Days On Market

List Date

Expire Date

## USE OF INFORMATION

**Section 13 LIMITATIONS ON USE OF INFORMATION:** Use of MLS current listing information from any Shareholder or Association of REALTORS® who subscribes to the Service, from a "Statistical Report," or from any "sold" or "comparable" report of a Shareholder or the Service in public mass-media advertising by a Participant or in other public representations is permitted as provided herein. However, any print or non-print forms of advertising or other forms of public representations based in whole or in part on information

supplied by any Shareholder or Association of REALTORS® who subscribe to the Service or the Service itself must clearly demonstrate the period of time over which such claims are based and must include the following, or substantially similar, notice:

"Based on information from the Board/Association of REALTORS® (or from the Triad MLS) for the period (date) through (date)."

**Section 13.1 PARTICIPANTS' USE OF INFORMATION:** Use of information from real property listings submitted to the Service by any Shareholder or Association of REALTORS® and included in the Compilation is limited to the Participants, real estate licensees affiliated with such Participants, those Participants who are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property and licensed or certified appraisers affiliated with such Participants. All such use of the information must be directly related to the Participants attempting to locate ready, willing, and able buyers for the properties appearing in the Compilation or to the preparation of appraisals for prospective purchasers of such properties as authorized under a Participant's licensure(s) or certification. Any unauthorized uses are prohibited.

## **CHANGES IN RULES AND REGULATIONS**

**Section 14 CHANGES IN RULES AND REGULATIONS:** Amendments to the Rules and Regulations of the Service shall be by consideration and approval of the Directors of the Triad Multiple Listing Service, Inc. and then by the Shareholders, in accordance with the provisions of Article 10 of the Bylaws of the Service, except that all NAR-mandated changes will occur automatically.

**NOTE: SECTIONS 15 and 16 were intentionally left blank.**

## **ORIENTATION**

**Section 17 ORIENTATION:** Any applicant for MLS Participation and any licensee affiliated with an MLS Participant who has access to and use of MLS-generated information shall complete an orientation program of no more than eight (8) classroom hours devoted to the MLS rules and regulations and computer training related to MLS information entry and retrieval. MLS computer training must be completed within (14) days after access has been provided. After 14 days, access will be denied until computer training is completed.

## **INTERNET DATA EXCHANGE**

**Section 18 INTERNET DATA EXCHANGE (IDX):**

**(A) IDX TERMS DEFINED**


1. "Internet Data Exchange " is a means by which each Participant subscribing to the program (the "Internet Data Exchange Subscriber" or "IDX") permits the display of its active and sold listings appearing in MLS on each other IDX's Internet web site.
2. The "Internet Data Exchange Database" is the current aggregate compilation of all active exclusive right to sell and exclusive agency listings and all sold listings marked


sold within the immediately preceding 12 months of all Internet Data Exchange Subscribers except (a) those active listings where the property seller has opted out of Internet publication by so indicating on the listing contract; and (b) those sold listings where the listing broker has opted out of Internet publication by so indicating on the MLS system.

3. "Internet Data Exchange User" (IDXU) is defined as a non-principal broker or sales licensee affiliated with an IDXS. An IDXU may, with the permission of his IDXS and Triad MLS, use the information available through IDX to populate his own web site(s).

**Section 18.1 INTERNET DATA EXCHANGE:** An Internet Data Exchange Subscriber or Internet Data Exchange User may republish all or a portion of the Internet Data Exchange Database on the Internet or Frame the Triad MLS Search page in accordance with the following provisions and in keeping with any policies that Triad MLS may adopt from time to time. Unless expressly contravened by the provisions of this section, all other rules and regulations remain in full force and effect.

**Section 18.2 REPUBLICATION/FRAMING OF INTERNET DATA EXCHANGE DATABASE ON INTERNET PERMITTED:**

- (A) An Internet republication of another IDXS's listing shall not contain more (but may contain less) information than is contained in Triad MLS's IDX database. Participants may select the listings they choose to display on their IDX sites based only on objective criteria including, but not limited to, factors such as geography or location ("uptown", "downtown", etc), list price, type of property, (e.g., condominiums, cooperatives, single-family detached, multi-family), cooperative compensation offered by listing brokers, type of listing (e.g., exclusive right to sell or exclusive agency), or the level of service being provided by the listing firm. Selection of listings displayed on any IDX site must be independently made by each Participant.
- (B) In order to be an IDXS, a Participant must be engaged in and licensed in North Carolina to provide real estate brokerage services to buyers or sellers in real estate transactions and must be contributing his/her listings to the IDX database, except those listings identified in Section 18(A)(2)(a) and (b).
- (C) IDXS / IDXU must notify the MLS of their intention to establish an IDX site and make their IDX site directly accessible to the MLS for purposes of monitoring/ensuring compliance with applicable rules and policies.
- (D) The IDXS / IDXU shall update the republication information on its Internet web site at least weekly.
- (E) An IDXS / IDXU may not modify or manipulate the republication of data relating to another IDXS's listing. (This is not a limitation on the design of the site but refers to the actual data.)
- (F) The Triad MLS-approved icon and an explanation that those properties marked with the icon are provided courtesy of the Triad MLS, Inc.'s, Internet Data Exchange Database must appear on the first page of the IDX republication where the listing data is displayed.  

- (G) Any search result in the republication identifying another IDXS's listing in a brief or "thumbnail" format shall bear the Triad MLS-approved icon or the TRIAD MLS-approved thumbnail icon immediately adjacent to the property information to identify the listing as a TRIAD MLS listing. A thumbnail display of another IDXS's listing may not include any contact information or branding of the IDXS / IDXU who owns the web site or any of its agents. A thumbnail display may only include the following: text data about

- the listing property, a photo of the listing property, the logo of the listing broker or TRIAD MLS-approved icon, and “buttons” providing links for other information.
- (H) A search result in the republication producing a detailed display of another IDXS’s listing shall bear the listing IDXS’s name, the selling IDXS’s name (if the listing has sold) the TRIAD MLS-approved icon, and TRIAD MLS’s copyright notice immediately following the property information. The listing IDXS’s name, selling IDXS’s name, the TRIAD MLS-approved icon, and copyright notice shall be as large as the largest type size used to display the listing data. A detailed display in the republication of another IDXS’s listing may not include any contact information or branding of the Participant who owns the web site or any of its agents within the “body” of the listing data, except that if the displaying IDXS / IDXU is the selling firm/broker on a sold listing, the site may indicate that fact in the body of the listing. The “body” is defined as the rectangular space whose borders are delimited by the utmost extent in each direction of the listing text and photo data.
- (I) Any result in the republication identifying another IDXS’s listing shall include the disclaimer “Information Deemed Reliable But Not Guaranteed.” 
- (J) Any Internet web site used for publication of the Internet Data Exchange Database or any portion thereof must be controlled by an IDXS and advertised as that IDXS’s / IDXU’s Internet web site. When displaying listing content, an IDXS’s or IDXU’s site must clearly identify the name of the brokerage firm under which they operate in a readily visible color and typeface.
- (K) An IDXS / IDXU displaying the Internet Data Exchange Database or any portion thereof shall make reasonable efforts to avoid “scraping” of the data by third parties or displaying of that data on any other web site. Reasonable efforts shall include but not be limited to:
1. Monitoring the web site for sign that Third party is ‘scraping’ data and
  2. Prominently posting notice that any use of search facilities of data on the site, other than by potential buyers and sellers is prohibited.
  3. Both number 1 and 2 above are to be posted on the 1<sup>st</sup> search page of the web site republishing the IDX data.
- If an IDXS / IDXU suspects “scraping” of the data has occurred, the suspicion and any evidence must be reported to the TRIAD MLS immediately for investigation and action.
- (L) An IDXS / IDXU must make changes to an Internet site necessary to cure a violation of TRIAD MLS’s Rules within five business days of notice from TRIAD MLS of the violation.
- (M) Except as provided in these rules, and IDX site or a participant or user operating an IDX site may not distribute, provide, or make any portion of the MLS database available to any person or entity.
- (N) No portion of the Internet Data Exchange Database shall be co-mingled with any non-MLS listings on the IDXS’s / IDXU’s Internet web site. Listings (excluded) not in the MLS shall be placed in a separate section part of the web site.
- (O) IDXS’s / IDXU’s republishing the IDX data must indicate on their web sites that the information being provided is for consumers’ personal, non-commercial use and may not be used for any purpose other than to identify perspective properties consumers may be interested in purchasing.
- (P) Listings or property addresses of sellers who have directed their listing brokers to withhold their listing or property address from display on the Internet (including, but not limited to, publicly-accessible Web sites or VOWs) shall not be accessible via IDX sites. Notwithstanding this prohibition, listing brokers may display on their IDX sites or their other Web site(s) the listing or property address of consenting sellers.

- (Q) Triad MLS has a right to fine for breach of IDX rules or password violations consistent with the provisions of Sections 9 and 9.1 (a) or (b) as applicable.
- (R) Triad MLS's board of directors may define which data fields are available for IDX display. It shall make the list of permitted fields available to IDXs' / IDXU's. The Triad MLS board of directors may change the permitted fields in its discretion by publishing a new list, and it may designate different fields available for active and sold listings.
- (S) Sold listings in the IDX Database ("IDX Solds") are subject to the following requirements:
  - 1. No display of IDX Solds may be identified as a "CMA," "comparable market analysis," "broker price opinion," or "appraisal."
  - 2. On any page where IDX Solds are displayed, the displaying IDXs / IDXU must provide a disclaimer indicating that the sale data is for informational purposes only and is not an indication of a market analysis or appraisal.
  - 3. Only the primary MLS photo may be displayed on any IDX Sold.

### **Section 18.3 APPROVED FORMS:**

- (A) The Internet Data Exchange Agreement is to be signed when a new firm joins TRIAD MLS.
- (B) Any IDXs / IDXU using a third party to develop/design its website will need to have the Data Display Agreement signed and returned to TRIAD MLS.

## **OUTLYING MEMBERS**

**Section 19.1 DEFINITION:** Any Participant whose office lies outside of Guilford, Forsyth, Davidson, Randolph, Davie, Surry and Stokes counties in North Carolina is herein referred to as an "Outlying Member".

**Section 19.2 CROSS-REFERENCES:** All of the generally applicable rules and regulations of Triad MLS shall also apply to Outlying Participants, except as provided in the following sections of these Rules and Regulations:

- (a) Section 1.12 (Jurisdiction)
- (b) Section 6(C) (Exemptions and Waivers)

## **Virtual Office Websites (VOWs)**

### **Section 20.1 Definitions and Usage.**

- (a) A "VOW" or "Virtual Office Website" is a Participant's Internet website, or a feature of a Participant's website, through which the Participant is capable of providing real estate brokerage services to consumers with whom the Participant has first established a broker-consumer relationship (as defined by state law) where the consumer has the opportunity to search MLS Listing Information, subject to the Participant's oversight, supervision, and accountability. References to "VOW" and "VOWs" include all VOWs, whether operated by a Participant, by a non-principal broker, or by an AVP on behalf of a Participant.
- (b) "Participant," as used in Section 20 of these rules, includes a Participant's affiliated non-

principal brokers, except when the term is used in the phrases “Participant’s consent” and “Participant’s oversight, supervision, and accountability.” A non-principal broker affiliated with a Participant may, with his or her Participant’s consent, operate a VOW. Any VOW of a non-principal broker is subject to the Participant’s oversight, supervision, and accountability.

- (c) “AVP” or “Affiliated VOW Partner” refers to an entity or person designated by a Participant to operate a VOW on behalf of the Participant, subject to the Participant’s supervision, accountability and compliance with the VOW Policy. No AVP has independent participation rights in the MLS by virtue of its right to receive information on behalf of a Participant. No AVP has the right to use MLS Listing Information except in connection with operation of a VOW on behalf of one or more Participants. Access by an AVP to MLS Listing Information is derivative of the rights of the Participant on whose behalf the AVP operates a VOW.
- (d) “MLS Listing Information,” as used in Section 20 of these rules, refers to active and off-market listing information and sold data provided by Participants to the Service and aggregated and distributed by the Service to Participants.
- (e) “VOW Policy” means the Virtual Office Website Policy of the Service, adopted pursuant to the requirements of the National Association of REALTORS®.
- (f) “Registrant” has the meaning given to it in Section 20.3(a)(i).
- (g) “Terms of use” has the meaning given to it in Section 20.3(d).

**Section 20.2 Scope limited; Other services permitted; No listing broker permission required.**

- (a) The right of a Participant’s VOW to display MLS Listing Information is limited to that supplied by the MLS(s) in which the Participant has participatory rights. However, a Participant with offices participating in different MLSs may operate a master website with links to the VOWs of the other offices.
- (b) Subject to the provisions of the VOW Policy and these rules, a Participant’s VOW, including any VOW operated on behalf of a Participant by an AVP, may provide other features, information, or functions, e.g. Internet Data Exchange (“IDX”).
- (c) Except as otherwise provided in the VOW Policy or in these rules, a Participant need not obtain separate permission from other service Participants whose listings will be displayed on the Participant’s VOW.

**Section 20.3 Prerequisites for access; Registration; Terms of Use.**

- (a) **Prerequisites for access.** Before permitting any consumer to search for or retrieve any MLS Listing Information on his or her VOW, the Participant must take each of the following steps:
  - (i) The Participant must first establish with that consumer a lawful broker-consumer relationship (as defined by state law), including completion of all actions required by state law in connection with providing real estate brokerage services to clients and customers (hereinafter “Registrants”). Such actions shall include, but are not limited to, satisfying all applicable agency, non-agency, and other disclosure obligations, and execution of any required agreements.
  - (ii) The Participant must obtain the name of, and a valid email address for, each

Registrant. The Participant must send an email to the address provided by the Registrant confirming that the Registrant has agreed to the Terms of Use (described in subsection (d) below). The Participant must verify that the email address provided by the Registrant is valid and that the Registrant has agreed to the Terms of Use.

- (iii) The Participant must require each Registrant to have a user name and a password, the combination of which is different from those of all other Registrants on the VOW. The Participant may, at his or her option, supply the user name and password or may allow the Registrant to establish his or her user name and password. The Participant must also assure that any email address is associated with only one user name and password.
- (b) **Password expiration; Retention of records.** The Participant must assure that each Registrant's password expires on a date certain but may provide for renewal of the password. The Participant must at all times maintain a record of the name, email address, user name, and current password of each Registrant. The Participant must keep such records for not less than 180 days after the expiration of the validity of the Registrant's password.
- (c) **Disclosure of records to the Service.** If the MLS has reason to believe that a Participant's VOW has caused or permitted a breach in the security of MLS Listing Information or a violation of rules, the Participant shall, upon request of the Service, provide the name, email address, user name, and current password, of any Registrant suspected of involvement in the breach or violation. The Participant shall also, if requested by the Service, provide an audit trail of activity by any such Registrant.
- (d) **Terms of use.** The Participant shall require each Registrant to review, and affirmatively to express agreement (by mouse click or otherwise) to, a "Terms of Use" provision that provides at least the following:
  - (i) the Registrant's acknowledgement that he or she has entered into a lawful consumer-broker relationship with the Participant;
  - (ii) the Registrant's agreement to use information obtained by the Registrant from the VOW only for the Registrant's personal, non-commercial use;
  - (iii) the Registrant's representation and warranty that the Registrant has a bona fide interest in the purchase, sale, or lease of real estate of the type being offered through the VOW;
  - (iv) the Registrant's agreement not to copy, redistribute, or retransmit any of the information provided except in connection with the Registrant's consideration of the purchase or sale of an individual property;
  - (v) the Registrant's acknowledgement of the MLS's ownership of, and the validity of the MLS's copyright in, the MLS database.
- (e) **Terms of use impose no financial obligation or representation.** The Terms of Use agreement may not impose a financial obligation on the Registrant or create any representation agreement between the Registrant and the Participant. Any agreement entered into at any time between the Participant and Registrant imposing a financial obligation on the Registrant or creating representation of the Registrant by the Participant must be established separately from the Terms of Use, must be prominently labeled as such, and may not be accepted solely by mouse click.

- (f) **Access for review purposes.** The Terms of Use agreement shall also expressly authorize the Service, and other MLS Participants or their duly authorized representatives, to access the VOW for the purposes of verifying compliance with rules and monitoring display of Participants' listings by the VOW. The agreement may also include such other provisions as may be agreed to between the Participant and the Registrant.

**Section 20.4 Contact information; Response to inquiries.** A Participant's VOW must prominently display an e-mail address, telephone number, or specific identification of another mode of communication (e.g., live chat) by which a consumer can contact the Participant to ask questions, or get more information, about any property displayed on the VOW. The Participant, or a non-principal broker or sales licensee licensed with the Participant, must be willing and able to respond knowledgeably to inquiries from Registrants about properties within the market area served by that Participant and displayed on the VOW.

**Section 20.5 Preventing unauthorized use of data.** A Participant's VOW must employ reasonable efforts to monitor for, and prevent, misappropriation, "scraping", and other unauthorized use of MLS Listing Information. A Participant's VOW shall utilize appropriate security protection such as firewalls as long as this requirement does not impose security obligations greater than those employed concurrently by the Service.

**Section 20.6 Sellers withholding listings and addresses from Internet.**

- (a) A Participant's VOW shall not display listings or property addresses of any seller who has affirmatively directed the listing broker to withhold the seller's listing or property address from display on the Internet. The listing broker shall communicate to the Service that the seller has elected not to permit display of the listing or property address on the Internet. Notwithstanding the foregoing, a Participant who operates a VOW may provide to consumers via other delivery mechanisms, such as email, fax, or otherwise, the listings of sellers who have determined not to have the listing for their property displayed on the Internet.
- (b) A Participant who lists a property for a seller who has elected not to have the property listing or the property address displayed on the Internet shall cause the seller to execute a document that includes the following (or a substantially similar) provision:

Seller Opt-Out Form

1. Please check either Option a or Option b

a.  I have advised my broker or sales agent that I do not want the listed property to be displayed on the Internet.

b.  I have advised my broker or sales agent that I do not want the address of the listed property to be displayed on the Internet.

2. I understand and acknowledge that, if I have selected option a, consumers who conduct searches for listings on the Internet will not see information about the listed property in response to their search.

\_\_\_\_\_ initials of seller

- (c) The Participant shall retain such forms for at least one year after the date they are signed,

or one year after the date the listing goes off the market, whichever is later.

**Section 20.7 Third-party commentary; Automated valuation; Professional judgment.**

- (a) Subject to Section 20.7(b), a Participant's VOW may allow third-parties (i) to write comments or reviews about particular listings or display a hyperlink to such comments or reviews in immediate conjunction with particular listings, or (ii) to display an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing
- (b) At the request of a seller the Participant shall disable or discontinue either or both of those features described in subsection (a) as to any listing of the seller. The listing broker shall communicate to the Service that the seller has elected to have one or both of these features disabled or discontinued on all Participants' websites. Subject to the foregoing and to Section 20.8, a Participant's VOW may communicate the Participant's professional judgment concerning any listing. A Participant's VOW may notify its customers that a particular feature has been disabled "at the request of the seller."

**Section 20.8 Means to correct errors.** A Participant's VOW shall maintain a means (e.g., e-mail address, telephone number) to receive comments from the listing broker about the accuracy of any information that is added by or on behalf of the Participant beyond that supplied by the Service and that relates to a specific property displayed on the VOW. The Participant shall correct or remove any false information relating to a specific property within 48 hours following receipt of a communication from the listing broker explaining why the data or information is false. The Participant shall not, however, be obligated to correct or remove any data or information that simply reflects good faith opinion, advice, or professional judgment.

**Section 20.9 Frequency of updates.** A Participant shall cause the MLS Listing Information available on its VOW to be refreshed at least once every three (3) days.

**Section 20.10 No other distribution permitted.** Except as provided in these rules, the VOW Policy, or any other applicable MLS rules or policies, no Participant shall distribute, provide, or make accessible any portion of the MLS Listing Information to any person or entity.

**Section 20.11 Privacy policy required.** A Participant's VOW must display the Participant's privacy policy informing Registrants of all of the ways in which information that they provide may be used.

**Section 20.12 Listings excluded from display based on objective criteria.** A Participant's VOW may exclude listings from display based only on objective criteria, including, but not limited to, factors such as geography, list price, type of property, cooperative compensation offered by listing broker, and whether the listing broker is a REALTOR®.

**Section 20.13 Access to VOW for compliance evaluation.** A Participant who intends to operate a VOW to display MLS Listing Information must notify the Service of its intention to establish a VOW and must make the VOW readily accessible to the Service and to all MLS Participants for purposes of verifying compliance with these rules, the VOW Policy, and any other applicable MLS rules or policies.

**Section 20.14 Multiple VOWs permitted.** A Participant may operate more than one VOW himself or herself or through an AVP. A Participant who operates his or her own VOW may

contract with an AVP to have the AVP operate other VOWs on his or her behalf. However, any VOW operated on behalf of a Participant by an AVP is subject to the supervision and accountability of the Participant.

**Section 20.15 Password expiration.** A Participant shall require that Registrants' passwords be reconfirmed or changed every 90 days.

**Section 20.16 Advertising and 'co-branding.'** A Participant may display advertising and the identification of other entities ("co-branding") on any VOW the Participant operates or that is operated on his or her behalf. However, a Participant may not display on any such VOW deceptive or misleading advertising or co-branding. For purposes of this Section, co-branding will be presumed not to be deceptive or misleading if the Participant's logo and contact information (or that of at least one Participant, in the case of a VOW established and operated on behalf of more than one Participant) is displayed in immediate conjunction with that of every other party, and the logo and contact information of all Participants displayed on the VOW is as large as the logo of the AVP and larger than that of any third party.

**Section 20.17 Displaying listings from other sources.** A Participant shall cause any listing displayed on his or her VOW that is obtained from other sources, including from another MLS or from a broker not participating in the Service, to identify the source of the listing.

**Section 20.18 Searching listings from other sources.** A Participant shall cause any listing displayed on his or her VOW obtained from other sources, including from another MLS or from a broker not participating in the Service, to be searched separately from the MLS Listing Information.

**Section 20.19 License agreement required.** Participants and the AVPs operating VOWs on their behalf must execute the license agreement required by the Service.

## **Exhibit List**

- 1 Triad MLS Business Rules
- 2 Residential Square Footage Guidelines
- 3a Triad MLS Waiver Request Policy & Application
- 3b Triad MLS Temporary Waiver Request Policy & Application
- 4 NCREC Bulletin Article found on [www.ncrec.state.nc.us](http://www.ncrec.state.nc.us).

## Exhibit 1

### Triad MLS Business Rules

#### Listing Retention and Management in the Tempo System:

<b>Incomplete</b>	Do not show Incomplete Listings. Delete if not active after 14 days. No MLS number assigned until property becomes active in system.
<b>Active</b>	No time limit
<b>Pending/ Pending AB</b>	No time limit
<b>Temp. Off Market</b>	No time limit—Listing status will change to expired on the expiration date.
<b>Closed*</b>	No time limit—Primary photos will be retained with no time limit. Secondary photos will be retained for 1 year from the closing date. Closed listings should be editable by the user for 30 days after closing. *
<b>Expired*</b>	Any property listing that has not closed, is not pending and that the expiration data has passed must be changed to a status of Expired. No time limit—listings should not be user searchable after 360 days. * Can be returned to Active status by user for 30 days—they should drop off user edit list after 30 days.
<b>Withdrawn*</b>	No time limit They can be returned to Active status by a Head or Office Broker for up to 30 days after withdrawn date. They should drop off of the edit list after 30 days. Properties can only be withdrawn by Head or Office Brokers or their assignees.

\* These listings are held in the system to populate the Archive Report.

#### Linked Fields MLS Information:

<b>MLS County/Area</b>	County should be entered in the system from a drop down box.
<b>Agent ID</b>	Listing Agent Full Name, First Name, Last Name, Phone #s, E-mail, Listing Office ID, Listing Office Name, Phone, Fax, E-mail —Once Agent ID is entered, these fields should auto-populate from the roster entry and be subsequently linked in the detail page
<b>Company ID</b>	Based on Listing Agent. Company ID is set when listing is entered. Based on Sell Agent ID when sale is entered.
<b>Editor</b>	Set to ID of person entering listing.

<b>Listing Date</b>	Cannot be changed once a listing becomes active.
<b>Original List Price</b>	Set to initial list price.
<b>Remarks</b>	Should keep track of character count and stop accepting input at 255 characters.

**Other Information Fields:**

<b>Listing Date</b>	The listing date in the system must be taken from the term dates on the listing agreement. Do not permit post dating.
<b>Exp/Date</b>	Required but should not suggest an expiration date (except for Residential Rental). Cannot permit a date less than the current date.
<b>Main SqFt</b>	Required and cannot be less than 1.
<b>Second SqFt</b>	Not required and must be 0 or greater.
<b>Fin-Basement</b>	Not required and must be 0 or greater.
<b>UnFin Bsmnt</b>	Not required and must be 0 or greater.
<b>Total SqFt</b>	System generated range.
<b>Directions</b>	Directions should keep track of character count and stop accepting input at 255 characters. Should not accept html tag information. Required field.
<b>DOM</b>	Computed from listing date to current date or until expired or closed.

**General Information:**

<b>Stories</b>	Required and must be 1.0 or greater.
<b>Year Built</b>	Required and cannot be less than 1700 or greater than current year.
<b>Completion date</b>	Is not available unless “New” is selected from <b>Built Info</b> field. If available, the value must be equal to or greater than current system date.
<b>Lot Dim/</b>	Either Lot Size or Acres must contain a value prior to activating a listing.
<b>Acres</b>	Remove the auto-populated “0” from Acres. Value for Acres must permit less than one acre and the value carried to 2 decimal places.

**Rooms:**

<b>Bedrooms</b>	Totals for BR must be greater than “0”.
<b>Baths</b>	Totals for FB must be greater than “0”.

Totals for ½ baths not required.

**Schools:**

All selected from drop down list.

MLS Staff must have easy way to manage the schools table to add or edit individual school information.

**Additional Features:**

**Pending/Closed**

At Pending and Closing, a link (Button) is needed to pull up a roster search for agents. This should not be a link to the Roster Section, but a link directly to the roster search for an individual agent. It should open in a separate window within the add/edit function.

**Tax Auto-Populate**

From Add/Edit Screen at Tax ID field, a button should permit user to jump immediately to a Quick Tax. The county should have already been chosen. The type of search should permit entry of appropriate information to return the property, or it should return a list of properties from which the proper one can be selected. The following fields should auto-populate: Owner Name, Year Built, Deed Book and Page, Plat Book and Page, and Tax Value. These values should be able to be overwritten by the user on the add/edit screen

**Multiple Listing Edit**

Office managers with multiple agents for whom they may add/edit need the capability to enter several MLS numbers in sequence for editing. Those listings should be presented in a list for selection for editing within that session regardless of the listing type or agent name.

**Copy Listing**

Listings should be able to be copied and entered again for use by those agents creating new subdivision entries. The information from one listing to the next should remain unchanged except that the following fields should be blank: **Street Number, Acres, Lot Size, Tax ID, and Deed Book/Page.**

**Print Preview**

Photo should not show in print preview in add/edit.

**Add media**

Media added to system should be photo or tour type with no advertising. No personal or company web address may be entered into media "URL" space or remarks or directions fields.

**Teams**

When two or more agents work together as a team or as an assistant and agent, one agent may be assigned as the lead agent and all production recorded under their Public ID. The other team members will use their own Public ID and Passwords and if the team chooses, each member will edit their "Full Name Field" to indicate the team name followed by the individual's initials. This will allow all reports to print the team name instead of individual names on reports and listings.

**Mandatory Fields**

See attached lists.

## Exhibit 2

# Residential Square Footage Guidelines

### Introduction

It is often said that the three most important factors in making a home buying decision are "location," "location," and "location." Other than "location," the single most-important factor is probably the size or "square footage" of the home. Not only is it an indicator of whether a particular home will meet a homebuyer's space needs, but it also affords a convenient (though not always accurate) method for the buyer to estimate the value of the home and compare it with other properties.

Although real estate agents are not required by the Real Estate License Law or Real Estate Commission rules to report the square footage of properties offered for sale (or rent), when they do report square footage, it is essential that the information they give prospective purchasers be accurate. At a minimum, information concerning square footage should include the amount of living area in the dwelling. The following guidelines and accompanying illustrations are designed to assist real estate brokers and salespersons in measuring, calculating and reporting (both orally and in writing) the living area contained in detached and attached single-family residential buildings. When reporting square footage, real estate agents should carefully follow these Guidelines or any other standards that are comparable to them, including those approved by the American National Standards Institute, Inc. (ANSI) which are recognized by the North Carolina Real Estate Commission as comparable standards.\* Agents should be prepared to identify, when requested, the standard used.

### Living Area Criteria

Living area (sometimes referred to as "heated living area" or "heated square footage") is space that is intended for human occupancy and is:

Heated by a conventional heating system or systems (forced air, radiant, solar, etc.) that are permanently installed in the dwelling - not a portable heater - which generates heat sufficient to make the space suitable for year-round occupancy;

Finished, with walls, floors and ceilings of materials generally accepted for interior construction (e.g., painted drywall/sheet rock or paneled walls, carpeted or hardwood flooring, etc.) and with a ceiling height of at least seven feet, except under beams, ducts, etc. where the height must be at least six feet four inches [Note: In rooms with sloped ceilings (e.g., finished attics, bonus rooms, etc.) you may also include as living area the portion of the room with a ceiling height of at least five feet if at least one-half of the finished area of the room has a ceiling height of at least seven feet.]; and directly accessible from other living area (through a door or by a heated hallway or stairway).

Real estate appraisers and lenders generally adhere to more detailed criteria in arriving at the living area or "gross living area" of residential dwellings. This normally includes distinguishing "above-grade" from "below-grade" area, which is also required by many multiple listing services. "Above-Grade" is defined as space on any level of a dwelling which has living area and no earth adjacent to any exterior wall on that level. "Below-Grade" is space on any level which has living area, is accessible by interior stairs, and has earth adjacent to any exterior wall on that level. If earth is adjacent to any portion of a wall, the entire level is considered "below-grade."

Space that is "at" or "on grade" is considered "above-grade."

While real estate agents are encouraged to provide the most complete information available about properties offered for sale, the Guidelines recognize that the separate reporting of "above-grade" and "below-grade" area can be impractical in the advertising and marketing of homes. For this reason, real estate agents are permitted under these Guidelines to report square footage of the dwelling as the total "living area" without a separate distinction between "above-grade" and "below-grade" areas. However, to help avoid confusion and concern, agents should alert purchasers and sellers that the appraisal report may reflect differences in the way living area is defined and described by the lender, appraiser, and the North Carolina Building Code which could affect the amount of living area reported.

Determining whether an area is considered living area can sometimes be confusing. Finished rooms used for general living (living room, dining room, kitchen, den, bedrooms, etc.) are normally included in living area. For other areas in the dwelling, the determination may not be so easy. For example, the following areas are considered living area if they meet the criteria (i.e., heated, finished, directly accessible from living area):

Attic, but note in the listing data that the space is located in an attic (Fig. 2).

[Note: If the ceiling is sloped, remember to apply the "ceiling height" criteria.]

Basement (or "Below-Grade"), but note in the listing data that the space is located in a basement or "below-grade" (Fig. 1). [Note: For reporting purposes, a "basement" is defined as an area below the entry level of the dwelling which is accessible by a full flight of stairs and has earth adjacent to some portion of at least one wall above the floor level.]

Bay Window, if it has a floor, a ceiling height of at least seven feet and otherwise meets the criteria for living area (Fig. 2).

Bonus Room (e.g., Finished Room over Garage) (Fig. 3). [Note: If the ceiling is sloped, remember to apply the "ceiling height" criteria.]

Breezeway (enclosed).

Chimney, if the chimney base is inside living area. If the chimney base is outside the living area but the hearth is in the living area, include the hearth in the living area but not the chimney base (Fig. 1).

Closets, if they are a functional part of the living area.

Dormers (Fig. 6).

Furnace (Mechanical) Room Also, in order to avoid excessive detail, if the furnace, water heater, etc. is located in a small closet in the living area, include it in living area even if it does not meet other living area criteria (Fig. 4).

Hallways, if they are a functional part of the living area.

Laundry Room/Area (Fig. 6).

Office (Fig. 1).

Stairs, if they meet the criteria and connect to living area (Fig. 1, 2, 3, 4, 5, 6). Include the stairway with the area from which it descends, not to exceed the area of the opening in the floor. If the opening for the stairway exceeds the length and width of the stairway, deduct the excess open space from the upper level area. Include as part of the lower level area the space beneath the stairway, regardless of its ceiling height.

Storage Room (Fig. 6).

Other Area

Note in the listing data and advise purchasers of any space that does not meet the criteria for living area but which contributes to the value of the dwelling; for example, unfinished

basements, unfinished attics (with permanent stairs), unfinished bonus rooms, shops, decks, balconies, porches, garages and carports.

### **Helpful Hints**

Concealed in the walls of nearly all residential construction are pipes, ducts, chases, returns, etc. necessary to support the structure's mechanical systems. Although they may occupy living area, to avoid excessive detail, do not deduct the space from the living area.

When measuring and reporting the living area of homes, be alert to any remodeling, room additions (e.g., an enclosed porch) or other structural modifications to assure that the space meets all the criteria for living area. Pay particular attention to the heating criteria, because the heating system for the original structure may not be adequate for the increased square footage. Although agents are not required to determine the adequacy of heating systems, they should at least note whether there are heat vents, radiators or other heat outlets in the room before deciding whether to include space as living area.

When an area that is not part of the living area (e.g., a garage) shares a common wall with the living area, treat the common wall as the exterior wall for the living area; therefore, the measurements for the living area will include the thickness of the common wall, and the measurements for the other area will not.

Interior space that is open from the floor of one level to the ceiling of the next higher level is included in the square footage for the lower level only. However, any area occupied by interior balconies, lofts, etc. on the upper level or stairs that extend to the upper level is included in the square footage for the upper level.

### **Measurements**

The amount of living area and "other area" in dwellings is based upon exterior measurements. A one hundred-foot-long tape measure is recommended for use in measuring the exterior of dwellings, and a thirty-foot retractable tape for measuring interior and hard-to-reach spaces. A tape measure that indicates linear footage in "tenths of a foot" will greatly simplify your calculations. For best results, take a partner to assist you in measuring. But if you do not have someone to assist you, a screwdriver or other sharp tool can be used to secure the tape measure to the ground.

Begin at one corner of the dwelling and proceed with measuring each exterior wall. Round off your measurements to the nearest inch (or tenth-of-a-foot if your tape indicates footage in that manner). Make a sketch of the structure. Write down each measurement as you go, and record it on your sketch. A clipboard and graph paper are helpful in sketching the dwelling and recording the measurements. Measure living area and "other area," but identify them separately on your sketch. Look for offsets (portions of walls that "jut out"), and adjust for any "overlap" of exterior walls (Fig. 3) or "overhang" in upper levels (Fig. 5).

When you cannot measure an exterior surface (such as in the case of attics and below-grade areas), measure the perimeter walls of the area from the inside of the dwelling. Remember to add six inches for each exterior wall and interior wall that you encounter in order to arrive at the exterior dimensions (Fig. 2, 3, 4, 6).

Measure all sides of the dwelling, making sure that the overall lengths of the front and rear sides are equal, as well as the ends. Then inspect the interior of the dwelling to identify spaces which cannot be included in living area. You may also find it helpful to take several photographs of the dwelling for later use when you return to your office.

### **Calculating Square Footage**

From your sketch of the dwelling, identify and separate living area from "other area." If your measurements are in inches (rather than tenths-of-a-foot), convert your figures to a decimal as follows:

1" = .10 ft. 7" = .60 ft.  
2" = .20 ft. 8" = .70 ft.  
3" = .25 ft. 9" = .75 ft.  
4" = .30 ft. 10" = .80 ft.  
5" = .40 ft. 11" = .90 ft.  
6" = .50 ft. 12" = 1.00 ft.

Calculate the living area (and other area) by multiplying the length times the width of each rectangular space. Then add your subtotals and round off your figure for total square footage to the nearest square foot. Double-check your calculations. When in doubt, recheck them and, if necessary, re-measure the house.

### **Attached Dwellings**

When measuring an "attached" single-family home (e.g., townhouse, duplex, condominium, etc.), use the same techniques just described. If there is a common wall, measure to the inside surface of the wall and add six inches. [Note: In the case of condominiums, do not include the thickness of exterior or common walls.] Do not include any "common areas" (exterior hallways, stairways, etc.) in your calculations.

### **Proposed Construction**

For proposed construction, your square footage calculations will be based upon dimensions described in blueprints and building plans. When reporting the projected square footage, be careful to disclose that you have calculated the square footage based upon plan dimensions. Therefore, the square footage may differ in the completed structure. Do not rely on any calculations printed on the plans.

### **Agents' Responsibilities**

(Effective May 9, 2001)

Real estate agents are expected to be able to accurately calculate the square footage of most dwellings. When reporting square footage, whether to a party to a real estate transaction, another real estate agent, or others, a real estate agent is expected to provide accurate square footage information that was compiled using these Guidelines or comparable standards. While an agent is expected to use reasonable skill, care and diligence when calculating square footage, it should be noted that the Commission does not expect absolute perfection. Because all properties are unique and no guidelines can anticipate every possibility, minor discrepancies in deriving square footage are not considered by the Commission to constitute negligence on the part of the agent. Minor variations in tape readings and small differences in rounding off or conversion from inches to decimals, when multiplied over distances, will cause reasonable discrepancies between two competent measurements of the same dwelling. In addition to differences due to minor

variations in measurement and calculation, discrepancies between measurements may also be attributable to reasonable differences in interpretation. For instance, two agents might reasonably differ about whether an addition to a dwelling is sufficiently finished under these Guidelines to be included within the measured living area. Differences which are based upon an agent's thoughtful judgment reasonably founded on these or other similar guidelines will not be considered by the Commission to constitute error on the agent's part. Deviations in calculated square footage of less than five percent will seldom be cause for concern.

As a general rule, the most reliable way for an agent to obtain accurate square footage data is by personally measuring the dwelling unit and calculating the square footage. It is especially recommended that listing agents use this approach for dwellings that are not particularly unusual or complex in their design.

As an alternative to personally measuring a dwelling and calculating its square footage, an agent may rely on the square footage reported by other persons when it is reasonable under the circumstances to do so. Generally speaking, an agent working with a buyer (either as a buyer's agent or as a seller's agent) may rely on the listing agent's square footage representations except in those unusual instances when there is an error in the reported square footage that should be obvious to a reasonably prudent agent. For example, a buyer's agent would not be expected to notice that a house advertised as containing 2200 square feet of living area in fact contained only 2000 square feet. On the other hand, that same agent, under most circumstances, would be expected to realize that a house described as containing 3200 square feet really contained only 2300 square feet of living area. If there is such a "red flag" regarding the reported square footage, the agent working with the buyer should promptly point out the suspected error to the buyer and the listing agent. The listing agent should then verify the square footage and correct any error in the information reported.

It is also appropriate for an agent to rely upon measurements and calculations performed by other professionals with greater expertise in determining square footage. A new agent who may be unsure of his or her own calculations should seek guidance from a more experienced agent. As the new agent gains experience and confidence, he or she will become less reliant on the assistance of others. In order to ensure accuracy of the square footage they report, even experienced agents may wish to rely upon a competent state-licensed or state-certified appraiser or another agent with greater expertise in determining square footage. For example, an agent might be confronted with an unusual measurement problem or a dwelling of complex design. The house described in Figure 8 in these Guidelines is such a property. When an agent relies upon measurements and calculations personally performed by a competent appraiser or a more expert agent, the appraiser or agent must use these Guidelines or other comparable standards and the square footage reported must be specifically determined in connection with the current transaction. An agent who relies on another's measurement would still be expected to recognize an obvious error in the reported square footage and to alert any interested parties.

Some sources of square footage information are by their very nature unreliable. For example, an agent should not rely on square footage information determined by the property owner or included in property tax records. An agent should also not rely on square footage information included in a listing, appraisal report or survey prepared in connection with an earlier transaction.

In areas where the prevailing practice is to report square footage in the advertising and marketing of homes, agents whose policy is not to calculate and report square footage must disclose this

fact to prospective buyer and seller clients before entering into agency agreements with them.

### **Illustrations**

For assistance in calculating and reporting the area of homes, refer to the following illustrations showing the living area shaded. To test your knowledge, an illustration and blank "Worksheet" for a home with a more challenging floor plan has also been included. (There is also a completed "Worksheet" for the Practice Floor Plan.) In reviewing the illustrations, assume that for those homes with basements, attics, etc., the exterior measurements shown have been derived from interior measurements taking into account walls and partitions. Where there is a common wall between living area and other area, the measurements shown in the illustrations include the thickness of the common wall in living area except in the condominium example where wall thickness is not included.

\*The following materials were consulted in the development of these Guidelines:

The American National Standard for Single-Family Residential Buildings:

Square Footage-Method for Calculating approved by the American National Standards Institute, Inc.;

House Measuring & Square Footage published by the Carolina Multiple Listing Services, Inc.;

and materials compiled by Bart T. Bryson, MAI, SRA, and Mary L. D'Angelo.

**Copyright© 1999 by the North Carolina Real Estate Commission. All rights reserved. Distribution of this documents is prohibited without written permission from the Commission.**





FIGURE 3

TWO STORY WITH "BONUS ROOM" OVER GARAGE WORKSHEET

TWO STORY WITH "BONUS ROOM" OVER GARAGE

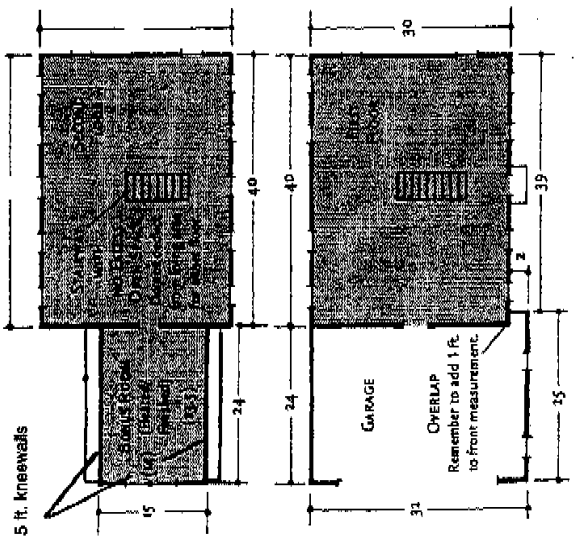
(Figure 3)



**Bonus Room**

If the "Bonus Room" is accessible from living area through a door, hallway or stairway, include in living area; otherwise, report as other area.

Add 6" to inside measurements for each exterior wall. Thus, 14' x 23.5" inside measurement equals 15' x 24" exterior measurements. In rooms with sloped ceilings, add 6" for each kneewall at least 5 in height.



LIVING AREA			
AREA	DIMENSIONS	SUBTOTAL	TOTAL
1st Floor	40 x 30		1,200
2nd Floor	40 x 30		1,200
Bonus Room	15 x 24		360
Total			2,760
OTHER AREA			
AREA	DIMENSIONS	SUBTOTAL	TOTAL
Garage	24 x 32	768	
	1 x 2	+ 2	770

REPORT: TWO-STORY DETACHED HOUSE WITH 2,760 SQUARE FEET OF LIVING AREA OF WHICH 360 SQUARE FEET ARE IN A "BONUS ROOM" OVER THE GARAGE, PLUS A 770-SQUARE-FOOT GARAGE.







FIGURE 7

CONDOMINIUM

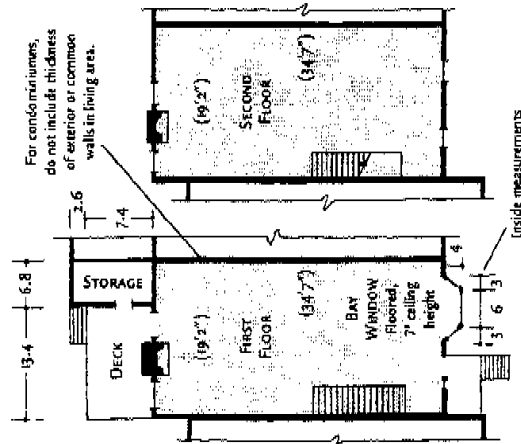
(Figure 7)



CONDOMINIUM WORKSHEET

LIVING AREA			
AREA	DIMENSIONS	SUBTOTAL	TOTAL
1st Floor	34.6 x 19.2	664.3	
Bay Window		36.0	700
2nd Floor	34.6 x 19.2	664.3	664
Total			1,364
OTHER AREA			
AREA	DIMENSIONS	SUBTOTAL	TOTAL
Deck	13.4 x 7.4	99.2	99
Storage	10 x 6.8		68

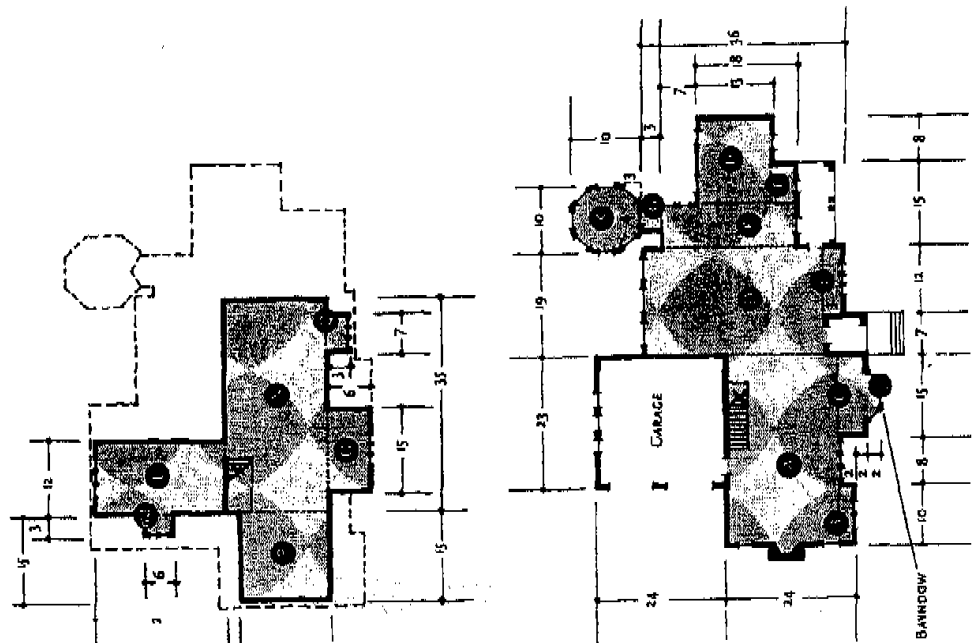
REPORT: TWO-STORY CONDOMINIUM WITH 1,364 SQUARE FEET OF LIVING AREA, PLUS 1.99 SQUARE FOOT DECK.





PRACTICE FLOOR PLAN WORKSHEET

PRACTICE FLOOR PLAN  
(Zoned to facilitate calculations)



PRACTICE FLOOR PLAN WORKSHEET

LIVING AREA			
AREA	DIMENSIONS	SUBTOTAL	TOTAL
1st Floor A	22 x 33	726	
1st Floor B	2 x 10	20	
1st Floor C	4 x 15	60	
1st Floor D	19 x 33	627	
1st Floor E	3 x 12	36	
1st Floor F	8 x 25	200	
1st Floor G	4 x 3	12	
1st Floor H	15 x 13	195	
1st Floor I	7 x 5	35	
Bay Window J		12	
Oct. Window K		82	2,005
2nd Floor L	24 x 12	288	
2nd Floor M	3 x 6	18	
2nd Floor N	17 x 35	595	
2nd Floor O	15 x 6	90	
2nd Floor P	15 x 15	225	
2nd Floor Q	3 x 7	21	1,237
Total			3,242
OTHER AREA			
AREA	DIMENSIONS	SUBTOTAL	TOTAL
Garage	24 x 23		552

REPORT ONE AND ONE-HALF STORY DETACHED HOUSE WITH 3,242 SQUARE FEET OF LIVING AREA

## Triad MLS Waiver Request Policy

*Please note this is a two-page form. Both pages must be signed and submitted to Triad MLS for consideration. This form must be completed by the broker-in-charge and signed by the broker, supervising agent (if applicable), and the applicant.*

*Fill out completely and legibly. Requests will be denied if they cannot be read or are incomplete.*

The broker-in-charge, supervising agent (if applicable), and applicant are required to complete this Triad MLS Waiver Request Application and forward it to the MLS coordinator at their Association. The application will be submitted to Triad MLS staff for recommendation to the Triad MLS Board of Directors for final approval.

The person requesting the waiver of MLS fees must be the broker-in-charge. Approved waivers apply only to the specific person while he or she is employed on a specific job. Such job (as indicated on the Waiver Request Application) and use of the on-line MLS system shall not be in violation of any policies of the Triad MLS or any agreements to which Triad MLS is a party. Any violation of such policies or unauthorized use shall subject the waived user, broker-in-charge, and supervising agent (if applicable) to penalties to be determined by the Triad MLS Board of Directors and to any other remedies available under law. If there is any change of the broker-in-charge, this waiver is null and void and must be resubmitted.

MLS policy will be determined on the regional level by the Triad MLS Board of Directors. Brokers-in-charge may be exempted from payment of recurring participation fees for any user under the broker-in-charge's supervision who does not have an active NC real estate or appraisal license and who does not perform acts requiring licensure as defined by the NC Real Estate Commission and the NC Appraisal Board in Articles 1&2. The Triad MLS adopts Articles 1&2 as the standard by which the waived user's acts will be evaluated. Copies of these Articles are available at Association offices. It will be assumed that any individual who holds an active license is performing acts requiring licensure and is therefore not eligible for a waiver. All users with the following active licenses are ineligible for waiver and must pay full MLS dues to participate in the MLS system: Real Estate - Broker, Salesperson. Appraiser - Certified, Licensed, Registered.

The broker-in-charge must certify in writing that the applicant is not licensed and is not performing acts requiring licensure. **If at any time the waived user obtains an active license or begins performing acts requiring licensure or is no longer employed, the broker-in-charge is required to notify his or her Association and the Triad MLS Board of Directors in writing.** Once the waived user obtains a license or begins performing acts requiring a license, the broker-in-charge has ten (10) business days to notify his or her Association and begin paying MLS dues for the user. **If the broker-in-charge fails to notify his or her Association and the Triad MLS within ten (10) business days, the broker-in-charge will be subject to penalties determined by the Triad MLS Board of Directors.** Violators will be billed for MLS access from the date (plus 10 days) they obtain an active real estate or appraisal license.

Approved waivers will take effect on the first day of the month after approval by the Triad MLS Board of Directors and will remain in effect until the waived user is no longer employed, obtains an active real estate or appraisal license, or begins performing acts requiring licensure.

If Triad MLS staff or the Triad MLS Board of Directors denies a waiver request application, his or her Association within fifteen (15) business days will notify the broker-in-charge in writing. If Triad MLS staff denies the waiver application the first time, the broker-in-charge may resubmit the request, answering any questions raised. The decision of the Triad MLS Board of Directors is final.

The Triad MLS Board of Directors will hold the broker-in-charge and the supervising agent, if applicable, fully responsible for the acts of the applicant.

When users receive training from Triad MLS a document must be signed regarding the security of passwords and penalties for violations. The penalties for password security violations are as follows: First Offense - \$1,000 fine; Second Offense - \$3,000 fine; Third Offense - Six month suspension from MLS.

Broker, supervising agent, and applicant all must sign AND print names. Please date this form AND complete reverse side.

Broker-in-charge: \_\_\_\_\_ (sign) \_\_\_\_\_ (print)

Supervising agent: \_\_\_\_\_ (sign) \_\_\_\_\_ (print)

(if applicable)

Waiver applicant: \_\_\_\_\_ (sign) \_\_\_\_\_ (print)

Today's date: \_\_\_\_\_ (Rev 12/09)



## Triad MLS Temporary Waiver Request Policy

***Please note this is a two-page form. Both pages must be signed and submitted to Triad MLS Board of Directors for consideration. This form must be completed by the broker-in-charge and signed by the broker, supervising agent (if applicable), and the applicant. Fill out completely and legibly. Requests will be denied if they cannot be read or are incomplete.***

The broker-in-charge, supervising agent (if applicable), and applicant are required to complete this Triad MLS Waiver Request Application and forward it to the MLS coordinator at their Association. The application will be submitted to Triad MLS staff for recommendation to the Triad MLS Board of Directors for final approval.

The person requesting the waiver of MLS fees must be the broker-in-charge. Approved waivers apply only to the specific person while he or she is employed temporarily on a specific job. Such job (as indicated on the Waiver Request Application) and use of the on-line MLS system shall not be in violation of any policies of the Triad MLS or any agreements to which Triad MLS is a party. Any violation of such policies or unauthorized use shall subject the waived user, broker-in-charge, and supervising agent (if applicable) to penalties to be determined by the Triad MLS Board of Directors and to any other remedies available under law. If there is any change of the broker-in-charge, this waiver is null and void and must be resubmitted.

MLS policy will be determined on the regional level by the Triad MLS Board of Directors. Brokers-in-charge may be exempted from payment of recurring participation fees for any user under the broker-in-charge's supervision who does not have an active NC real estate or appraisal license and who does not perform acts requiring licensure as defined by the NC Real Estate Commission and the NC Appraisal Board in Articles 1&2. The Triad MLS adopts Articles 1&2 as the standard by which the waived user's acts will be evaluated. Copies of these Articles are available at Association offices. It will be assumed that any individual who holds an active license is performing acts requiring licensure and is therefore not eligible for a waiver. All users with the following active licenses are ineligible for waiver and must pay full MLS dues to participate in the MLS system: Real Estate - Broker, Salesperson. Appraiser - Certified, Licensed, Registered.

The broker-in-charge must certify in writing that the applicant is not licensed and is not performing acts requiring licensure. **If at any time the waived user obtains an active license or begins performing acts requiring licensure or is no longer employed, the broker-in-charge is required to notify his or her Association and the Triad MLS Board of Directors in writing.** Once the waived user obtains a license or begins performing acts requiring a license, the broker-in-charge has ten (10) business days to notify his or her Association and begin paying MLS dues for the user. **If the broker-in-charge fails to notify his or her Association and the Triad MLS within ten (10) business days, the broker-in-charge will be subject to penalties determined by the Triad MLS Board of Directors.** Violators will be billed for MLS access from the date (plus 10 days) they obtain an active real estate or appraisal license.

Approved waivers will take effect on the first day of the month after approval by the Triad MLS Board of Directors and will remain in effect until the waived user is no longer employed, obtains an active real estate or appraisal license, or begins performing acts requiring licensure.

If Triad MLS staff or the Triad MLS Board of Directors denies a waiver request application, his or her Association within fifteen (15) business days will notify the broker-in-charge in writing. If Triad MLS staff denies the waiver application the first time, the broker-in-charge may resubmit the request, answering any questions raised. The decision of the Triad MLS Board of Directors is final.

The Triad MLS Board of Directors will hold the broker-in-charge and the supervising agent, if applicable, fully responsible for the acts of the applicant.

When users receive training from Triad MLS a document must be signed regarding the security of passwords and penalties for violations. The penalties for password security violations are as follows: First Offense - \$1,000 fine; Second Offense - \$3,000 fine; Third Offense - Six month suspension from MLS.

***Triad MLS Help Desk will not be available to the Temporarily Waivered User unless training on the MLS system is completed at the Triad MLS office. All Temporarily Waivered Users requesting more than 2 weeks access MUST attend training within 2 weeks of obtaining access. If training is not completed within 2 weeks, access will be denied.***

Broker, supervising agent, and applicant all must sign AND print names. Please date this form AND complete reverse side.

Broker-in-charge: \_\_\_\_\_ (sign) \_\_\_\_\_ (print)

Supervising agent: \_\_\_\_\_ (sign) \_\_\_\_\_ (print)

(if applicable)

Waiver applicant: \_\_\_\_\_ (sign) \_\_\_\_\_ (print)

Today's date: \_\_\_\_\_ (Rev 12/09)



## **Exhibit 4**

### **THE MOBILE HOME: Real Property or Personal Property?**

*by Robin M. Barefoot*

The following article was originally published in the April 27, 1992 edition of the North Carolina Lawyers Weekly. The author is a title attorney at a title insurance company in Chapel Hill, North Carolina. The article is reprinted herewith her permission (with minor modifications to address issues pertinent to real estate licensees).

Real estate agents sometimes encounter a transaction in which a mobile or manufactured home is being transferred with the property that is being sold. In such case, an issue may arise as to whether the mobile or manufactured home is real property or personal property. What follows is intended to guide real estate agents through an understanding of the issues raised in these transactions.

#### **Definition**

A mobile/manufactured home (m/m home) is a dwelling which is factory-built to the specifications of the National Manufactured Housing Construction and Safety Code as promulgated by the U.S. Department of Housing and Urban Development. It is transported to the building site either on its own chassis or on a flat bed truck.

In a recent case involving a restrictive covenant which prohibited mobile homes, the North Carolina Court of Appeals ruled that a factory-built modular home, designed and constructed to travel on wheels from place to place was a "mobile home," even though the axles, wheels and tongues were removed after the structure was placed on the lot.

North Carolina courts have uniformly held that the term "trailer" within a restrictive covenant includes "mobile homes." The North Carolina General Statutes also include the term "manufactured home" when it is used in the context of restrictive covenants.

#### **M/M Homes as Motor Vehicles**

Every m/m home is treated initially as a motor vehicle. At the time it is sold or transferred from the manufacturer to a retailer, ownership is evidenced by a manufacturer's Certificate of Origin.

When the home is sold by a retailer, the customer or the retailer acting on behalf of the customer applies to the Division of Motor Vehicles for a Certificate of Title. The DMV issues the Certificate of Title based upon the manufacturer's Certificate of Origin. If the home is subsequently resold, the Certificate of Title is assigned to the new purchaser.

Most m/m homes are sold and financed as personal property, just like motor vehicles. Ownership of the home is evidenced by a Certificate of Title. Any lien or security interest in the home is evidenced by a notation on the Certificate of Title or perfected by the filing of a UCC financing statement. M/M Homes as Real Property.

More and more frequently, however, m/m homes are being placed on permanent foundations in

residential subdivisions or on individual tracts of land. In these situations, the homes are being sold and financed as real estate, and loans used to purchase or refinance them or the land to which they have been affixed are secured by deeds of trust.

There are legal and practical implications when an m/m home is sold and financed as real estate. First, information relative to whether the m/m home has been placed on a permanent, enclosed foundation with the wheels, moving hitch and axles removed is often requested by the lender. An affidavit from the owner or his attorney addressing these points is recommended.

When the m/in home is new and placed directly on a lot foundation by the manufacturer and not sold by a retailer, there will likely be a manufacturer's Certificate of Origin but no Certificate of Title. While recognizing that it is the intention of the new owner to treat the m/in home as real estate, it is nonetheless recommended by the Registration Section of the DMV that the new owner apply for a Certificate of Title. After the Certificate of Title has been issued, it can be readily canceled if the m/m home is to be treated as real estate, but having issued the Certificate of Title allows the owner to have the title reissued should he decide in the future to sell the m/m home independent of the land.

Once the Certificate of Title is canceled, no independent intervening liens can arise on the m/m home. Title to the home and lot can be transferred together by deed and any loan can be secured by a deed of trust. The home should also be listed as real property for city/county ad valorem taxes. If the owner chooses to disregard the recommendation of the DMV and does not apply for and obtain a Certificate of Title, the Certificate of Origin must be destroyed to prevent a subsequent issuance of the Certificate of Title.

Similarly, when the purchaser of an m/m home already owns the lot on which the home is to be placed, the purchaser or his attorney must cancel the prior owner's Certificate of Title. It is suggested by the DMV that a new owner should have a Certificate of Title issued in his name before canceling the prior certificate. The DMV explains that when a Certificate of Title is assigned upon purchase of an m/m home and then canceled for treatment of the home as real property, it cannot be reissued to the assignee, nor upon his request, but only to the name appearing on the face of the certificate (presumably, the seller) and only upon that person's request. The home should also be listed as real property for city/county ad valorem taxes.

### **Cancellation of Certificate of Title**

Cancellation of the title is effectuated by writing the following information on the face of the Certificate of Title: "This home has been placed on a permanent foundation and declared to be real estate." The owner should then sign and date the title certificate directly beneath this statement. If there are any liens noted on the title, these liens must be satisfied or with the consent of the lien holder, transferred to other collateral (perhaps to the property where the home is to be located, evidenced by a note and deed of trust). Satisfaction or transfer of a lien must also be noted on the face of the title. The owner should then send the Certificate of Title, along with a short cover letter to:

Registration Section  
Division of Motor Vehicles  
1100 New Bern Avenue  
Raleigh, NC 27697  
(919) 733-3025

If the Certificate of Title is lost, the DMV requires that a replacement Certificate of Title be issued to the owner, and then canceled for treatment of the m/m home as real property.

### **Conclusion**

The importance of complying with the steps outlined above will be dictated in each case by whether the lender considers the m/m home as part of its collateral, or whether the loan was made on the basis of the land value exclusive of the home. Failure to subject the m/m home to the lien of the lender's deed of trust will prevent the lender from exercising its right of foreclosure against the m/m home.

### **Commission Comments**

There is a common belief among real estate licensees that they are prohibited by law from selling mobile homes. This is untrue. When a sale involves only a mobile home, but no real property, a real estate license is not required. However, in some cases the licensee must obtain a motor vehicle dealer's license from the Division of Motor Vehicles.

Nevertheless, when the land on which the mobile home rests is included in the listing agreement or sales contract, a real estate license is required. Similarly, when a mobile home's Certificate of Title is canceled and the mobile home becomes part of the real property, a North Carolina real estate license is required to list and sell the mobile home/land combination.