

CT-2011-003

**THE COMPETITION TRIBUNAL**

**IN THE MATTER OF** the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

**IN THE MATTER OF** an application by the Commissioner of Competition pursuant to section 79 of the *Competition Act*; and

**AND IN THE MATTER OF** certain rules, policies and agreements relating to the residential multiple listing service of the Toronto Real Estate Board.

**BETWEEN:**

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE  <b>RECEIVED/REÇU</b> August 17, 2012 CT-2011-003  Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 175

**THE COMMISSIONER OF COMPETITION****Applicant****- AND -****THE TORONTO REAL ESTATE BOARD****Respondent****- AND -**

**THE CANADIAN REAL ESTATE ASSOCIATION AND REALTYSELLERS  
 REAL ESTATE INC.**

**Intervenors****WITNESS STATEMENT OF GARY SIMONSEN**

August 3, 2012

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1. I am the Chief Executive Officer of The Canadian Real Estate Association ("CREA") and have held that position since July 3, 2011. Prior to becoming CEO, I was the Chief Operating Officer of CREA for approximately three years, and prior to

becoming COO in 2008, served CREA for approximately a decade as its Associate Executive Officer.

**A. CREA**

2. CREA was incorporated in 1954 under Part II of the *Canada Corporations Act* and is one of Canada's largest single-industry trade associations.

3. CREA represents over 105,000 real estate brokers and agents working through approximately 100 real estate boards and associations, including provincial and territorial associations. Membership in CREA is open to real estate boards and associations, as well as their members in good standing, and is conditional on agreeing to be bound by, amongst other things, the REALTOR® Code (CREA's Code of Ethics), CREA's By-Laws, Rules and Regulations, Privacy Code and Principles of Competition, as well as applicable federal and provincial laws.

4. Attached as Exhibit 1 (CREA S001453) is a copy of CREA's By-Laws, Rules and Regulations, as at March 2012. Attached as Exhibit 2 (CREA S001509) is a copy of CREA's Code of Ethics, as at December 2011.

5. Each province/territory regulates and licences the brokers and agents within its jurisdiction. The regulatory regimes differ across Canada. Accordingly, there are differences across Canada in terms of the standards and requirements imposed on brokers and agents, which also impact boards and associations.

6. As the national voice for the Canadian real estate industry, CREA's key objectives include national representation of the industry on issues at the federal

government level, assisting members in understanding the *Competition Act* and its effect on their business, formulating professional standards, acting as an interactive forum, and researching and disseminating information on issues affecting the real estate industry, including technological issues.

7. CREA has also taken a leadership role in ensuring that competition issues are properly addressed within the Canadian real estate industry. In 1999, CREA created the Principles of Competition, adherence to which is a condition of membership. CREA also coordinates a national competition awareness campaign and provides an online competition compliance program for REALTORS®.

#### **B. CREA's MLS® and REALTOR® Trademarks and Board MLS® Systems**

8. CREA owns the Multiple Listing Service® trademark, the MLS® trademark, and the associated logos (the "MLS® Trademarks"). The MLS® Trademarks identify professional services provided by CREA members to effect the purchase and sale of real estate as part of a cooperative selling system.

9. The trademarks REALTOR® and REALTORS® and the associated logos (the "REALTOR® Trademarks") are owned by REALTOR® Canada Inc., a company owned by CREA and the National Association of REALTORS® ("NAR"), the national real estate industry association in the United States. In Canada, the REALTOR® Trademarks certify to the public that the real estate brokerage services are offered by professional and licensed real estate agents who are members of CREA and subject to CREA's rules, regulations and policies and, as a result, subscribe to a high standard of professional service and a strict code of ethics.

10. The MLS® Trademarks and REALTOR® Trademarks (together, CREA's Trademarks") are certification marks. They are an assurance of integrity and identify a certain standard of brokerage services and professionalism. They can only be used in Canada by members in good standing of CREA.

11. An MLS® System is a cooperative selling system operated by a local board or association in association with the MLS® Trademarks (under license from CREA). An MLS® System provides an ongoing inventory of available properties listed for sale by REALTORS®. This inventory is accessed by REALTORS® by virtue of their membership in the local board/association. Some boards also have inter-board agreements with other boards to allow access to MLS® listings.

12. An MLS® System ensures a certain level of accuracy of information, professionalism and cooperation among REALTORS® to effect the purchase and sale of real estate. The credibility of an MLS® System comes not from the number of listings in it but from adherence to the standards associated with the MLS® and REALTOR® Trademarks, which standards are closely related to its operation. REALTORS® who access an MLS® System do so to provide a high standard of service and professionalism consistent with the standards associated with the MLS® and REALTOR® Trademarks.

13. Attached as Exhibit 3 (CREA S000660) is a copy of the Certification Mark License Agreement between CREA and The Toronto Real Estate Board ("TREB"), pursuant to which CREA licenses the use of the MLS® Trademarks to TREB for use in association with the operation of TREB's MLS® System.

14. In order for a board or association's MLS® System to operate effectively and to maintain the distinctiveness of the MLS® Trademarks, REALTORS® must adhere to certain standards which promote confidence in, and the reliability of, the System. These standards ensure that the quality of the information is high and available on a timely basis. CREA's rules require members to be responsible to ensure the accuracy of information in an MLS® System. This ensures that members and the public recognize and value MLS® data as being the most reliable and current information available, and in turn promotes and supports CREA's Trademarks and the benefits of using a REALTOR® who uses an MLS® System on behalf of his/her clients.

15. While only REALTORS® can enter information concerning properties for sale on an MLS® System and access all the information entered by other REALTORS® on that System, a portion of the listing information contained within an MLS® System may be uploaded by local boards/associations to a public website at REALTOR.ca (formerly MLS.ca). REALTOR.ca is operated by CREA and is a means of disseminating information to the public about properties listed by REALTORS® across Canada.

16. The REALTOR® mark, when used in the www.realtor.ca domain name, certifies that the listings on the website are posted by REALTOR® members of CREA, for the purpose of marketing and selling their listings. The mark also certifies that the REALTOR® is responsible for, and stands behind the accuracy of, the listing information.

17. CREA has, over the years, consistently and diligently educated its members and the public about CREA's Trademarks and their proper use and has consistently taken action to protect those Trademarks. For example:

- (a) CREA created a Trademark Tool Kit to explain CREA's Trademarks to board and association members and to provide guidelines and policies to ensure that the Trademarks are properly used and protected. This Tool Kit is designed to assist boards/associations in taking an active role in enforcing CREA's Trademarks which, under CREA's rules, they are required to do. A copy of the Trademark Took Kit (CREA 00041929) is attached as Exhibit 4. Members can access these materials and videos on how to properly use CREA's Trademarks online and can take advantage of compliance programs offered by CREA. Members also have access to CREA's Trademark Manual which explains to REALTORS® how to properly use CREA's Trademarks.
- (b) CREA has sent notices to members regarding the importance of protecting CREA's Trademarks and complying with CREA's rules and policies regarding those Trademarks. For example, attached as Exhibit 5 (TREB 00045896) is a notice sent to members regarding restrictions on use of CREA's Trademarks when contracting with non-members.
- (c) CREA has provided boards and associations with templates for licence agreements to allow them to permit listings to be uploaded to REALTORS® or their third party service providers in a way that protects the integrity and security of the board/association's MLS® System and CREA's Trademarks which are associated with it. An example is attached as Exhibit 6 (TREB 00023934).
- (d) CREA created a Data Protection Tool Kit to assist members in protecting their intellectual property rights and to ensure the high quality of content in MLS® Systems. A copy of this Tool Kit is attached as Exhibit 7 (TREB 00008404).
- (e) To the extent that infringements of CREA's Trademarks come to CREA's attention, CREA, in conjunction with the relevant board/association, enforces the Trademarks by requiring those infringers to immediately cease and desist their improper use. CREA also monitors the trademark register and opposes any registrations that could pose a risk to CREA's Trademarks.
- (f) CREA educates the public about CREA's Trademarks, including through advertising campaigns and through its public facing websites (such as [howrealtorshelp.ca](http://howrealtorshelp.ca)).

### C. PRIVACY

18. Privacy issues have received increased focus in the real estate industry because of the passage of the *Personal Information Protection and Electronic Documents Act* ("PIPEDA") in 2004 and the increased use of the internet by both REALTORS® and consumers.

19. CREA has taken the lead in addressing privacy issues and concerns that are relevant to the Canadian real estate industry. For example, CREA has developed an information kit for all levels of real estate, including a brochure for distribution to home buyers and sellers outlining their privacy rights under PIPEDA. CREA also developed a Privacy Code for all members, a copy of which is attached as Exhibit 8 (CREA S000611). The CREA Privacy Code is based on the 10 principles of PIPEDA, including the need to obtain consent for the collection, use or disclosure of personal information and the requirement that such information can only be used for the purposes discussed.

20. As I understand it, PIPEDA prohibits the disclosure of personal information about a person without that person's consent, unless the information is publicly available and is specified by the regulations. There have been a number of decisions from the Privacy Commissioner about the application of this principle to the disclosure of information about a real estate transaction. For example, the Privacy Commissioner has concluded that, in some contexts, personal information can include the purchase price of real estate and it is not enough for personal information to be simply available from a public source for an organization to be able to lawfully disclose it without obtaining consent; rather, it must also have been collected from the publicly available

source for the specific disclosure at issue. Attached as Exhibit 9 (TREB 00050068) is a copy of the Privacy Commissioner's decision that I am referring to.

21. Further, there is provincial legislation across the country that governs restrictions on advertising in the real estate industry, including when information about a transaction can be included in an advertisement and whose consent (seller or buyer or both) is required. In Ontario, this issue is governed by the Real Estate Commission of Ontario's ("RECO") Code of Ethics, which is Regulation 580/05 under the Real Estate Business and Brokers Act, 2002 ("REBBA"). REBBA has published advertising guidelines that are designed to assist compliance with RECO's Code of Ethics, a copy of which is attached as Exhibit 10 (GRMR1753\_00000117). These guidelines state that:

- (a) One cannot identify any real estate in any advertising without the owner's written consent;
- (b) One cannot include any information in an advertisement that would identify a party to a transaction without that party's consent;
- (c) One needs the written consent of both parties before any information is included in an advertisement that could be used to identify the transaction terms; and
- (d) With the seller's written consent, one can advertise that a property has been sold once the transaction has been entered into provided that no information about the terms of the agreement are included. Once the transaction has closed, the buyer's consent is also required.

#### **D. CREA's Response To Technology And The Use of the Internet**

22. The internet has had a significant effect on the real estate industry. CREA has been at the forefront of the Canadian real estate industry's response to the challenges and opportunities created by the advent of the internet.

23. CREA's MLS® and Technology Council (the "MTC") has been at the forefront of CREA's initiatives in relation to the internet. The MTC reports to CREA's board and is responsible for devising strategies and policies for the provision of national technological services (including data management, delivery and security), researching technology trends and their impact on the real estate industry, facilitating the creation of national data standards for the operation of MLS® Systems and facilitating in the determination of national data and information sharing solutions. Attached as Exhibit 11 (CREA S000690) is a copy of MTC's Policy Manual, as at March 2012.

24. CREA supports the use of new and innovative business models which improve the services provided by REALTORS® to consumers. In that respect, CREA is supportive of the provision by REALTORS® of relevant, appropriate, accurate and up-to-date information to consumers through the internet in a manner which protects and preserves the integrity and quality associated with CREA's Trademarks, appropriately addresses privacy concerns and meets the requirements of the relevant provincial and federal legislation.

25. For the past decade, the MTC and CREA have studied the potential use of the internet to provide new and innovative services and have devised several proposals and policies to meet this objective. Throughout the consideration and implementation of these proposals and policies (which are discussed in more detail below), the MTC and CREA have recognized two important realities. First, it is possible to implement policies through a number of different methods and which method is appropriate for a particular board or association will depend, amongst other things, on its financial and technical capabilities as well as the rules and policies that govern it. Second, the development of

internet data sharing vehicles raises a whole host of challenging issues, including in relation to CREA'S Trademarks, privacy and technology.

26. The major initiatives undertaken by CREA and MTC are discussed below.

**(i) REALTOR.ca**

27. At the time when the internet began to gain prominence as a vehicle for commercial applications, CREA launched an initiative to respond to the technological revolution that the real estate industry was facing. One of the end results of this initiative was the establishment in 1995 of MLS.ca (the predecessor to REALTOR.ca), with the cooperation of boards/associations across the country. CREA assumed the operation of this public website in 1999.

28. REALTOR.ca contains a subset of listing content from MLS® Systems across the country. Boards/associations provide CREA with the consumer facing listings data which is then uploaded daily onto REALTOR.ca. CREA requires certain mandatory fields of information to be provided for any listings that are uploaded to REALTOR.ca and some boards/associations provide information in addition to the mandatory fields. Accordingly, the information in the listings on REALTOR.ca does vary. Attached as Confidential (Level A) Exhibit 12 (CREA S000683) is a list of the mandatory fields of information that boards/associations must provide to CREA for upload onto REALTOR.ca, as well as a snapshot of the information that was provided by TREB for upload onto REALTOR.ca.

29. REALTOR.ca has been consistently identified by CREA members as one of the most important services provided by CREA. It is also a popular resource for

consumers to gather information, especially at the start of the process of buying or selling real estate, as it allows them to privately search through listings without the need to call a broker or to provide their identity through a log-in mechanism. Over the past few years, REALTOR.ca has had between approximately 3 to 6 million unique visitors each month and generated over 250 million monthly page views. Both the monthly unique visits and page views have generally increased over time. REALTOR.ca contains over 350,000 listings at any one time.

30. REALTOR.ca has recently undergone a number of improvements. For example, in 2010 and 2011 CREA launched “apps” for most major mobile devices at no cost to consumers and no additional cost for REALTOR®. These apps allow consumers to use REALTOR.ca to search for properties, including new listings and open houses in their vicinity, and to contact agents for more information about a property. CREA has experienced a significant take-up of these apps. As at the end of 2011, there were 361,488 downloads of these apps. During January to June 2012, there were over 300,000 further downloads.

31. There are also a number of improvements that have or will be implemented including a polygon search tool, the incorporation of social media links, the addition in 2013 of demographics at the neighbourhood level (such as average household income and education) and a consumer log-in which will give consumers the ability to customize and set preferences.

32. Despite the availability of many third party websites that advertise real estate, REALTOR.ca remains popular with consumers. The following statistics from

Google Analytics show unique visitors to REALTOR.ca in the first six months of 2012 compared to the same period in 2011.

	<b>2011</b>	<b>2012</b>	<b>Increase/Decrease</b>
January	3,613,034	4,737,248	+31%
February	4,070,596	5,003,377	+23%
March	4,613,898	5,923,797	+28%
April	4,377,265	5,654,720	+29%
May	4,567,071	5,332,281	+17%
June	4,364,316	4,823,788	+11%

The number of pages viewed have also increased by on average of 17% in the first six months of 2012, compared to the same period in 2011.

**(ii) CONNECT**

33. CONNECT is a program in Ontario that was created by a number of Ontario boards/associations to provide REALTORS® in Ontario with access to virtually all MLS® listings in Ontario, regardless of board boundaries, so that REALTORS® may better serve consumers.

34. In particular, CONNECT allows REALTORS® at participating boards/associations to search and view active listings and recent sales history of all other participating boards without the complexities and issues associated with actual data exchange. Currently, Ontario boards representing 92% of the province's membership are participating in CONNECT.

35. CONNECT is a means by which information can be obtained by REALTORS® in Ontario. It does not offer the full functionality of an MLS® System.

Attached as Exhibit 13 (CREA S000679) is a document which provides further details on the CONNECT program.

**(iii) Development of CREA's Permissions Management Solution**

36. In 2002, the MTC established the Electronic Data Usage Task Force (the "EDU Task Force") to develop guidelines for the use of electronic data for boards and associations across Canada.

37. The establishment of the EDU Task Force was prompted by the incredible growth of the internet as both a marketing tool for REALTORS® and a source of information for consumers, as well as certain developments in the United States.

38. In May 2000, NAR adopted a policy that required real estate associations in the United States and their MLS® Systems to enable MLS® participants to display on their public websites aggregated MLS® active listing information subject to the requirements of state law. This policy implemented internet data exchange networks or "IDXs", which I discuss in more detail below. The US experience at that time revealed that these public websites received significant traffic from consumers and were a positive influence in terms of brokers attracting and retaining consumers because they provided consumers with the information services they desired.

39. Around the same time, NAR was considering the issues associated with virtual office websites or "VOWs" and began working on a formal VOW policy for use by boards in the United States. NAR released a draft VOW policy in 2003. Litigation ensued between the US Department of Justice and NAR regarding the competitive impacts of the proposed VOW policy. Ultimately, a settlement was reached in 2008 and

a formal VOW policy was implemented by NAR in the United States. Attached as Exhibit 14 (CREA S001059) is the NAR VOW Policy. Attached as Exhibits 15 to 17 are NAR's summary of the settlement (CREA 00034069), FAQs prepared by NAR concerning its VOW policy (CREA S001430) and NAR's model rules for implementing the VOW policy (CREA S001443).

40. Around 2002, CREA believed that it was time to consider the implementation of these internet data sharing tools for REALTORS® and consumers in Canada and the EDU Task Force was mandated to do that.

41. The EDU Task Force considered three vehicles for sharing data through the internet, as well as the provision of information for use by third parties. The three vehicles were IDXs, VOWs and Deep Link Framing ("DLF"). These vehicles are referred to as "permissions based technology". The EDU Task Force defined these vehicles as follows:

- (a) An IDX is a reciprocal system whereby consenting brokerages agree to advertise on their internet websites each other's active property listings, either from the MLS® System of the relevant local board/association or from REALTOR.ca, subject to the rules of the relevant local board/association and the REALTOR®'s oversight.
- (b) A VOW is a broker or REALTOR® internet website through which the REALTOR® provides real estate services to consumers with whom the REALTOR® has first established a broker-consumer relationship, where the consumer has the opportunity to search for MLS® data from the MLS® database of the board/association, subject to the rules of the relevant board/association and the REALTOR®'s oversight.
- (c) A DLF is an inexpensive internet marketing tool using the current technology of REALTOR.ca for both display and searching of listings.

42. After considering the numerous issues raised by these three vehicles of permissions based technology, the EDU Task Force delivered a report in October, 2003. A copy of the EDU Task Force Report is attached as Exhibit 18 (CREA 00005957).

43. In rendering the Report, the EDU Task Force and MTC were attempting to encourage local boards/associations to enable members to display on approved public websites aggregated MLS® active listing information and, at the same time, have a system that was flexible enough to respect the interests of consumers, REALTORS® and the boards. The solution was not to enforce national rules, but to provide guidelines and model rules that could be implemented, subject to board by-laws and provincial rules.

44. In that regard the EDU Task Force provided detailed guidelines and proposed rules that boards/associations could use in setting up their own permission based technology systems, including IDXs and VOWs, as well as a model contract for use with third parties who wish to provide these services to REALTORS®. Boards therefore had the option of offering their own permissions management technology by using their own MLS® data and the services of a third party technology company (such as the MLS® System provider).

45. CREA also developed Permissions Management Guidelines whereby CREA (as opposed to a local board/association) could provide the actual technology

services necessary for the implementation of IDXs, VOWs, and DLFs (“CREA PM Solution”).<sup>1</sup>

46. The goal of the CREA PM Solution was to provide a cost-effective alternative for a board/association to offer permission based technology to its members. A copy of the most recent version of CREA’s Permissions Management Guidelines (version 2, published in 2005), is attached as Exhibit 19 (CREA 00005862). The CREA PM Solution is based on the REALTOR.ca database. A board that takes advantage of the CREA PM Solution can choose to administer the program on its own or have CREA administer it.

47. Boards/associations who allowed their members to access the technology services offered by CREA under the CREA PM Solution were required to comply with the Permission Management Rules specified by CREA in the Permissions Management Guidelines. The Permission Management Rules contain detailed rules and requirements for the use of the CREA PM Solution in general (such as in relation to the use of CREA’s Trademarks, privacy issues, obtaining authorization, content of frames created and display of pages) as well as separate detailed rules and requirements for using each of the CREA DLF, VOW and IDX vehicles.

48. The Permission Management Rules were significantly influenced by the VOW and IDX policies implemented by NAR and by the need to protect confidential and private information. The confidential information which is the focus of this proceeding is

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<sup>1</sup> Accordingly, VOWs and IDXs can be provided through CREA or through local boards/associations (either directly or by retaining third party providers).

not permitted to be included on an IDX or VOW data feed provided under the CREA PM Solution.

**(iv) Moving Forward – CREA's Data Distribution Facility**

49. In 2009, with the increasing influence of the internet and the changing demands of consumers, CREA focused on whether the Canadian real estate industry was meeting the needs of both its members and consumers.

50. CREA began this process by commissioning an external report which examined consumers' view of the real estate industry and their wants and needs with respect to the buying and selling of real estate. Amongst other things, this report confirmed the increasing use by consumers of the internet to research real estate, including the use of third party websites.

51. It also became apparent that there was a significant problem with the accuracy and currency of the MLS® listing information being shown on third party websites. REALTORS® throughout the country were sending their MLS® listing information to numerous websites without proper contracts in place to protect the intellectual property rights in the listing content, to ensure the accuracy and currency of the content and to ensure the proper use of CREA's Trademarks. As a result, the internet was inundated with inaccurate and out of date listing information. Also, REALTORS® were investing a considerable amount of time and money to send their listing content to various websites.

52. Shortly thereafter the MTC held a national forum with the goal of devising a national technology strategy that responded to the needs of members and consumers.

Recognizing the increased use and influence of third party websites, the national strategy included moving towards the distribution of data to third parties in a way that ensured the accuracy and currency of the data and protected CREA's Trademarks.

53. Around the same time, some franchisors asked CREA to consider the creation of a National IDX, which would include MLS® listings from across Canada. A CREA solution for a National IDX was considered to be the most efficient and cost effective. CREA was also viewed as being in the best position to ensure the consistency and accuracy of the listing data, as well as to protect CREA's Trademarks.

54. These developments in 2009 and 2010 led to the creation of an MTC Data Distribution Task Force which was mandated to consider policies to be administered by CREA concerning data sharing and data distribution. CREA's goal in establishing this Task Force was to support REALTORS® by providing tools and efficient services that would promote a positive REALTOR®/MLS® public perception through the display of quality data. Achieving this goal is essential to the protection of CREA's Trademarks, as well as to the success of the REALTOR®/consumer relationship.

55. The Task Force ultimately designed a data distribution facility for Canadian REALTORS® (the "DDF"), after consultation with the industry. At its essence, the DDF is intended to supply publicly available MLS® listing content for publication on both member and non-member (i.e., third party) websites. It is a permissions-based system that will allow brokers to share their listings with other brokers, receive a feed of their own listings for display on their website, and send their listings to third party websites. The DDF consists of three modules.

56. Module One of the DDF, the National Shared Pool Module, allows brokers and their sales staff to contribute their listings to a national data pool and receive a feed from that pool to display all other participants' listings on their websites. Participants can filter the data they receive based on objective criteria. Brokers that decide to contribute their listings to the national data pool can also include them in a data feed provided to participating franchisors for display on the franchisors' websites.

57. Module Two, the Member Feed DDF Module, allows brokers and salespeople to receive a feed of their own listings for display on their websites, ensures consistency and accuracy of the data and gives brokers the ability to track the success of their website as a marketing tool.

58. Module Three, the Third Party Module, involves the distribution of data to third party websites outside of organized real estate. It allows participating brokers and salespeople to distribute their listing content to third party websites such as Zoocasa. Policies and procedures must be followed to ensure that information contained on third party sites remains accurate and up to date, and the parties must agree to terms and conditions that protect the use of the data and CREA's Trademarks.

59. Board participation in the National Shared Pool Module is mandatory in that boards must provide or authorize a feed of the listings of their members who have chosen to participate in the DDF to CREA and adopt and enforce the DDF rules established by CREA. Boards must also participate in the Member Feed DDF Module and the Third Party Module, unless they provide a comparable facility to their members.

60. The DDF was developed and implemented because it addresses the needs of both consumers and REALTORS®. Sellers receive the benefit of their property being advertised accurately and consistently and on a wider range of websites. REALTORS® are able to provide this service to their clients without the need to invest in any additional infrastructure and with the confidence that the data quality is high. The importance of data quality cannot be overemphasized. Whether the consumer is a buyer or seller, the accuracy of the listing data sourced from an MLS® System is key, regardless of which website it is accessed from. The failure of a website to contain updated and accurate data creates the risk of negative consumer perception of MLS® listing data and the services provided by REALTORS®.

61. The DDF was approved at CREA's Annual General Meeting on April 2, 2011. Boards/associations now have a positive obligation to comply with CREA's DDF Policy as it is amended from time to time. A copy of the current CREA DDF Policy and Rules, dated April 30, 2012, is attached as Exhibit 20 (CREA S000916). Also attached as Exhibit 21 (CREA 00042502) is a copy of CREA's "Frequently Asked Questions" in relation to the DDF Policy.

62. Both the National Shared Pool Module and the Member Feed DDF Module were implemented in July 2012. We expect that the Third Party Module will be implemented in the near future.

**(v) CREA Vow Task Forces**

63. In July 2008, CREA created a VOW Task Force to review various areas of concerns that had been raised by the Competition Bureau with respect to VOWs in

Canada and to make recommendations if appropriate. The VOW Task Force held a number of meetings with the Bureau and consulted with CREA members across Canada on the issues relevant to a VOW policy. The Bureau and the VOW Task Force did not reach an agreement on the appropriate terms and conditions for a national VOW policy as of 2010, when discussions between the Bureau and CREA ceased.

64. In August 2011, CREA created a new VOW Task Force to assess and develop a national VOW policy. The 2011 Task Force intended to build upon the work of the 2008 Task Force with the ultimate goal of providing leadership and guidance to boards/associations and REALTORS® across Canada. After some preliminary work, the 2011 Task Force is continuing its deliberations and is waiting for the resolution of this proceeding before finalizing its recommendations.

**(vi) Futures Sessions**

65. As part of its continuing effort to respond to the evolving challenges faced by the Canadian real estate industry, CREA undertook what it has called the “Futures” project commencing in 2011.

66. The Futures project involved various sessions being held across the country where, using an innovative scenario planning exercise, industry participants discussed the challenges faced by REALTORS® and how best to address those challenges, and identified what consumers’ needs will be in the next decade and how those needs impact on REALTORS®. The sessions were designed to encourage “out of the box” thinking and to have participants discuss the issues faced by the industry.

67. The topics addressed in the Futures sessions included:

- (a) The modern consumer who increasingly uses the internet to become informed and therefore wants quick access to the information they think they need;
- (b) The effect of advancements in technology, including with respect to the internet;
- (c) The rise of different service options for the consumer and the rise of competitors in the industry; and
- (d) The tension that exists in the industry between those who embrace technology and those who do not.

68. CREA prepared a summary of the insights received from the Futures sessions, a copy of which is attached as Exhibit 22 (CREA S000814) Important themes which arose from the Futures sessions can be summarized as follows:

- (a) CREA should continue to make improvements to REALTOR.ca with the ultimate goal being to make it the best online portal for real estate and a one-stop shop for both consumers and REALTORS®.
- (b) Industry participants are generally enthusiastic about CREA's DDF. Consumers clearly want their properties advertised on multiple sites and REALTORS® want to provide this improved service to consumers.
- (c) The perception of some members of the public of REALTORS® as gatekeepers of data is a challenge for REALTORS®. There is an increased recognition that the value of a REALTOR® for a consumer is not only in the data itself but also in the REALTORS® ability to interpret that data and to provide guidance throughout the transaction.

#### **D. Status of Internet Data Sharing Vehicles in Canada**

69. The experience of local boards/associations with VOWs, IDXs, DLFs and other internet data sharing vehicles has varied across the country. A number of boards/associations have opted into CREA's PM Solution. Relatively few have instituted formal policies of their own.

70. The different experiences across Canada are due to a number of factors, not all of which may be present in each situation. For example, each local board/association is subject to regulation by their province or territory, and those regulations do differ. In addition, the demand by both consumers and REALTORS® for internet data sharing vehicles is not consistent across the country. Further, the financial resources and technical capabilities of local boards/associations vary. Many don't have the financial resources to administer an internet data sharing solution. Many also don't currently have the technical capability to provide an internet data sharing solution.

71. I set out below some examples of how Canadian local boards/associations are permitting their members to use the internet to provide real estate information to consumers. This is in no way an exhaustive summary. My intention is to use examples (not already addressed by the Parties in their witness statements) to illustrate the variety of innovation that exists across the country, and the different experiences that boards/associations have had with the use and success of internet data sharing vehicles.

72. Starting with the CREA PM Solution for VOWs, IDXs and DLFs, as at September 2011, there were 873 CREA DLFs, 27 CREA IDXs and 36 CREA VOWs registered with CREA. Of those registered, no CREA VOWs were active and 27 CREA IDXs were active. CREA's DLFs will be discontinued in the near future, having been made redundant by the DDF.

73. In addition to TREB, there are a number of local boards/associations across Canada who are not using the CREA PM Solution, but are instead providing

internet data sharing services for their membership, either directly or through a third party provider. A number of examples of such boards/associations are discussed below.

74. The Victoria Real Estate Board allows members to provide a VOW solution through its MLS® System software (Matrix client portal) and through third parties who receive a data feed supplied by the board. The data displayed to consumers is equivalent to the board's public feature sheet, which includes data beyond what is uploaded by the board to CREA for posting on REALTOR.ca.

75. The Greater Vancouver Real Estate Board has implemented an IDX/VOW advertising solution through third party providers. Attached as Exhibit 23 (CREA 00047978) is a copy of the board's rules which include the policy. The data for both IDXs and VOWs comes from the same pool of listings so if a member wants access to one facility, that member has to opt into both. Currently, approximately 90% of brokers have opted into the policy. The board estimates that approximately 30% of brokers have IDX solutions and approximately 23% of brokers use a VOW solution.

76. The REALTORS® Association of Edmonton originally did not offer its own VOW or IDX solution to members. Rather, members could have their preferred third party providers receive access to the association's MLS® data (comparable to the level of information disclosed on REALTOR.ca) through third party agreements. Many of those third parties provided VOW and IDX solutions, although the association does not have a record of how many members have taken advantage of these services. More recently, the association began to also offer its own IDX solution through Marketlink at

no cost to members, although the take-up has been minimal, likely because this solution is less advanced than that provided through third party providers. The anecdotal evidence is that while Edmonton REALTORS® interest in VOWs was relatively high approximately 5 years ago, that interest has apparently waned and, more recently, the IDX solution appears to be satisfying the current demand.

77. The Saskatoon Region Association of REALTORS® facilitates the provision of data from each of the three associations in Saskatchewan who allow access to an IDX and VOW solution. A copy of the IDX policy is attached as Exhibit 24 (CREA 00048050). A copy of the VOW policy is attached as Exhibit 25 (CREA 00048045). For each association that authorizes access, a direct data feed (comparable to the data uploaded to REALTOR.ca) may be provided to third party service providers, who then provide the VOW and IDX services to members who chose to receive them. As at 2011, approximately 20% of the association's membership had chosen to receive VOW or IDX services. Interest among members appears to be declining due to minimal, if any, interest from the public in Saskatchewan. This may partly be explained by the fact that Saskatchewan uses a single MLS® System for the entire province and already has a facility that is relatively equivalent to Module 3 of the DDF.

78. In 2003, the London St Thomas Association of Realtors® was the first board/association in Ontario (and the second in Canada) to implement an IDX solution for its members. Attached as Exhibit 26 (CREA S001529) is a copy of the association's rules, which include the IDX policy. Since 99% of association members participate in

this facility, it has become a significant benefit for consumers. A person can go to any member's website and access virtually all the MLS® listings of the association.

79. The London IDX facility is unique in that it does not involve a direct data feed to members. Rather, the association operates and keeps current a website that members then frame onto their own personal websites. Currently, a substantial number of the association's approximately 1500 members link to the association's IDX website. In addition, the association is currently rolling out the ability for members to provide an IDX feed to their web providers. There has been virtually no interest by either members or the public in the provision of a VOW solution in the London St Thomas area and I believe that this is due, at least in part, to the longstanding and successful IDX solution operated by the association.

80. The Ottawa Real Estate Board does not have a formal policy for the provision of IDXs or VOWs. This board operates its own public website of active listings (with similar information as that contained on REALTOR.ca) and allows any member who chooses to do so to link to the public website.

81. In Quebec, an entity called Centris operates an MLS® System for the province of Quebec. Centris is an advertising vehicle similar to REALTOR.ca, as well as a provider of technology services. Centris includes all MLS® listings in the province of Quebec and consumers have access to all active MLS® listings with generally the same level of information as found on REALTOR.ca. Centris also provides a solution similar to Module Three of the DDF in that it sends listing content to websites selected by brokers.

82. Lastly, CREA did a survey of its members in 2011 regarding their interest in using the DDF. The results were that 93% of boards/associations intended to offer the CREA DDF solution and 72.5% of those REALTORS® who responded indicated an intention to use it. Attached as Exhibit 27 (CREA 00040718) is a copy of the May 2011 report which outlines the results of the survey.

**E. Effect of Remedy Requested on CREA and its Members**

83. As I read it, the remedy requested by the Commissioner is broad. The Commissioner seeks to permit brokers to use the property listing information from the TREB MLS® System to provide services over the internet (including, but not restricted to, VOWs), without any restrictions. Regarding VOWs in particular, I understand that the Commissioner believes that they should include a complete inventory of information available on an MLS® System, including historical sales data and all properties currently listed for sale. Lastly, I understand that the Commissioner asks that the Tribunal "direct" TREB to "implement" resources and facilities that are necessary to ensure the operation of VOWs or "similar services" in the manner in which the Commissioner believes they should be operated.

84. CREA has a number of very serious concerns about the effect of the remedy requested by the Commissioner on CREA, CREA's Trademarks and CREA's members across Canada.

85. First, the Commissioner appears to equate innovative use of the internet to provide services in the real estate industry with VOWs and VOWs alone. As explained above, this is not the case in Canada. The innovative use of the internet to

provide information to consumers is reflected in a wide variety of vehicles in addition to VOWs, including REALTOR.ca, IDXs, the CREA PM Solution, CREA's DDF, the variety of services offered by boards/associations across Canada (examples of which were discussed above) and numerous third party websites. VOWs are only one of many options and it is important from CREA's perspective that this proceeding not have the harmful effect of endorsing one type of innovative tool to the exclusion of others.

86. Second, CREA is concerned that the Commissioner may intend to use any result in this proceeding as a precedent for Canadian boards/associations generally. CREA believes that this would be harmful to the industry and the ability of REALTORS® to provide the services that consumers request and need. The local boards/associations across Canada have different demands from consumers and members, and different levels of resources, both financially and technologically. Requiring a board to implement one type of internet data sharing vehicle, such as a VOW, in priority to or to the exclusion of other innovation, regardless of that board's particular circumstances could harm or prevent the development of the particular innovation which may be of greatest benefit to that board's members and consumers. Accordingly, CREA believes that it is important that if the Tribunal makes any order against TREB in this proceeding, that it is clearly stated to be confined to the particular circumstances of TREB as reflected in the evidence in this proceeding.

87. Third, as already explained above, CREA has been diligent to ensure that its valuable Trademarks are used only by members in association with a high standard of professionalism and service, including the provision of appropriate, accurate and up-to-date information. Any misrepresentation or misuse on the internet of information

sourced from an MLS® System could cause very serious harm to the MLS® Trademarks, and specifically, to the trust that Canadians have come to place in the standards of service and level of professionalism symbolized by the MLS® Trademarks, and in the accuracy of listing information obtained from an MLS® System. A significant loss of trust could imperil the Trademarks themselves.

88. CREA is very concerned that if a VOW is required to contain all property information available on a board's MLS® System, including the confidential data that TREB's VOW policy excludes from TREB's VOW data feed, consumers will lose faith in the credibility of both MLS® Systems, REALTOR.ca and the services of REALTORS®, which loss of faith will, in turn, significantly harm CREA's Trademarks.

89. There is no question that a REALTOR® making available confidential data on the internet raises serious confidentiality and privacy concerns today, especially in circumstances where it is not possible to confirm whether the appropriate consents to disclosure have been confirmed (and, for example, I do not see how those consents could be confirmed in respect of past sales that are recorded on an MLS® System). This is complicated by the uncertainty as to whether VOWs are properly viewed as a means of providing real estate services or a form of advertising (in which case the RECO Code of Ethics applies) or a combination of both. Views on the proper characterization of VOWs differ. This issue is further complicated by the decision of the Privacy Commissioner discussed above to the effect that to qualify as public information, the sold information at issue must have been actually derived from a public source.

90. CREA is concerned that the disclosure on the internet through VOWs of personal and confidential information could cause significant damage to the credibility of MLS® Systems and the services provided by REALTORS® using an MLS® System. Consumers may be upset by the disclosure of their confidential transactional information from an MLS® System and will blame the REALTOR® for what they view as improper disclosure. This could significantly impact the consumer's willingness to use the services of a REALTOR® and participate in an MLS® System. In short, a REALTOR® who makes private information from an MLS® System accessible over the internet will certainly not be associated in the public's mind with a high standard of professionalism and service.

91. CREA agrees that REALTORS® have to be given the tools to provide services on the internet that promote a positive and successful REALTOR®/consumer relationship for both parties in that relationship. These tools are not only essential to the success of the REALTOR®/consumer relationship, they are essential to the success of MLS® Systems and the continued existence of CREA's Trademarks. CREA is concerned that requiring the disclosure of personal and confidential information from an MLS® System onto the internet is contrary to these goals. Any benefit that may arguably result from such disclosure appears to be outweighed by the potential negative effects of such disclosure, especially when one takes into account the other available sources of information.



GARY SIMONSEN

# EXHIBIT 1

**BY-LAWS RULES AND REGULATIONS**

**THE CANADIAN REAL ESTATE ASSOCIATION**

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**APPROVED MARCH 2012**

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**ARTICLE 1 – DEFINITIONS**

**Act** means the Canada Corporations Act R.S.C 1970, c. C-32 as amended from time to time and every statute that may be substituted for that Act.

**Annual General Meeting** means the business meeting of the Members, as required by the Act, and called each year pursuant to these By-Laws.

**Bilateral Agreement** means the written agreements between The Canadian Real Estate Association and all provincial Associations establishing the obligations of each Association in terms of enforcement of the REALTOR® Code.

**Director** means any person duly elected or appointed to sit on the Board of Directors of The Canadian Real Estate Association.

**Meeting of the Members** means any Special or Annual General Meeting duly called pursuant to these By-Laws.

**Member** means a person or organization who has qualified under any category of membership established in these By-Laws and whose membership is in good standing.

**Policy** means any internal, operational, membership, or other requirement duly established in writing by the Board of Directors that does not require ratification of the Members.

**REALTOR®** is a certification mark owned by REALTOR® Canada Inc., a subsidiary of The Canadian Real Estate Association, and identifies a standard of brokerage service rendered by Members of The Canadian Real Estate Association. As used in these By-Laws, REALTOR® designates a licensed real estate practitioner who is a Member of The Canadian Real Estate Association.

**REALTOR® Code** means the Code of Ethics of The Canadian Real Estate Association as approved by the Members and as amended from time to time.

**REALTOR® Code Protocols** mean the Education, Communication and Compliance Protocols as approved by the Members, which establish Member obligations in relation to the operation of the REALTOR® Code.

**Special General Meeting** means any business meeting of the Members other than the Annual General Meeting.

**Three-Way Agreement** means the written agreements between The Canadian Real Estate Association and each Board and Association setting out membership and other obligations of each party.

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**ARTICLE 2 – NAME****2.1: English**

The English name of the Association shall be The Canadian Real Estate Association (hereinafter referred to as "CREA").

**2.2: French**

The French name of the Association shall be L'Association canadienne de l'immeuble (referred to in the French translation of these By-Laws as « ACI »).

**ARTICLE 3 – PURPOSE, OBJECTS AND PRINCIPLES****3.1: Purpose, Objects and Principles**

In accordance with the Letters Patent, the purpose, objects and principles of CREA are as follows:

- 3.1.1: to advance and promote the interests of its Members;
- 3.1.2: to increase public confidence in, and respect for, those engaged in the real estate industry;
- 3.1.3: to promote and maintain a high level of professionalism amongst its Members by creating and sustaining a Code of Ethics;
- 3.1.4: to promote, encourage and protect the private ownership of real property and do all things necessary or advisable to ensure that real estate remains a sound and desirable investment;
- 3.1.5: to promote and protect the REALTOR® and MLS® family of certification marks by exclusively licensing the marks to, and encouraging their use by Members, by promoting the acceptance and understanding of these marks through public and Member education, and by monitoring and preventing improper uses;
- 3.1.6: to promote Canadian real estate and the services of its Members internationally by liaising and developing relationships with international real estate organizations;
- 3.1.7: to raise, administer or manage charitable funds for any purposes consistent with the principles of CREA, and to establish any charitable organization advisable to further that purpose;
- 3.1.8: to act as a technological resource to its Members by monitoring and researching technology trends and their impact on the real estate industry, and by providing national technological services and products.

**3.2: Attainment of Purpose, Objects and Principles**

For the attainment of its purpose, objects and principles, CREA may exercise any of the powers as prescribed by the Act, or any other statutes or laws from time to time as applicable. In particular, without limiting the generality of the foregoing, it may:

- 3.2.1: Accumulate from time to time any part of CREA's financial assets and income earned on those assets;
- 3.2.2: Invest and re-invest the financial assets of CREA in a manner consistent with CREA's governing principles;
- 3.2.3: Issue, sell or pledge debentures or other securities of CREA;
- 3.2.4: Mortgage or otherwise secure the real or personal property of CREA;

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- 3.2.5: Authorize any Director, officer or employee to manage, transact, and settle any borrowing, with the power to vary or modify the terms of such arrangements;
  - 3.2.6: Enter into agreements, contracts and undertakings incidental to CREA's objects and purposes;
  - 3.2.7: Borrow money on the credit of CREA;
  - 3.2.8: Levy and collect dues and assessments.

#### **ARTICLE 4 – ASSOCIATION SEAL**

##### **4.1: Form**

The seal, an impression of which is stamped in the margin hereof, shall be CREA's seal until changed by the Board of Directors.

#### **ARTICLE 5 – HEAD OFFICE**

##### **5.1: Location**

CREA's head office shall be in the City of Ottawa, in the Province of Ontario.

#### **ARTICLE 6 – BY-LAWS, RULES AND REGULATIONS**

##### **6.1: Adoption of Rules and Regulations**

The Board of Directors may from time to time adopt rules and regulations (hereinafter referred to as "Rules") consistent with these By-Laws relating to CREA's management and operation.

##### **6.2: Immediate Force and Effect**

Any Rules and any subsequent amendments adopted by the Board of Directors shall have immediate force and effect, but shall cease to have force and effect unless ratified, with or without amendment, at the next Meeting of the Members.

##### **6.3: Editorial Changes to By-Laws and Rules**

The Board of Directors may make such editorial, grammatical, typographical, or cross-reference changes to the By-Laws or Rules, including section designations, that do not change the substance or the meaning of the By-Laws or Rules provided that any such changes to the By-Laws shall require the approval of Industry Canada or otherwise as may be required by the Act.

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**ARTICLE 7 – INTERPRETATIONS****7.1: Interpretations**

In reading the By-Laws and Rules, words may be interpreted as meaning singular, plural, masculine or feminine, as the context requires. References to persons shall include firms, corporations and other legal entities.

**ARTICLE 8 – MEMBERSHIP****8.1: Classes of Membership**

Membership in CREA shall consist of:

- 8.1.1: Boards – Local Real Estate Boards and Local Real Estate Associations.
- 8.1.2: Associations – Provincial and Territorial Real Estate Associations.
- 8.1.3: Commercial Overlay Boards – Boards that encompass the jurisdiction of one or more existing Boards, offering services exclusively to commercial REALTORS®.
- 8.1.4: REALTORS® – Licensed practitioners who are members in good standing of a Board or Association.
- 8.1.5: Individual Members – Persons who are not licensed practitioners who are members of any category of membership in a Board or Association.
- 8.1.6: Direct Affiliate Members – Persons who do not otherwise qualify for any category of membership in a Board or Association, or any individual licensed practitioner outside of Canada whose membership has been approved in accordance with the Rules.
- 8.1.7: Foreign Affiliate Members – Any national real estate association outside of Canada that has a reciprocal agreement with CREA, including all practitioners who are members of that association.
- 8.1.8: Honorary Life Members – Past Presidents and current or former REALTORS® who are approved by the CREA Board of Directors.
- 8.1.9: Honorary Members – Persons not current or former REALTORS® who are approved by the CREA Board of Directors.

**8.2: Qualifying For and Maintaining Membership**

To qualify and to maintain membership in CREA, prospective and current members shall agree to adhere to and be bound by the following, as applicable, and as amended from time to time:

- 8.2.1: CREA's By-Laws, Rules and Policies;
- 8.2.2: The 3-Way Agreement;
- 8.2.3: The REALTOR® Code;
- 8.2.4: The Principles of Competition.

**8.3: Failure to Comply**

- 8.3.1: The Board of Directors, after reasonable notice and hearing, may terminate the membership of any Direct REALTOR®, Direct Affiliate, Foreign Affiliate, Honorary or Honorary Life Member who fails to comply with the provisions of CREA's By-Laws,

Rules or Policies, or who, in the reasonable opinion of a majority of the members of the Board of Directors, is guilty of unethical or dishonest practice.

- 8.3.2: If a REALTOR® appears to be in violation of CREA's By-Laws, Rules and Regulations or Policies, CREA may refer the matter to the appropriate Board as a professional standards complaint or take such other action as is provided for in the Rules.
- 8.3.3: In the event of a complaint that a Board or Association has not complied with CREA's By-Laws, Rules or Policies, the Board of Directors has the authority to make such determination as it deems reasonable including termination of the Board or Association membership, in accordance with the procedure outlined in the Rules.
- 8.3.4: Upon termination of membership, all rights and privileges associated with membership in CREA shall immediately cease.

#### **8.4: Withdrawal**

- 8.4.1: A Board, Association or Commercial Overlay Board may withdraw as a member from CREA by giving ninety (90) days written notice to CREA's Chief Executive Officer.
- 8.4.2: Any Direct REALTOR®, Direct Affiliate, Foreign Affiliate, Honorary or Honorary Life Member may withdraw as a Member from CREA by giving written notice to CREA's Chief Executive Officer.
- 8.4.3: Upon withdrawal of membership, all rights and privileges associated with membership in CREA shall immediately cease.

#### **8.5: Effect of Board/Association Termination**

In the event a Board or Association ceases to be a Member of CREA, all REALTORS® and Individual Members who are members of such Board or Association shall also be deemed to have terminated their membership, unless they have joined another Member Board or Association.

#### **8.6: Arbitration**

All REALTORS® shall be conclusively deemed to have agreed to submit Claims to Arbitration as provided in CREA's Rules, the By-Laws and Rules and Regulations of the applicable Board/Association, and the REALTOR® Code.

### **ARTICLE 9 – MEETINGS OF THE MEMBERS**

#### **9.1: Annual General Meeting**

The Annual General Meeting shall be held each year between the first day of March and the thirty-first day of May at such time and place as determined by the Board of Directors.

#### **9.2: Purpose of Annual General Meeting**

The Annual General Meeting shall be held to:

- (i) Elect or appoint directors;
- (ii) Hear and receive the reports and financial statements required by the Act;
- (iii) Appoint the auditors; and

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(iv) Transact any other business properly brought before the meeting.

**9.3: Special General Meetings**

Special General Meetings may be called by the Board of Directors on its own initiative, or upon the written petition of twenty (20) per cent of the combined number of the Boards and Associations.

**9.4: Place of Meetings of the Members**

The Board of Directors may determine to hold Meetings of the Members inside or outside of Canada.

**9.5: Form and Timing of Notice**

9.5.1: Notice of the time and place of any Meeting of the Members shall be in written or electronic format, given in the name of the President or Chief Executive Officer, and shall be communicated to each Board and Association in good standing.

9.5.2: The notice shall be communicated by regular mail, courier, facsimile, e-mail or other electronic means delivered to Boards or Associations at their last known address as shown on the records of CREA at least thirty (30) days before the meeting date.

9.5.3: The inadvertent omission to notify any Board or Association, or the non-receipt of such notice by any Board or Association, shall not invalidate the proceedings at any such meeting.

9.5.4: Notice of any Meeting of the Members should contain sufficient information to permit the Member to be aware of the nature of the matters to be presented to the meeting.

9.5.5: In the event of an emergency situation, the thirty (30) day notice requirement for a Special General Meeting may be waived by the Board of Directors and the notice shall be circulated to the Members in the most expedient means available.

**9.6: Quorum**

A quorum at any Meeting of the Members shall be fifty (50) per cent of the Boards and Associations entitled to vote, present either through their voting delegates or by way of proxy.

**ARTICLE 10 – ATTENDANCE AND VOTING AT MEETINGS OF THE MEMBERS**

**10.1: Voting Rights**

Only Boards and Associations in good standing are entitled to vote at Meetings of the Members.

**10.2: Number of Votes**

The number of votes that each Board and Association has at a Meeting of the Members shall be as follows:

- 
- 10.2.1: Each Board shall be entitled to one (1) vote for each five hundred (500) members or part thereof, from all membership categories;
- 10.2.2: Each Association shall be entitled to one (1) vote. Associations with direct members (i.e. REALTORS® who are not members of a Board) shall be entitled to one (1) additional vote for each five hundred (500) direct members or part thereof.
- 10.2.3: "Members" in this Article means members in good standing as of December 31, whose dues are paid as of January 31st, according to CREA's records. In the case of dual membership, only the Board or Association that collects and remits the CREA dues on behalf of the member may include that person in its membership figures for the purposes of this Article.

**10.3: Voting Delegates**

Each Board or Association may send one or more voting delegates to carry their votes. Each voting delegate may carry one or more votes on behalf of the Board or Association, up to the total number of votes to which the Board or Association is entitled.

**10.4: Proxies**

A Board or Association, rather than sending a voting delegate, may give a written proxy to another Board or Association for any or all of its votes.

**10.5: Votes Needed to Pass Motion**

Unless otherwise specifically provided for by the Act, or by these By-Laws, all questions at Meetings of the Members shall be determined as follows:

- 10.5.1: Major technology decisions, as defined in the Rules, require a majority of the votes cast representing more than fifty (50) per cent of the membership;
- 10.5.2: A motion to introduce a matter for which insufficient notice has been given may be brought to the floor if either the substance or timing indicates urgency. This motion requires a 2/3 vote.
- 10.5.3: All other matters shall be are determined by a simple majority vote.

**10.6: Voting Method**

At the discretion of the Chair, a vote may be conducted by show of hands, an electronic voting mechanism, or by secret ballot.

**10.7: Attendance**

All Members may attend and participate in any Meeting of the Members but shall not be entitled to vote unless a voting delegate.

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## ARTICLE 11 – BOARD OF DIRECTORS

### 11.1: Composition of Board of Directors

The administration of CREA's affairs shall be vested in a Board of Directors comprised of twenty (20) persons as follows:

- 11.1.1: the President;
- 11.1.2: the Immediate Past President or in the event that he/she cannot act, the most recent Past President so willing to act;
- 11.1.3: the CCC Director, who is the Chair of an appointee of the Canadian Commercial Council of REALTORS®;
- 11.1.4: the MTC Director, who is the Chair or an appointee of the MLS® and Technology Council;
- 11.1.5: the AEC Director, who is the Chair or an appointee of the Association Executives Council.
- 11.1.6: the President of the National Association of REALTORS®, or his or her representative, with non-voting status;
- 11.1.7: eight (8) Regional Directors;
- 11.1.8: six (6) Directors-at-Large.

### 11.2: Definitions

**Director-at-Large** means a Director elected by all Boards and Associations at an Annual General Meeting.

**Regional Director** means a Director elected by the Boards and Associations of a Region in accordance with the procedure outlined in Article 13 – Election of Directors-At-Large and Regional Directors.

**Region** refers to each of the following seven (7) Regions:

- (1) New Brunswick, Newfoundland, Nova Scotia and Prince Edward Island (2 directors);
- (2) Quebec;
- (3) Ontario;
- (4) Manitoba;
- (5) Saskatchewan;
- (6) Alberta/Northwest Territories;
- (7) British Columbia/Yukon Territory.

### 11.3: Duties and Responsibilities

11.3.1: The Board of Directors, as the senior policy-making body, shall ensure that the objects and purposes of CREA, as set forth in the Letters Patent and these By-Laws, are actively pursued. The detailed responsibilities of the Board of Directors are established in the Rules.

11.3.2: The Board of Directors shall have those powers, rights and privileges conferred upon corporations pursuant to the Act and the Letters Patent, including, but not limited to:

- 11.3.2.1: Govern and administer the affairs of CREA;

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- 11.3.2.2: Take any measures to control and manage CREA's business that are not inconsistent with the Act or its By-Laws, including entering into contracts on behalf of CREA;
  - 11.3.2.3: Take any and all such steps necessary to enable CREA to acquire, accept, solicit, or receive legacies, gifts, grants, settlements, bequests, endowments and donations of any kind for the purpose of furthering the objects and governing principles of CREA;
  - 11.3.2.4: Accept, collect and expend such monies as is considered necessary to conduct the affairs of CREA and to retain financial, legal and other expertise;
  - 11.3.2.5: Lease or purchase real property; enter into mortgages, contracts and leases, including contracts of employment and personal service contracts;
  - 11.3.2.6: Establish membership fees, dues, and assessments, to become effective when approved at a Meeting of the Members;
  - 11.3.2.7: Borrow money upon the credit of CREA;
  - 11.3.2.8: Issue, pledge, or sell or secure debentures or other securities of CREA;
  - 11.3.2.9: Establish an annual budget in relation to the affairs of CREA;
  - 11.3.2.10: Purchase insurance to indemnify individuals who serve at the request of CREA on Boards or assume specific tasks on behalf of CREA.

#### **11.4: Terms of Office**

- 11.4.1: The President shall hold office for one year as of right, in the year immediately following the year in which he/she holds office as President-Elect;
- 11.4.2: The immediate Past President, the representative of the National Association of REALTORS®, and the three (3) Council Directors shall hold office for a term of one (1) year.
- 11.4.3: The Regional Directors and the Directors-at-Large shall hold office for a term of two (2) years.
- 11.4.4: All terms of office are deemed to expire at the end of the Annual General Meeting in the year the particular term ends.

#### **11.5: Restriction on Holding Office**

- 11.5.1: No Director may hold more than one position as Director.
- 11.5.2: Any person who holds the office of President is deemed to have resigned any other Director position such person would simultaneously hold. The balance of the term of an incoming President's term as a Director-at-Large or Regional Director (if any) will be filled by a qualified member elected at an Annual General Meeting of the Members.

#### **11.6: Term Limits**

- 11.6.1: Subject to the provisions of this section, Directors cannot serve more than four (4) consecutive two-year terms.
- 11.6.2: A Director who is elected Vice-President in his or her eighth (8th) year may run for a fifth (5th) consecutive term.

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11.6.3: A Director who has left the Board of Directors for at least one year may run again as if he or she were sitting for the first time.

**11.7: Quorum**

A majority of the voting Directors shall constitute a quorum at any meeting of Directors, and may exercise all of the powers of the Board of Directors.

**11.8: Meetings of the Board of Directors**

11.8.1: The Board of Directors shall meet not less than twice yearly upon the call of the President.

11.8.2: Meetings of the Board of Directors may also be called by:

11.8.2.1: A motion of the Boards and Associations passed at a Meeting of the Members; or

11.8.2.2: Any five (5) members of the Board of Directors in accordance with Section 8 (Notice of Meetings of Directors).

11.8.3: All meetings shall take place at the time specified in the call at CREA's head office or such place as determined by the President.

**11.9: Form of Meeting**

Any meeting of the Directors may be held in person, by teleconference or by other electronic means.

**11.10: Voting**

Each Director, other than the President of the National Association of REALTORS® or his or her representative, shall have one (1) vote.

**11.11: Notice of Meetings of Directors**

Notice of Board of Directors meetings shall be delivered or telephoned to each Director not less than ten (10) days before the meeting is to take place. No notice is necessary if all the Directors are present or if those absent have signified their consent to the meeting being held without notice and in their absence.

**11.12: Director Honoraria**

The Directors shall be allowed an honorarium for their services, and shall be paid for expenses incurred on behalf of CREA in accordance with the policy of the Board of Directors, provided that any proposed change in the amount of total honoraria for directors, including directors who are officers, is approved at a meeting of the members.

**11.13: Loss of Qualification during the Term of Office**

A Director shall cease to hold office as a Director in the following circumstances:

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- 11.13.1: If a Director resigns by delivering a written resignation to the President and Chief Executive Officer;
  - 11.13.2: If, at a Meeting of the Members, a resolution is passed that a Director be removed from office;
  - 11.13.3: If a Director makes an assignment for the benefit of creditors, becomes bankrupt or insolvent, or takes the benefit of any act that may be in force for bankrupt or insolvent debtors.
  - 11.13.4: If a Director ceases to be a member in good standing;
  - 11.13.5: If a Director becomes legally incompetent;
  - 11.13.6: If a Director is removed for cause by a resolution passed by seventy-five (75) per cent of the voting Directors, other than the director proposed to be removed, at a meeting called for that express purpose, provided that all of the Directors (other than the Director proposed to be removed) are present in person or as otherwise provided herein at such meeting; or
  - 11.13.7: If a Director is convicted of an indictable offence or an offence involving theft, fraud or moral turpitude.

#### **11.14: Vacancies**

If a vacancy occurs as a result of any of the foregoing reasons, the Directors remaining in office may exercise all of the powers of the Board of Directors provided that a quorum is sustained. The Board of Directors may fill a vacancy for the balance of the term:

- 11.14.1: by appointing a qualified Member in good standing; or
- 11.14.2: by recommending that a qualified Member in good standing be elected by the membership in accordance with these By-Laws.

#### **11.15: Delegation of Powers**

The Board of Directors may, from time to time, delegate such of its powers as it deems appropriate.

### **ARTICLE 12 – OFFICERS**

#### **12.1: Officers**

The officers are as follows:

- 12.1.1: President, who shall be the chief elected officer and the Chair of all meetings of the Board of Directors and shall perform such other duties and responsibilities as are established in the Rules or assigned by the Board of Directors;
- 12.1.2: President-Elect, who shall act as President pro tem in the absence of the President, shall be the Chair of all meetings of the Executive Committee and shall perform such other duties and responsibilities as are established in the Rules or assigned by the Board of Directors;
- 12.1.3: Vice-President, who shall act as President-Elect pro tem in the absence of the President-Elect, and shall perform such other duties and responsibilities as are established in the Rules or assigned by the Board of Directors;
- 12.1.4: Immediate Past President, who shall perform such duties and responsibilities as are established in the Rules or assigned by the Board of Directors;

12.1.5: Chief Executive Officer, who shall have the powers and perform the duties assigned by the Board of Directors.

12.1.6: Any other person or position so named by the Board of Directors.

## **12.2: Election of Officers**

At their first meeting, or as soon as practical following an Annual General Meeting, the Board of Directors will appoint the President as Past President, the President-Elect as President, and elect from among the elected Director positions a President-Elect and Vice-President.

## **12.3: Termination of Officers**

Officers may be terminated on the same grounds, and in accordance with the same process, as set out in the By-Laws and Rules for disqualification of Directors.

## **12.4 Vacancies**

If a vacancy occurs in any of the Officer positions, the officers remaining may exercise all of the powers of the Executive Committee provided that a quorum is sustained. The Board of Directors may fill a vacancy in an Officer position as follows:

12.4.1: If a vacancy occurs in the position of President, the President-Elect shall become President for the remainder of the term.

12.4.1.1: Upon completion of the remainder of the term vacated, the President-Elect shall serve as President for the ensuing term.

12.4.2: If a vacancy occurs in the position of President-Elect, the Board of Directors shall elect a qualified person to serve as President-Elect for the remainder of the term.

12.4.3: If a vacancy occurs in the position of Vice-President, the Board of Directors may elect a qualified person to serve as Vice-President for the remainder of the term.

12.4.4: If a vacancy occurs in the position of Immediate Past President, the Board of Directors may, at its option, choose to leave the position vacant, or to appoint a person to fill the position for the remainder of the term.

12.4.5: If the Board of Directors chooses to appoint a person to fill the balance of the term of Immediate Past President, it shall appoint the most recent Past-President so willing to act.

## **ARTICLE 13 – ELECTION OF DIRECTORS-AT-LARGE AND REGIONAL DIRECTORS**

### **13.1: Qualifications of Directors**

Persons wishing to be elected either as a Director-at-Large or a Regional Director must:

13.1.1: Have a minimum of three (3) years' experience as a director of a Board or Association;

13.1.2: Have been a REALTOR® for at least five (5) years;

13.1.3: In the case of a Regional Director, be licensed in that Region.

### **13.2: Only One Director Position**

A candidate for Director is eligible to run for election for only one Director position in any given year.

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**13.3: Directors-at-Large**

- 13.3.1: Directors-at-Large shall be elected and retire in rotation. Three (3) Directors-at-Large shall be elected at each Annual General Meeting;
- 13.3.2: All Boards and Associations are entitled to vote in the Director-at-Large elections, and shall carry the same number of votes as they do for the Annual General Meeting voting.

**13.4: Regional Directors**

- 13.4.1: Only the Boards and Associations of the particular Region are entitled to vote in the Regional Director elections, and shall carry the same number of votes as they do for the Annual General Meeting.
- 13.4.2: Regional Directors shall be elected and retire in rotation as follows:
- 13.4.2.1: In odd numbered years, Regional Directors shall be elected in the following regions:  
British Columbia/Yukon (1 director);  
Manitoba (1 director); Quebec (1 director);  
New Brunswick/Newfoundland/Nova Scotia/Prince Edward Island (1 director).
- 13.4.2.2: In even numbered years, Regional Directors shall be elected in the following regions:  
Alberta/Northwest Territories (1 director);  
Saskatchewan (1 director);  
Ontario (1 director);  
New Brunswick/Newfoundland/Nova Scotia/Prince Edward Island (1 director).

**13.5: Place of Regional Director Election**

The Regional Director election may be held in the Region if a majority of the candidates running for Regional Director in that particular Region advise CREA's Chief Executive Officer in writing of their preference no later than sixty (60) days preceding the Annual General Meeting. Otherwise, the election will be scheduled by CREA on a date preceding the Annual General Meeting in the city scheduled for that meeting.

**13.6: Acclamation**

- 13.6.1: If the number of candidates seeking election to the Board of Directors is less than or equal to the number of vacancies open for that position, or, if a Nominating Committee constituted under the Rules nominates only the number of nominees necessary to fill vacancies on the directorate without the requirement for an election to be held, then those candidates shall be deemed to be elected by acclamation to that position.
- 13.6.2: If one of the acclaimed positions is for a term of one (1) year, and the candidates are unable to agree amongst themselves as to who will take that term, the candidate who shall have a term of only one (1) year shall be determined by random draw, conducted by the Chief Executive Officer.

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**13.7: Voting**

13.7.1: Any candidates to be elected must receive a majority of the legal ballots cast. In any directorship category, where vacancies exist for both two-year and one-year terms, the candidates elected to the two-year terms shall be those receiving the greatest number of votes in descending order. Once candidates have been elected to all two-year terms, the candidates with the next highest number of votes shall be elected to any one-year term.

13.7.2: The candidate receiving the fewest number of ballots cast shall be deemed to have withdrawn from any subsequent ballot except where this would give rise to a position on the Board of Directors being filled by a candidate who did not receive a majority of the ballots cast.

**ARTICLE 14 – COMMITTEES, TASK FORCES AND COUNCILS****14.1: Committees and Task Forces**

The Board of Directors may create such committees and task forces as it deems appropriate, and establish their mandates.

**14.2: Councils**

The Board of Directors may create councils as it deems appropriate and establish their duties and powers in the Rules.

**14.3: Reporting**

All committees, task forces and councils shall report to the Board of Directors.

**ARTICLE 15 – FISCAL YEAR****15.1: Establishment of Fiscal Year**

Until changed by resolution of the Board of Directors, CREA's fiscal year shall end on December 31st.

**ARTICLE 16 – AUDITORS****16.1: Appointment**

The members shall appoint an auditor at each Annual General Meeting.

**16.2: Removal**

An auditor may be removed and replaced prior to the expiry of his or her appointment at a Meeting of the Members.

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**16.3: Annual Audit**

The auditors shall conduct an annual audit of CREA's books and shall prepare statements and reports for each fiscal year.

**ARTICLE 17 – EXECUTION OF DOCUMENTS****17.1: Cheques, Notes, Drafts, etc.**

All cheques, drafts, electronic transfers or orders for the payment of money and all notes and acceptances of bills of exchange shall be signed or authorized by the person or persons designated in accordance with Board of Director policy.

**17.2: Execution of Documents**

Contracts, documents or any instruments in writing requiring the signature of CREA shall be signed by the officers of CREA, or such other persons as authorized by the Board of Directors, and all contracts, documents and instruments in writing so signed shall be binding upon CREA without any further authorization or formality. The Directors shall have power from time to time by resolution to appoint an Officer or Officers on behalf of CREA to sign specific contracts, documents and instruments in writing. The Directors may give CREA's power of attorney to any registered dealer in securities for the purposes of the transferring of and dealing with any stocks, bonds, and other securities of CREA.

**17.3: Books and Records**

The Board of Directors shall ensure that all necessary books and records of CREA required by the By-Laws or by any applicable statute are regularly and properly kept.

**ARTICLE 18 – BANKING ARRANGEMENTS****18.1: Authorization**

The Board of Directors shall designate, by resolution, the persons authorized to transact the banking business of CREA, to have the authority set out in the resolution, including, unless otherwise restricted, the power to:

- 18.1.1: Choose the banker or bankers to operate CREA's accounts;
- 18.1.2: Make, sign, draw, accept, endorse, negotiate, lodge, deposit or transfer any of the cheques, promissory notes, drafts, acceptances, bills of exchange and orders for payment of money;
- 18.1.3: Execute any agreement relating to any banking business and defining the rights and powers of the parties thereto; and
- 18.1.4: Authorize any officer of the banker to do any act or thing on CREA's behalf to facilitate the banking business.

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**18.2: Board Authorized Signatories**

The Board of Directors may authorize any person to negotiate and re-negotiate the terms and conditions of loans on behalf of CREA, including the security to be given.

**ARTICLE 19 – LIABILITY AND INDEMNITY OF DIRECTORS AND OFFICERS****19.1: Indemnity**

Every Director and Officer of CREA and the heirs, executors and administrators, and estate and effects of such Director and officer, shall from time to time and at all times be indemnified and saved harmless, out of the funds of CREA, from and against:

19.1.1: All costs, charges and expenses whatsoever, which the Director or officer sustains or incurs in or about any action, suit or proceeding that is brought, commenced or prosecuted against such Director or officer for or in respect of any act, deed, matter or thing whatsoever made, done or permitted by such Director or officer in or about the execution of the duties of the office; and

19.1.2: All other costs, charges and expenses, which such Director sustains or incurs in or about or in relation to the affairs thereof, except the costs, charges or expenses occasioned by the willful neglect or default of such Director.

**19.2: Insurance**

CREA shall purchase and maintain insurance, if available, on behalf of each and every of its Directors, Officers, former Directors and former Officers against any liability incurred or alleged to have been incurred by them by reason of being or having been Directors or officers of CREA. CREA shall purchase insurance in respect of potential liabilities of the Directors and Officers whether or not CREA would have the power to indemnify them against any such liability.

**19.3: Protection of Directors and Officers**

No Directors or Officers of CREA shall be liable for the acts, receipts, neglects or defaults of any other Director or Officer or employee, or for joining in any receipt or act for conformity or for any loss, damage or expense happening to CREA through the insufficiency or deficiency of title to any property acquired by CREA or for or on behalf of CREA or for the insufficiency of any security in or upon which any of the money of or belonging to CREA shall be placed out or invested or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person, firm or Corporation with whom or which any money, securities or effects shall be lodged or deposited or for any other loss, damage or misfortune whatever which may happen in the execution of the duties of his/her respective office or trust in relation thereto unless the same shall happen by or through the person's own wrongful and willful act or through wrongful or willful neglect or default of such Directors or Officers.

**19.4: Responsibility for Acts**

The Directors of CREA shall not be under any duty or responsibility in respect of any contract, act or transaction whether or not made, done or entered into in the name or on behalf of

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CREA, except such as shall have been submitted to and authorized and approved by the Board of Directors.

**ARTICLE 20 – AMENDMENT OF BY-LAWS**

The By-Laws of CREA not embodied in the Letters Patent may be repealed or amended, or a new By-Law relating to the requirements of subsection 155(2) of the Act may be enacted, by the Directors and approved by the Members provided that the repeal or amendment of such By-Laws shall not be enforced or acted upon until approved by Industry Canada.

**ARTICLE 21 – ACTIONS AND PROCEEDINGS**

- 21.1:** No action or proceeding, either at law or in equity, will be brought by any CREA Member against any other Member or against any Director, officer, employee, or any other servant or agent of CREA, or its member Boards and Associations, for any act or omission in relation to the administration or enforcement of these By-Laws.
- 21.2:** This Article may be pleaded as, and shall constitute, an absolute defence to any such claim or action.

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## RULES AND REGULATIONS

### RULE 1 – DEFINITIONS

All defined terms in the By-Laws shall have the same meanings in the Rules.

### RULE 2 – QUALIFYING FOR MEMBERSHIP

#### 2.1: BOARDS AND ASSOCIATIONS

In order to qualify and maintain membership in CREA, all Boards and Associations must comply with the following requirements:

##### 2.1.1: Membership Requirements

- 2.1.1.1: A Board must consist of a minimum of two (2) real estate firms, with no common ownership or interest, direct or indirect.
- 2.1.1.2: A Board, as a minimum, must maintain a class of membership for an individual who is a licensed real estate practitioner in that province/territory.
- 2.1.1.3: A Board may maintain any other class of membership for individuals or organizations whose mandates support the aims and objectives of the Board.
- 2.1.1.4: An applicant for Board membership will provide, at the time of application, the initial list of membership of all classifications, including addresses and firm affiliation. An updated membership list must be provided to CREA by each Board by December 31st of each year.

##### 2.1.2: Membership in Associations

To qualify and maintain membership in CREA a Board must also be a member in good standing of the provincial/territorial Association in its province or territory, where one exists.

##### 2.1.3: Corporate Jurisdiction

- 2.1.3.1: A Board must provide CREA with a detailed geographical description and a map of the Board's corporate jurisdiction for approval.
- 2.1.3.2: Unless otherwise agreed by the affected Boards, only one Board shall operate in each separate jurisdictional area.
- 2.1.3.3: Any proposed changes to the corporate jurisdiction of a Board must be approved by CREA and the appropriate Association. If the applicant Board is proposing to take any portion of the jurisdiction of another Board into its jurisdictional boundaries, the written approval of that affected Board is also required.

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**2.1.4: Dues**

2.1.4.1: A Board/Association will regularly collect and remit the appropriate CREA membership dues.

2.1.4.2: An applicant for Board/Association membership will submit, with its application, the dues for at least one full year for all members of the proposed Board/Association.

**2.1.5: The REALTOR® Code**

Each Board/Association shall adopt and enforce the REALTOR® Code in the manner and according to the standards established in the Three-Way Agreement, the Bilateral Agreements, CREA's Rules and Regulations, the REALTOR® Code Protocols, and CREA's policies, all as amended from time to time.

**2.1.6: Principles of Competition**

A Board/Association is required to abide by the Principles of Competition.

**2.1.7: Arbitration**

2.1.7.1: All Boards/Associations must have a binding arbitration process to deal with commission disputes between their members.

2.1.7.2: All Associations must have an arbitration/mediation process to deal with disputes between their member Boards.

**2.1.8: CREA's By-Laws, Rules and Policies**

A Board/Association must abide by the By-Laws, Rules and Policies of CREA, and must, through its By-Laws and membership agreements, establish the same requirement of its own members.

**2.1.9: Incorporation**

A Board/Association must be incorporated and be in compliance with the requirements of the appropriate incorporating legislation.

**2.1.10: CREA's Certification Marks**

2.1.10.1: All of CREA's certification marks, including, but not limited to, REALTOR®, REALTORS®, MLS®, Multiple Listing Service®, and the associated logos must only be used in accordance with the rules for use and certification mark policies as established by CREA from time to time.

2.1.10.2: A Board/Association must monitor trademark use within its jurisdiction, as required by CREA's By-Laws, Rules and Policies, and will assist CREA, as needed, in the enforcement of CREA's certification marks.

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**2.1.11: Board/Association Names**

The proposed name of an applicant for Board/Association membership and applications for change of names submitted by existing Boards/Associations are subject to the approval of CREA. CREA's approval for a proposed Board name is conditional on the prior approval of the appropriate Association.

**2.1.12: Agreements**

Boards/Associations must execute and abide by all agreements with CREA including the Three-Way Agreement, the Certification Mark License Agreement and any other agreements reasonably requested by CREA to be signed. Any existing agreements must be re-signed by Boards/Associations that have changed their names.

**2.1.13: Staff**

2.1.13.1: A Board/Association must:

2.1.13.1.1: maintain adequate staff support to co-ordinate its activities and administration, to enforce the REALTOR® Code and CREA's By-Laws, Rules and Policies, and to ensure the Board/Association complies with these Rules, and;

2.1.13.1.2: have an executive officer, chief executive officer or equivalent title, who possesses the Association Executive Competencies as set out in CREA's Succession Planning Guide.

2.1.13.2: A senior staff person at all Boards/Associations is required to attend at least one (1) risk management session approved by CREA's Chief Executive Officer each year;

2.1.13.3: At least one (1) senior staff person at all Boards/Associations must maintain membership in the AEC, and that person cannot actively transact or trade in real estate in a licensed capacity;

2.1.13.4: A senior staff person at all Boards/Association is required to attend at least one (1) CREA meeting or event each year. A CREA meeting or event means CREA's Annual General Meeting, Special General Meeting, Political Action Committee (PAC) days or the AEC Seminar.

2.1.13.5: Any new executive officer, chief executive officer, or equivalent, hired by a Board/Association after November 1, 2009, is required to:

2.1.13.5.1: Attend the first AEC seminar held following the date of hiring.

2.1.13.5.2: Complete the Canadian REALTOR® Association Executive designation course entitled "Module 1: Perspectives: Real Estate Association Yesterday, Today and Tomorrow" or its equivalent as soon as reasonably possible, but in any event, no later than the date of the AEC seminar referred to in 2.1.13.5.1 above.

2.1.13.6: CREA's Chief Executive Officer may grant an exemption or extension to any of the requirements set out in 2.1.13.2, 2.1.13.4 and 2.1.13.5 in any particular year. A Board/Association's request for an exemption must be in writing, and must set out in detail the reasons for the request.

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**2.1.14: By-Laws**

The proposed By-Laws of an applicant for Board/Association membership must be submitted with the application for review and approval by CREA to ensure compliance with CREA's By-Laws, Rules, and Policies.

**2.1.15: Insurance**

A Board/Association must maintain Directors, Officers and Entity Liability Insurance.

**2.1.16: Legal Counsel**

A Board/Association must have a designated legal counsel to whom it has access when needed.

**2.1.17: Operational Responsibilities**

A Board/Association has an ongoing obligation to:

- 2.1.17.1: Ensure new members and its Board of Directors is aware of their responsibilities as members and/or governors of organized real estate;
- 2.1.17.2: Ensure its Board of Directors is knowledgeable regarding competition matters, including the Competition Act and Principles of Competition;
- 2.1.17.3: Conduct regular meetings in accordance with the By-Laws of the Board/Association; and
- 2.1.17.4: Maintain awareness within its membership and its Board of Directors of CREA's certification marks.

**2.1.18: Certification**

- 2.1.18.1: All Boards/Associations must annually complete a form provided by CREA certifying in writing that they continue to be in compliance with this Rule and that all Board/Association documents continue to be current and comprehensive. The certification for each year must be filed with CREA no later than January 31 of the following year.
- 2.1.18.2: Additionally, all Boards/Associations must when requested by CREA:
  - 2.1.18.2.1: Complete a Self-Evaluation Form intended to assess the status of a Board/Association in terms of these Rules.
  - 2.1.18.2.2: Provide copies of any Board/Association documents, including Bylaws, Rules, Policies, financial review engagement or audited financial statement, whichever is required under the Board/Association's incorporation legislation.

**2.1.19: Failure to Comply**

2.1.19.1: In the event a Board/Association fails to comply with 2.1.18, CREA may, in addition to any other powers set out in CREA's By-Laws and Rules, suspend the Board's voting rights at Meetings of the Members and/or suspend some or all of its services or subsidies otherwise provided to Boards/Associations.

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**2.1.20: New Board/Association Membership Applications**

- 2.1.20.1: Applicants for Board/Association membership must complete a Board/Association Membership Application form and submit it to the Chief Executive Officer, together with all required documentation.
- 2.1.20.2: The Chief Executive Officer shall provide the application to the CREA Board of Directors.
- 2.1.20.3: The CREA Board of Directors may approve the application, subject to ratification at a Meeting of the Members.

**2.1.21 CREA's Data Distribution Facility**

Each Board/Association shall comply with CREA's Data Distribution Facility Policy as amended from time to time.

**2.2: REALTOR® MEMBERS AND INDIVIDUAL MEMBERS**

REALTOR® and Individual Members shall be considered members of CREA upon:

- 2.2.1: Written notification to CREA by the respective Board that their application for Board membership has been approved; and
- 2.2.2: Receipt by CREA of any dues, initiation fees or assessments owing.

**2.3: DIRECT AFFILIATE MEMBERS AND FOREIGN AFFILIATE MEMBERS**

- 2.3.1: Direct Affiliate Members are individuals or organizations that:
  - 2.3.1.1: Are not licensed real estate practitioners; do not qualify in any category of membership in any Board/Association; and, whose mandate, in the opinion of the CREA Board of Directors, supports the objectives of CREA.
- Or
- 2.3.1.2: Are licensed real estate practitioners outside of Canada.
- 2.3.2: Applications for Direct Affiliate membership must be in writing, in the form prescribed by CREA.
- 2.3.3: Applicants from 2.3.1.1 must satisfy CREA that they have applied for, and been declined membership in the Board and Association in their jurisdiction.
- 2.3.4: Applications must be accompanied by any dues, initiation fees or assessments owing.
- 2.3.5: Foreign Affiliate Members are any national real estate organizations outside of Canada that have reciprocal agreements with CREA, including all practitioners who are members of that association.
- 2.3.6: Applications for Foreign Affiliate membership must be submitted to CREA in writing, in the form prescribed by CREA.
- 2.3.7: Applications must be accompanied by any dues, initiation fees or assessments owing.

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## **2.4: HONORARY LIFE MEMBERS AND HONORARY MEMBERS**

### **2.4.1: Eligibility**

2.4.1.1: Persons eligible for Honorary Life membership are:

2.4.1.1.1: All Past Presidents of CREA, who are automatically granted Honorary Life Memberships;

2.4.1.1.2: Current or former REALTORS® whose contributions to organized real estate, in the opinion of the CREA Board of Directors, warrant this recognition.

2.4.1.2: Persons eligible for Honorary membership are persons who are not current or former REALTORS®, and whose contributions to organized real estate, in the opinion of the CREA Board of Directors, warrant this recognition.

### **2.4.2: Process**

2.4.2.1: The CREA Board of Directors may approve recommendations for Honorary or Honorary Life membership. Recommendations may come from any source.

2.4.2.2: The criteria for considering recommendations shall include consideration of community service, past or present service to CREA, to organized real estate or to the real estate industry generally.

### **2.4.3: Rights of Honorary Life Members and Honorary Members**

2.4.3.1: Honorary Life Members:

2.4.3.1.1: Are exempt from the payment of any CREA dues, or assessments of any kind;

2.4.3.1.2: Can hold office in CREA;

2.4.3.1.3: Are entitled to all other privileges of membership.

2.4.3.2: Honorary Members have the same rights as Honorary Life members with the exception that they cannot hold office in CREA.

## **RULE 3 – FAILURE TO COMPLY WITH REQUIREMENTS OF MEMBERSHIP**

### **3.1: BOARDS AND ASSOCIATIONS**

In the event of a complaint that a Board or Association has not complied with the requirements of membership, the following process shall be applied:

3.1.1: The complaint must be initiated either by CREA or an Association. In the latter case, the complaint must be in writing directed to CREA's Chief Executive Officer.

3.1.2: Upon receipt of a complaint the Chief Executive Officer shall forward to the Board, a notice setting out the details of the complaint, and a Self-Evaluation Form, which shall be completed by the Board and returned to the Chief Executive Officer within twenty (20) days of its date.

3.1.3: If, upon receipt of the Self Evaluation Form, or the expiry of the twenty (20) day period without the Form being returned, CREA's Board of Directors decides, after consultation with the appropriate Association, that a Board is not complying with the requirements of membership, a notice shall be sent to the Board setting out the

details of the non-compliance and requiring that the problem be rectified within twenty (20) days of the date of the notice.

- 3.1.4: In the event the non-compliance is not addressed to the satisfaction of CREA within the twenty (20) day period, the Board of Directors may make such determination as it deems reasonable, including suspension or termination of the Board membership.
- 3.1.5: The complaint process set out in this Section applies equally to a complaint against an Association.

### **3.2: DIRECT AFFILIATE MEMBERS, FOREIGN AFFILIATE MEMBERS, HONORARY MEMBERS AND HONORARY LIFE MEMBERS**

In the event a complaint is received against a Direct Affiliate, Foreign Affiliate, Honorary or Honorary Life Member, the following process shall be applied:

- 3.2.1: A complaint may come from any source, and must be in writing, directed to CREA's Chief Executive Officer, who will cause an investigation to be conducted.
- 3.2.2: The investigator may speak to the complainant, the Member in question and any other person who may have relevant information. All Members shall co-operate fully with the investigator and provide any documents required relating to the investigation.
- 3.2.3: The investigator will provide a written report to the Chief Executive Officer within thirty (30) days of his appointment.
- 3.2.4: If the Chief Executive Officer determines that there may have been a violation of the REALTOR® Code or CREA's By-Laws, Rules or Policies, then he or she shall forward the investigator's report, together with all other documentation, to the Board of Directors.
- 3.2.5: The Board of Directors shall review and consider the complaint and may make such determination as it deems reasonable, including suspension or termination of the membership.

### **3.3: REALTORS® AND INDIVIDUAL MEMBERS**

- 3.3.1: Complaints relating to the conduct of REALTORS® or Individual Members will be referred by CREA to the executive officer of the Board or Association to which the Member belongs, with the request that the matter be dealt with through the Board's professional standards process.
- 3.3.2: If the complaint involves the misuse of CREA's trademarks – including the MLS® and REALTOR® family of marks – or other intellectual property (including, but not limited to, REALTOR.ca, ICX.CA, realtorlink.ca and crea.ca), the complaint may, at the same time, be dealt with by the CREA Chief Executive Officer, who may make such determination as he or she deems expedient, including:
  - 3.3.2.1: Suspending or revoking the Member's license to display CREA's trademarks;
  - 3.3.2.2: Suspending or terminating the Member's passwords to CREA's websites; or
  - 3.3.2.3: Otherwise preventing access by the Member to any of CREA's intellectual property.
- 3.3.3: Any decision of the Chief Executive Officer may be stated to be effective immediately or at such time as a determination is made on the complaint by the appropriate Board or Association.

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- 3.3.4: A Member affected by a decision under 3.3.2.2 above may appeal to the CREA Board of Directors within ten (10) days of notification of the decision.
  - 3.3.5: The Board of Directors shall review and consider the complaint and may make such determination as it deems reasonable. Any suspension or termination of rights imposed by the Chief Executive Officer shall remain in effect pending the decision of the Directors.

#### **RULE 4 – DUES**

##### **4.1: Remittance of Dues – Boards/Associations**

- 4.1.1: CREA dues shall be remitted quarterly, based on a calendar year.
- 4.1.2: Each Board and Association shall remit to CREA, not later than the end of each calendar quarter, an amount representing at least one-fourth of the applicable CREA annual dues for each person who is a Member at any time during the calendar quarter.
- 4.1.3: Annual membership dues shall be prorated on a quarterly basis for those new members joining CREA during the calendar year.
- 4.1.4: In the event a Board fails to remit dues as required by CREA for a period of six (6) months, CREA's Board of Directors may terminate the membership of the Board.

##### **4.2: Remittance of Dues – Direct Affiliate Members and Foreign Affiliate Members**

- 4.2.1: Direct Affiliate Members and Foreign Affiliate Members shall, at the beginning of each calendar year, remit annual dues in the amount established by the Board of Directors.
- 4.2.2: In the event a Direct Affiliate Member or Foreign Affiliate Member fails to remit dues as required for a period of six (6) months, CREA's Board of Directors may terminate membership.

#### **RULE 5 – MEETINGS OF THE MEMBERS**

##### **5.1.: Voting Delegates**

- 5.1.1: In order to exercise voting rights, a Board or Association must provide CREA's Chief Executive Officer with written notice of the names of its voting delegates at least forty-five (45) days prior to the Annual General Meeting. The persons named will also be deemed to be the Board or Association's voting delegates at any subsequent Special General Meeting held before the next Annual General Meeting, unless the Board/Association otherwise notifies the Chief Executive Officer in writing.
- 5.1.2: Any Board or Association that did not comply with Section 5.2.1 will nevertheless be entitled to vote at any subsequent Special General Meeting held in the same fiscal year, provided it supplies the Chief Executive Officer with the names of its voting delegates at least thirty (30) days prior to the date of such subsequent meeting.
- 5.1.3: A Board or Association may change its voting delegates at any time, on written or electronic notice to the Chief Executive Officer.

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## RULE 6 – DIRECTOR RESPONSIBILITIES

### 6.1: Board of Directors

#### 6.1.1: Responsibility

In addition to the duties and powers established in the Letters Patent and By-Laws, the Board of Directors is responsible for the following:

- 6.1.1.1: To give direction to the Officers.
- 6.1.1.2: To review and approve the proposed annual budget for the following fiscal year.
- 6.1.1.3: To consider and approve policies that will further the objectives of CREA.
- 6.1.1.4: To identify major issues and trends affecting the profession and determine the position to be taken by CREA.
- 6.1.1.5: To ensure that there is a united national voice for the profession.
- 6.1.1.6: To develop standards of ethics and practice for the conduct of business in the profession.
- 6.1.1.7: To establish national objectives for CREA in the following areas:
  - 6.1.1.7.1: Governmental Affairs;
  - 6.1.1.7.2: Public Relations and Communications;
  - 6.1.1.7.3: Member Services;
  - 6.1.1.7.4: Technology;
  - 6.1.1.7.5: Education.
- 6.1.1.8: To determine the nature of co-operative relationships with foreign industry bodies, e.g. NAR, FIABCI, etc.
- 6.1.1.9: To determine the nature of co-operative relationships with related national industry bodies, e.g. UDI, CIPREC, HUDAC, CMHC, etc.
- 6.1.1.10: To appoint the Chief Executive Officer.
- 6.1.1.11: To protect CREA's trademarks and designations.
- 6.1.1.12: To carry out such other general responsibilities as may be properly directed by the Members.

#### 6.1.2: Reporting

The Board of Directors reports to the Members.

### 6.2: Directors

#### 6.2.1: All Directors shall:

- 6.2.1.1: Act as representatives of CREA to Boards and Associations across the country by attending Board/Association meetings as directed by the Board of Directors.
- 6.2.1.2: Undertake specific duties as assigned by the President or the Board of Directors.

#### 6.2.2: Directors shall always act in the best interests of CREA.

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**RULE 7 – ELECTION/APPOINTMENT OF OFFICERS****7.1: Timing**

Elections and appointments of officers shall take place in accordance with the By-Laws, not later than seventy-two (72) hours after the Annual General Meeting.

**7.2: Notice of Intention to Run**

Persons wishing to run for the offices of Vice-President or President-Elect shall indicate their intention to do so at or before the meeting called for that purpose.

**7.3: Order of Appointments/Elections**

The appointment/elections shall take place in the following order:

- 7.3.1: Appointment of President as Past-President;
- 7.3.2: Appointment of President-Elect as President;
- 7.3.3: Election of President-Elect;
- 7.3.4: Election of Vice-President.

**RULE 8 – DIRECTOR NOMINATION PROCESS****8.1: Notice of Director Elections**

- 8.1.1: The Chief Executive Officer shall send a notice to all broker offices, at the addresses recorded in CREA's membership database and to all Boards and Associations, advising of upcoming vacancies on the Board of Directors and encouraging qualified persons to let their names stand for election as Regional Director or Director-at-Large.
- 8.1.2: The notice may be in writing or electronic format, and may be communicated by regular mail, courier, facsimile, e-mail or other electronic means, at least one hundred and five (105) days before the Annual General Meeting, and shall be posted on REALTOR Link®.
- 8.1.3: Boards and Associations shall distribute the notice to all of their current directors, as well as to those former directors and other qualified persons the Board/Association believes would make a contributions to the CREA Board of Directors.

**8.2: Candidates**

Interested candidates must complete CREA's Director Candidacy Form and submit it to the Chief Executive Officer no later than sixty (60) days prior to the Annual General Meeting.

**8.3: Nominating Committee**

- 8.3.1: In the event that no qualified candidate has submitted his or her name for election for any particular category the matter shall be referred to the Nominating Committee.

**8.4: Notification of Candidate Names**

The Chief Executive Officer shall circulate the names of the candidates to all Boards and Associations no later than thirty (30) days prior to the Annual General Meeting.

**RULE 9 – TERMINATING A DIRECTOR/OFFICER FOR CAUSE**

In the event a complaint is received against a Director or elected officer alleging facts that could give rise to removal of that person from the Board of Directors for cause, the Board of Directors will carry out an investigation and may make such determination as it deems reasonable.

**RULE 10 – EXECUTIVE COMMITTEE****10.1 Composition**

10.1.1: The Executive Committee of the Association shall be comprised of the President, President- Elect, Vice-President, the Immediate Past-President, and a Chief Executive Officer (non-voting).

**10.2 Duties**

10.2.1: The Executive Committee shall:

10.2.1.1: Conduct the affairs of CREA between meetings of the Board of Directors in accordance with the policies of the Board of Directors, and shall report its activities at each meeting of the Board of Directors;

10.2.1.2: Carry out such other responsibilities as may from time to time be delegated to it by the Board of Directors.

**RULE 11 – COUNCILS****11.1: Establishment of Councils**

CREA shall maintain the following Councils:

11.1.1: The Association Executives Council;

11.1.2: The Canadian Commercial Council of REALTORS®;

11.1.3: The MLS® and Technology Council.

**11.2: Objectives of the Councils**

The objectives of the Councils must be beneficial to CREA and promote its mission.

**11.3: Authority of CREA**

11.3.1: The conduct of all Councils shall be subject to the overriding authority of the CREA Board of Directors.

11.3.2: The minutes of all Council meetings shall be forwarded to CREA.

11.3.3: CREA will provide administrative services to co-ordinate the affairs of Councils.

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#### 11.4: Council Board of Directors

- 11.4.1: Each Council shall be governed by a Council Board of Directors, elected in accordance with the Rules of the particular Council. Each Council Board of Directors, as the senior policy-making body for that Council, shall ensure that the Objects of the Council are actively pursued.
- 11.4.2: Subject to 11.3 above, each Council Board of Directors shall have the authority to:
- 11.4.2.1: Establish an annual budget for approval by the CREA Board of Directors;
  - 11.4.2.2: Carry out the directives of the Council membership;
  - 11.4.2.3: Generally govern the affairs of the Council in a manner consistent with CREA's By-Laws, Rules and Policies as well as the Rules of the Council;
  - 11.4.2.4: Unless specific Council Rules provide otherwise, each Council Board of Directors shall operate in the following manner:
    - 11.4.2.4.1: Meetings
      - 11.4.2.4.1.1: The Board of Directors shall meet not less than twice yearly, upon the call of the Chair or on the request of any three (3) members of the Board of Directors.
      - 11.4.2.4.1.2: The meetings shall take place at the time and in the place specified in the call.
      - 11.4.2.4.1.3: A Notice of Meeting shall be delivered by regular mail, courier, facsimile, e-mail or other electronic means not less than ten (10) days prior to the date of the meeting. No formal notice is necessary if all directors are present or if those absent have signified their consent to the meeting behind held without notice and in their absence.
      - 11.4.2.4.1.4: Any meeting may be held in person, by teleconference or by other electronic means agreed to by a majority of the directors.
      - 11.4.2.4.1.5: Each director shall carry one (1) vote at directors meetings.
    - 11.4.2.4.2: Term Limits
      - 11.4.2.4.2.1: Subject to the provisions of this section, Council Directors cannot serve more than four (4) consecutive two-year.
      - 11.4.2.4.2.2: A Council Director who is elected Chair-Elect or Vice-Chair, as the case may be, in his or her eighth (8th) year may run for a fifth (5th) consecutive term.
      - 11.4.2.4.2.3: A Director who has left the Board of Directors of a Council for at least one year may run again as if he or she were sitting for the first time.

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- 11.4.2.4.3: Quorum  
A majority of the directors shall constitute a quorum at any directors meetings and may exercise the powers of the Board of Directors.
- 11.4.2.4.4: Loss of Qualification  
A director shall cease to hold office if the director:
- 11.4.2.4.4.1: Resigns;
  - 11.4.2.4.4.2: Makes an assignment for the benefit of creditors or becomes legally bankrupt;
  - 11.4.2.4.4.3: Ceases to be a member in good standing of the Council;
  - 11.4.2.4.4.4: Is found by a court to be of unsound mind;
  - 11.4.2.4.4.5: Dies;
  - 11.4.2.4.4.6: Is convicted of an indictable offence involving theft, fraud or moral turpitude;
  - 11.4.2.4.4.7: Is removed for cause by a majority vote of the CREA Board of Directors, either on its own initiative, or on the recommendation of the Council Directors.
- 11.4.2.4.5: Vacancies  
In the event of a vacancy, the directors remaining in office may exercise all of the powers of the Board of Directors provided that a quorum is sustained. The Board of Directors may, at its option, fill any vacancy with a qualified person for the balance of the term.
- 11.4.2.4.6: Council Rules
- 11.4.2.4.6.1: The Rules of each Council shall be embodied in CREA's Rules and may be amended by CREA's Board of Directors, either on its own initiative or on the recommendation of the directors of that Council, subject to ratification at a Meeting of the Members.
  - 11.4.2.4.6.2: In the event of ambiguity or uncertainty in the interpretation of any Council Rule, the decision of the CREA Board of Directors shall be determinative and final.
  - 11.4.2.4.6.3: In the event of a conflict between CREA's By-Laws, Rules, or Policies and a Council Rule, the provisions of CREA's By-Laws, Rules or Policies shall prevail.
- 11.4.2.4.7: Council Finances
- 11.4.2.4.7.1: The fiscal year of each Council shall be the same as CREA's fiscal year.
  - 11.4.2.4.7.2: Each Council shall submit a proposed operating budget for the following year to the CREA Board of Directors for approval.
  - 11.4.2.4.7.3: Approved Council budgets will be made part of CREA's general budget processes. The accounting

records and reports of CREA will reflect the costs of each Council's operations.

11.4.2.4.7.4: Councils may not incur expenditures or make commitments, which have not been approved in advance by CREA.

11.4.2.4.8: Trademarks

11.4.2.4.8.1: Any use of CREA's trademarks by Councils shall comply with CREA's Rules and Policies for use.

11.4.2.4.8.2: Each Council may adopt an identifying emblem, subject to the approval of CREA's Board of Directors.

11.4.2.4.8.3: Any emblem may, at the option of the Council, also be displayed by the Council members, subject to any conditions for use deemed necessary by the Council or by CREA.

11.4.2.4.9: Council Office

The office of each Council shall be at CREA's head office.

## **RULE 12 – ASSOCIATION EXECUTIVES COUNCIL**

### **12.1: Objects**

The objects of the Association Executives Council (the "AEC") are as follows:

12.1.1: To provide and identify services that assist the AEC membership in their professional practice and development.

12.1.2: To support the objectives of CREA and its Boards and Associations, and to contribute to maximizing their effectiveness in meeting the needs of their members.

12.1.3: To maintain the highest possible membership and representation from Boards and Associations in the AEC.

12.1.4: To promote and encourage the highest standards among both AEC members and the members of the organizations they administer.

### **12.2: Membership**

12.2.1: Applications for membership shall be in writing and shall be submitted to the AEC Board of Directors for approval.

12.2.2: Membership in the AEC shall be open to persons qualifying under any of the following classifications:

12.2.2.1: Board/Association Executive

A person retained to carry out the functions of an executive officer of a Board or Association, but specifically excluding any elected directors or elected officers of such Board or Association;

12.2.2.2: Board/Association Personnel

Any person employed in association management by a Board, Association or CREA.

12.2.2.3: International Affiliate

Any person employed in a management capacity either by a national real estate association outside of Canada or by a local or regional real estate association that is a member of such national association. International

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Affiliate members shall not carry a vote at AEC meetings and are not eligible to run for the AEC Board of Directors.

12.2.3: Membership is terminated if:

12.2.3.1: A member ceases to meet any of the qualifications for membership;

12.2.3.2: A member resigns;

12.2.3.3: The AEC Board of Directors votes to terminate the membership for cause.

**12.3: Membership Meetings**

12.3.1: The annual membership meeting of the AEC shall be held to coincide with the time and place of the CREA Annual General Meeting.

12.3.2: Other special membership meetings may be held as required.

12.3.3: All membership meetings require at least fifteen (15) days' notice to the membership, sent by regular mail, courier, facsimile, e-mail or other electronic means.

12.3.4: Those members of the AEC present at any Annual or Special meetings shall constitute a quorum.

12.3.5: Every voting member of the AEC may vote either in person or by written proxy at all membership meetings. The proxy shall be deposited with CREA staff prior to the commencement of the meetings at which it is to be used and is valid only for those named meetings. A member may hold only one proxy at a time.

**12.4: Membership Dues**

12.4.1: The annual membership dues shall be as prescribed from time to time by the AEC Board of Directors subject to the approval of the CREA Board of Directors.

12.4.2: Dues shall be paid annually in advance.

12.4.3: Membership dues shall be pro-rated on a quarterly basis for those members joining the AEC during the calendar year.

12.4.4: Membership dues paid by a member may be assigned to his/her successor in office on approval of application for membership.

12.4.5: Dues are due and payable thirty (30) days after receipt of invoice.

**12.5: Board of Directors**

12.5.1: Composition

The governance of the affairs of the AEC shall be vested in a Board of Directors consisting of the following:

12.5.1.1: Three Directors;

12.5.1.2: A Chair;

12.5.1.3: The Immediate Past Chair, or in the event that he/she cannot act, the most recent Past-Chair so willing to act. In the event no Past-Chair is able or willing to serve, the AEC Board of Directors may appoint another director.

12.5.2: In any given year, the Board of Directors may, at its option, appoint an additional Director for a one-year term in order to balance representation, provide certain expertise, or for any other identified need.

12.5.3: Terms of Office

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All terms of office are for one year and are deemed to expire at the end of the annual membership meeting in the year following the election or appointment, or until their successors are elected or appointed.

## 12.6: Officers

### 12.6.1: Officer Positions

The officers are as follows:

12.6.1.1: The Chair, who shall be the chief elected officer of the AEC and shall preside at all AEC meetings. The Chair is responsible for the general and active management of the business of the AEC. The Chair or an appointee shall represent the AEC as a Director on the CREA Board of Directors (provided that if the Chair is a staff member of CREA, he or she may not sit as a CREA Director). The Chair shall be the liaison between the AEC and CREA.

12.6.1.2: The Chair-Elect, who shall, in the absence or disability of the Chair, perform the duties and exercise the powers of the Chair, and such other duties as may be assigned by the AEC Board of Directors.

12.6.1.3: The Immediate Past Chair, who shall perform such duties as may be assigned by the Board of Directors.

### 12.6.2: Election/Appointment of Officers

12.6.2.1: The Chair shall hold office for one year as of right in the year immediately following the year in which he or she holds office as Chair-Elect.

12.6.2.2: The Chair-Elect shall be elected by the AEC Board of Directors at their first meeting following their annual membership meeting each year. Only the three (3) elected directors are eligible to run for Chair-Elect.

12.6.2.3: The Immediate Past Chair shall hold office for one year in the year immediately following the year in which he or she holds office as Chair.

## 12.7: Elections

### 12.7.1: Elected Directors

Three (3) elected directors shall be elected by a majority vote of the membership by way of secret ballot at the annual membership meeting.

### 12.7.2: Election Procedure

12.7.2.1: Nomination forms will be sent to the membership at least ninety (90) days preceding the annual membership meeting.

12.7.2.2: All nominations must be received by the CREA office at least sixty (60) days prior to the annual meeting.

12.7.2.3: In the event only three (3) nominations are received for the three (3) elected director positions, then such nominees shall be deemed to be elected by acclamation.

12.7.2.4: In the event that fewer than three (3) nominations are received for the three (3) elected director positions, a Nominating Committee shall be appointed by the Chair within ten (10) days after the deadline. The Nominating Committee shall propose a qualified nominee or nominees and verify agreement to serve as a director not less than thirty (30) days prior to the date of the annual membership meeting.

12.7.2.5: Nominations from the floor shall not be accepted.

12.7.2.6: Two members not nominated for a director position shall be appointed by the Chair and act as scrutineers.

**12.7.3: Nominating Committee**

12.7.3.1: The Nominating Committee shall consist of:

12.7.3.1.1: The most immediate and available Past Chair who is a member of the AEC Council, and who shall be the Chair of the Nominating Committee;

12.7.3.1.2: Two (2) members from the membership at large;

12.7.3.1.3: The current Chair of the AEC (non-voting).

12.7.3.2: The report of the Nominating Committee will be sent to each AEC member not less than thirty (30) days prior to the date of the annual membership meeting.

**12.8: Committees and Task Forces**

The AEC Board of Directors shall appoint Committees and Task Forces as required.

**RULE 13 – CANADIAN COMMERCIAL COUNCIL OF REALTORS®**

**13.1: Objects**

The objects of the Canadian Commercial Council of REALTORS® (the “CCC”) are as follows:

13.1.1: To represent the interests of the membership of the CCC to CREA;

13.1.2: To maintain high standards for admission to the CCC;

13.1.3: To establish and foster professional expertise through educational activities and programs;

13.1.4: To provide strategic leadership for the delivery of commercial services by Boards and Associations to their respective membership;

13.1.5: To promote to the public the expertise associated with membership in the CCC;

13.1.6: To formulate recommendations to CREA on matters of public policy involving commercial real estate issues;

13.1.7: To foster co-operation in the exchange of information among members of the CCC.

**13.2: Membership**

13.2.1: Members of the CCC must be licensed members of CREA (REALTORS®) and abide by the REALTOR® Code.

13.2.2: Membership categories are Full and Candidate.

13.2.2.1: Full members meet all of the membership requirements as established by the CCC Council from time to time.

13.2.2.2: An individual who does not meet Full membership requirements may apply to become a Candidate member. A Candidate member will be eligible to become a full member upon meeting the educational requirements and any other requirements established by the CCC from time to time.

13.2.3: Membership Rights:

13.2.3.1: Full members are afforded all of the rights and privileges of membership.

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- 13.2.3.2: Candidate members may attend CCC events but may not vote at membership meetings. Candidate members may not identify themselves as members of the CCC, display the emblem, or access the services that are available only to Full members.
  - 13.2.4: A REALTOR® can become a member of the Council by either:
    - 13.2.4.1: Membership in the Recognized Commercial Structure of a pre-approved Board/Association; OR
    - 13.2.4.2: Direct membership.
  - 13.2.5: A REALTOR® may apply for Direct membership in the CCC if:
    - 13.2.5.1: There is no Recognized Commercial Structure in place at the Board/Association to which the REALTOR® belongs; and
    - 13.2.5.2: The REALTOR® satisfies the membership requirements for Full or Candidate membership.
  - 13.2.6: Any REALTOR® who is a Full or Candidate member of a Recognized Commercial Structure in the Board/Association to which the REALTOR® belongs is deemed to be accepted as a Full or Candidate member of the CCC.
  - 13.2.7: A "Recognized Commercial Structure" is a specific Commercial Council/Division/Committee created by a Board/Association for the purpose of providing services to its commercial members, which meets the following criteria:
    - 13.2.7.1: The membership criteria is approved by the CCC; and
    - 13.2.7.2: The Board/Association has executed a written membership and licensing agreement with the CCC in a form to be provided by the CCC.
  - 13.2.8: Any proposed changes to the membership criteria must be pre-approved by the CCC.

### **13.3: Membership Meetings**

- 13.3.1: The annual membership meeting shall be held to coincide with the time and the place of the CREA Annual General Meeting.
- 13.3.2: Notice of such meeting shall be given to the membership at least thirty (30) days prior to the meeting.
- 13.3.3: Such other meetings, as deemed necessary from time to time, may be called on fifteen (15) days' notice to the membership.
- 13.3.4: Notice of any membership meeting may be sent by regular mail, courier, facsimile, e-mail or other electronic means.
- 13.3.5: Every voting member of the CCC may vote either in person or by written proxy at all membership meetings. The proxy shall be deposited with CREA staff prior to the commencement of the meeting at which the proxy is to be used and is only valid for that named meeting or meetings.
- 13.3.6: Those members of the CCC present at any annual or special meeting shall constitute a quorum.

### **13.4: Membership Dues**

Membership dues and fees for services provided to CCC members shall be as prescribed by the CCC Board of Directors subject to the approval of the CREA Board of Directors.

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**13.5: Board of Directors****13.5.1: Composition**

The governance of the affairs of the CCC shall be vested in a Board of Directors comprised of eight (8) persons, consisting of the following:

13.5.1.1: A Chair;

13.5.1.2: Five (5) regional directors, one from each of the following regions: British Columbia/Yukon; Alberta/NWT, Saskatchewan, Manitoba; Ontario; Quebec; New Brunswick/Newfoundland/Nova Scotia/Prince Edward Island;

13.5.1.3: One (1) additional director may also be appointed at the discretion of the CCC Board of Directors;

13.5.1.4: In alternating years, the Immediate Past Chair and the Chair-Elect.

**13.5.2: Terms of Office**

13.5.2.1: The Chair shall hold office for two years as of right, in the year immediately following the year in which he or she holds office as Chair-Elect;

13.5.2.2: The Immediate Past-Chair shall hold office for one (1) year, only in even-numbered years, following the year in which he or she was Chair. In the event that he/she cannot act, the most recent Past-Chair so willing to act will be appointed. In the event no Past-Chair is able or willing to serve, the CCC Board of Directors may appoint another director;

13.5.2.3: The Chair-Elect shall hold office for a one (1) year term in odd-numbered years;

13.5.2.4: The five (5) regional directors shall hold office for two (2) year terms;

13.5.2.5: The optional additional director shall, when appointed, hold office for the term prescribed by the Board of Directors at the time of the appointment;

13.5.2.6: All terms of office shall be deemed to expire at the end of the annual membership meeting in the year the particular term ends.

**13.5.3: Restrictions on Holding Office**

13.5.3.1: Only Full members of the CCC are eligible to run for any director position, with the exception of the optional appointed director in 13.5.1.3 above.

13.5.3.2: The appointed director need not be a CCC member or a REALTOR®.

13.5.3.3: The regional directors are not restricted on the number of terms they may serve.

13.5.3.4: No person serving as a director can hold more than one (1) position as director.

13.5.3.5: Any person who holds the office of Chair is deemed to have resigned any other CCC director position such person would simultaneously hold.

**13.6: Officers****13.6.1: Officer Positions**

The officers are as follows:

13.6.1.1: The Chair, who shall be the chief elected officer of the CCC and shall preside at all CCC meetings. The Chair or an appointee shall represent the CCC as a director on the CREA Board of Directors and shall be the liaison between the CCC and CREA.

13.6.1.2: The Chair Elect, or the Immediate Past Chair, who shall, in the absence of the Chair, conduct the meetings and business of the CCC, perform the

duties and exercise the powers of the Chair, and perform such other duties as may be assigned by the CCC Board of Directors.

**13.6.2: Election/Appointment of Officers**

13.6.2.1: The Chair Elect and the Immediate Past Chair are rotating one (1) year positions, the Chair Elect being elected in odd years and the Immediate Past Chair appointed to serve in even years. Both positions cannot be held on the Council Board of Directors at the same time.

13.6.2.2: The Chair-Elect shall be elected by the directors from among the CCC regional directors. This election shall take place at some point in the year preceding the year in which the Chair-Elect would assume office and, in any case, prior to the notice of CCC director elections for the upcoming year being issued.

**13.7: Elections**

**13.7.1: Regional Directors**

The regional directors shall be elected and retire in rotation as follows:

13.7.1.1: In even numbered years, regional directors shall be elected from the following regions:

13.7.1.1.1: Alberta/NWT/Saskatchewan/Manitoba;

13.7.1.1.2: Quebec.

13.7.1.2: In odd-numbered years, regional directors shall be elected from the following regions:

13.7.1.2.1: British Columbia/Yukon;

13.7.1.2.2: Ontario;

13.7.1.2.3: New Brunswick/Newfoundland/Nova Scotia/Prince Edward Island.

13.7.1.3: Only the voting members of the particular region are entitled to vote for the regional director.

**13.7.2: Nominating Committee**

The Chair shall appoint a Nominating Committee consisting of:

13.7.2.1: The immediate Past Chair who shall be Chair of the Nominating Committee and shall conduct the director elections.

13.7.2.2: One (1) member of the CCC Board of Directors who is not a candidate in the election.

13.7.2.3: The current Chair of the CCC.

**13.7.3: Voting Process**

13.7.3.1: At least one-hundred-and-twenty (120) days prior to the annual membership meeting, a notice will be sent to all CCC members advising of the number of upcoming vacancies on the CCC Board of Directors, and encouraging qualified members to let their name stand for election.

13.7.3.2: Interested candidates must submit their names and credentials to the Nominating Committee no later than ninety (90) days prior to the annual membership meeting.

13.7.3.3: In the event that no candidate expresses a desire to stand for election for a directorship position, the Nominating Committee shall propose a nominee or nominees who meet the qualifications for that position and verify that person(s) agreement to serve as a director.

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- 13.7.3.4: In the event only one candidate lets their name stand for election for a director category, or in the event the Nominating Committee nominates only the number of nominees to fill vacancies on the CCC Board of Directors, an election will not be required, and such candidate(s) shall be deemed to be elected by acclamation.
  - 13.7.3.5: In the event that more than one (1) candidate has let their name stand for election for a director category, an election shall be called by the Nominating Committee.
  - 13.7.3.6: Elections for the CCC Board of Directors shall be, at the option of the CCC directors, by mail, courier, facsimile transmission or by electronic ballot. An election notice and ballots shall be circulated to the membership at least sixty (60) days prior to the annual meeting. The specified deadline date for return of ballots shall be no later than thirty (30) days prior to the annual meeting. Two (2) scrutineers will be appointed by the CCC Board of Directors to count the ballots.
  - 13.7.3.7: In each year that elections are held, the directors elected (with the exception of the Chair Elect and the Immediate Past Chair) shall take office at the first CCC Board of Directors meeting following the CREA Annual General Meeting and shall hold office until the second Annual General Meeting or until their successors have been duly elected or appointed.

#### **13.8: Committees and Task Forces**

The CCC Board of Directors may establish committees and task forces as required.

#### **Rule 14 – MLS® AND TECHNOLOGY COUNCIL**

##### **14.1: Objects**

The objects of the MLS® and Technology Council (the “MTC”) are to act as a technological resource to the membership, and specifically:

- 14.1.1: To prepare and recommend strategic plans, policies and budgets to CREA’s Board of Directors and determine priorities for the provision of national technological services including product/application development, as well as data management, delivery and security by CREA;
- 14.1.2: To monitor, research and report on developments, stakeholder and consumer technology trends and their impact on the real estate industry;
- 14.1.3: To facilitate and participate in the creation of national data standards for the operation of MLS® systems, and other common services and, when cost effective, national shared technology components for CREA technology products such as REALTOR Link®, WEBForms™, NAF, REALTOR.ca, ICX.CA, IXN® and other related products/services; and
- 14.1.4: To facilitate and participate in the determination of national data and information sharing solutions.

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**14.2: Major Technology Decisions**

- 14.2.1: A major technology decision is defined as any decision involving an issue related to the delivery of technology services by CREA, directly or indirectly related to MLS® Systems, that has a material financial or business impact on organized real estate.
- 14.2.2: Prior to formulating any recommendations on major policy decisions involving MLS® technology, the MTC shall consult with all major internal and external stakeholders (those most affected by the issue at hand).
- 14.2.3: Recommendations from the MTC Board of Directors to the CREA Board of Directors concerning major policy decisions involving MLS® technology shall be dealt with as follows:
- 14.2.3.1: If the MTC recommendation is acceptable to the CREA Board of Directors and is within their jurisdiction to implement, the CREA Board of Directors shall approve the recommendation;
- 14.2.3.2: If the MTC recommendation is acceptable to the CREA Board of Directors but is not within their jurisdiction to implement, the CREA Board of Directors shall approve the proposal and recommend it to the next CREA Meeting of the Members;
- 14.2.3.3: If the MTC recommendation is not acceptable to the CREA Directors, it shall be placed on the agenda of the next CREA Meeting of the Members.

**14.3: Membership**

All Boards and Associations are members of the MTC.

**14.4: Membership Meetings**

- 14.4.1: The annual membership meeting of the MTC shall be held to coincide with the time and place of CREA's Annual General Meeting;
- 14.4.2: Other special membership meetings may be held as necessary.
- 14.4.3: Notice  
Notice of the time and place of any meeting shall be in writing and shall be communicated to all Boards and Associations by regular mail, courier, facsimile, e-mail or electronic means at least thirty (30) days prior to the date of the meeting.
- 14.4.4: Quorum  
Fifty (50) per cent of the members of the MTC present at any annual or special meeting either through their voting delegates or by way of proxy shall constitute a quorum.
- 14.4.5: Voting
- 14.4.5.1: Each member Board or Association shall be entitled to the same number of votes as they would carry at a CREA Meeting of the Members.
- 14.4.5.2: All questions at MTC membership meetings shall be determined as follows:
- 14.4.5.2.1: Major technology decisions require a majority of the votes cast representing more than fifty (50) per cent of the membership;
- 14.4.5.2.2: All other matters shall be determined by a simple majority vote.
- 14.4.5.3: A Board or Association may vote through its voting delegate or by written proxy, which is valid only for the named meeting.

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**14.5: Board of Directors****14.5.1: Composition**

The governance of the affairs of the MTC shall be vested in a Board of Directors consisting of the following:

14.5.1.1: Five (5) directors, at least one (1) of which must be a REALTOR®, appointed from and by the fifteen (15) largest Boards as determined by the CREA Rules;

14.5.1.2: Two (2) directors, at least one (1) of which must be a REALTOR®, appointed by CREA from the remaining Boards;

14.5.1.3: The Immediate Past-Chair, or in the event that he/she cannot act, the most recent Past-Chair so willing to act. In the event no Past-Chair is able or willing to serve, the MTC Board of Directors may appoint another director.

**14.5.2: Terms of Office**

14.5.2.1: Subject to 14.5.2.2 below, all terms of office are for two (2) years and are deemed to expire at the end of the second annual MTC membership meeting following the election or appointment, or until their successors are elected or appointed.

14.5.2.2: If a director's term of office expires while that person is in the middle of his or her term as Chair, then the term of office shall be extended for one further year, following which a person shall be appointed in accordance with these Rules to fill the balance of the term.

**14.6: Officers****14.6.1: The Officers are as follows:**

14.6.1.1: The Chair shall be the chief elected officer of the MTC. The Chair or an appointee shall represent the MTC as a director on the CREA Board of Directors and shall be the liaison between the MTC and the CREA Board of Directors.

14.6.1.2: The Vice-Chair, who shall in the absence of the Chair conduct the meetings and business of the MTC and shall perform such other duties as may be assigned from time to time by the Council Board.

**14.6.2: Election/Appointment of Officers**

In even-numbered years, at their first meeting following an annual membership meeting, the MTC directors shall convene a meeting and elect from amongst themselves a Chair and a Vice-Chair, each for a two (2) year term.

**14.7: Appointments**

14.7.1: In odd-numbered years, two (2) directors representing the fifteen (15) largest Boards, and one (1) director representing the remaining Boards shall be appointed to hold office.

14.7.2: In even-numbered years, three (3) directors representing the fifteen (15) largest Boards, and one (1) director representing the remaining Boards shall be appointed to hold office.

14.7.3: At least fifteen (15) days prior to the annual membership meeting each year, the fifteen (15) largest Boards shall notify CREA of the names and credentials of the

persons they are appointing to sit as directors to fill those director positions whose terms are expiring that year. The names of those appointed shall be circulated by CREA to all Boards/Associations prior to the annual membership meeting.

- 14.7.4: CREA shall circulate a notice to all remaining Boards and to the MTC Board of Directors, setting out the Director positions representing the remaining Boards whose terms are expiring that year. At least ninety (90) days prior to the annual membership meeting, the remaining Boards/Associations may submit in writing the names and credentials of persons they wish to have considered for those positions. The submission shall be made on a form provided by CREA.
- 14.7.5: CREA's Board of Directors may consider the submissions, if any, in determining which persons shall be appointed. The names of those appointed shall be circulated to all Boards and Associations prior to the annual meeting.
- 14.7.6: In the event the fifteen (15) largest Boards do not appoint a candidate or appoint fewer candidates than there are large Board director positions available, CREA's Board of Directors may appoint suitable individuals to fill the positions.
- 14.7.7: The directors elected shall take office at the first MTC Board of Directors meeting following the CREA Annual General Meeting, and shall hold office until the Annual General Meeting two (2) years thereafter or until their successors are appointed.

#### **14.8: Committees and Task Forces**

The MTC Board of Directors may establish Committees and Task Forces as required.

### **RULE 15 – REALTOR® CODE MANDATORY EDUCATION**

#### **15.1: Jurisdictions Not Subject to Regulator Code**

All REALTORS® in jurisdictions not subject to a regulators code shall complete an education program of not less than two (2) hours provided or approved by CREA in accordance with the Education Protocol as follows:

- 15.1.1: New REALTORS® shall complete an education program within one (1) year of joining and shall thereafter, complete a continuing education program once in every four (4) year cycle;
- 15.1.2: REALTORS® who are already Board members as of July 1, 2006, shall complete a continuing education program once in every four (4) year cycle.

#### **15.2: Board/Association By-Laws**

In jurisdictions not subject to a regulator's code, each Board shall incorporate into its By-Laws, provisions acceptable to CREA, which require its member REALTORS® to complete the ethics training course as set out in the Education Protocol and this Rule, and provide for suspension of REALTOR® membership in the event the course is not completed.

#### **15.3: Jurisdictions Subject to Regulator Code**

In jurisdictions that have a regulator's code as part of their curriculum, each Association shall, at a minimum, communicate with each of its member REALTORS® at least every two (2) years

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on those areas of the REALTOR® Code that are not covered by the regulator's mandatory course.

#### **15.4: Bilateral Agreements**

Each Association shall enter into Bilateral Agreements with CREA as provided for in the Compliance Protocol.

#### **15.5: Definition of Enforcement**

"Enforcement" of the REALTOR® Code by a Board includes:

- 15.5.1: Ensuring through its By-Laws and membership agreements that all Board members are bound by the REALTOR® Code;
- 15.5.2: Either maintaining a mechanism to effectively deal with and adjudicate complaints under the REALTOR® Code, or appropriately delegating such enforcement to another Compliance Body in accordance with the Compliance Protocol and the relevant Bilateral Agreements executed by the appropriate Association;
- 15.5.3: Processing complaints in accordance with the procedures established in the Compliance Protocol.

### **RULE 16 – CERTIFICATION MARKS**

#### **16.1: The Marks**

- 16.1.1: The Certification Marks (collectively, the "Marks") owned or controlled by CREA, and that are licensed by CREA pursuant to the terms and conditions herein, are as follows:
  - MLS®;
  - Multiple Listing Service®;
  - MLS® logos as shown in existing registrations and such variations as may be permitted by CREA in writing (collectively, the "MLS® Marks");
  - REALTOR®;
  - REALTORS®;
  - REALTOR® logos as shown in existing registrations and such variations as may be permitted by CREA in writing (collectively, the "REALTOR® Marks").
- 16.1.2: CREA may in the future adopt other marks as certification marks, and may license them in CREA's sole discretion, and on such terms and conditions as CREA may subsequently specify in writing.

#### **16.2: Standards Associated with the Marks**

- 16.2.1: The Marks are registered under the Trademarks Act as certification marks and are protected throughout Canada.
- 16.2.2: The REALTOR® Marks identify members in good standing of CREA who provide real estate brokerage services (the "REALTOR® services") in compliance with CREA's By-Laws and Rules, and the REALTOR® Code, as amended from time to time, and in compliance with all applicable federal and provincial/territorial laws and regulations.

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- 16.2.3: The MLS® Marks identify professional services rendered by members in good standing of CREA to effect the purchase and sale of real estate as part of a "plural system arrangement," also known as a co-operative selling system (the "MLS® services"), in compliance with CREA's By-Laws and Rules, and the REALTOR® Code as amended from time to time, and in compliance with all applicable federal and provincial/territorial laws and regulations. The MLS® Marks do not identify or describe a computer database of real estate listings.
- 16.2.4: An MLS® System is a co-operative selling system operated and promoted by a Board or Association in association with the MLS® Marks. An MLS® System includes an inventory of listings of participating REALTORS®, and ensures a certain level of accuracy of information, professionalism and co-operation amongst REALTORS® to affect the purchase and sale of real estate.

### **16.3: Licensees of the Marks**

- 16.3.1: Subject to the terms of this Rule, the following Members of CREA (collectively, "Licensees") are licensed to use, reproduce and display the Marks:
- 16.3.1.1: Boards;
  - 16.3.1.2: Associations;
  - 16.3.1.3: REALTORS®.
- 16.3.2: A corporation, partnership, or other entity operating as a licensed real estate firm may use, reproduce and display the Marks in the course of its business, provided that all licensed practitioners in any way affiliated with the firm are REALTORS®.
- 16.3.3: An individual, corporation, partnership or other entity who has been licensed by CREA in writing may use, reproduce and display one or more of the Marks for certain specific wares or services.
- 16.3.4: Former REALTORS® who are no longer licensed, but who are Honorary Life Members of a Board/Association, may display the REALTOR® marks in a manner consistent with their Honorary membership provided that:
- 16.3.4.1: any such display is solely for the purpose of promoting membership in CREA, and not for any commercial or business purpose;
  - 16.3.4.2: the REALTOR® marks are not displayed in any manner that would lead a consumer to believe that the person is a licensed real estate practitioner;
  - 16.3.4.3: the person agrees in writing:
    - 16.3.4.3.1: to be bound by the REALTOR® Code and CREA's By-Laws, Rules and Policies;
    - 16.3.4.3.2: to immediately cease displaying the REALTOR® marks if requested to do so by CREA or the appropriate Board/Association.

### **16.4: Restrictions on License**

- 16.4.1: Licensed Wares and Services
- 16.4.1.1: The Marks may only be used, reproduced and displayed in association with the REALTOR® services or the MLS® services, as the case may be, and such other wares, services or business as CREA may specifically permit in writing.
  - 16.4.1.2: All Licenses granted pursuant to this Rule shall be non-exclusive.
- 16.4.2: Compliance with Standards

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- 16.4.2.1: CREA owns or controls the Marks. As such, CREA has the absolute right to withhold, withdraw or suspend any Licensee's right to use, reproduce or display the Marks, or any one of them, at any time, subject only to the terms of any specific written license agreement between CREA and each Licensee.
- 16.4.2.2: The terms and standards of the license to use the Marks are established in CREA's By-Laws, Rules and Policies, as amended from time to time. The right to use the Marks is conditional on strict adherence to all terms and standards.
- 16.4.2.3: At the request of CREA, each Licensee shall promptly provide samples of all use of the Marks, or any of them, for CREA's review, and each Licensee shall promptly take such steps or make such changes as CREA may request to rectify any non-compliance with these terms and standards.
- 16.4.2.4: Licensees shall have no right to use, reproduce or display the Marks, except as specifically provided for in this Rule. All other rights are reserved to and remain with CREA. Without limiting the generality of the foregoing, Licensees shall have no right to sub-license or assign their right to use, reproduce or display the Marks, or any of them, except as may be permitted by CREA in writing.
- 16.4.3: Licensee Responsibility For Use of Marks By Third Parties
- 16.4.3.1: Licensees are responsible for ensuring that buyers and sellers for whom they are providing any service, as well as any other third parties in any way involved in transactions, do not use the Marks in any unauthorized manner.
- 16.4.3.2: Any Licensee who partners with a non-member in the provision of real estate related services and wishes to permit that non-member to display CREA's marks must:
- 16.4.3.2.1: Provide the non-member with a CREA notice of allowed displays of the Marks;
- 16.4.3.2.2: Enter into a written contract with the non-member which provides as a minimum that:
- 16.4.3.2.2.1: The non-member may only display the Marks in the manner specifically approved by CREA from time to time;
- 16.4.3.2.2.2: The Licensee has the right to terminate the agreement at any time in the event of non-compliance by the non-member;
- 16.4.3.2.2.3: Licensees are required to terminate these agreements in the event of a breach by a non-member.
- 16.4.4: Term and Termination
- 16.4.4.1: All Licenses granted pursuant to this Rule shall commence upon each Licensee satisfying the terms and conditions of CREA's By-Laws and Rules, and shall terminate upon each Licensee ceasing to be a Member in good standing of CREA, or upon CREA terminating the License as provided for in CREA's By-Laws and Rules, as amended from time to time.
- 16.4.4.2: Upon termination, each Licensee shall immediately cease any and all use, reproduction and/or display of the Marks, or any of them, and any and all similar marks, as, or as part of, any trademark, trade name, corporate name, domain name, or otherwise.

**16.4.5: Estoppel**

Licenseses agree that they will not at any time, either during the term of, or following the termination of this license:

16.4.5.1: Challenge the validity or distinctiveness of the Marks or any other trademarks of CREA, or CREA's ownership thereof;

16.4.5.2: Use, display or attempt to register (as trademarks, trade names, corporate names or domain names) any word, phrase, term, acronym, initials or design that incorporate, or are confusingly similar to the Marks or any of them or any other trademark of CREA.

**16.4.6: Business Restriction**

The Marks may only be used by REALTORS® in connection with their brokerage services relating to real estate transactions, as permitted by the relevant provincial or territorial real estate licensing legislation.

**16.5: Usage Rules****16.5.1: General Rule**

16.5.1.1: The Marks must always be displayed in a manner that enforces their distinctiveness as certification marks, and emphasizes that they are not generic or descriptive words.

16.5.1.2: The detailed usage requirements found in CREA's Policies must be complied with in every use, display or reproduction of the Marks. Any repeated failure to comply with these requirements shall entitle CREA to terminate the license.

**16.5.2: Form Requirements**

16.5.2.1: The Marks must always be displayed in the exact form and manner in which they are registered, as follows:

MLS®, Multiple Listing Service®;

REALTOR®, REALTORS®.

16.5.2.2: The ® registration symbol must always be displayed in conjunction with the Marks except in the case of any permitted new Marks that are not registered.

16.5.2.3: All business and promotional material displaying any of the Marks must, where possible, include the statement "Trademark owned or controlled by The Canadian Real Estate Association. Used under license."

16.5.2.4: The MLS® and REALTOR® logos must only be used, reproduced and displayed in the form as registered, or in such other form as may be approved by CREA in writing, as detailed in CREA's Policies as amended from time to time.

**16.5.3: Exceptions to Form Requirements**

16.5.3.1: National and local media outlets may display the REALTOR® marks by capitalizing only the "R," and are not required to display the ® symbol following the Marks, all in accordance with the Associated Press Style Book or the United Press International Style Book.

16.5.3.2: Textbooks and other educational material may use the Marks without the ® symbol provided that there is, at the beginning of the book or document, an explanation of the meaning and ownership of the Marks, which has been approved by CREA.

**16.5.4: Specific Additional Requirements – REALTOR® Marks**

16.5.4.1: The REALTOR® Marks must only be used to identify the real estate brokerage services and related professional services provided by members of CREA. The REALTOR® Marks must never be used as a generic or descriptive name to identify a salesperson, broker, or other real estate professional.

16.5.4.2: The REALTOR® Marks must never be used as part of a business name or trade name or corporate branding except as may be permitted by CREA in writing.

**16.5.5: Specific Additional Requirements – MLS® Marks**

16.5.5.1: The MLS® Marks must only be used to identify the professional services provided by Members of CREA to effect the purchase and sale of real estate as part of a "plural system arrangement," also known as a co-operative selling system. The MLS® Marks must never be used as a synonym for a "database of real estate listings."

16.5.5.2: When referring to the co-operative selling systems operated by Boards and Associations, the proper terminology is "the MLS® System of the Board."

16.5.5.3: The MLS® Marks must never be used as part of a business name, trade name, or corporate branding except as may be permitted by CREA in writing.

16.5.5.4: A REALTOR® who does not have access to the MLS® System of a Board/Association may not use, reproduce or display the MLS® Marks.

**16.6: Use of Marks by Boards and Associations**

16.6.1: A Board may only use, reproduce or display the MLS® Marks if it operates, or otherwise provides its REALTOR® members with access to an MLS® System.

16.6.2: A Board or Association may use REALTOR® or REALTORS® as part of its corporate name and trade name, provided that:

16.6.2.1: the proposed name is approved in accordance with CREA's Rules; and

16.6.2.2: the Board or Association executes a written license agreement with CREA prior to using the name.

16.6.3: Each Board and Association is licensed to use REALTOR® or REALTORS® in the name of its building and in the titles of its publications, provided that each use is first approved by CREA in writing.

**16.7: Use of the Marks in Domain Names and on the Internet**

16.7.1: Licensees shall not use the Marks or any of them or any other CREA trademarks in domain names, e-mail addresses, meta-tags or other Internet search fields unless specifically authorized to do so by CREA's Policies.

**16.8: Enforcement**

16.8.1: Boards and Associations are responsible for monitoring and enforcing the proper use, reproduction and display of the Marks in their own jurisdiction. This includes ensuring that member firm names, websites and other advertising materials (print and electronic) are compliant, and that Boards and Associations respond to

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complaints regarding improper uses of the Marks, and conduct discipline hearings in a prompt manner, as required.

## **RULE 17 – OPERATION OF A BOARD’S MLS® SYSTEM**

### **17.1: Acceptance of Listings**

#### **17.1.1: The Three (3) Pillars of the MLS® Mark**

Only listings that comply with the following three (3) pillars of the MLS® Mark can be placed on a Board/Association’s MLS® System.

##### **17.1.1.1: Membership**

Only REALTORS® may place a listing on a Board/Association’s MLS® System.

##### **17.1.1.2: Agency**

A listing REALTOR®/brokerage must act as agent for the seller to post, amend or remove a property listing in a Board's MLS® System. The nature of any additional services to be provided by the listing REALTOR®/brokerage to the seller is determined by agreement between the listing REALTOR®/brokerage and the seller.

##### **17.1.1.3: Compensation to Co-operating Broker**

The listing REALTOR® agrees to pay to the co-operating (i.e. selling) REALTOR® compensation for the co-operative selling of the property. An offer of compensation of zero is not acceptable.

### **17.2: Interpretations of the Three Pillars of the MLS® Mark**

17.2.1: The listing REALTOR® shall be available to provide professional advice and counsel to the seller on all offers and counter offers unless otherwise directed by the seller in writing.

17.2.2: The listing REALTOR® is responsible and accountable for the accuracy of information submitted to a Board/Association for inclusion in the Board's MLS® System, and the Board/Association is responsible for ensuring that the data submitted to it meets reasonable standards of quality.

17.2.3: Only REALTORS® are permitted to display the MLS® trademarks in signage, advertising, etc.

17.2.4: Where the seller directs the listing REALTOR® in writing to do so, the seller’s contact information may appear in the REALTOR® only remarks (non-public) section of a listing on a Board/Association’s MLS® System. The seller's contact information shall not appear on REALTOR.ca or in the general (public) remarks section of a listing on a Board/Association's MLS® System.

The listing REALTOR® may include a direction in the General Description section on REALTOR.ca or on websites operated by CREA or a Board/Association to visit the REALTOR® website to obtain additional information about the listing (but the nature of such additional information shall not be specified).

17.2.5: Where the seller has reserved the right to sell the property himself/herself, that fact shall be specified in the Board/Association’s MLS® System.

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**17.3: Out of Jurisdiction Listings**

17.3.1: A Board/Association may, at its option, accept a listing of a property located outside the Board's corporate jurisdiction, including property located in another province or territory, or another country, provided that:

17.3.1.1: the REALTOR®, in taking the listing, does not violate the provisions of applicable provincial/territorial licensing legislation; and

17.3.1.2: the listing complies with all other requirements of the Rules of CREA and the Board/Association, including the three (3) pillars of the MLS® Mark.

**17.4: Real Estate Component**

17.4.1: Only properties with a real estate component may be listed on a Board/Association's MLS® System.

17.4.2: The term "real estate" includes real property, a leasehold or other interest in real property less than a fee simple, and a time share agreement with regard to real property.

17.4.3: Provided they conform to the provisions of the provincial/territorial licensing legislation, a Board/Association may also, at its option, accept listings for:

17.4.3.1: a moveable dwelling that is designed for use as a permanent residence;

17.4.3.2: a business, including an interest or share of a business, with or without premises, and the fixtures, stock-in-trade, goods and chattels associated with the business, provided such items are sold in bulk as part of the business operation.

**17.5: Processing of Listings**

17.5.1: Listing Contracts

17.5.1.1: A Board/Association may, at its option, require either listing contracts or data input forms to be submitted within a reasonable period of time (as defined by the Board/Association MLS® Rules) after execution of the listing contract. A Board/Association has the right to require production of the executed listing contract prior to processing the listing.

17.5.1.2: All unconditional sales, and any changes to listing information, must be submitted to a Board/Association within a reasonable period of time (as defined by the Board/Association MLS® Rules). Boards/Associations may, at their option, require conditional sales to be reported.

17.5.1.3: All forms submitted to a Board/Association in relation to a listing must be complete and accurate.

**17.6: Non-Member Access to Limited Information**

17.6.1: Information on a Board/Association's MLS® System is intended for the exclusive use of REALTORS®. However, a Board/Association may, at its option, permit limited access to such information by third parties other than REALTORS® whose objectives support the interests of the Board/Association and its members, provided that such access:

- 17.6.1.1: is granted only by way of a written contract and not as a privilege of membership; and
- 17.6.1.2: is otherwise in compliance with the law.

#### **17.7: Board/Association Obligations**

- 17.7.1: All Boards and Associations that operate MLS® Systems must:
  - 17.7.1.1: Include in their rules and regulations, provisions that give general effect to the provisions of this Rule.
  - 17.7.1.2: Ensure the high quality of listing information on the MLS® Systems and promote data integrity to ensure that MLS® Systems throughout Canada remain a reliable source of accurate information.
  - 17.7.1.3: Every two (2) years, submit to CREA a form certifying that they have complied with CREA's By-Laws, Rules and Policies dealing with proper use, reproduction and display of CREA's Marks and have taken reasonable measures to ensure that users of their MLS® Systems have also complied with CREA's By-Laws, Rules and Policies.

#### **RULE 18 – DISPUTE RESOLUTION**

- 18.1: CREA shall maintain and administer a dispute resolution process to adjudicate disputes between:
  - 18.1.1: REALTORS® operating in different provinces or territories, relating to the division or disposition of commissions, including referral fees;
  - 18.1.2: A Board (or Boards) and an Association;
  - 18.1.3: Boards operating in different provinces or territories;
  - 18.1.4: Boards operating in the same province or territory, provided that the provincial dispute resolution process has been exhausted and does not involve binding arbitration.
- 18.2: REALTOR®, for the purposes of 18.1.1, includes brokerages, and any other entity that is legally entitled to pay or receive referral fees or other compensation, including, as the context requires, all licensed members of the brokerage who are members of CREA.
- 18.3: All inter-provincial REALTOR® commission disputes shall be submitted to CREA unless otherwise agreed by all parties to the dispute, and the decision of the adjudicators is final and binding. All other disputes under this Rule may, at the option of the parties be submitted to CREA, provided that all parties to the dispute consent.
- 18.4: The dispute resolution process shall be in accordance with policies established by the Board of Directors.

#### **RULE 19 – CONFERENCE**

##### **19.1: Timing of Conference**

CREA shall organize and operate an annual Conference to be held in conjunction with a Meeting of the Members.

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**RULE 20 – HOLDING MEETINGS****20.1: Meetings**

All CREA meetings, except Meetings of Members, may be held by telephone, video-conferencing, or other electronic means, provided all persons participating can hear and speak with each other simultaneously. Persons participating at such meetings are deemed to be present at the meeting.

**20.2: Telephone and Electronic Meetings**

Telephone, video-conferencing or electronic meetings must follow the principles of physical meetings, including, notice of meeting, quorum requirements, agenda (where required), and the production and distribution of minutes.

**20.3: Notice of Meetings**

Notice for any meeting may be given by written or electronic means.

**RULE 21 – MINUTES****21.1: Minutes to Be Recorded and Filed**

21.1.1: Minutes of all proceedings, motions approved and decisions taken at Meetings of the Members, CREA Board of Directors, Council Board of Directors, and all Committee and Task Force Meetings shall be recorded and filed at CREA's head office.

21.1.2: The Minutes of Meetings of the Members and the Board of Directors shall be signed by the Chief Executive Officer and, after approval, by the meeting Chair. All other CREA minutes shall be signed by the staff liaison and, after approval, by the Chair.

**21.2: Distribution of the Minutes of CREA Meetings**

21.2.1: Minutes of all meetings shall be distributed to all CREA Directors. Additionally:

21.2.1.1: Minutes of Committee and Task Force meetings shall be distributed to all the members of the particular Committee or Task Force;

21.2.1.2: Minutes of Council Board of Director meetings shall be distributed to the directors of the particular Council;

21.2.1.3: Minutes of CREA Board of Directors meetings shall be made available to Boards and Associations on request;

21.2.1.4: Minutes of Meetings of the Members shall be distributed to Boards and Associations;

21.2.1.5: Posting the minutes on REALTOR Link® shall constitute "distribution" for the purposes of this Rule.

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**RULE 22 – AFFILIATION****22.1: National and International Bodies**

The Board of Directors may establish relationships between CREA and any national or international real estate body and may enter into agreements setting out the terms of that relationship.

**22.2: NAR Directorship**

The President of the National Association of REALTORS®, or his or her delegate, shall be appointed as an honorary Director without voting status on CREA's Board of Directors.

**RULE 23 – RULES OF ORDER****23.1: Robert's Rules of Order**

Where not otherwise provided for in CREA's By-Laws, Rules, Policies or Standing Rules for meetings, procedural issues at all CREA meetings shall be determined in accordance with the latest edition of "Robert's Rules of Order."



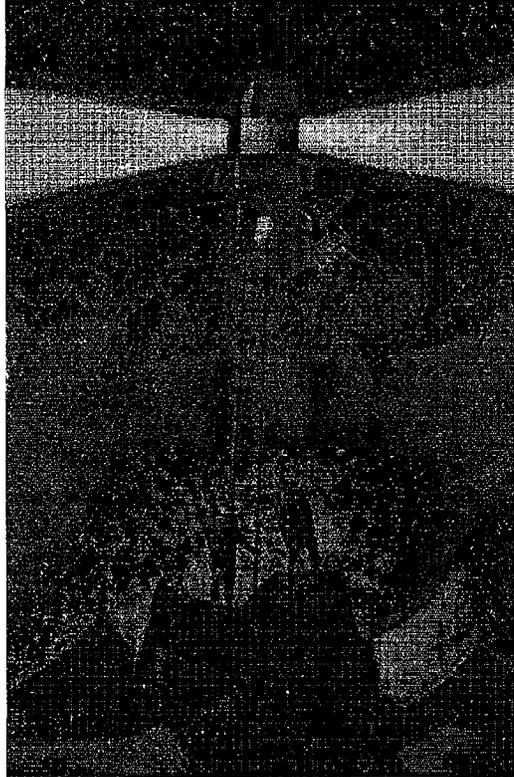
Any questions or comments about the service or products CREA provides?  
You can contact us on-line at [info@crea.ca](mailto:info@crea.ca).

**CREA** THE CANADIAN  
REAL ESTATE ASSOCIATION

200 CATHERINE STREET, 6<sup>TH</sup> FLOOR, OTTAWA, ONTARIO, K2P 2K9  
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# EXHIBIT 2



# *The REALTOR<sup>®</sup> Code*

*Effective December, 2011*

**CREA** THE CANADIAN  
REAL ESTATE ASSOCIATION



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## PREAMBLE

Under all is the land. Upon its wise utilization and widely allocated ownership depend the survival and growth of free institutions and of our civilization. Through the REALTOR®, the land resource of the nation reaches its highest use and private land ownership its widest distribution. The REALTOR® is instrumental in moulding the form of his or her community and the living and working conditions of its people.

Such functions impose grave social responsibilities which REALTORS® can meet only by diligent preparation, and considering it a civic duty to dedicate themselves to the fulfillment of a REALTOR®'s obligations to society.

The REALTOR® Code of Ethics of The Canadian Real Estate Association (CREA) is universally recognized by real estate professionals and consumers alike as the measure of professionalism in real estate. The REALTOR® Code is intended to define the high standard of performance the public has a right to expect from those licensed to display the REALTOR® trademark.

In the same manner that the real estate marketplace is a dynamic, demanding environment, so the REALTOR® Code is, has been, and will continue to be a demanding document; a plan for professionalism in real estate, capable of including and accommodating every change, challenge and controversy which arises.

Since 1913, when the first Code of Ethics was approved by the National Association of Real Estate Boards, it has served as the ten commandments of the real estate community, binding REALTORS® together in a common continuing quest for professionalism through ethical obligations based on honesty, integrity, fairness, accountability and professionally competent service.

The REALTOR® Code has been amended many times over the years to reflect the changing needs of the public and the values of society. Most recently, the REALTOR® Code was revised in 2005 to accommodate new technologies and an evolving marketplace and to focus on the REALTOR® trademark as an assurance of a high level of brokerage service and protection.

Any charge filed shall read as a violation of the REALTOR® Code and/or one or more of the Articles of the Standards of Business Practice. An Interpretation may only be cited in support of the charge or the defence. Penalties for violation of the REALTOR® Code shall be established by the local board or other body authorized to conduct discipline proceedings.

## THE REALTOR® CODE OF ETHICS

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The exclusive designation for a member of The Canadian Real Estate Association is the trademark REALTOR®. It symbolizes a commitment to competence, service and professional conduct.

In the quest for these high standards, REALTORS® in Canada have been bound together by a Code of Ethics since 1959.

As REALTORS®, we accept a personal obligation to the public and to our profession. The Code of Ethics of The Canadian Real Estate Association embodies these obligations.

As REALTORS®, we are committed to:

- Professional competent service
- Absolute honesty and integrity in business dealings
- Co-operation with and fairness to all
- Personal accountability through compliance with CREA's Standards of Business Practice.

To meet their obligations, REALTORS® pledge to observe the spirit of the Code in all of their activities and conduct their business in accordance with the Standards of Business Practice and the Golden Rule — Do unto others as you would have them do unto you.

STANDARDS OF BUSINESS PRACTICE

ARTICLE	INTERPRETATION
<p>1. Informed of Essential Facts</p> <p>A REALTOR® shall be informed regarding the essential facts which affect current market conditions.</p>	<p>1.1 A REALTOR® shall be aware of current legislation and, wherever reasonably possible, be aware of pending legislation (including zoning, government programs, etc.) which could affect trading conditions in the marketplace. (Also applies to Article 4.)</p> <p>1.2 A REALTOR® should attend educational programs and courses which will assist the REALTOR® in remaining up-to-date and aware of matters that could affect any aspect of a real estate transaction.</p> <p>1.3 A REALTOR® shall be aware of appropriate financing procedures, mortgaging requirements, etc. in order to properly discuss financial obligations on any transaction.</p> <p>1.4 A REALTOR® shall be familiar with the contents of the most current forms commonly used in real estate transactions.</p>
<p>2. Disclosure of Role - Agency</p> <p>A REALTOR® shall fully disclose in writing to, and is advised to seek written acknowledgement from, his or her Clients and those Customers who are not represented by other Registrants regarding the role and nature of the service the REALTOR® will be providing. This disclosure shall be made at the earliest possible opportunity and in any event prior to the REALTOR® providing professional services which go beyond providing information as a result of incidental contact by a consumer.</p>	

## STANDARDS OF BUSINESS PRACTICE

ARTICLE	INTERPRETATION
<p><b>3. Primary Duty to Client</b></p> <p>A REALTOR® shall protect and promote the interests of his or her Client. This primary obligation does not relieve the REALTOR® of the responsibility of dealing fairly with all parties to the transaction.</p>	<p>3.1 A REALTOR® shall fully disclose to his or her Client at the earliest opportunity any information that relates to the transaction.</p> <p>3.2 A REALTOR® shall not intentionally mislead anyone as to any matters pertaining to a property.</p> <p>3.3 A REALTOR® shall not, during or following the relationship with his/her Client, reveal Confidential Information of the Client.</p> <p>3.4 A REALTOR® shall not use any information of the Client to the Client's disadvantage.</p> <p>3.5 In a competing offer situation, a listing REALTOR® acting as a dual agent shall not use the information contained in another offer to put either client at a competitive advantage.</p> <p>3.6 A REALTOR® shall, at all times, be able to render a proper accounting to the REALTOR®'s Client with respect to monies and other property of the Client which have been entrusted to the care of the REALTOR®.</p> <p>3.7 A REALTOR® shall provide competent assistance when dealing with lawyers, mortgage lenders and other third parties needed to ensure the successful completion of any contract entered into between a Seller and a Buyer.</p> <p>3.8 An individual REALTOR® representing more than one Buyer on the same property shall disclose this fact to each Buyer and shall not use the information contained in another offer to put either client at a competitive advantage.</p> <p>3.9 "Dealing fairly" means acting honestly and professionally. The obligation to deal fairly does not in any way reduce a REALTOR®'s obligation to fulfill his or her fiduciary duties to a Client and follow the Client's lawful instructions.</p>
<p><b>4. Discovery of Facts</b></p> <p>A REALTOR® has an obligation to discover facts pertaining to a property which a prudent REALTOR® would discover in order to avoid error or misrepresentation.</p>	<p>4.1 This Article applies equally to REALTORS® working with Buyers or Sellers.</p> <p>4.2 This Article is not intended to increase the disclosure obligations of REALTORS® beyond those required by common or civil law or any other statutory or regulatory requirements.</p> <p>4.3 The REALTOR® shall not be party to any agreement in any way to conceal any facts pertaining to a property.</p> <p>4.4 Interpretations 1.1 &amp; 3.2 also apply to Article 4.</p>

## STANDARDS OF BUSINESS PRACTICE

ARTICLE	INTERPRETATION
<p><b>5. Written Service Agreements</b></p> <p>A REALTOR® shall ensure that all Service Agreements with consumers with the exception of Service Agreements with Buyers are in writing in clear and understandable language, expressing the specific terms, conditions, obligations and commitments of the parties to the agreement.</p>	<p>5.1 Written agreements should be signed at the earliest possible opportunity and in any event prior to any offer to Purchase being presented or submitted.</p> <p>5.2 Before entering into a Dual Agency, a REALTOR® shall have the parties' consent in writing to this form of representation by executing a Dual Agency agreement clearly setting out the duties owed by the REALTOR® to each Client.</p> <p>5.3 Contracts entered into electronically shall be considered to be "in writing" for the purpose of this Article, provided such contracts comply with the requirements of applicable legislation.</p> <p>5.4 A REALTOR® shall, prior to signing, provide the necessary explanations to enable a Client to understand the terms and conditions of a contract.</p> <p>5.5 A REALTOR® shall ensure that documents pertaining to the Listing of real estate or to a Buyer agency relationship are kept current through the use of written extensions or amendments.</p> <p>5.6 A REALTOR®, on entering into a Listing or other service contract with a Seller, shall discuss and disclose to the Seller the amount of Compensation offered to co-operating brokers.</p> <p>5.7 REALTORS® should make reasonable efforts to ensure that Service Agreements with Buyers are signed, and are required to do so in those jurisdictions that mandate written agreements.</p>
<p><b>6. Written Transaction Agreements</b></p> <p>REALTORS® shall ensure that agreements regarding real estate transactions are in writing in clear and understandable language, expressing the specific terms, conditions, obligations and commitments of the parties to the agreement. A copy of each final agreement shall be furnished to each party upon their signing or initialing, and shall be dealt with in accordance with the instructions of the parties involved.</p>	<p>6.1 Where the distribution of contracts is regulated by the By-Laws and/or Rules and Regulations of the Board or by provincial regulations, such distribution shall be in accordance with the requirements of those By-Laws and/or Rules and Regulations.</p> <p>6.2 REALTORS® shall ensure that documents pertaining to the Purchase or Sale of real estate are kept current through the use of written extensions or amendments.</p> <p>6.3 Interpretations 1.4 &amp; 5.3 also apply to Article 6.</p>

## STANDARDS OF BUSINESS PRACTICE

ARTICLE	INTERPRETATION
<p>7. Expenses Related to the Transaction</p> <p>A REALTOR® shall, prior to the signing of any agreement, fully inform the signing party regarding the type of expenses directly related to the real estate transaction for which that party may normally be liable.</p>	<p>7.1 In explaining fees for services, the REALTOR® shall not state or suggest that the type or level of fees is based on direction from a real estate Board, Association, Institute, Society or Council to which the REALTOR® belongs.</p> <p>7.2 A REALTOR® shall be fully conversant with the routine type of expenses that a Seller and/or Buyer may incur.</p>
<p>8. Disclosure of Benefits to Clients</p> <p>REALTORS® shall:</p> <p>(a) obtain the consent of their Clients prior to: (i) accepting Compensation from more than one party to a transaction, or (ii) accepting any rebate or profit on expenditures made for a Client.</p> <p>(b) disclose to their Clients any financial or other benefit the REALTOR® or his/her firm may receive as a result of recommending real estate products or services to that party.</p>	<p>8.1 Without limiting the generality of Article 8, reference to real estate products or services includes lending institutions, title insurance companies, lawyers, appraisers and moving companies, and other real estate brokerage firms from which the REALTOR® may receive a referral fee.</p>
<p>9. Disclosure of Benefits to Customers</p> <p>REALTORS® shall disclose to Customers:</p> <p>a) any financial or other benefit the REALTOR® or his/her firm may receive as a result of recommending real estate products or services to that party.</p> <p>b) any rebate or profit accepted by the REALTOR® or his/her firm for expenditures made for that party.</p>	<p>9.1 The REALTOR® should not recommend or suggest to a party the use of services or products of any other organization or business in which the REALTOR® has a direct or indirect interest without disclosing such interest in writing at the time of the recommendation or suggestion.</p> <p>9.2 Interpretation 8.1 also applies to Article 9.</p>

## STANDARDS OF BUSINESS PRACTICE

ARTICLE	INTERPRETATION
<p>10. Outside Professional Advice</p> <p>The REALTOR® shall encourage parties to a transaction to seek the advice of outside professionals where such advice is beyond the expertise of the REALTOR®.</p> <p>11. Personal Interest in Property</p> <p>A REALTOR® shall not buy or sell, or attempt to buy or sell an interest in property either directly or indirectly for himself or herself, any member of his or her Immediate Family, or any entity in which the REALTOR® has a financial interest, without making the REALTOR®'s position known to the buyer or seller in writing.</p>	<p>10.1 Outside professional advice would include, without limitation, lawyers, appraisers, home inspectors, surveyors, accountants, insurance agents or brokers, mortgage consultants, land use planners and environmental consultants.</p> <p>11.1 Disclosure of the REALTOR®'s position shall include the fact that the REALTOR® is a licensed real estate practitioner, the nature of the interest held (when selling), the relationship of the REALTOR® to the Immediate Family member, and/or the fact that the REALTOR® has a financial interest in the buying or selling entity.</p> <p>11.2 This disclosure must be made regardless of the location of the property in question and regardless of whether the REALTOR® in question is represented by another registrant.</p> <p>11.3 Where disclosure regarding the Purchase or Sale is also required pursuant to provincial regulation, such additional disclosure shall be made in accordance with that regulation.</p> <p>11.4 Disclosure pursuant to Article 11 shall be made at the earliest possible opportunity, and in any event prior to the presentation of an offer to Purchase.</p> <p>11.5 When in doubt, disclose.</p>
<p>12. Skilled and Conscientious Service</p> <p>A REALTOR® shall render a skilled and conscientious service, in conformity with standards of competence which are reasonably expected in the specific real estate disciplines in which the REALTOR® engages. When a REALTOR® is unable to render such service, either alone or with the aid of other professionals, the REALTOR® shall not accept the assignment or otherwise provide assistance in connection with the transaction.</p>	<p>12.1 Where a REALTOR® lacks sufficient expertise, he or she may only provide the service with the assistance of another professional who is properly qualified.</p> <p>12.2 A REALTOR® shall not provide an Opinion of Value if it is outside the REALTOR®'s field of expertise to do so unless this fact is disclosed in writing to the Client or assistance is obtained from another Person who has experience in this area.</p> <p>12.3 A REALTOR® shall not perform an Appraisal or Opinion of Value on a property in which the REALTOR® has a present or contemplated interest without first disclosing this fact to the Client.</p> <p>12.4 Fees charged for Appraisals or Opinions of Value shall not be based on the amount of value reported.</p> <p>12.5 A REALTOR® shall not perform an Appraisal unless he or she has the appropriate training.</p>

## STANDARDS OF BUSINESS PRACTICE

ARTICLE	INTERPRETATION
<p>13. Advertising - Content/Accuracy</p> <p>All Advertising and promotion of properties shall accurately reflect property and other details and prominently display the name of the brokerage and any additional information required by provincial regulation.</p>	<p>13.1 The Internet website of a REALTOR® is an Advertising vehicle. In the event of a multiple page website, every page is an Advertising vehicle. All properties displayed and all representations made on a website must comply with the REALTOR® Code as well as applicable provincial, federal and any other requirements regarding Advertising.</p> <p>13.2 The advertised or offered price shall not be other than that which was agreed upon in writing with the Seller.</p>
<p>14. Advertising Listings of Other REALTORS®</p> <p>REALTORS® may only advertise a property if such Advertising has not been restricted at the request of the Seller and is in accordance with provincial and federal regulations.</p>	<p>14.1 Unless otherwise agreed upon in writing, all property Advertising must include the name of the Listing brokerage.</p> <p>14.2 Listing brokerages may permit the Advertising of their properties by other brokerages when authorized in writing by the Seller to do so.</p> <p>14.3 Virtual Office Websites (VOWs), Internet Data Exchange Websites (IDXs) and any other similar sites or technologies which display properties of other REALTORS® shall be subject to all applicable laws, and be operated in accordance with the rules established by the appropriate real estate board(s) for such sites.</p> <p>14.4 Interpretation 13.1 also applies to Article 14.</p>

## STANDARDS OF BUSINESS PRACTICE

ARTICLE	INTERPRETATION
<p>15. Advertising Claims</p> <p>Claims or offerings in Advertising must be accurate, clear and understandable.</p>	<p>15.1 Advertising of Compensation shall include the details of services provided and whether any additional charges may apply. If the services to be provided for the advertised Compensation do not include listing on a Board's MLS® System, a statement to that effect must be included.</p> <p>15.2 Representations of performance (e.g. "#1," "top-selling," etc.) must include the geographical area referred to, the relevant time-frame (e.g. January-June 2004) and the source or basis on which the claim is based (e.g. based on the number of sales on the MLS® system of the relevant Board for the specified time period).</p> <p>15.3 Advertising of programs, initiatives or guarantees (e.g. "Buy a house with 0% down," "If I don't sell your house, I will buy it from you," must clearly set out all significant details of how the program works, including, but not limited to, exceptions and time frames.</p> <p>15.4 Significant conditions, restrictions, limitations and additional charges shall be fully and prominently displayed in the body of the advertisement near the claim or offering in easily readable form and shall comply with all applicable laws.</p> <p>15.5 A condition, restriction, limitation or additional charge shall be considered "significant" if it would likely affect a consumer's decision to retain the REALTOR®/brokerage.</p> <p>15.6 Any claims or offerings in advertising must also comply with all applicable laws, including the Competition Act.</p> <p>15.7 Interpretation 13.1 Applies to Article 15.</p>
<p>16. Discrimination</p> <p>The REALTOR® shall not deny professional services to or be a party to any plan to discriminate against any Person for reasons of race, national or ethnic origin, religion, colour, sex, family status, age, or sexual orientation, marital status or disability.</p>	<p>16.1 REALTORS® should be familiar with the applicable human rights legislation.</p>

## STANDARDS OF BUSINESS PRACTICE

ARTICLE	INTERPRETATION
<p>17. Compliance with Board/ Association Bylaws</p> <p>The REALTOR® shall abide by the By-Laws, Rules, Regulations and policies established by the REALTOR®'s Real Estate Board, Provincial/ Territorial Association, and The Canadian Real Estate Association (CREA).</p>	
<p>18. Compliance with Statutory Requirements</p> <p>The business of a REALTOR® shall be conducted in strict accordance with all statutory and regulatory requirements.</p>	<p>18.1 A board may only charge a REALTOR® under this Article once he or she has been found to have violated a statute or regulation by the body duly authorized to make such a determination.</p> <p>18.2 A certificate of conviction or other proof of non-compliance issued by a duly authorized body may be relied on by a board as evidence of non-compliance with this Article.</p> <p>18.3 Nothing in this Article prevents a board from initiating discipline proceedings where the conduct which is the subject of charges under other statutes or regulations may also constitute a violation of the REALTOR® Code of Ethics and Standards of Business Practice.</p>
<p>19. Discrediting another Registrant</p> <p>The REALTOR® shall never publicly discredit any other Registrant. If the REALTOR®'s opinion is sought, it should be rendered with strict professional integrity and courtesy.</p>	<p>19.1 The REALTOR® should not comment in a derogatory manner as to the capacity, integrity, and competence of any other Registrant.</p> <p>19.2 Where any REALTOR® is asked to comment on a specific transaction or the business practices of another Registrant, such comments should be given with strict professional integrity, objectivity and courtesy.</p> <p>19.3 This Article does not apply to truthful Advertising by REALTORS®. Any Advertising by a REALTOR® which contains seemingly derogatory statements about other Registrants or competitors, their businesses or their business practices may form the basis of an ethics charge only if such statements are false or misleading within the meaning of the Competition Act, or are otherwise prohibited by law.</p>

## STANDARDS OF BUSINESS PRACTICE

ARTICLE	INTERPRETATION
<p>20. Respecting Contractual Relationships</p> <p>The agency or other contractual relationship of a Registrant shall be respected by all REALTORS®.</p> <p>Negotiations regarding an offer or the acceptance of an offer with any party who is exclusively represented shall be carried on with the Registrant representing the party except with the consent of the Registrant.</p> <p>21. Principal (Broker) Responsibility</p> <p>The principal of a brokerage is required to supervise and control the activities of the REALTOR® and other personnel for whom he/she is responsible.</p>	<p>20.1 A REALTOR® should not in any manner, by specific direction or suggestion, advise a party to a contract that the party should attempt to breach the contract.</p> <p>20.2 Prior to the expiry of an existing listing/buyer agency agreement, a REALTOR® may enter into a Listing agreement with a seller for the same property or a buyer agency agreement with the same buyer provided the following conditions are met: (a) Any communication with the seller/buyer: (i) may be initiated by the seller/buyer; or (ii) if initiated by the REALTOR® must comply with Board Bylaws/Rules concerning solicitation and any applicable provincial or federal legislation or regulation; and (b) any new Listing agreement for the property or buyer agency agreement with the buyer shall not commence until the expiry of the current Listing/buyer agency agreement.</p> <p>21.1 "Principal" means the individual designated as the representative of the firm, either for the purposes of the provincial real estate licensing legislation or with regard to the relationship between the brokerage and the local real estate Board/Association.</p> <p>21.2 In determining the adequacy of supervision, all relevant factors may be considered, including, but not limited to: (a) whether the brokerage had established written policies and procedures which were provided to all REALTORS® and other personnel; (b) whether office activities were regularly reviewed and updated to ensure that the policies and procedures were current and were being properly implemented; (c) whether the principal had undertaken all reasonable steps to ensure compliance by all REALTORS® and other personnel; (d) whether each transaction was reviewed by the principal, including trust deposits, sales record sheets, Listing and sales contracts and (e) whether the principal took remedial action when a violation by a REALTOR® or other personnel was discovered.</p> <p>(f) whether the brokerage regularly informed or updated the firm REALTORS® and other personnel on changes in legislation, rules and regulations or other relevant issues.</p>

## STANDARDS OF BUSINESS PRACTICE

ARTICLE	INTERPRETATION
<p><b>22. Cooperation with Board/Association</b></p> <p>Should a REALTOR® be asked to co-operate in any way in connection with a disciplinary investigation or proceeding, the REALTOR® shall place all pertinent facts before the proper Committee of whichever real estate board or association is conducting the investigation or proceeding.</p>	<p>22.1 A REALTOR® who is being investigated for alleged unethical conduct should provide the appropriate Committee, upon request, with all materials and information in the REALTOR®'s possession in connection with the matter being investigated.</p> <p>22.2 Where a REALTOR® is asked to assist the appropriate Committee in connection with a disciplinary investigation or proceeding involving another REALTOR®, the REALTOR® should provide all relevant materials and information in that REALTOR®'s possession, and be prepared to testify at any hearing of the matter. Such assistance should not be deemed a "controversy" within the meaning and intent of Article 25.</p> <p>22.3 Where a REALTOR® has reasonable and probable grounds to believe: (a) that another REALTOR® has apparently breached the REALTOR® Code of Ethics and Standards of Business Practice, and (b) that a person will likely suffer serious damage as a consequence of the apparent breach, the REALTOR® should immediately report the apparent breach to the appropriate Board in writing with the reporting REALTOR®'s name, address and telephone number. The report should be made bona fide without malice or ulterior motive.</p>
<p><b>23. Arbitration</b></p> <p>In the event of a dispute between REALTORS® associated with different brokerages of the same local Board/Association regarding the Compensation earned or to be earned in connection with a real estate transaction, the dispute shall be submitted for arbitration in accordance with the By-Laws, Rules and Regulations of their local Board/Association.</p>	<p>23.1 A dispute between REALTORS® which is properly submitted for arbitration pursuant to this Article should not be deemed a "controversy" within the meaning and intent of Article 25.</p> <p>23.2 Where a REALTOR® fails to submit a dispute to arbitration in accordance with the applicable By-Laws and Rules and Regulations, this Article may be pleaded as a defence in any other action or proceeding.</p> <p>23.3 This Article does not require REALTORS® to arbitrate when all parties to the dispute advise their Board/Association in writing that they choose not to arbitrate before the Board/Association.</p>

## STANDARDS OF BUSINESS PRACTICE

ARTICLE	INTERPRETATION
<p>24. Inter-Board and Inter-provincial Arbitration</p> <p>In the event of a dispute between REALTORS® associated with different brokerages and belonging to different local Boards/Associations, regarding the Compensation earned or to be earned in connection with a real estate transaction, the dispute shall be submitted to arbitration in accordance with the By-Laws and Rules and Regulations of the appropriate Provincial/Territorial Association. Should the REALTORS® belong to different Provincial/Territorial Associations, the dispute shall be arbitrated in accordance with the By-Laws and Rules and Regulations of The Canadian Real Estate Association.</p>	<p>24.1 Interpretations 23.1, 23.2 and 23.3 also apply to Article 24.</p>
<p>25. Avoid Controversies</p> <p>The business of a REALTOR® shall be conducted so as to avoid controversies with other REALTORS®.</p>	<p>25.1 Any REALTOR® who is aware of or involved in a controversy with another REALTOR®, resulting from the alleged misconduct or impropriety of that other REALTOR®, should place such matters before the appropriate Committee for resolution in order that the matter may be resolved in accordance with the Rules and Regulations of the Board, Association, Society or Council to which the REALTOR® belongs.</p> <p>25.2 "Controversies," as used in this Article, does not include aggressive or innovative business practices, which are otherwise ethical and disputes over Compensation or the division of commissions/fees.</p> <p>25.3 A REALTOR® should not disrupt or obstruct a disciplinary investigation or proceeding relating to the alleged misconduct of another REALTOR®.</p> <p>25.4 A REALTOR® should not make any unauthorized disclosure or dissemination of allegations, findings or a decision in connection with a disciplinary investigation, hearing or appeal.</p> <p>25.5 A REALTOR® should not intentionally impede a disciplinary investigation or proceeding by filing multiple complaints based on the same event or transaction.</p>

## STANDARDS OF BUSINESS PRACTICE

ARTICLE	INTERPRETATION
<p>26. CREA Trademarks</p> <p>A REALTOR® shall only use the trademarks of The Canadian Real Estate Association in accordance with CREA's rules, regulations and policies.</p>	<p>26.1 A REALTOR® shall not challenge the validity of CREA's Trademarks.</p> <p>26.2 A REALTOR® shall not use any of CREA's Trademarks in domain names, e-mail addresses or meta-tags unless specifically authorized to do so by CREA policies.</p> <p>26.3 CREA's Trademarks are not to be used as hypertext links in Internet websites.</p> <p>26.4 A REALTOR® shall not use, display, or attempt to register as trademarks any word, phrase, term, initials or design marks that incorporate, or are confusingly similar to, any trademark of CREA.</p> <p>26.5 A REALTOR® shall not incorporate into corporate or trade names any trademark of CREA or any confusingly similar mark.</p>
<p>27. Intellectual Property Rights of Boards/Associations</p> <p>REALTORS® shall respect the intellectual property and other ownership rights of other REALTORS®, Boards, Provincial/Territorial Associations and CREA.</p>	<p>27.1 REALTORS® shall only access and use the websites and other databases of Boards, Associations, CREA and other REALTORS® in accordance with the policies for use established by the owner of the site.</p> <p>27.2 REALTORS® should not infringe the copyright or other ownership interest of another REALTOR® in his/her Listing.</p> <p>27.3 A REALTOR® shall not use the trade names or trademarks or confusingly similar trade names or trademarks of any firm, franchise, or other organization other than those with which the REALTOR® is affiliated or otherwise authorized in writing to use. This restriction includes but is not limited to, unauthorized Internet uses such as domain names, e-mail addresses and metatags.</p>
<p>28. REALTOR® Acting as Principal</p> <p>A REALTOR®, when acting as a principal in a real estate transaction, remains obligated by the duties imposed by the REALTOR® Code.</p>	<p>28.1 A REALTOR® is acting as a principal when he or she is buying or selling or attempting to buy or sell an interest in the property either directly, on his or her own behalf or through any entity which the REALTOR® holds any direct or indirect interest.</p>

## DEFINITIONS

The following definitions are illustrative only and are intended simply to assist the reader's understanding of the REALTOR® Code of Ethics and Standards of Business Practice. Throughout this document, words that are defined have been capitalized.

**ADVERTISING** means any marketing activity to promote the brokerage, the REALTOR® or a transaction and includes any verbal, written or graphic representation in any form, including electronic media.

**APPRAISAL** means an opinion of the value of specified interests in, or aspects of, identified real estate based on an analysis of relevant data and performed by persons who have the required training in the preparation of appraisals.

**BOARD** means a member local real estate Board/ Association or provincial/territorial association and includes, where appropriate, a compliance body.

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

**CLIENT** means a Buyer or a Seller whom a REALTOR® is representing as agent.

**COMPENSATION** means the payment to a REALTOR® for services related to a Purchase or Sale and includes commissions, fees and any other form of remuneration or reward for services rendered by a REALTOR®.

**CONFIDENTIAL INFORMATION** means any personal or business information relating to the individual that ought to be considered confidential by its nature.

**CUSTOMER** means a Buyer or Seller who is not a Client.

**CREA'S TRADEMARKS** include, but are not limited to, the words REALTOR® and REALTOR Link®, the REALTOR® and REALTOR Link® logos, Multiple Listing Service®, MLS® and the related MLS® logos.

## DEFINITIONS

**DUAL AGENCY** means a relationship in which a brokerage or a REALTOR® represents, as agent, more than one party in the same Transaction.

**IDX** ("Internet Data Exchange"), refers to a reciprocal system whereby consenting brokerages agree to advertise on their Internet websites, each other's active listings, either from the MLS® database of the board or from REALTOR.ca, subject to the rules of the applicable real estate board and the REALTOR®'s oversight, supervision and accountability.

**IMMEDIATE FAMILY** means a spouse, son, daughter, parent, brother or sister and includes persons who are in such categories because of marriage, common-law relationships, or adoption as well as entities in which such persons have any direct or indirect financial interest.

**LISTING** means an agreement between a brokerage and a Client granting the brokerage the authority to offer for sale the Client's real property with defined terms and conditions. A listing on MLS® must involve agency and an offer of compensation to the selling office.

**OPINION OF VALUE** means an estimate of the value of specified interests in, or aspects of, identified real estate which may be based wholly or partly on comparative market analyses. An Opinion of Value may contain more or less analysis of relevant data than an appraisal and may be performed by a REALTOR®.

**PERSON** includes, where applicable, an individual, a partnership, a corporation and any other entity legally capable of buying and selling real estate.

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

**REALTOR®** is a registered trademark of REALTOR® Canada Inc., a company owned equally by the Canadian Real Estate Association and the National Association of REALTORS® and refers to licensed real estate practitioners who are members of The Canadian Real Estate Association.

**REGISTRANT** means a person licensed by a jurisdiction to trade in real estate.

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

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

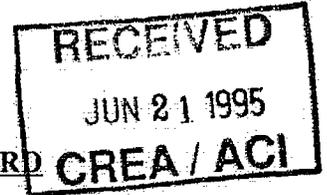
**SERVICE AGREEMENT** means an agreement that establishes a relationship between a brokerage and a Person which identifies the responsibilities of each party and includes the services to be performed by the brokerage and any compensation payable.

**VOW** ("Virtual Office Website") refers to a brokerage or REALTOR® Internet website, or a feature of a such Internet website, through which the REALTOR® provides real estate brokerage services to consumers with whom the REALTOR® has first established a broker-consumer relationship, where the consumer has the opportunity to search for MLS® data, either from the MLS® database of the board or from REALTOR.ca, subject to the rules of the applicable real estate board and the REALTOR®'s oversight, supervision and accountability.

The trademarks REALTOR®, REALTORS® and the REALTOR® logo are controlled by The Canadian Real Estate Association (CREA) and identify real estate professionals who are members of CREA.



# EXHIBIT 3



**CERTIFICATION MARK LICENSE AGREEMENT - LOCAL BOARD**

THIS AGREEMENT made the 1 day of June, 1995

BETWEEN:

**THE CANADIAN REAL ESTATE ASSOCIATION/L'ASSOCIATION CANADIENNE DE L'IMMEUBLE**, a corporation incorporated pursuant to Part II of the Canada Corporations Act and having its head office in the City of Ottawa, in the Province of Ontario,

(hereinafter referred to as "CREA")

**OF THE FIRST PART**

**AND: TORONTO REAL ESTATE BOARD**

a corporation incorporated under the laws of Ontario having its head office in the City of Don Mills, in the Province of Ontario,

(hereinafter referred to as "Local Board")

**OF THE SECOND PART**

WHEREAS:

CREA and the Local Board are corporations incorporated to promote interests in relation to real estate:

CREA is the registered owner in the Canadian Trade Marks Office of the Certification Mark registrations listed in Schedule "A" and is authorized to license the Certification Mark registrations listed in Schedule "B" (all marks referred to in Schedules "A" & "B", as amended from time to time, hereinafter collectively being referred to as the "Certification Marks").

CREA has the exclusive right to license others to use in Canada any or all of such Certification Marks in association with services that meet the defined standards applicable thereto.

It is therefore of great importance to CREA, to its licensees and to the public that the distinctiveness of the Certification Marks be preserved and their value and effectiveness enhanced by strict adherence to the terms and conditions of this Agreement.

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As used herein, "Territory" means the current jurisdictional area of the Local Board, as may be amended from time to time with the consent of CREA.

NOW THEREFORE in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. Subject to the terms and conditions hereof, CREA hereby grants to the Local Board the following rights:
  - (a) a non-exclusive, non-transferable license to use the Certification Marks in the Territory in association with the operation, promotion and advertising of a listing service under MLS® and the provision of services for which the Certification Marks are registered in accordance with this Agreement and the standards provided in the registrations for such marks and the terms and conditions set forth in CREA's Rules and Regulations, as amended from time to time, and
  - (b) authority to permit members of the Local Board to use the Certification Marks in relation to the operation and advertising of their business, and without restricting the generality of the foregoing, to use the Certification Marks in listing agreements, "for sale" signs, business cards, letterhead and other similar limited uses, so long as such use is in connection with the service provided to such members by the Local Board.
2. CREA agrees that the licenses herein granted include the right to incidental use of the Certification Marks by the Local Board and its members in adjoining jurisdictional areas of other Local Boards through advertising or otherwise, so long as such use relates to a service rendered within the Territory.
3. The Local Board agrees that the Certification Marks shall at all times be used only in association with the services for which the Local Board is herein licensed, in strict conformity with the rules for use of the Certification Marks as set forth in the Rules and Regulations of CREA annexed to CREA's By-Law No. 1 and CREA's Trademarks Manual, as amended from time to time, and in strict accordance with the terms and conditions of this agreement.
4. The Local Board agrees:
  - (a) to inform all members of the Local Board of the standards and rules for use of the Certification Marks applicable to its members, as set forth in CREA's Rules and Regulations, and of any changes thereto as from time to time notified to the Local Board by CREA, and to require all members of the Local Board to comply with the said Standards and Rules as a condition of



- 4 -

when, the Local Board fails to remain a member of CREA, or upon notice from CREA in the event the Local Board, in CREA's opinion, persistently fails to adhere to the terms and conditions hereof. Otherwise, the said license shall subsist without definite period.

- 9. This Agreement shall be governed by and construed in accordance with the laws of the province where the Local Board is situate and the parties hereby attorn to the jurisdiction of the Courts of such Province to hear and determine any proceeding arising out of or in connection with this Agreement.

IN WITNESS WHEREOF this Agreement has been duly executed by the parties hereto under the hands of their duly authorized signing officers as of the day and year first hereinabove written.

THE CANADIAN REAL ESTATE ASSOCIATION

By:

By:

c/s

TORONTO REAL ESTATE BOARD

By:

By:

c/s

SCHEDULE "A"



Multiple Listing Service®

MLS®



Service inter-agences®

S.I.A.®

Service d'inscriptions multiples®

SIM™

SCHEDULE "B"

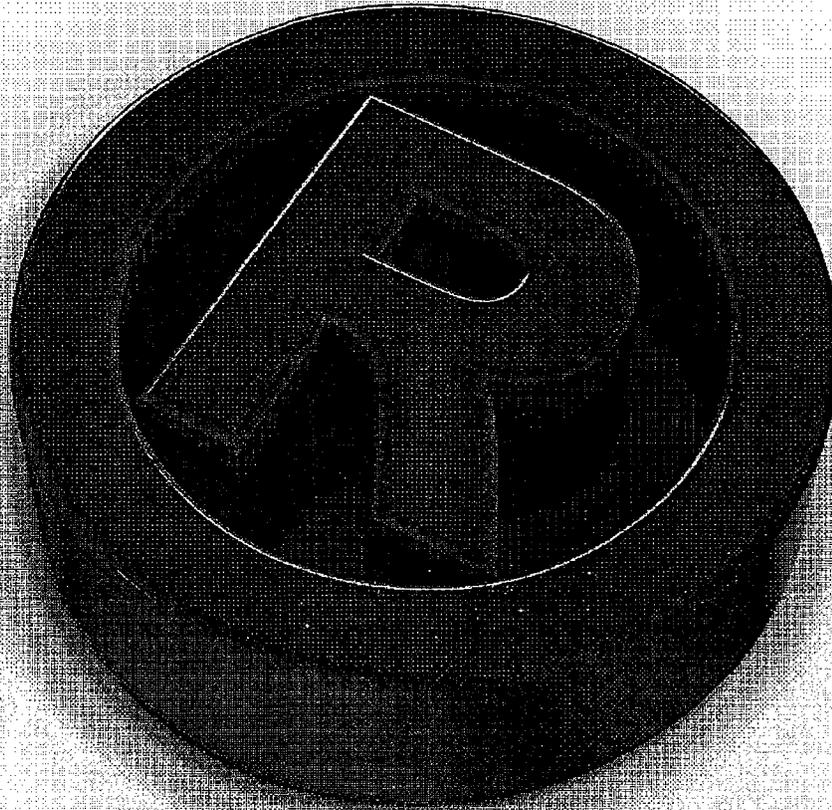


(available for use only in the  
province of Quebec in this form)

REALTOR®

REALTORS™

# EXHIBIT 4



# **TRADEMARK TOOLKIT**

THE CANADIAN REAL ESTATE ASSOCIATION © APRIL 2009

## THE RULES for Proper Use of Trademarks

**1. ALWAYS USE CAPITAL LETTERS:**

For REALTOR®, REALTORS® and MLS®

For the first letters of Multiple Listing Service®

For the "S" in "System" in the phrase "MLS® System"

**2. ALWAYS include the ® registration mark.**

**3. ALWAYS include the disclaimer "Trademark owned or controlled by The Canadian Real Estate Association. Used under license."**

**4. ALWAYS use the term "MLS® System" when referring to the co-operative selling system of a Board/Association.**

**5. NEVER alter or distort the words or the design marks.**

**6. NEVER combine the marks with any other words or designs.**

**7. NEVER use adjectives with the marks.**

**8. NEVER use the marks in slogans, product or business names.**

**9. NEVER use REALTOR® or REALTORS® in a way that implies it means "real estate agent".**

**10. NEVER use MLS® in a way that implies it means a database.**

**11. NEVER use MLS® as a noun.**

**12. NEVER use MLS® in domain names.**

**13. ONLY use REALTOR® in domain names in accordance with CREA's policies.**

## TRADEMARK Toolkit

The primary purpose of this Trademark Toolkit is to explain certain simple but essential policies and guidelines that have been adopted by The Canadian Real Estate Association to govern and protect the usage of its trademarks. These CREA guidelines and policies are designed to encourage the widest possible consistent use of the trademarks while at the same time preserving and perpetuating their meaning. Without these guidelines and policies, and the cooperation and assistance of member Boards and Associations in assuring proper use, the trademarks might become confused in the public mind and lose their valuable qualities that can be protected. To remain effective in identifying unique services or identification, the trademarks must be used consistently and correctly.

### **Protection is everyone's business**

The subject of trademarks often conjures up images of a complex law reserved for the legal departments of multi-national companies. Nothing could be further from the truth. In fact, membership support and compliance of trademarks is the first step to building a strong national trademark.

Trademark owners, including The Canadian Real Estate Association, can protect and even enhance the value of trademarks through proper trademark usage. Protection of a trademark begins at home. We need to ensure that REALTORS®, Boards and Associations know how to use our trademarks.

### **The Trademark Toolkit**

This Trademark Toolkit has been developed with a number of broad objectives in mind:

- (a) to provide a background primer on trademarks, including a review of what a trademark is, how it adds value to your organization, what a trademark infringement is, and how trademark law in general works;
- (b) to explain how CREA's Rules, policies and guidelines relate to the use of the MLS® and REALTOR® family of marks;
- (c) to act as a resource manual for Boards and Associations, and to provide them with the tools necessary in developing their own trademark compliance programs.

### **RESOURCES**

This Trademark Toolkit is also available on [www.realtorlink.ca](http://www.realtorlink.ca).

The template letters that Boards and Associations can use as part of their enforcement process can also be found on [www.realtorlink.ca](http://www.realtorlink.ca) for convenient downloading.

You can also refer to the federal Trade-marks Act by going to the Department of Justice website <http://laws.justice.gc.ca/en/ShowDoc/cs/T-13///en?page=1>

**"The references throughout to CREA's Rules are based on the new By-Laws and Rules presented to the membership at the April 4, 2009 Annual General Meeting."**

## TRADEMARK Toolkit

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**APPENDICES**


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# THE TRADEMARK TOOLKIT



## 1. The importance of trademark protection

Trademark protection is everyone's business, and effective trademark protection begins at home. The subject of trademarks often conjures up images of a complex law reserved for the legal departments of multi-national companies. Nothing could be further from the truth. In fact, membership support and compliance with trademark rules are the first steps to building a strong national trademark.

CREA is the owner of various trademarks that serve to identify and brand the services of CREA, Boards/Associations and member salespeople and brokers. While CREA owns a number of trademarks, the most prominent are the seven trademarks which comprise the MLS® and REALTOR® family of marks.

The purpose of this Trademark Toolkit is to assist Boards/Associations and members in protecting and enhancing these marks. However, before we begin talking about the "how to's" of trademark protection, we need to address a much more fundamental question: why?

The simple answer is that trademarks are not just ethereal concepts – they are valuable corporate assets and need to be treated as such. This concept is discussed in greater detail in Chapter II, but for the time being, suffice it to say that a trademark owner uses trademarks properly and enforces improper use for the same reason they lock their office doors – to protect the assets of the company.

The MLS® and REALTOR® marks may be owned by CREA, but they are assets of organized real estate. They identify our membership and the services provided by that membership. Boards, Associations and CREA have spent millions of dollars at the local, provincial and national levels promoting the MLS® and REALTOR® marks. This advertising is an essential element of trademark protection, but is not enough on its own. True trademark protection is the result of a comprehensive strategy of registration, licensing, advertising and enforcement, undertaken jointly by all members at every level of organized real estate. This Toolkit is part of that strategy.

## I. What is a Trademark?

### 1. Definition

A trademark is a word or a symbol that is used to distinguish the products or services of one person or organization from those of another in the marketplace. A word does not gain trademark significance simply because it refers to a particular product or service. In order to “distinguish” a product or service, the mark itself must be distinctive. For example, a toothpaste manufacturer cannot coin the word “toothpaste” to identify its product exclusively. Toothpaste is a common word of the English language used to identify any of the products used to clean teeth. No-one can “own” that word. But when you see the word CREST, you immediately conjure up an image of a particular brand of toothpaste.

Trademarks are not limited to just words and symbols. Even shapes can be imbued with trademark rights when they are sufficiently well known. The shape of a product or the way it is wrapped or packaged is known as a “distinguishing guise”. If the shape is sufficiently distinctive to “distinguish” or identify the owner’s goods from those of others, it may be given trademark protection. For example, look at the shape of the TOBLERONE bar. Those distinctive points, somewhat reminiscent of Bart Simpson’s head, are unique to this product, and can be protected by law from dubious chocolate makers who try to pass themselves off as pseudo Toblerones.

Sounds, colours and smells may also become trademarks. Colour alone is difficult to protect, but colour can be associated with a trademark. The distinctive red, white and blue colour contrasts of the PEPSI logo, as an example, are integral to the identification of the mark.

### 2. Acquiring Trademark Rights

Trademark rights are acquired, in a nutshell, by use. The *Trade-marks Act* is federal legislation that establishes a regime for the registration of trademarks, but registration is not necessary in order to protect a trademark. It is the use of the mark, not its registration, that creates ownership rights. In fact, you cannot apply for registration of a mark unless it has actually been in use.

The use must be specific – i.e. the mark must be used for the purpose of distinguishing goods or services emanating from a particular source. It is not essential that the public know exactly who or what the source is, but they must be able to associate the mark with a particular product or service. The iPod MP3 player, for example, is distinguishable from all other MP3 players on the market today. You may not know or remember the name of the company that developed the iPod (it’s Apple Computer Inc. for those who care) but that doesn’t matter. The important thing is that the iPod name carries with it immediate brand recognition because of its extensive use, its massive sales and the large-scale advertising campaign that supports the product.





Trademark rights based on use are territorial in nature. A trademark owner relying on simple use may only be able to assert trademark rights in the jurisdiction in which the product is actually used or the service is rendered. If a roofer in Winnipeg has branded himself as the SHINGLE GUY, he can defend that phrase against other persons in the same type of business in the Winnipeg area where he does business and where his service is known. However, he may not be able to assert a case against another roofer in Halifax who adopts the SHINGLE GUY moniker because his use has been restricted to Winnipeg. If for some reason, the notoriety of the Winnipeg SHINGLE GUY has spread far and wide, and his reputation as a world-class roofer has become well known across Canada, this may be sufficient for him to have developed trademark rights in Halifax. It would, in each case, be a matter of fact.

### 3. Registration of a Trademark

#### (i) *The Trade-marks Act*

Registration of a trademark is done in accordance with the provisions of the *Trade-marks Act*. This legislation sets out the structure and rules regarding the registration and enforcement of trademark rights, including:

- What trademarks are registrable;
- What trademarks are prohibited;
- Who is entitled to register a trademark;
- The application and opposition process;
- What constitutes trademark infringement;
- The rights and obligations of trademark owners;
- How rights are lost.

#### (ii) *Advantages of Registration*

Even though trademark rights can arise and can be enforced from a common law perspective simply as a result of use, there are a number of advantages to registration.

- A registered trademark gives the owner the exclusive right to its use throughout Canada even though the registered owner may have used it in only one location;
- A registration is good forever provided a nominal renewal fee is paid and the trademark continues to be used;
- A registered trademark is, for all practical purposes, a prerequisite for business expansion through licensed franchisees, or licensing agreements;
- A registered trademark is deemed to be distinctive to the products and services of the trademark owner and the onus is on the defendant to prove otherwise. In an action based on an unregistered mark, the owner must prove it is distinctive;
- A registration is a defined right that can be asserted against others. An owner has the legal right to defend his or her trademarks;
- As a definable right, it will enhance the value of a business by more clearly defining goodwill as an asset;

**TRADEMARK Toolkit****PART 1 – A TRADEMARK PRIMER**

- The owner of an unregistered trademark can only sue if there is actual infringement by another party. The owner of a registered trademark can prevent the use of another mark in any manner that is likely to have the effect of depreciating the goodwill of the registered mark whether or not that use constitutes trademark infringement;
- A registration is property that can be bought and sold like any other asset;
- The registration is recorded in the Trade-Marks Office. Confusing or similar trademark applications will be denied by the Office without any opposition or comment from the public or other trademark owners;
- Registration also serves as notice to others of the owner's trademark rights, in effect encouraging them to select non-confusing alternatives.

**(iii) Who is Entitled to Register a Trademark?**

As a general rule, the person entitled to register a trademark is the person who first "adopted" it. A trademark is adopted either when the person begins to use the trademark or make it known in Canada, or when the person makes an application to register the trademark, whichever is the earliest.

**(iv) The Basis for Trademark Registration**

A trademark application may be based on one or more of four grounds:

**(a) use of the trademark in Canada**

Using a trademark in association with services generally means displaying it in the course of performing the services. While the advertising of the services may be "use" to some degree, the fact is, advertising services without having actually performed the services or without having the ability or facilities to perform the services is likely not "use" within the meaning of the *Trade-marks Act*. Promoting or advertising your services is not performing the services. It is a secondary act. It could be that being available and willing to do the services is enough, but it would depend on the circumstances.

**(b) making the trademark known in Canada**

A trademark is "made known" in Canada if:

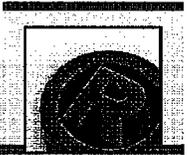
1. it is used in a country that is a member of the World Trade Organization;
2. the products and services are distributed or advertised in Canada in association with the trademark in printed publications, radio and television broadcasts or on the Internet; and
3. the products or services have, in fact, become well known in Canada because of such distribution or advertising.

**(c) proposed use of the trademark in Canada**

An application for registration can be filed on the basis of proposed use. The advantage to this is that the registrant reserves the mark. However, before the trademark can actually be registered, the owner must have started using it, and must file a statutory declaration to that effect.

## TRADEMARK Toolkit

## PART 1 – A TRADEMARK PRIMER



- (d) the applicant owns the trademark registration in another country

If the applicant owns and uses the trademark in his or her country of origin in association with the same products or services, and is using the mark in any convention country, he or she may apply for a trademark registration in Canada.

#### 4. Certification Marks Versus Ordinary Trademarks

A certification mark is a particular type of registration that is permitted by the *Trade-marks Act*. An understanding of the place of certification marks in the trademark universe is essential to a discussion of CREA's trademarks, as the bulk of those marks are, in fact, certification marks.

A Certification trademark is one that is used to distinguish the products or services that are of a defined standard from others that do not meet that standard. This standard can relate to one or more of the following characteristics:

- (a) the character or quality of the wares or services;
- (b) the working conditions under which the wares have been produced or the services performed;
- (c) the class of persons by whom the wares have been produced or the services performed; or
- (d) the area within which the wares have been produced or the services performed.

**CERTIFICATION MARK**

A Certification trademark is one that is used to distinguish the products or services that are of a defined standard from others that do not meet that standard.



MLS  
MULTIPLE LISTING SERVICE®



REALTOR®

Both **REALTOR®** and **MLS®** are registered as certification marks.

The owner of the certification mark cannot be involved in the services described by the mark. The mark itself is licensed to a group of people or organizations that meet the defined standard. The nice thing about a certification mark is that the owner does not have to enter into separate licensing agreements with each member of the defined group. The *Trade-marks Act* provides that use by any of the members of the group is deemed to be use by the owner.

A good example of an effective certification mark is the GOOD HOUSEKEEPING SEAL OF APPROVAL. This mark is licensed to those companies that meet a defined standard of service or quality of product. Those organizations that have raised the bar to that degree may apply to display the mark in association with that service or product. It says to the world that they have met a standard beyond that provided by other companies.

With this in mind, you can see how certification mark registrations mesh with the services provided by members of organized real estate. Many business organizations, unions, and professional associations have established a set of standards that members are required to maintain. The Canadian Real Estate Association is one of them.

These associations pride themselves on their standards and encourage members of the public to deal with Association members. CREA's REALTOR® and MLS® families of trademarks are registered as certification marks because they denote a standard of excellence that CREA members must meet in order to maintain their membership. These concepts are discussed in greater detail in Part 2 of this Toolkit.

## II. Intellectual Property and Trademarks

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### 1. Definition of Intellectual Property

A trademark is a sub-set of intellectual property. Intellectual property is a phrase used to describe rights in property of an intangible or “intellectual” nature. This can be a trademark, a process for manufacturing a chemical, or the name of a product. These rights may include the right to sell or transfer the property, the right to manufacture a product using certain technology, the right to exploit a name or famous character to market a product, or the right to reproduce a literary or musical work.

Intellectual property rights are different than physical property rights. Ownership of the physical property does not necessarily lead to ownership of the intellectual property, or vice versa. For example, when you own the physical property in a book you have the right to read the book, and to loan or sell the book to a friend. You do not have the intellectual property right to make a photocopy of the book, to adapt the book as a screenplay, or to publish the book.

Intellectual property generally includes five main areas: patents, copyrights, industrial designs, confidential information and trade secrets, and trademarks. These rights are protected in Canada by a combination of common law and legislation.

### 2. Defensive and Offensive Use of Intellectual Property

While this concept of intellectual, as opposed to physical, property may seem ethereal, it is important to remember that intellectual property can be as – or more – valuable to a business operation as the technology that runs it.

Ownership carries with it substantial rights. The owner of a copyright, for example, is the only person authorized to reproduce, distribute or sell the copyrighted work. The owner of a trademark is the only person authorized to display it. The owner of a patent is the only person authorized to incorporate the design or functionality into a product. Anyone else who wishes to do any of these things must deal with the owner and work out a financial arrangement. Using someone else’s intellectual property without consent may result in enormous financial consequences.

As a result, intellectual property ownership is a powerful tool that can be used as a sword or a shield.

The defensive use of intellectual property involves conducting due diligence before you launch any new product or service to ensure that you are not stepping on any intellectual property toes. If you are developing hardware or software, you will want to research current patents and copyrights to avoid infringement problems. If you are branding your product or yourself in some way, you should not introduce that brand without making sure there are no similar trademarks. For example, in expanding the functionality of the REALTOR.ca website, CREA considered a marketing program called HOUSE BY MOUSE, with a cute little stylized computer mouse with a tail. Before launching the program, a search of registered trademarks revealed that the idea was apparently so clever, many, many persons had registered variations on that theme. So the idea was dropped.



The offensive use of intellectual property refers simply to the process of protecting your original ideas once you have satisfied yourself that they are indeed original. Ideas, by themselves, are nothing, until they have been reduced to some form of product. Once you have conceived of the perfect mouse-trap, you must flesh out that concept and register a patent. Otherwise, your idea becomes someone else's retirement plan.

### 3. Intellectual Property as a Valuable Business Asset

The information age is upon us. And what that means is that the business world has moved away from putting value exclusively on bricks and mortar, and now looks at the value of information, in its many forms when it assesses businesses. The North American economy is now knowledge-based and technology driven. The vast majority of successful Internet based companies leverage nothing more than information. The shares of GOOGLE, for example, have not skyrocketed because of its knack in real estate investments. The foundation for Google's worth is its constant innovation in how to find and present information to consumers.

Officials of Google estimate that 20 per cent of search requests every day are new. They interpret this as a strategy that 20 per cent of their business changes daily.

If you look at the buyouts and mergers taking place every day, particularly in the high-tech sector, you will see in almost every case, they are simply the joining of complementary technologies – I've got a piece of software that, when combined with your hardware, will produce information in a totally novel manner. Or, my functionality, when marketed through your branding, will triple our customer base.

What is being bought and sold in these scenarios is really nothing more than intellectual property. For this reason, it is crucial to consider intellectual property in every aspect of business operations.

### 4. Intellectual Property as Part of a Strategic Plan

Because intellectual property has a very real, very tangible and very assessable value, it is in the best interests of any organization to leverage its intellectual property with its strategic plan. Intellectual property is inextricably bound up with effective commercial activity.

Every strategic plan has key elements. For example, the marketing plan, the financial plan, the sales plan, and the operational plan or strategy for implementation. These elements all combine to become the foundation for the strategies that will help the business deliver on its objectives for the coming year.

When considering the strategic plan, businesses should always be aware of the intellectual property tie-ins. For example:

- Databases are subject to copyright. If you are developing a database, what ownership rights do you want to assert - rights in the database as a whole or in the individual things that comprise the database? What kind of protection do you need in contracts with the users of the database and any other third party technology and content providers?
- Most of the material you produce is subject to copyright. What controls do you need to protect that right? Are third parties creating any of the documentation? If so, do you have contracts with them confirming your ownership? Have your employees waived their moral rights to the documents they are creating on your behalf?
- What are you doing to brand yourself or create consumer recognition? Any advertising, communication, packaging and consumer or customer activity involves trademarks and copyrights.

## 5. How Intellectual Property Fits With Business Objectives

It is important to give thought to how intellectual property fits with your business objectives.

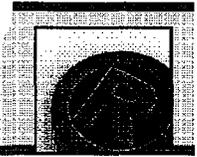
**Some of the questions you need to ask when developing any new initiative are:**

- a. Can intellectual property be leveraged for the product or service?
- b. If yes, what intellectual property rights are available to best protect this product?
- c. Is it to your advantage to create some brand and positioning?
- d. Is it even worthwhile to use intellectual property to protect this product (cost benefit analysis)?
- e. Is the branding you are thinking of “ownable”?

The bottom line is that in today’s knowledge-based economy, intellectual property must be a key consideration in day-to-day business decisions, and should be exploited at every possible opportunity.

Wrapping your products and service up with an intellectual property component serves four main purposes:

1. It turns ideas into assets;
2. It prevents competitors from copying or closely imitating your organization’s products or services;
3. It creates a recognizable corporate identity through branding strategies;
4. It increases the market value of your organization.



### III. How Trademarks are Violated

People are familiar with the words “trademark infringement” and tend to think of that term as a catchall category for any type of improper use of another’s trademark. As with so many areas of the law, it isn’t quite that simple. While trademark infringement itself is a cause of action available to the owners of both registered and unregistered trademarks, the owners of registered trademarks have an additional cause of action based on “depreciation of goodwill”. This action is generally known as “passing off”. While the concepts are similar, there are distinctions between the two.

#### 1. Passing Off

As you probably realize by now, trademarks are not just words and symbols that serve no purpose but to decorate the page. They are very real — and very valuable — corporate assets. The value inherent in a trademark is known as “goodwill”. Goodwill is really the reputation of the company. The stronger a mark gets, the more clearly it identifies your product or your service or your company, with the result that your brand recognition—or goodwill—increases.

This reputation has monetary worth when your company is being valued. So, if someone is acting in a way that depreciates or lessens the value attributable to a trademark, you may take action. This conduct may or may not be an actual trademark infringement, but that is irrelevant for the purposes of this action.

Passing off occurs when a trademark is used in such a way as to misrepresent to a consumer that the services or products of that person were offered, manufactured, performed or endorsed by the trademark owner.

Passing off is a powerful weapon for registered trademark owners, as it is based on “likely result” and therefore has a basis in common sense business practice. A plaintiff in a passing off action must prove three things:

- (a) it operates a business, that includes goodwill (or reputation), and that goodwill is connected with the trademark used by the business to identify its products or services;
- (b) there has been a misrepresentation by the defendant;
- (c) there is a likelihood of damage.

## 2. Infringement

### (i) Definition

The *Trade-marks Act* gives the owner of a registered trademark the right of “exclusive use” of a trademark. That exclusive use is infringed upon when, in the words of the Act, “...a person not entitled to its use under this Act...sells, distributes or advertises wares or services in association with a confusing trade-mark or trade-name...” An infringement is therefore not limited to identical marks, but also includes confusingly similar marks.

In order to bring an infringement action, it is not necessary to establish any kind of loss. There is a presumption that if a confusing trademark is being used, a loss occurs.

### (ii) Confusion

Generally, confusion is deemed to have occurred if the use of two trademarks in the same area would lead to the inference that the products or services are manufactured or performed by the same person. The basic test is a variation on the classic “reasonable man” test used in tort litigation. In this case, the question is what the reaction would be of a reasonable consumer who was familiar with one product and subsequently came into contact with the other. Would he or she be “confused”? While it is a test that is fact-based and will vary with the circumstances, the *Trade-marks Act* sets out four factors that will be considered in assessing confusion:

1. the inherent distinctiveness of the trademark and the extent to which it has become known;
2. the length of time the trademark has been in use;
3. the nature of the wares, services or business;
4. the degree of resemblance between the trademarks in appearance or sound or in the ideas suggested by them.

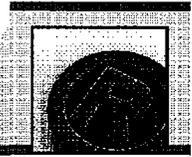
### LET YOUR FINGERS DO THE WALKING



A Federal Court decision in the case of Tele-Direct (Publications) Inc. v. Canadian Business Online Inc. is an example of a Canadian court enforcing trademark protection against a Canadian website operator.

In this case, Canadian Business Online Inc. had set up web sites that provided basic contact information for individuals, companies and institutions including telephone number. The plaintiffs, the owners of the “Yellow Pages” and “Walking Fingers” trademarks, sought and received an injunction restraining the defendants from using the expression “Canadian Yellow Pages on the Internet” alongside a Walking Fingers design on its Internet website. Tele-Direct took the action to defend its “Yellow Pages” trademark and its well-known slogan, “Let your fingers do the walking”.

Canadian Business Online was ordered to cease and desist using the term “Yellow Pages” and the walking fingers design.



## IV. The Four Step Formula to Protecting Your Trademarks

Trademark law is a harsh mistress, and effective trademark protection involves much more than simply registering a mark, or using it properly. In order to solidify and maintain one's rights, a trademark owner must actively and diligently follow this four-step formula.

### 1. Acquisition of Rights

Before trademark rights can be enforced, they must be acquired. As we have discussed, you can develop unregistered rights by way of use, but if you are serious about protecting the symbol of your products or services, you should register the trademark. The exclusive right to use the mark that is given to you under a registration is an extremely valuable asset. Therefore, always apply for trademark registrations for any words, phrases or designs you wish to protect.

The application can be filed online with the Canadian Intellectual Property Office (CIPO). More information on process and costs can be obtained from the CIPO website, which can be accessed from the federal government site located at <http://strategis.ic.gc.ca>. While it is possible to file a trademark application yourself, the process can be complex, and it is therefore recommended that you retain a lawyer or trademark agent to act on your behalf.

### 2. Licensing

Never allow your trademarks to be displayed by any other person or company without a written license agreement. Proper use strengthens a trademark. The more extensive the proper use, the larger the group using it, the stronger the mark becomes. By the same token, improper use by anyone, and any use by unauthorized persons, weakens the mark. The more extensive the improper use, the weaker the mark becomes, until eventually, it is lost. It is therefore crucial for trademark owners to ensure that any uses of the marks are within the limits of allowed uses and are properly controlled by the owner. This control is exercised through licensing agreements.

Trademark owners have the exclusive right to license the use of their marks to third parties. In these situations, the licensee has the authority from the owner to use the mark and the owner maintains the direct or indirect control over the quality or character of the wares or services with which the mark is used. Generally, these agreements contain clauses providing for the proposed uses of the marks and are subject to certain terms and conditions as established by the trademark owner. Through these license agreements, trademark owners exert the control necessary to meet the requirements of the *Trade-marks Act*.

### 3. Marketing

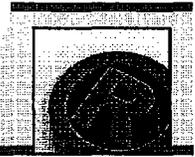
Trademark rights that you have acquired are not particularly valuable if you are the only one who knows the trademark exists. In order for a mark to be distinctive of a product or service, it has to be recognized by the public. The greater that recognition, the stronger and more valuable the mark will become.

Part of successful marketing of a trademark is branding it to ensure that a consumer, when reading that word or looking at that design, thinks of you. For example, a word or design may, through constant use and extensive advertising, attain a secondary meaning that relates directly to a particular product or service. The word MCDONALD'S and the stylized "M" logo (known to the world as the "Golden Arches") are now synonymous with the restaurant services and products of the most famous hamburger joint in the world. This did not happen by accident. The company has spent tens of millions of dollars in advertising, which ties its symbols to its products. This is known in the business as "branding". A successful branding campaign—which invariably also includes many, many years of use—results in consumers immediately identifying your product or service with that word or symbol.



### 4. Enforcement

Enforcement is really the other side of the coin to licensing. Licensing ensures that all authorized users are documented. Enforcement ensures that all unauthorized users are detected and stopped. There is no point in carefully documenting proper uses if there is rampant misuse of your mark by others in the commercial arena. In other words, if you are going to own trademarks, you need to take extreme care to monitor improper uses and establish effective procedures to deal with them.



## V. What Constitutes Trademark Infringement?

### 1. The Golden Rule

In the world of trademarks, there is one primary rule, one overriding principle from which all-else flows. It can be simply expressed as follows:

**“Trademarks must always be displayed in a way that enforces their distinctiveness as registered marks and emphasizes that they are not words of common usage in the English language”.**

This is pure logic, and if you understand this rule, you understand everything there is to know about why users of trademarks must respect them, and why owners of trademarks must be vigilant in monitoring and enforcing proper use.

There are innumerable general rules that flow from this Golden Rule, and apply to all trademarks—for example, you can’t combine the trademark with any other text or design, you must comply with sizing restrictions, etc... But most of the rules for use fall under one of these two headings: FORM and CONTEXT.

### 2. The FORM Rule

The FORM Rule is straightforward. A trademark must always be displayed in the exact form and manner in which it is registered. If a design mark has a required colour scheme, those colours must always be used. If a word is spelled in all capitals, then it must be spelled exactly the same way whenever used.

Adhering perfectly to the FORM Rule requires attention to at least three points:

- (a) Always use the ® symbol to identify a registered trademark and the ™ symbol to identify an unregistered trademark. These symbols traditionally appear on the “shoulder” of the trademark, i.e. in the upper right hand corner. Canadian trademark law does not require the ® or ™ symbol to be used, but CREA’s Rules do require their use.
- (b) Always spell the word exactly as used in the trademark registration, including using capitals, where required. Always duplicate a logo or design mark in its registered form, ensuring that colour schemes, sizing and any other requirements are respected.
- (c) Include a notation somewhere on the page on which the trademark is displayed, identifying the owner of the trademark: For example, CREA’s Rules require that the following notation appear with each use of its marks: “Trademark owned or controlled by The Canadian Real Estate Association. Used under license.” A note of this sort assists trademark owners in exercising the kind of control required under the Trade-marks Act.

**For discussion of application of FORM Rule to CREA’s trademarks, see Chapter X Section 2**

### 3. The CONTEXT Rule

The CONTEXT Rule says that a trademark must always be displayed in a way that emphasizes its registered meaning. In other words, whenever readers, come across, for example, a reference to a trademark in written text, they should immediately be aware of 2 things:

- (a) that they are dealing with something more than mere words of the English language (the FORM Rule should ensure this); and
- (b) the reader should be able to associate the trademark with the owner of the product or service simply from the manner in which it is used.

**For discussion of application of CONTEXT Rule to CREA's trademarks, see Chapter X Section 3**

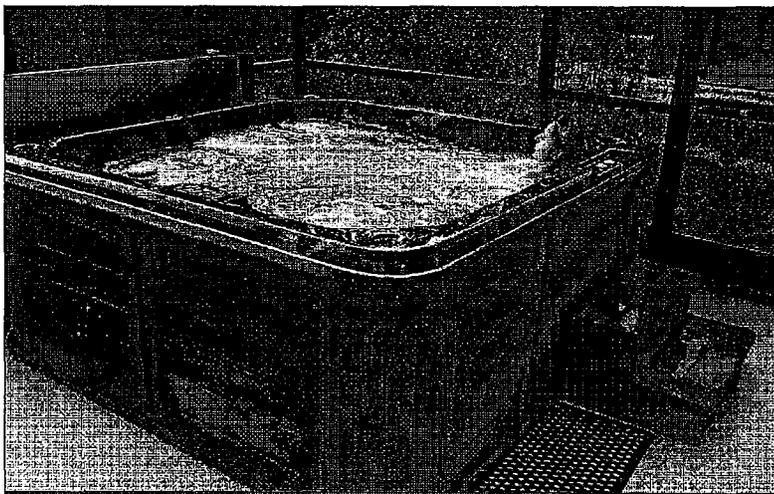
Jacuzzi®, for example, is a registered trademark owned by Jacuzzi Brands, Inc., and is used to identify the hot tubs, whirlpools and other products sold by that company under the Jacuzzi® brand. When the Jacuzzi® mark is being displayed, it must conform to the Form and Context Rules.

#### **WRONG: "I just bought a new jacuzzi".**

This violates the FORM Rule as it is not spelled with a capital "J" and does not contain the ® symbol. It also breaches the CONTEXT Rule because it is not written in such a way as to identify the owner of the product, as opposed to the product itself. On the contrary, the way it is written makes it look like "Jacuzzi" is just another word for "hot tub"-a usage that is extraordinarily dangerous to the trademark.

#### **RIGHT: "I just bought a new Jacuzzi® hot tub."**

This sentence clearly identifies the word Jacuzzi® as a trademark and makes it clear that the Jacuzzi® term represents not just a hot tub, but the hot tubs sold by Jacuzzi® Brands, Inc.





#### 4. Consequences of allowing misuse

##### (i) Death by genericism

Monitoring and ensuring proper use of trademarks is not just an academic exercise for trademark owners. It is a necessary and crucial strategy directed at protecting an extremely valuable asset. If misuses are allowed to continue, if trademarks are used to identify a “thing” rather than the maker of that “thing” (see Jacuzzi® above), if members of the public come to view a trademark as nothing more than another word in the English language, then all rights in that mark may be lost. Perception becomes reality, and that trademark becomes just another word. And when it becomes just another word, there is no longer any special meaning attributed to it. Nor is there any special protection afforded it. And perhaps most importantly, there is no longer any special value to the mark. It is gone. A corporate asset that may have been worth thousands or millions or tens of millions of dollars has been lost forever to the owner.



##### (ii) Some marks that have been lost

There are literally hundreds, if not thousands, of words in the dictionary that at one time or another were strong, valuable trademarks identifying the owners or creators of products. But they were victims of their own success. Members of the public so identified with the products themselves, that eventually, they lost their distinctiveness.

##### A few examples are:

Ju Jubes,  
Escalator,  
Brassiere,  
Thermos,  
Cellophane

And the list goes on. One lost trademark that should serve as an object lesson to organized real estate is Mortician. The trademark Mortician once referred to an undertaker who was a member of the Mortician’s Association. Every Mortician was an undertaker, but every undertaker was not a Mortician. Eventually, people started referring to undertakers as “morticians”, the terms became synonymous, and were used interchangeably by members of the public. The trademark was not adequately protected, became generic, and all rights to it were extinguished. The similarities to the REALTOR® trademark are striking, and underline the need for constant diligence in defending this very valuable asset of organized real estate.

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## VI. Trademarks and the Internet

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### 1. Domain Names

Domain names are the unique Internet addresses assigned by various Internet administrators, such as "yahoo.com", "harvard.edu" or "cbc.ca". The domain names proprietary to the owners in these examples are Yahoo, Harvard and the Canadian Broadcasting Corporation (CBC). The endings ".com", ".edu" and ".ca" define the type of organization or the location of the organization – ".com" for commercial organization, ".edu" for educational organization and ".ca" for a Canadian organization.

A person who is searching the Internet for information on a certain company or product will often try to locate the company by using its company name or its main product name. In this way, a domain name can be an important marketing tool for a company, and a very effective way to promote use of the trademark.

Various court decisions over the last ten years have made it clear that trademark law applies to domain names. A prudent trademark owner will want to make sure it has registered its company name, its major brands, and its trademarks as domain names.

### 2. Meta-tags

Meta-tags can be used to lure Internet users away from competing sites. This is possible because all websites are created using a programming language called hypertext mark-up language (HTML). Like any computer program, a programmer may include non-operational lines of code in the program (i.e. programmer's notes), also known as meta-tags. When a website is viewed, the reader only sees text and graphics produced by the HTML programming, not the source code or the meta-tags. When an Internet user is searching for a website containing specific information, he or she will normally employ a search engine, such as "Yahoo" or "Google" to find the site. The user will enter a word or phrase and the search engine will produce a list of sites that contain the word or phrase. Most search engines will list sites by giving a higher rank to those sites with a greater frequency of the desired word or phrase.

The meta-tag problem occurs because some of the major search engines will consider the meta-tags to be part of the text of the website when conducting a search. An unscrupulous website operator may take advantage of this by including the names or trademarks of its competitors in the form of a meta-tag, often repeating the key words dozens of times.

The courts have confirmed that meta-tags are comparable to advertising and will be subject to the usual rules of trademark protection.



### 3. Hyperlinks

Hyperlinks allow Internet users to switch from web page to web page without actually typing in new Internet addresses. Web pages often include links to other websites with similar content, or which complement the original site. For example, a running shoe company may provide “links” to professional sport websites. Hyperlinks usually appear on web pages in the form of words or logos, also the primary forms of trademarks. Thus, hyperlinks also can be used to imply association with a trademark holder, when none really exists, resulting in either the infringement or dilution of a trademark.

You should always obtain the prior written approval of the owner before creating a hyperlink in any form from a third party website to any page of the owner’s website. The company may or may not give such approval at its absolute discretion.

Many companies will only allow a plain-text link and will reserve the right to rescind their approval at any time. Many of these agreements contain clauses that ensure that the person using the links will do so without alteration or deletion or without infringing the trademarks. The company will usually also reserve the right to review and approve the manner in which the company’s content is displayed on the website.

## VII. A Summary of CREA's Trademarks and Certification Marks

The Canadian Real Estate Association (CREA) owns a number of marks that are trademarks – and can therefore only be used by CREA, and a number of certification marks that can be used and displayed by CREA members who are licensed practitioners. For an explanation of the difference between trademarks and certification marks, see Chapter 1, Section 4.

These are CREA's **CERTIFICATION MARKS**  
(for use by CREA members that are licensed practitioners)

### (i) **MLS® Family of Marks**

In text, the initials

**MLS®**

In text, the phrase

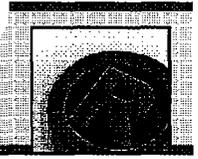
**Multiple Listing Service®**

The "MLS® Design Mark"  
(including Multiple Listing Service® phrase)



The "MLS® Design Mark"  
(without Multiple Listing Service® phrase)

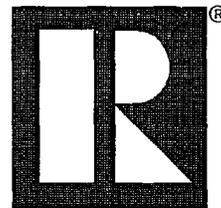


**(ii) REALTOR® Family of Marks**

In text, the word

**REALTOR®**

In text, the word

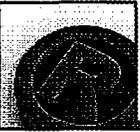
**REALTORS®**The "REALTOR® Design Mark"  
(including REALTOR® word)The "REALTOR® Design Mark"  
(without REALTOR® word) – for use in  
province of Quebec only**(iii) REALTORS Care® Family of Marks**

In text, the phrase

**REALTORS Care®**

The various "REALTORS Care® Design Marks"




**TRADEMARK Toolkit**
**PART 2 – CREA'S TRADEMARKS**

These are CREA's **TRADEMARKS**

(for use only by CREA – cannot be used by members – without permission)

**REALTOR**Link®

**IXN**™

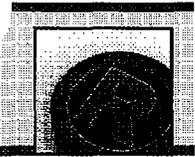
Lien**IMMOBILIER**™

**icx**™

**CREA**®  
The Canadian Real Estate Association

**Web  
Forms**™

As the primary purpose of this Trademark Toolkit is to act as a resource for Boards/Associations in establishing trademark compliance programs, the focus will be on CREA's two primary families of certification marks—namely **MLS®** and **REALTOR®**.



## VIII. The MLS® Family of Certification Marks

### 1. The meaning of the MLS® Marks

The four MLS® certification marks were registered at different times, with the earliest registration taking place in 1959. However, the MLS® marks have been used since at least 1954—over half a century ago—to describe the standard of service provided by members of organized real estate.

And this is the important point—as certification marks, the MLS® marks must refer to a standard of service, and not to a “thing”. The MLS® marks do not identify a computer database of real estate listings or any product related to how a database works.



The meaning of the four MLS® Marks is set out in Rule 15.2.3 of CREA's Rules as follows:

**15.2.3 The MLS® Marks identify professional services rendered by members in good standing of CREA to effect the purchase and sale of real estate as part of a “plural system arrangement”, also known as a co-operative selling system (the “MLS® Services”), in compliance with CREA's By-Laws and Rules, and the REALTOR® Code as amended from time to time, and in compliance with all applicable federal and provincial/territorial laws and regulations...”**

### 2. MLS® versus “MLS® System”

The co-operative selling systems operated by real estate Boards under the MLS® certification marks are critical to the provision of **MLS® Services**. These systems contain the real property listings of member brokers, and are unique in the commercial world in the sense that competitors are sharing their inventory with each other, all for the purpose of better serving the consumer.

CREA, as the owner of the MLS® marks, licenses its member real estate Boards to use those marks in association with the operation of their co-operative selling systems. Accordingly, the proper identification of these systems is “**MLS® Systems**”.

Having said that, it is important to understand that the power of a Board's MLS® System does not come from the number of listings in the database or the computer functionality. The power of an MLS® System emanates from the underlying standards of the MLS® mark that are applied to its operation. Those members who access the MLS® System do so to provide a high standard of service in accordance with the MLS® mark –the **MLS® Services**.

Describing an MLS® System as a “database” is akin to describing the theory of relativity as a “bunch of numbers”. It is so much more.

## TRADEMARK Toolkit

## PART 2 – CREA'S TRADEMARKS

Rule 15.2.4 of CREA's Rules contains a proper description of an MLS® System:

**15.2.4 An MLS® System is a co-operative selling system operated and promoted by a Board or Association in association with the MLS® Marks. An MLS® System includes an inventory of listings of participating REALTORS®, and ensures a certain level of accuracy of information, professionalism and co-operation amongst REALTORS® to effect the purchase and sale of real estate.**

The standards inherent in the MLS® Marks and the operation of MLS® Systems include the integral concepts of membership in organized real estate, agency, co-operation, and offers of compensation.

Why are we spending so much time explaining the differences between these concepts? The distinction is critical because, as we saw in Chapter V, trademarks must always be used to clearly reflect their registered meaning. Failure to do so weakens the marks and may result in trademark rights being lost. Every time someone refers to a Board's MLS® System as "the MLS®", or defines MLS® as being a database of listings, they are pounding another nail into the coffin of the MLS® marks.

Why? For a multitude of reasons. MLS® is not a "noun". It is not a "thing". It is a certification mark, and as such is only being properly used when it is used as an adjective. Secondly, MLS® refers to a standard of service—the **MLS® Services**—not a listing system. And even if MLS® were the proper term to refer to a Board's MLS® System (which it is not), that system is not a "database of listings". It is a co-operative selling system operating under the MLS® certification mark.

Proper use is incredibly important. And proper use requires an understanding of the meaning of the marks.

**More information on the "right" and "wrong" ways to use the MLS® can be found in Chapter X.**

## WHAT'S WRONG WITH THIS PROMO?

## ANSWER

**Mister  
MLS**

The MLS® mark cannot be used in combination with other letters or another mark to "create" something else. In this case MLS® is also being used as a noun, which is also not permitted.



## IX. The REALTOR® Family of Certification Marks

### 1. Some Background

The REALTOR® family of certification marks has a long and checkered history, both in Canada and the United States. The term has been used by the National Association of REALTORS® (NAR) in the U.S. since 1916, and by CREA, or its Boards, since at least 1921, to identify members of organized real estate who adhere to a Code of Ethics.

Historically, both CREA and NAR took steps to protect the REALTOR® mark in their respective countries for the mutual interests of both. Many facets of organized real estate developed more or less simultaneously in both countries, and the issues of consistent usage of the REALTOR® mark on both sides of the border has been a constant focus of concern in terms of protecting the distinctiveness of the marks.

The REALTOR® family of marks is owned in Canada by REALTOR® Canada Inc. (RCI), a non-profit company owned equally by CREA and NAR. This “split ownership” was undertaken to effectively protect and strengthen the REALTOR® marks in the United States and Canada and to make the meaning of the term uniform and consistent in the two countries.

The Shareholders Agreement within RCI provides that CREA controls all aspects of licensing REALTOR® in Canada. On the other side of the coin, the obligation to monitor and protect the mark in Canada is the responsibility of CREA and its member real estate Boards and provincial Associations.

### 2. The meaning of the REALTOR® Marks

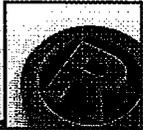
The trademark legislation in the United States recognizes something called “collective membership marks”, which refer to persons. So NAR has registered REALTOR® to mean “member of the National Association of REALTORS®”. That’s nice and neat and simple.

Things are less neat and simple in Canada, however, because no such designation exists in our *Trade-marks Act*. Organizations wishing to identify “members” must do so through the use of certification marks. As discussed in Chapter I, certification marks refer to a standard of service provided by an identified group of people.

Since the REALTOR® registration in Canada cannot directly identify a “member”, it instead refers to the standard of brokerage services provided by members of CREA. In effect, it identifies members based on the services they provide.

But the branding of the REALTOR® marks go beyond pure service. REALTOR® is synonymous with professionalism. And professionalism means at least three things –service, competence and ethics. All three are essential ingredients in the REALTOR® recipe.

TRADEMARK Toolkit



PART 2 – CREA'S TRADEMARKS



**Competence** is a result of education and training;  
**Service** includes the provision of the MLS® Services discussed above;  
**Ethics**, as established by the REALTOR® Code, governs the essence of how a REALTOR® provides this service and the relationship between a REALTOR® and the public.

The “standards” inherent in a certification mark are found in these elements. And that leads to what the REALTOR® certification mark has come to mean in organized real estate—a real estate professional who is a member of The Canadian Real Estate Association and, as such, subscribes to a high standard of professional service and a strict Code of Ethics.

What REALTOR® absolutely does **not** mean is “real estate agent”. It identifies only membership in CREA. It is not a synonym for salesperson, broker, or any other job that a real estate practitioner does. Any reference to REALTOR® in a context where a consumer might interpret the terms as meaning “real estate agent” is a trademark infringement.

**For more detail on proper and improper use, see Chapter X.**

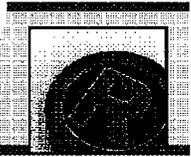
WHAT'S WRONG WITH THIS PROMO?

ANSWER

**Mike Likely Serves**  
 up the power of



The MLS® initials must never be used to create a new logo or design, or as part of “branding”. The logo must also never be combined with any other logo.



## X. Identifying Improper Uses of the MLS® and REALTOR® Certification Marks

### 1. The Steps

Let's look now at the right and wrong ways of using the MLS® and REALTOR® certification marks.

**Note:** These considerations apply only to uses by CREA members, the idea being that members have the right to display the marks, so the only question is whether that display conforms to CREA's Rules and policies. If the use is by a non-member, it is not necessary to go through this analysis. A non-member has no right to use the marks, and that is the end of the discussion. It is not necessary to look at "how" the marks are used.

Whenever you are asked to look at a particular use of the MLS® or REALTOR® marks, you must go through the following steps:

#### STEP 1:

##### **Know what MLS® and REALTOR® mean**

Enforcing a trademark you don't understand is like trying to speak a language you never heard before. Without that basic background information, you are fumbling in the dark, and you will get nowhere. How can you tell if a mark is being improperly used to mean something other than its registered meaning when you have no idea what that registered meaning is? That may sound trite, but the fact is that much of the uncertainty that exists surrounding the use of these marks results directly from a complete lack of understanding as to what they mean. So begin at the beginning—learn the meaning of the marks. [See Chapters VIII and IX for the meaning of the MLS® and REALTOR® marks]

#### STEP 2:

##### **Ask yourself the following question: now that I know what the mark actually means, is that meaning plain and obvious from the way it is used?**

In other words, does the manner of use comply with the CONTEXT Rule that states that the actual meaning of trademarks must be obvious from the context of its use? For example, would a consumer looking at this use of REALTOR® ever think that it means "real estate agent". If yes, the context rule has been offended. [See Chapter V, Section 3, as well as Rule 15 of CREA's Rules for more information on the Context Rule]

#### STEP 3:

##### **Ask yourself the second question: Is the mark being displayed in the exact form in which it is registered?**

In other words, does the manner of use comply with the FORM Rule?

[See Chapter V, Section 2, as well as Rule 15 of CREA's Rules for more information on the Form Rule]

**STEP 4:**

**Ask yourself the final question –does the use of the mark comply with all of CREA's policies on trademark use?**

In addition to the "general" trademark rules, CREA has developed specific restrictions that appear in CREA's Rules and various trademark policies. These include, for example, rules for use of the marks in domain names, e-mail addresses, meta-tags and business names.

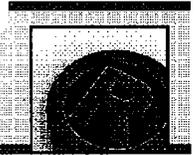
**2. Applying the FORM Rule**

The 3 elements of the Form Rule are:

- (i) The marks must be spelled exactly as registered—for example, the words MLS® and REALTOR® are to be spelled all in capitals, as are the first letters in Multiple Listing Service®;
- (ii) the ® registration symbol must be displayed in superscript with every use of the marks;
- (iii) the statement **"Trademark owned or controlled by The Canadian Real Estate Association. Used under license."** must be included with the marks, where possible. The only exception is where the medium doesn't allow for such a statement (e.g: a REALTOR® pin).

A few examples of "form" problems are listed below for illustrative purposes. They are not by any means intended to be all-inclusive. The examples are endless. For the purposes of this illustration, it is assumed that the trademark "statement" set out in (iii) above is included.

WRONG	WHY
mls	1. All letters must be capitalized (MLS) 2. The ® registration symbol is missing
M.L.S.®	The MLS® mark does not contain any periods
MLS	The mark cannot be distorted
realtor	1. All letters must be capitalized 2. The ® registration symbol is missing
Realtor®	All letters must be capitalized
REALTOR®-Assistant	CREA's marks must never be combined with any other words or designs
realtor.ca	The REALTOR® term must be capitalized when referring to CREA's website – REALTOR.ca
R&ALTOR	1. The mark cannot be distorted 2. The ® registration symbol is missing



### 3. Applying the **CONTEXT** Rule

The “Form” requirements previously described are fairly straightforward in the sense that they are purely visual. You can look at the way a mark is written and, without a lot of effort, determine whether or not it complies with the way it is “supposed to look”.

The “Context” rule, however, is more complicated, because it is directed not just at the way the mark looks, but at the message it conveys. When someone looks at what has been created, does the registered meaning of the mark jump out at him or her? Or is some other meaning implied?

This is much more subjective and subtle, and requires thoughtful consideration. In fact, many people are only aware of the form requirement and give no thought to context. They take great care to make sure capitals are used in the lettering, but pay no attention at all to the message they are conveying with the way they use the mark.

(i) **MLS®**

The registered meaning of MLS® is discussed in Chapter VIII. Please ensure that you have reviewed that Chapter before reading further.

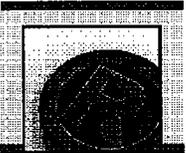


## PART 2 - CREA'S TRADEMARKS

## SOME IMPROPER "CONTEXT" USES of MLS®

WRONG	WHY	RIGHT
"I placed a listing on the MLS®."	<ol style="list-style-type: none"> <li>1. MLS® is <b>NOT</b> a <b>NOUN</b>. It is a certification mark identifying a standard of services and must always be used as an <b>ADJECTIVE</b>. References to "the MLS®" are <b>ALWAYS</b> wrong.</li> <li>2. MLS®, by itself, is never to be used to identify a real estate Board's co-operative listing system.</li> <li>3. CREA's Rules define a Board's listing system as an "MLS® System." And, when using the term "MLS® System", you must clearly be referring to a real estate Board.</li> </ol>	"I placed a listing on the Ottawa Real Estate Board's MLS® System."
"ABC Realty just set up their own MLS® System (or Multiple Listing Service®)."	Only a member real estate Board is licensed by CREA to operate an "MLS® System". Any company or individual can operate a property listing website or database, but it is <b>NOT</b> an MLS® System unless it is operated by a real estate Board under license with CREA.	"ABC Realty just set up their own listings site."
"Remember this name for all of your real estate needs - Mary Louise Smith."	The MLS® mark cannot be combined with other words or designs to create another image or branding.	"Remember this name for all of your real estate needs - Mary Louise Smith."
Mr. MLS®	<ol style="list-style-type: none"> <li>1. This is another attempt to develop a personal "branding" using the MLS® certification mark by combining the mark with text to "create" something else, which is not permitted.</li> <li>2. MLS® is being used as a noun.</li> <li>3. MLS® is a mark identifying the quality of services rendered by a group of people. It is improper for an individual to imply in advertising that he or she somehow has "better" access to the mark than someone else.</li> </ol>	N/A
"Ultimate MLS"	<ol style="list-style-type: none"> <li>1. MLS® is being used as a noun, which is not permitted.</li> <li>2. Never use adjectives with certification marks as adjectives tend to give the marks a generic meaning - a "thing" rather than a certification mark.</li> <li>3. The ® registration symbol is missing.</li> </ol>	N/A
MLS® Explorer	<ol style="list-style-type: none"> <li>1. The MLS® mark cannot be used in "product" or program names.</li> <li>2. MLS® is being used as a noun.</li> </ol>	N/A

**PART 2 – CREA’S TRADEMARKS**



**(ii) REALTOR®**

As discussed in Chapter IX, REALTOR® is a certification mark that identifies real estate professionals who are members of The Canadian Real Estate Association.

REALTOR® does not mean salesperson, broker, real estate agent, or any other job that a real estate practitioner does. Any use of the mark that implies “real estate agent” instead of “member of CREA” is wrong.

The REALTOR® certification mark is really intended to be a stand-alone mark. It should be displayed on its own in letterhead and on business cards to identify the individual as a member of CREA.

Whenever REALTOR® is being used in a slogan, it is likely being used incorrectly.

**SOME IMPROPER “CONTEXT” USES OF REALTOR®**

WRONG	WHY	RIGHT
<p>Top Selling REALTOR® The Community REALTOR® The Virtual REALTOR® Your Toronto REALTOR®</p>	<p><b>Never use adjectives</b> with the REALTOR® mark. Adjectives give the mark a generic meaning. Consumers read that as meaning “top selling real estate agent”, which is an infringement.</p>	<p><b>Top Selling Salesperson</b> <b>The Community Real Estate Professional</b> <b>N/A</b> <b>Your Toronto Real Estate Professional</b></p>
<p>REALTOR® Connection REALTOR® Products</p>	<p>Never use REALTOR® in product or program names.</p>	<p><b>N/A</b></p>
<p>ABC REALTORS®</p>	<p>REALTOR® can be used in conjunction with a corporate name, but cannot be part of the name. In other words, you can display the REALTOR® mark after the corporate name, with proper punctuation separating it, but you cannot include the certification mark in the name itself.</p>	<p><b>ABC Realty, Inc. REALTORS®</b></p>
<p>“What do I do for a living? I’m a REALTOR®”</p>	<p>REALTOR® is not a job description. It does not identify what someone does to earn a living. It identifies a person as a member of CREA. Using the mark to mean “real estate professional” is an infringement.</p>	<p><b>“What do I do for a living? I’m a real estate professional. I’m also a REALTOR®”</b></p>

**TRADEMARK Toolkit**
**PART 2 – CREA'S TRADEMARKS**
**4. The REALTOR® and MLS® Design Marks**

While the REALTOR® and MLS® design marks each have their own required elements, there are two very important restrictions that apply to both:

- The design marks must never be altered, reshaped, distorted or combined with any other logos in any way.
- The design marks must never be used as hypertext links to REALTOR.ca.

To avoid inadvertent infringements, members are encouraged to only use the authorized versions of the design marks, which are available for download from [www.realtorlink.ca](http://www.realtorlink.ca). Buttons to use as hypertext links to REALTOR.ca are also available on the same site.

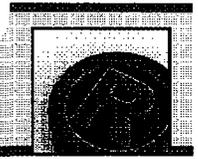
**(i) The MLS® Design Mark**

The MLS® design is generally described as three identical shaped boxes designed to look like a house, rising to a point at the top. The letters “M”, “L” and “S” are each located in one box in that order, in bold block letters. If the full designation of “Multiple Listing Service®” is used, the words must be printed all capitals in block to fit exactly below the three “houses”, followed by the ® superscript.

The standard colour combinations involve the left and right boxes in solid red, with the letters “M” and “S” in white. The centre box is outlined in black, with the letter “L” also in black. Members are encouraged—but not required—to use this original black, white and red design (graphically referred to as black and one colour).

A display using black only is also permitted.



**(ii) The REALTOR® Design Mark:**

The official REALTOR® logo consists of an “R” in the Futura font, or typeface, on a contrasting rectangular background to form a block “R”. The word REALTOR® is then centered under the rectangle. Only members in Quebec are permitted to use the REALTOR® “R” logo without the term REALTOR® below the “R” block.

The dimensions of the rectangle, the size of the Futura “R” in relation to the rectangle’s dimensions, and the length and font size of the word REALTOR® are important design features of the REALTOR® logo. So is the space between the rectangle and the word REALTOR®. You can reduce the size of the overall logo to meet the needs of the intended application, but it must never be reduced to the point where the word REALTOR® cannot be read.

There is no official colour for the REALTOR® logo, but the following 3 rules must be adhered to:

1. Any 2-colour combinations may be used but the colours must be sharply contrasting.
2. The block surrounding the “R” and the REALTOR® term must be the same colour (i.e. if the block surrounding the “R” is black, then the REALTOR® term must also be black).
3. The “R” must be a sharply contrasting colour to the block and the REALTOR® term. If the block is dark, the “R” should be light. It is preferable, but not required, to have the “R” the same colour as the paper background.

If you are using the logo on a dark background and intend to reverse the logo elements, make sure you reverse ALL of the elements. The usual colours must be reversed so both the rectangle and the word REALTOR® appear in a light colour on the dark background.

The REALTOR® logo must be separated from other logos or lettering, designs or emblems by a minimum distance of one-half the width of the rectangle, or block “R”. If the block “R” is one inch wide, it must be a half-inch away from any other logo. The logo must never be framed or outlined.

**RIGHT****WRONG**

## 5. Other Restrictions on Use of MLS® and REALTOR®

### (i) Use in Domain Names and E-mail Addresses

All of the Form and Context Rules are violated when trademarks are used in domain names, with the result that the marks are weakened. For that reason, CREA has developed specific policies for use of the MLS® and REALTOR® family of marks in domain names or e-mail addresses.

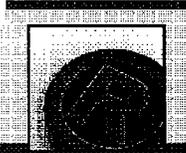
The policies provide as follows:

1. MLS® and Multiple Listing Service® must never be used by members in domain names or e-mail addresses. (See Chapter XI for the permitted uses by Boards/Associations).
2. REALTOR® and REALTORS® can be used in domain names only in conjunction with the name of the member or the member's firm. They can never be used alone or with geographical, descriptive or other modifiers. Punctuation, while preferred, is not mandatory.
3. None of the marks can ever be used in meta-tags or in the name of any website computer directory.
4. In all advertising where the domain name is displayed, there must be an acknowledgment that the terms are trademarks of The Canadian Real Estate Association.

Some examples of proper and improper use of REALTOR® and REALTORS® in domain names are as follows:

Improper Use in Domain Names	Proper Use in Domain Names
www.calgaryrealtor.ca	www.johnjonesrealtor.ca
www.professionalrealtor.ca	www.johnjones-realtor.ca
www.simontherealtor.ca	
Improper Use in E-mail Address	Proper Use in E-mail Address
realtor4@rogers.com	johnjones-realtor@sympatico.ca
superrealtor@shaw.ca	johnjonesrealtor@sympatico.ca
thebestrealtors@sympatico.ca	

**PART 2 – CREA’S TRADEMARKS**



**(ii) Use with Firm Name**

Neither the REALTOR® nor MLS® marks may be used as part of a business name. The REALTOR® mark may be used ADJACENT to the firm name, provided it is separated from the name by punctuation, and preferably on another line. But it cannot form “part” of the firm name:

Improper Use	Proper Uses
ABC REALTORS	ABC Realty, Inc., REALTORS® ABC Realty, Inc. REALTORS®

**(iii) Business Limitation**

**MLS®**

In order to display the MLS® trademarks, members must offer MLS® services. A key component of those services is access to a Board’s MLS® System. Therefore, a REALTOR® who does not have listing access to an MLS® System may not display the MLS® marks.

**REALTOR®**

The REALTOR® certification mark does not just identify a standard of service—it identifies a standard of brokerage services. Rule 15.4.5 of CREA’s Rules restricts the use of the REALTOR® mark to “...brokerage services relating to real estate transactions as permitted by the relevant provincial or territorial real estate licensing legislation”. A REALTOR® who, for example, develops and markets a software program is not engaged in brokerage services and cannot use the REALTOR® trademark in association with that enterprise.

## XI. Use of the MLS® and REALTOR® Certification Marks by Boards and Associations

### 1. Letterhead and Business Materials

Member real estate Boards and provincial Associations may display the REALTOR® and MLS® design marks on their business material in the same manner as other members.

The one exception to this rule is that real estate Boards that do not operate MLS® Systems or otherwise provide their members with access to an MLS® System are not permitted to display the MLS® marks. This restriction does not apply to provincial Associations.

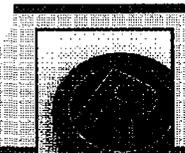
### 2. REALTOR® in Board/Association Names

Real estate Boards and provincial Associations may incorporate REALTOR® or REALTORS® as part of their business names. Realty firms are not permitted to do this, but an exception is carved out for Boards and Associations, provided that they have received the approval of CREA and have signed a license agreement for the use. Real estate Boards are also required to obtain the permission of the appropriate provincial Association.



### 3. Domain Names and E-mail Addresses

Real estate Boards and provincial Associations may use the MLS® marks in their domain names and e-mail addresses, provided firstly that they are used in conjunction with appropriate geographical modifiers, and secondly that they are separated from other text by punctuation. A license agreement with CREA must also be signed. Boards and Associations that have REALTOR® or REALTORS® as part of their business name may use domain names and email addresses that include their name, provided that a license agreement with CREA has been signed.



#### 4. Board/Association Logos

The REALTOR® and/or the MLS® design marks may be incorporated into a Board/Association logo, provided the design has been pre-approved by CREA and a license agreement with CREA has been signed. The word “REALTOR” may, at the option of the Board/Association, be removed from the block “R” REALTOR® logo for this purpose.

Some Boards/Associations may also wish to develop other types of branding, such as design marks for award designations. As an example, a Board/Association may give out performance awards that incorporate CREA’s trademarks, such as “MLS® Award” or “REALTOR® Excellence Award”. These terminologies always require CREA’s approval and, at CREA’s option, the signing of a license agreement. This is particularly important where the designation includes a design element.



#### 5. Names of Buildings or Publications

Boards and Associations may incorporate REALTOR® or REALTORS® into the name of its building, the titles of its publications, and educational courses, provided that CREA has approved each use in writing and the involvement of the Board or Association is noted with each use.

#### 6. Incentive Items

Boards/Associations may display the MLS® and REALTOR® marks on incentive and promotional material such as clothing, pens, etc...provided the name of the Board/Association is included on the material.

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## **XII. Use of the MLS® and REALTOR® Certification Marks By Non-Members**

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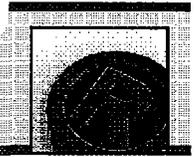
### **1. General**

Non-members are never authorized to use the marks. Only licensed real estate practitioners who belong to CREA (i.e. REALTORS®) are authorized to display the MLS® and REALTOR® marks. The marks may not be displayed by persons in other categories of Board membership (e.g. affiliate members), nor may they be displayed by non-members. When a non-member is using the marks, all of the policies and guidelines for proper use of the trademarks are irrelevant. It doesn't matter if the use would comply with the guidelines if used by a member.

Common unauthorized uses by non-members appear in various forms, including use of the trademarks in non-member trade names, corporate names, newspaper ads, business cards, websites, letterheads, domain names and e-mail addresses, or in various forms of advertising. In addition, unauthorized uses may take the form of imitations or variations of the logos or the word marks.

Remember, however, that some trademark use may be unauthorized, but is known as permissible "collateral use". For example, a non-member broker cannot use the REALTOR® or MLS® marks in his advertising or on his website in a manner that implies an association with those marks or a right to use them.

However, it would be acceptable for the broker to state on his website that he was not a member of a real estate Board and therefore was not a REALTOR® and was not able to access an MLS® System. He is, in this case "displaying" the marks, but is not "using" them in the trademark sense because he is only referring to them for the purposes of clarifying to the reader that he is not an authorized user of the marks. This type of use is not an infringement.



## 2. Media

Editors, publishers and broadcasters — including publications catering to the real estate industry — improperly use CREA's trademarks with frightening regularity. Even more distressing, many of the articles involve CREA members or even CREA Boards and Associations, where the opportunity existed to correct the improper uses before the offending article or interview was ever published or aired, yet the opportunity was lost.

Most newspapers follow the Associated Press or Canadian Press Style Books in preparing news items for publications. These stylebooks do not call for use of full capitals or the “®” registration symbol even for registered marks.

To acknowledge the reality of this limitation, CREA's Rule 15.5.3.1 allows the media to display REALTOR® by only capitalizing the “R”. The Rule also provides that the ® is not necessary.

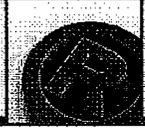
Note, however, that this limited exception only applies to the Form Rule. It is still critical that whenever the word is used, it conforms to the Context Rule and clearly refers to membership in CREA.

If the usage implies “broker” or “salesperson” or any other “job” a real estate professional does, it is an improper use of the mark.

Similarly, the MLS® mark may be used by media without the ® symbol. However, there is no other exception to the Form Rule, and it must be displayed all in capital letters. As with REALTOR®, there is no exception to the Context Rule. It must always be used in media in a manner that emphasizes its proper trademark meaning. This includes ensuring that Boards' MLS® Systems are never referred to as “MLS®'s” or “the MLS®”.

Each time a Board/Association interacts with the media, the trademark message should be part of the communication. This should include passive messages such as including the definition of the term REALTOR® and Multiple Listing Service® or MLS® on releases provided to the media.

## TRADEMARK Toolkit

**PART 3 – CREA'S A TRADEMARK PROTECTION AND COMPLIANCE PROGRAM FOR BOARDS/ASSOCIATIONS**

There are at least three essential elements to an effective trademark compliance program:

- 1. An internal audit**
- 2. Ongoing member audits**
- 3. An effective enforcement process**

### **XIII. Conducting an Internal Audit**

Before a Board can begin seeking out improper trademark uses among its members, it is critical that it takes a good hard look at how it is using the marks itself. Based on the “physician, heal thyself” principle, putting your own house in order is always a good first step to asking others to clean up theirs.

This is good business practice for two reasons. Firstly, it is an educational opportunity. The best way of learning the trademark rules is to actually apply them. It is very easy to fall into questionable usage practices, and many Boards may surprise themselves by discovering a host of trademark uses that do not comply. By going through the processes of analyzing the Board’s use of the trademarks, the Board staff is learning by doing. This will be an enormous asset in dealing with member use.

Secondly, members who are asked to correct trademark problems in their own business or promotional material will be quick to point out any irregularities with Board uses, and that will erode the Board’s “moral high ground” in asking for member compliance. We don’t have the luxury of saying “do like I say, not like I do”.

An internal audit does not have to be a complicated process. Think of it as a little look around to see what’s going on. It’s a relatively simple matter of determining what uses are made of CREA’s certification marks by the Board, and ensuring that they all comply with the usage guidelines.

Obviously, if this audit is undertaken with absolutely no concept of what constitutes a trademark infringement, what uses are allowed by CREA’s policies and what uses require license agreements, you are wasting your time. But if you understand the general rules discussed in Chapter X and the allowable Board uses outlined in Chapter XI of this manual, you should be able to quickly identify any problems.



The areas of review would include:

### 1. Board Name

If the REALTOR® mark (or a variation of the mark) is part of the Board name, ensure that:

- CREA's approval was obtained prior to using the name;
- A license agreement for the use of REALTOR® in the name has been executed;
- REALTOR® complies with the "Form" rule in that it is spelled all in capitals and includes the ® registration symbol.

**Note:** The Corporations Branch of the applicable government agency responsible for registering corporate names may not allow the "®" symbol to accompany the corporate name for registration. That's fine. However, the "®" symbol must appear in all uses of the name on business and promotional material, as well as websites.

### 2. Board Logos

There are two logo situations—a design mark developed to identify the Board, and other design marks or phrases used by the Board to identify specific services or awards (e.g. "The Million Dollar MLS® Club" or the "REALTOR® Achievement Award").

If the Board incorporates any of CREA's trademarks into its branding — including both word and design marks—then the Board must ensure that:

- CREA's approval was obtained prior to using the design or the phrase;
- A license agreement for the use of REALTOR® or MLS® in the design or phrase has been executed;
- The REALTOR® or MLS® word (if applicable) complies with the "Form" rule in that it is spelled all in capitals and includes the ® registration symbol;
- The REALTOR® or MLS® design mark (if applicable) conforms to CREA's design mark specifications.

**Note:** CREA permits the word "REALTOR®" to be removed from the logo for the purpose of incorporating the logo into a Board/Association logo.

### 3. Letterhead

Does the Board display any of the REALTOR® or MLS® family of marks on letterhead or other promotional material? If yes, the Board must ensure that:

- The word or design marks conform to CREA's guidelines for proper usage (capital letters for the word marks, proper size and colour contrast for the design marks, ® registration symbol with all marks);
- The marks should always be used in a "stand-alone" fashion, in that they are not combined with any other text or design.

#### 4. Board Newsletters, Publications, Educational Courses

These documents must be reviewed with two things in mind:

- (i) **Do any of CREA's trademarks appear in the title of the publication (e.g. "The REALTOR® Connection")?**

If yes, ensure that CREA has approved the use in writing.

- (ii) **Are any of CREA's trademarks used in the body of the publication?**

If yes, ensure that:

- The REALTOR® or MLS® words comply with the "Form" rule in that it is spelled all in capitals and includes the ® registration symbol;
- The REALTOR® or MLS® word comply with the "Context" rule in that no-one reading it would mistake the word REALTOR® for "real estate agent" or MLS® for a "database". Ask yourself these questions — Have you properly used the term "MLS® System" to identify your listing system? Have you improperly used MLS® as a noun (e.g. "our members access the MLS®...");
- All design marks conform to CREA's design mark specifications.

**Note:** All publications intended for consumer use and all websites that contain the REALTOR® or MLS® marks:

(a) must include the disclaimer "Trademark owned or controlled by The Canadian Real Estate Association. Used under license".

(b) should include a definition of what a REALTOR® is, what MLS® means, and what an MLS® System is. All of these terms are defined in Chapters VIII and IX.

#### 5. Board Websites

- (i) **Domain Names**

Does the Board own domain names or email addresses that contain the MLS® or REALTOR® marks? If yes, ensure that:

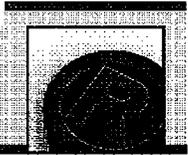
- CREA has pre-approved the use;
- A license agreement with CREA has been signed.

**Note:** CREA's MLS® marks may only be used in Board domain names and e-mail addresses in conjunction with a geographical modifier AND a separation between the MLS® mark and any other words (e.g. www.toronto-mls.ca). While Boards are encouraged to acquire the registration of "offending" domain names (www.topsellingrealtor.com, www.ultimatemls.com etc...) in order to protect them, they are not allowed to activate those names or have them point to the Board's website.

- (ii) **Content of Website**

Review the interior of the Board website in the same manner as you would with publications, as discussed above. The Board website is another advertising vehicle and subject to the same usage guidelines.

This audit process may initially take some time, but should only need to be done once in this kind of detail. It is essential that Board staff be educated on proper trademark use, and become familiar with CREA's policies for use, as well as this toolkit. Going forward, then, basic maintenance should be all that is required.



## XIV. Conducting a Member Audit

When we talk about member audits, it is important to understand that we are not suggesting that Boards take each member individually and perform an audit on his or her operations in the same manner as described above for Board audits. Nor are we suggesting that Boards institute some kind of mandatory review process that requires members to get Board approval for business and promotional material or websites.

What is being suggested, however, is that Board staff persons educate themselves on trademark infringements and apply that knowledge to assist members in complying with the usage guidelines when displaying CREA's trademarks.

The fact is that the local Board is in the best position to see what is happening in its jurisdiction. In the normal course of business, Boards see much of the material produced by their members. Some of it comes across the desks of Board staff persons. Some is in the local newspapers that staff reads. And yet, a vast amount of member advertising and communication violates CREA's rules for the use of its trademarks. If Board personnel were able to look at this material with a critical eye, based on an understanding of the trademark rules, many of the problems would be stopped in the first instance before they become critical.

Here is a list of some of the most common problems with member use of the CREA trademarks.

### 1. Realty Firm Names

CREA's Rules provide that the REALTOR® and REALTORS® certification marks cannot form part of a business or trade name (see Chapter X).

For example, the name "Riverside REALTORS" violates the usage rules. The name "Riverside Realty, Inc., REALTORS®" is acceptable because the REALTORS® mark is not part of the firm name, but rather is used as an identifier after the name, properly separated by punctuation.

Neither the regulators nor the various government bodies charged with approving business names deal with trademarks, and they will not refuse names because they infringe trademark rights. It is not their job. Trademark protection is legally the responsibility of the owners of the mark.

So brokers can easily register firm names that violate CREA's rules.

However, as such names violate CREA's rules, as well as the REALTOR® Code, no broker should be allowed membership in these circumstances. They are in breach of the contractual obligation contained in the membership application the Board bylaws.

Yet many infringing firm names make their way onto Board membership databases. That information is then directly uploaded to CREA's membership database, and may reside there for years before it is noticed that a problem exists. At that time, the member is arguing that he or she has been allowed this non-conforming use for years, and CREA now has no right to require compliance. This puts both the member and CREA in a difficult position.

**TRADEMARK Toolkit****PART 3 – CREA'S A TRADEMARK PROTECTION AND COMPLIANCE PROGRAM FOR BOARDS/ASSOCIATIONS**

Therefore, it is incumbent on Boards to:

1. Refuse to process firm names that violate CREA's rules.
2. When uploading firm names to the CREA database that use REALTOR® properly after the name, do not include the REALTOR® mark in the firm name. In the example Riverside Realty, Inc., REALTORS®, the trademark REALTORS® is not part of the firm name. It should be uploaded as "Riverside Realty Inc.", not as "Riverside Realty Inc., REALTORS®"

**2. Member Advertising in Board Publications**

All advertising containing any of CREA's trademarks, submitted to a Board for insertion in a Board publication should be reviewed for compliance with CREA's rules before it is accepted. Improper uses of the trademarks are particularly harmful when communicated in a Board publication.

**3. Member Advertising in Other Media**

When a Board staff person reads a local newspaper or gets a flyer from a member at their home, he or she should review the content for trademark problems. If any are identified, the Board should contact the member, pointing out the problem and requesting it be rectified (see Chapter XV on how this is done).

**4. Domain Names**

Domain names that infringe CREA's trademarks represent the largest single challenge in trademark enforcement today. CREA has dealt with hundreds of non-compliant names, but on our own we are barely scratching the surface of the problem.

Boards, however, are in a unique position to assist with compliance. Most Boards have the e-mail addresses of their members in the Board database. Many of these e-mail addresses are themselves trademark infringements (e.g. realtor@hotmail.com). But even the ones that are not, will in most cases, lead to a website. For example, if the e-mail address is mary@professionalrealtor.com the website is www.professionalrealtor.com. And we can tell right away that there is a problem—the website violates the rules for use of REALTOR® in domain names.


**BRAMPTON REAL ESTATE BOARD**

10 - 35 Van Kirk Drive

Brampton, Ontario L7A 1A5

Tel: (905) 791-9913

Fax: (905) 791-9430

[www.breb.org](http://www.breb.org)
[www.realtorlink.ca](http://www.realtorlink.ca)
[www.realtor.ca](http://www.realtor.ca)

*E-mail sent February 15, 2009 to info@crea.ca*

In browsing some of the real estate websites I found several, well, sad to say but most of them, that had trademark infringements. I e-mailed the contact person of each of the sites in regards to this and asked them to correct the situation. To my surprise, I have received e-mail replies very quickly thanking me and said they will make these changes right away. I have also not turned my head when I see a sign "REALTOR ON DUTY" outside an office. I have e-mailed the Broker of Record and within a couple days, a new sign has appeared "REALTOR® ON DUTY".

It's been great to see this and it's become a great tool I use with my Members. Asking them all too randomly search a few sites and then e-mail explaining the trademark issue and that they are adding to the risk of losing these trademarks. I've used the scenario; there are approx. 2,500 REALTORS® in our area, approx. 35,000 in Ontario and approx. 94,000 in Canada. What a statement they would make if they all just emailed a couple. Once they receive the replies they realize they do make a difference and then it starts, they become addicted to checking the trademarks.

Below is an e-mail I received from [REDACTED] When searching 'real estate Ontario' a link comes up - [REDACTED] This is how I found it. Throughout their material they reference REALTOR®, Multiple Listing Service® and MLS®; all incorrectly.

The emails I have been sending up until now basically reference the fact that these are owned by CREA, can only be used by Members of CREA and can never be used without permission.

I am starting to receive emails, such as this one below asking for more details and not being a lawyer, I would like to know if CREA has wording we could use in answering these types of questions. My first reaction would have been to tell them to get permission to use the two trademarks in their marketing materials, and then make sure they have the proper rules for the trademarks. I reference the Canadian Trademark Guidelines but now would like to know exactly what we should be saying.

Some of my members have been doing the same thing and are now asking the same question. Several I have heard back from know the answers and have agreed to make the corrections or replace the wording.

I present the Trademark issues every time I'm in front of my members, whether it's a Member's meeting, a education session or a Broker/Manager Forum. They are finally coming on board and I would really appreciate your help in letting them know exactly how they can pursue this.

Thank you in advance for any advice or suggestions you can give me,

Lynn M. Martin  
 Executive Officer  
 Brampton Real Estate Board

## TRADEMARK Toolkit


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Note: If the domain name would be considered "popular"—for example, something that contains a geographical reference such as [www.winnipegmls.com](http://www.winnipegmls.com); then the Board should require not only that the domain be deactivated, but also that it be transferred to the Board. That is the only way of protecting the domain from being bought by another person as soon as it is handed in by the member. CREA presently owns a multitude of offending domain names, but we are asking Boards to assist in protecting these valuable marks.

Therefore, Boards should:

- Review the email addresses and websites currently on their membership database, compile a list of offending sites, and advise the members of the need to deactivate the domain names;
- Review the contact information provided by new members, and any new information from existing members for compliance with the trademark rules.

### 5. Member Websites

Websites are advertising vehicles, and Boards should review the content of websites in the same manner as any other member advertising, with an eye on the use of both REALTOR® and MLS®. In addition to domain name problems, the improper uses in websites mirror the most common misuses that appear in other media. They include:

- Displaying MLS® improperly by using by using small letters or periods or omitting the ® symbol;
- Using MLS® as a noun ("I have access to the MLS®");
- Displaying REALTOR® improperly by not using all capitals and/or not using the ® symbol;
- Using REALTOR® to mean "real estate agent" instead of "member of CREA";
- Using REALTOR® or MLS® with adjectives or as part of a marketing "slogan"; (I'm Your Condo REALTOR®; "Talk to me about our "MLS® Advantage" Program).

#### WHAT'S WRONG WITH THIS PROMO?

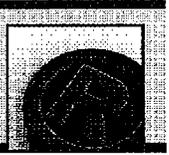


**Meet John Smith  
of ABC Realty Inc.**

He's **REALTORific!**

#### ANSWER

The REALTOR® term should never be used to create a new term or phrase, such as "REALTORific". Modification of the term, in any manner, tends to weaken the distinctiveness of the mark and undermine its identifying functions.



## XV. Enforcement Process

### 1. Getting Ready

In preparation for processing trademark complaints, the Board should ensure that following has been done:

**(i) Know the Rules**

Trademark misuses fall into two general categories—unauthorized use by non-members, and improper use by members who are authorized to use the marks, but do so in a manner that violates CREA's policies for use. Before you can recognize a misuse, you must know the rules and the reasons behind the rules. This Toolkit sets out in considerable detail the usage rules and the rationale for them.

All Board staff should understand, at least at a basic level, how the rules work so that they all recognize obvious trademark infringements when they see them.

**(ii) Appoint a Trademark Officer**

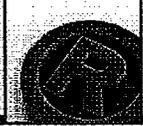
One individual in the Board office should be appointed the person responsible for trademark compliance. The duties of this person would include training the staff on trademark issues, educating the members, responding to questions and complaints from members and other third parties, and establishing and supervising an internal procedure for dealing with trademark complaints. To be effective, a program of this nature should have one point of contact.

**(iii) Develop a Record Keeping and Tracking System**

It is critical to keep detailed records of everything that has transpired in the course of efforts to ensure compliance. A few of the things to keep in mind are:

- (a) Maintain separate files for each trademark infringement, which are kept up to date. If you maintain only electronic files, ensure that all hard copy documentation is scanned and filed.
- (b) Always maintain a paper or electronic trail of contacts with the complainant and the offending party. Written notes should always be taken during telephone conversations and should subsequently be filed. Where possible, always confirm discussions in writing or electronically. Remember, any individual enforcement process may end up either in court or before a Board discipline panel, and it is imperative that a complete file is available.
- (c) Institute a tracking system that tells you at a glance what stage any particular trademark action is at. As an example, CREA created an electronic spreadsheet that includes the name of the offending party, the nature of the infringement, the date of first letter, the date and content of any response, the date of any second letter, the date of compliance (if any) and whatever follow-up action has been taken. This spreadsheet is cross-referenced so that if you have any piece of information—for example, the domain name that was the subject of the complaint—you can search that, and retrieve all of the information about that particular complaint.
- (d) Create a tickler system that brings forward files when the next step has been reached. If, for example, an offending party has been given 10 days to cure an infringement, the Board's operational system should be structured so that a reminder comes forward that something needs to be done on this file.

## TRADEMARK Toolkit


**PART 3 – CREA'S A TRADEMARK PROTECTION AND COMPLIANCE PROGRAM FOR BOARDS/ASSOCIATIONS**

## 2. Handling a Trademark Complaint

(See Complete Enforcement Process Flowchart in Appendix A for summary of complaint procedure)

When the Board has received a complaint, here are the points to consider.

### (i) Is the trademark being used in Canada?

#### (a) No use at all in Canada

CREA's trademark registrations are valid throughout Canada. They have no application in other countries. A particular use that would be a problem in Canada is fine if the use is restricted to another country.

So the first thing a Board wants to determine is whether the use actually is in Canada. In most cases, this is obvious. But when the complaint involves a domain name or website, you need to be careful.

Let's say, for example, the Board gets a complaint about the domain name [www.supermls.com](http://www.supermls.com). On the face of it, this is a clear violation of CREA's rules, which do not permit the use of MLS® in domain names. Also, MLS® can never be used with adjectives, so domain name offends a number of usage guidelines.

However, if you click on the domain and look at the site, it is a property listings site, located in the United States. You can only search for properties located in the U.S., and there is no connection whatsoever to Canada. MLS® is not a registered trademark in the U.S., and CREA's rights end at the border. Therefore, it is not a trademark infringement, and the Board's investigation is done.

While this type of analysis usually comes up when dealing with Internet applications, it may very well apply to other types of communications or advertising.

### Action

- If the alleged infringement only involves MLS® and occurs only outside of Canada, there is no more that can be done. Advise the complainant accordingly, and close the file.
- If the complaint involves REALTOR® and occurs in the United States, then forward it to the National Association of REALTORS® (NAR).
- That organization is the owner of the REALTOR® trademark in the U.S. NAR can be contacted at:

**The National Association of REALTORS®**

**Attention: Trademark Administrator**

**E-mail address: [trademark@realtors.org](mailto:trademark@realtors.org)**

## PART 3 – CREA'S A TRADEMARK PROTECTION AND COMPLIANCE PROGRAM FOR BOARDS/ASSOCIATIONS



### (b) Server/Company located in U.S. but cross-border marketing

The situation is different if the company or website originates in the U.S., but is marketing products or services in Canada. For example, e-mails or other advertising materials may come from a U.S. site, marketing a product like "MLS® Explorer" or soliciting listings on their website. Alternatively, when you look at the website, it may offer listings from Canada. In both of those circumstances, even though the site is located in the U.S., because the products or services are marketed or sold in Canada, all of the usual trademark rules apply. Even though MLS® is not a trademark in the United States, if it is being used by a U.S. company in Canada, any uses must comply with Canadian law and CREA's Rules.

#### Action

- Report the use of REALTOR® to NAR, as described previously.
- Analyze the use of REALTOR® and/or MLS®, based on CREA's rules and determine whether a violation exists. Proceed to the next step, as if the violation originated in Canada.

### (ii) Are the marks (or similar marks) being used in connection with real estate products or services?

The focus of a trademark infringement is the possibility of "confusion". If one person uses a mark to identify the quality of a service and another person is using that mark, or a similar mark, to identify the quality of the same or a similar service, the result is confusion in the minds of consumers. However, if similar marks are being used to identify completely different services, then no trademark infringement exists.

For example, Major League Soccer, Inc., a New York company, has registered an "MLS®" design mark in Canada that refers to soccer games and related apparel. As this has absolutely nothing to do with any aspect of real estate, it is not an infringement. If the registration had anything to do, directly or indirectly, with the purchase and sale of real property, or databases of real property, or products related to real estate it would be an infringement.

#### Action

- Report the use of REALTOR® to NAR, as described previously.
- Analyze the use of REALTOR® and/or MLS®, based on CREA's rules and determine whether a violation exists. Proceed to the next step, as if the violation originated in Canada.

**TRADEMARK Toolkit****PART 3 – CREA'S A TRADEMARK PROTECTION AND COMPLIANCE PROGRAM FOR BOARDS/ASSOCIATIONS****(iii) Identify Use**

Is the offending party a member or a non-member? If it is a non-member, it is not necessary to determine whether the use conforms to CREA's usage guidelines. That is irrelevant. A non-member is not licensed to use the marks and therefore has no right to display them unless the use is purely for reference purposes (see Chapter XII).

**(iv) Categorize Infringement (if offending party is a member)**

If the offending party is a member, it is necessary to examine the particular use and determine whether or not it complies with CREA's guidelines for use. Refer to Chapter X for a discussion of proper use and examples of improper uses. If the use conforms, advise the complainant and close the file. If the use is not compliant, proceed to the next step.

**Note:** If there is any question as to whether a particular use is problematic, contact CREA.

**(v) Gather the Information**

When the Board is satisfied that the use is problematic, it should obtain and document as much of the following information as possible:

- A description, sample or copy, or website address (URL) of the alleged unauthorized use;
- The person or firm responsible for the use;
- The address of such person or firm;
- The date of the use and/or the publication where the use appeared;
- Whether the use is continuing;
- Any information available regarding any possible relationship between the one misusing a trademark and any member should also be documented.



(vi) **Initial letter to offending party**

When the initial investigation has been completed, and the information gathered, the Board should communicate with the individual or company identified as misusing a CREA trademark.

Template letters directed to both members and non-members, covering all of the most common types of infringements, are included on a CD in the Appendices. These letters may be customized for Board use.

• **Non-members**

When the offending party is not a member, a letter should be sent explaining that the trademark used is a registered mark owned or controlled by CREA in Canada, and that the trademark is reserved for the exclusive use of, or in reference to, members of CREA. The letter should conclude with a polite but clear and direct request that the unauthorized use of the trademark be promptly terminated. If the user is a real estate practitioner or a brokerage, this is an opportunity for the Board to explain the benefits of membership. Do not threaten litigation at this stage. The letter should include a request that the party confirm their intention to comply by a certain date.

• **Members**

When a member is using the marks improperly, the letter should include a description of CREA's trademarks and their definitions, the fact that the member is licensed to use the marks, but must do so in accordance with usage rules, and an explanation of the misuses that were found. The member should also be politely asked to make the necessary changes within a certain time frame (e.g. within two weeks from when the letter is sent). The letter should include a request that the member confirm his or her intention to comply by a certain date.

If the alleged infringement involves a domain name, a decision must be made ahead of time as to whether the Board will require the domain name to be transferred to them, so that the letter can reflect that request.

The vast majority of member infringements result from a simple misunderstanding of the usage rules. The letter should therefore be extremely polite and as helpful as possible in explaining the problem. It is not appropriate to be in any way threatening in the initial letter.

**(vii) Review file status at deadline.**

The initial letter will result in one of five scenarios:

**1. The party responds indicating they have complied.**

In this case:

- Confirm compliance by checking website or materials;
- Write a letter thanking the person for their co-operation;
- Copy the file to CREA;
- Close the file.

**2. The party responds refusing to comply.**

In this case, send the second letter as described below.

**3. The party does not respond.**

In this case, send the second letter as described below.

**4. The party responds asking for clarification.**

In this case, politely respond to any questions. The greater the understanding, the greater the likelihood of compliance. At the same time, it is important to reinforce the need to comply, and a deadline should be agreed on at this time. If the party asks any questions about which the Board is uncertain, CREA is happy to assist.

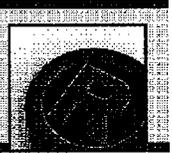
**5. The party responds, agreeing to comply, but asks for more time to cure the problem.**

This is quite common, particularly in domain name and website issues. The party may be prepared to comply, but needs time to change over the domain name or revise the site content. CREA's policy is to allow any reasonable extension of time for people who are honestly trying to comply.

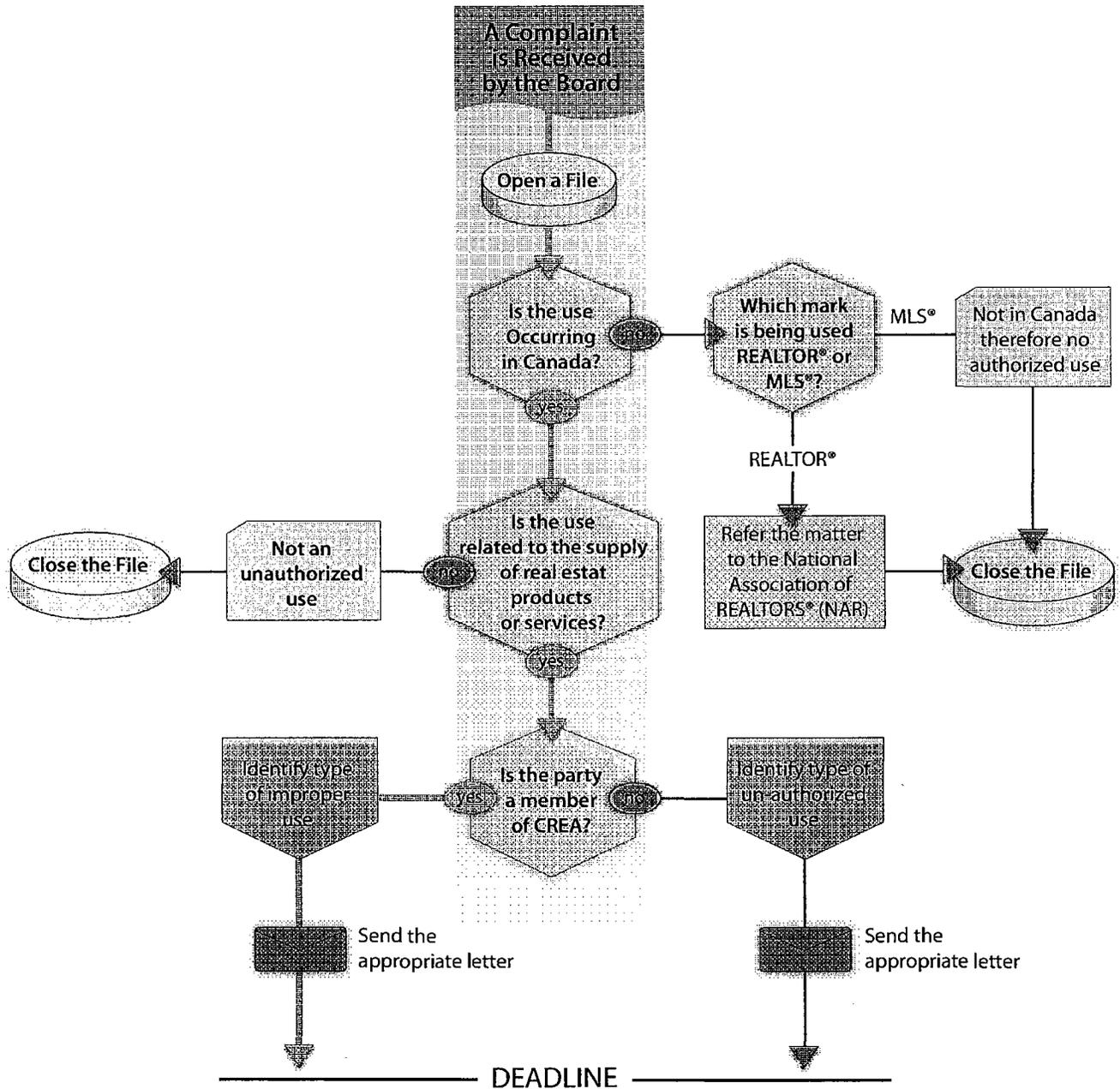
**(viii) The offending party has not responded or refused to comply****Send a second letter.**

Given the fact that the offending party at this juncture is either ignoring the Board or choosing to defy its request, the second letter should be more direct and set out a new deadline for compliance—one that is considerably shorter than the original deadline in the first letter. It is suggested that the deadline be no more than 5 days from the date of the letter, if the letter is being sent electronically, or 8 days if the letter is being sent by mail.

**If the offending party is a non-member,** the letter should indicate that if the misuse is not rectified within the timeframe set out, the matter will be referred to legal counsel for further action.



This is how the enforcement process should have gone so far.



**PLEASE NOTE** that template letters you can use for any trademark infraction are available on [www.realtorlink.ca](http://www.realtorlink.ca), or on the CD that was included with this Toolkit. There are more than 30 templates in all, covering the misuse of REALTOR® or MLS®, involving either a member or a member of the general public. If you have any questions about the use of these letter templates, please contact CREA.

## TRADEMARK Toolkit


**PART 3 – CREA'S A TRADEMARK PROTECTION AND COMPLIANCE PROGRAM FOR BOARDS/ASSOCIATIONS**

**If the offending party is a member**, the letter should point out the following:

- The misuse of CREA's trademarks is a violation of Article 26 of the REALTOR® Code and if the problem is not rectified within the timeframe set out, the matter will be sent to the Board's professional standards committee as a discipline complaint.
- The misuse of CREA's trademarks is also a violation of CREA's Rules, and if the problem is not rectified within the timeframe set out, the matter will be forwarded to CREA, who has the right to terminate or suspend the member's access to any of CREA's trademarks, as well as to REALTORLink® and REALTOR.ca.

**Copy this letter to the offending party's broker.**

**(ix) Review file status at deadline**

**1. If, following receipt of the second letter, the offending party agrees to comply:**

- Confirm compliance by checking website or materials;
- Write a letter thanking the person for their co-operation;
- Copy the file to CREA;
- Close the file.

**2. If the offending party ignores the second letter or continues to refuse to comply:**

- » If the offending party is a non-member, forward the entire file to CREA for action.
- » If the offending party is a member:
  - Forward the file to the appropriate Board body as a professional standards complaint;
  - Forward the entire file to CREA, confirming that the matter is the subject of a discipline complaint;
  - Update CREA regularly on the status of the discipline matter.

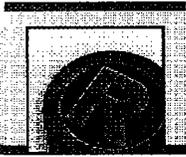
### **3. CREA's Role in Enforcement**

CREA is involved in the trademark enforcement process both as a resource and as the body primarily responsible for the proper use of the marks.

#### **CREA as a Resource**

» As part of the enforcement process

CREA's legal department is available to provide advice and assistance to Boards at any stage of the enforcement process. CREA will work with Boards to help them understand how the trademarks work, and to answer questions at any stage of enforcement. If there is any issue as to whether a particular use of the marks is improper, or if an offending party requires clarification that the Board is unable to provide, CREA will help.



» As part of the discipline process

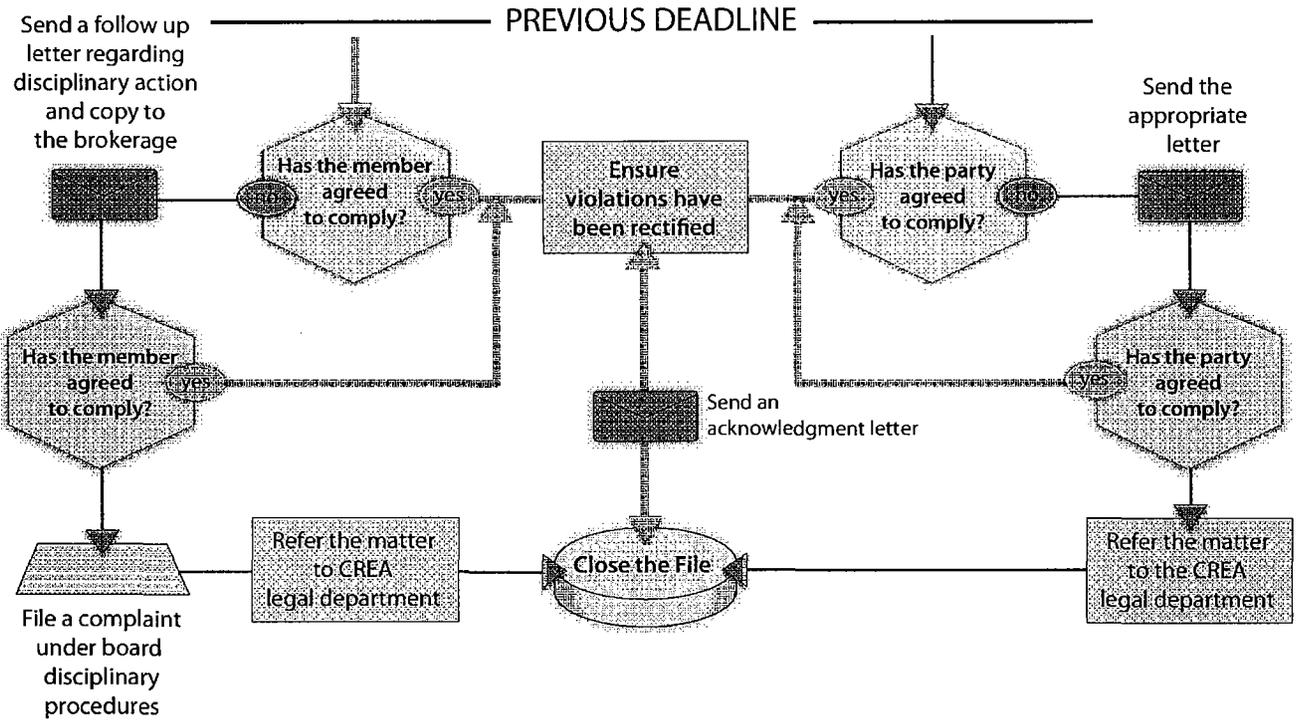
If a member infringement has been referred by the Board to discipline, CREA will work with the Board in putting together the evidence. CREA can provide affidavit material analyzing the misuse and confirming it violates CREA's policies. If necessary, CREA can provide expert evidence at the hearing.

**CREA as an Enforcement Body**

CREA does not expect Boards to commence litigation against infringers. If the Board has gone through the enforcement process and the offending party has not ceased the misuse, CREA will take over the file at that point, and deal directly with the offending party.

**“Furthermore, CREA will continue to enforce its trademarks directly, as required or as requested by Boards and Associations. CREA will copy the appropriate Board/ Association on all trademark action taken.”**

This is how the enforcement process would continue if corrective action was not taken in response to the first letter.





### A note about domain names and websites

CREA's experience has been that the vast majority of complaints involve the misuse of the marks in domain names. In view of that, a couple of comments specific to the handling of domain name complaints are warranted.

1. You need to find the owner of the domain name. A number of sites on the Internet can provide you with this information. If the domain name in question is a ".ca", you can do a search at [www.cira.ca](http://www.cira.ca). This is the site of the Canadian Internet Registration Authority, the governing body for .ca domain names. A broader search of any URL's, including .ca, can be conducted at [www.networksolutions.com](http://www.networksolutions.com). There are also numerous other websites that provide this information.
2. A non-compliant domain name is usually just the tip of the iceberg, and your investigation should not be considered concluded once you have determined the name violates CREA's policies. The next step is to look at the website itself. CREA's experience has been that websites with infringing domain names are likely to be breeding grounds for all kinds of trademark misuses. Go into the site and review all of the uses of REALTOR® and MLS® throughout. Are the form and context rules being adhered to? Are any logos being used as hypertext links? Does the site refer to "mls.ca", which is now antiquated terminology? Does it refer to REALTOR.ca as an "MLS® system"? There is no point in fixing one problem (the domain name) and ignoring twenty other ones. Deal with everything at the same time.
3. When a review of the website discloses misuses of the marks, make sure that the infringing web pages are either saved electronically or printed off. A number of software programs that capture and save web pages with the click of a mouse are available.
4. If the infringing domain name is unusual, in the sense that it is not likely to be of interest to another party—for example, [www.zootsuitrealtor.com](http://www.zootsuitrealtor.com) the request is that the domain name be deactivated.
5. If the domain name is something that will likely be purchased by someone else if it is deactivated by the current owner—for example, one that includes a geographical reference such as [www.reginarealtor.com](http://www.reginarealtor.com) — the only way of fully protecting the marks is to require the current owner to transfer the domain name to the Board. That way, the Board keeps the name "off the market". The Board should automatically require the transfer to it of any domain names with geographical references to be transferred to it.
6. Domain names are not being "used" if they are not active. If a person owns a domain name that would otherwise be an infringement, but it has not been activated, there is nothing that can be done. Nevertheless, they should still be contacted and put on notice that if they activate it or sell it to third party, an infringement has occurred.
7. Domain names are still active if they "point" to another site. For instance, someone with a site at [www.kelownamls.com](http://www.kelownamls.com) may, after being contacted by the Board, set up another site at [www.johnsmith.com](http://www.johnsmith.com), and "move" the content to that site. So far, so good. But instead of deactivating the "kelownamls" name, they "point" it to their new site, so that if users type in [www.kelownamls.com](http://www.kelownamls.com), they get sent to [www.johnsmith.com](http://www.johnsmith.com). Many people think this complies with the request to deactivate the name, but it does not. If the domain name takes you to any site at all, it is still "active" and is an infringement. In this particular example, of course, the Board should require the owner to transfer the name to the Board.



## Domain Name Transfer Procedure

There are two ways to transfer a domain name – the owner may carry out the transfer, or the Board may carry out the transfer. It is recommended that where possible, the Board carry out the transfer itself.

### (A) The Board Carries Out the Transfer

**1. The Board sends a communication to the domain name owner asking that he or she do two (2) things:**

**(i) Change the domain name's administrative e-mail contact address to an e-mail address owned and used by the Board.**

The purpose of this step is to have all subsequent communication sent to the attention of the Board.

**(ii) Ensure that the status of the infringing domain name is set to "unlocked".**

Unless the domain name has an "unlocked status" the transfer cannot be initiated.

**2. The Board retains a Domain Name Registrar to act on its behalf to carry out the transfer.**

Only persons or organizations that have been approved by the Canadian Internet Registration Authority ("CIRA") as Domain Name Registrars are legally entitled to generate domain name transfer requests. The Board's Internet Service Provider (ISP) may or may not have this certification. A partial list of approved registrars can be found on CIRA's website at <http://www.cira.ca>.

**3. The Domain Name Registrar sends a request to CIRA that the domain name be transferred to the Board.**

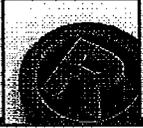
**4. CIRA sends the transfer request to the e-mail address of the administrative contact on its records.**

As the domain name owner has changed the administrative e-mail contact to the Board (Step 1, above), this request will come to the Board.

**5. The Board opens the e-mail and follows the instructions contained in the request.**

This action must be taken within a specified period of time in order to approve the transfer. Presently, this is the requirement is that the transfer be accepted within seven (7) days of the date of receipt.

**6. CIRA or the Board's Domain Name Registrar will notify the Board once the transfer has been successful.**



## Domain Name Transfer Procedure continued

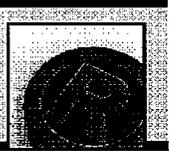
### (B) The Domain Name Owner Carries Out the Transfer

This procedure will apply when the domain name owner cannot or does not want to change the administrative e-mail contact address for the domain. In this case, the Board should take the following steps:

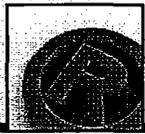
1. **Send a communication to the domain name owner:**
  - (i) reminding them that he or she ensure that the domain name status is set to "unlocked";
  - (ii) advising that he or she will be receiving a transfer request from CIRA;
  - (iii) explaining what to do once the request has been received; And
  - (iv) requesting the owner to keep the Board advised of progress of transfer.
2. **Follow Steps 2 and 3 under "The Board Carries Out the Transfer" above.**
3. **CIRA sends the transfer request to the e-mail address of the administrative contact on its records.**

In this case, the request will go to the domain name owner, not the Board, as the administrative contact e-mail has not been changed.
4. **The domain name owner opens the e-mail and clicks on the <Accept> option in the request.**

There will be other steps to be taken by the owner to perform the transfer process, such as logging in to the CIRA website. The instructions will be contained in the transfer request that the domain name owner receives.
5. **CIRA or the Board's Domain Name Registrar will notify the Board once the transfer has been successful.**

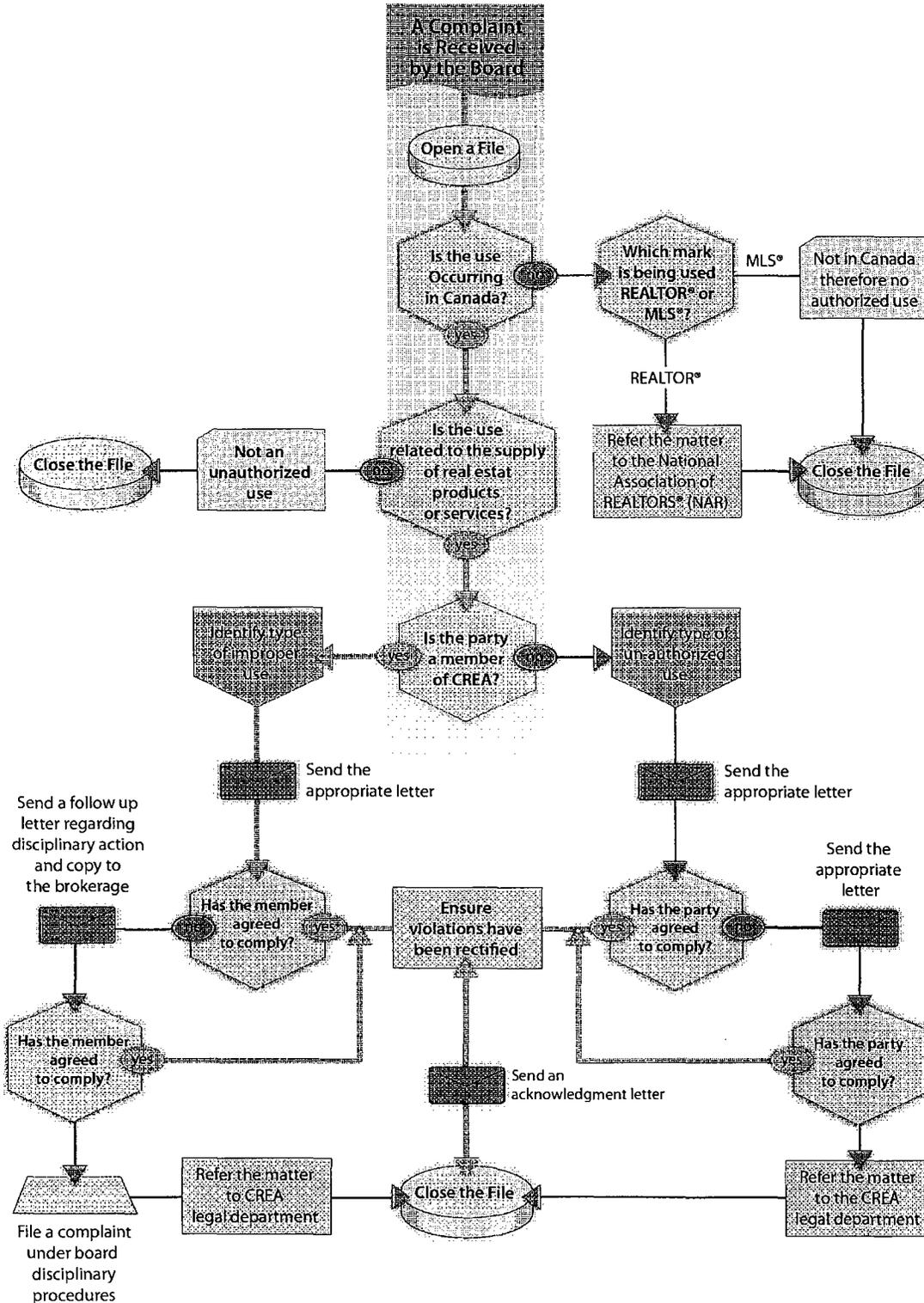


- A Enforcement Process Flowchart.**
- B Article 26 of the REALTOR® Code.**
- C Rule 3.3 of CREA's Rules - (Failure To Comply With Requirements of Membership –REALTORS® and Individual Members)**
- D Rule 15 of CREA's Rules - (Certification Marks)**
- E CREA Policy for Use of REALTOR® in Domain Names and E-mail Addresses**
- F CREA Policy for Use of MLS® in Domain Names**



# APPENDIX A

## The Complete Enforcement Process





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**REALTOR® CODE**

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**ARTICLE 26: CREA TRADEMARKS**

A REALTOR® shall only use the trademarks of The Canadian Real Estate Association in accordance with CREA's rules, regulations and policies.

**Interpretations**

- 26.1** A REALTOR® shall not challenge the validity of CREA's Trademarks.
- 26.2** A REALTOR® shall not use any of CREA's Trademarks in domain names, e-mail addresses or meta-tags unless specifically authorized to do so by CREA policies.
- 26.3** CREA's Trademarks are not to be used as hypertext links in Internet websites.
- 26.4** A REALTOR® shall not use, display, or attempt to register as trademarks any word, phrase, term, initials or design marks that incorporate, or are confusingly similar to, any trademark of CREA.
- 26.5** A REALTOR® shall not incorporate into corporate or trade names any trademark of CREA or any confusingly similar mark.



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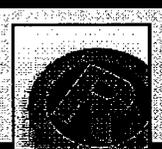
## CREA'S RULES

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### **RULE 3: FAILURE TO COMPLY WITH REQUIREMENTS OF MEMBERSHIP**

#### **3.3: REALTORS® AND INDIVIDUAL MEMBERS**

- 3.3.1:** Complaints relating to the conduct of REALTORS® or Individual Members will be referred by CREA to the executive officer of the Board or Association to which the Member belongs, with the request that the matter be dealt with through the Board's professional standards process.
- 3.3.2:** If the complaint involves the misuse of CREA's trademarks — including the MLS® and REALTOR® family of marks — or other intellectual property, (including, but not limited to, REALTOR.ca, ICX.CA, realtorlink.ca and crea.ca) the complaint may, at the same time, be dealt with by the CREA Chief Executive Officer, who may make such determination as he or she deems expedient, including:
- 3.3.2.1: Suspending or revoking the Member's license to display CREA's trademarks;
  - 3.3.2.2: Suspending or terminating the Member's passwords to CREA's websites; or
  - 3.3.2.3: Otherwise preventing access by the Member to any of CREA's intellectual property.
- 3.3.3:** Any decision of the Chief Executive Officer may be stated to be effective immediately or at such time as a determination is made on the complaint by the appropriate Board or Association.
- 3.3.4:** A Member affected by a decision under 3.3.2.2 above may appeal to the CREA Board of Directors within ten (10) days of notification of the decision.
- 3.3.5:** The Board of Directors shall review and consider the complaint and may make such determination as it deems reasonable. Any suspension or termination of rights imposed by the Chief Executive Officer shall remain in effect pending the decision of the Directors.



## CREA'S RULES

### RULE 15: CERTIFICATION MARKS

#### 15.1: The Marks

15.1.1: The Certification Marks (collectively, the "Marks") owned or controlled by CREA, and that are licensed by CREA pursuant to the terms and conditions herein, are as follows:

- MLS®
- Multiple Listing Service®
- MLS® logos as shown in existing registrations, and such variations as may be permitted by CREA in writing (collectively, the "MLS® Marks")
- REALTOR®
- REALTORS®
- REALTOR® logos as shown in existing registrations, and such variations as may be permitted by CREA in writing (collectively, the "REALTOR® Marks")

15.1.2: CREA may in the future adopt other marks as certification marks, and may license them in CREA's sole discretion, and on such terms and conditions as CREA may subsequently specify in writing.

#### 15.2: Standards Associated With The Marks

15.2.1: The Marks are registered under the Trademarks Act as certification marks and are protected throughout Canada.

15.2.2: The REALTOR® Marks identify members in good standing of CREA who provide real estate brokerage services (the "REALTOR® services") in compliance with CREA's By-Laws and Rules, and the REALTOR® Code, as amended from time to time, and in compliance with all applicable federal and provincial/territorial laws and regulations.

15.2.3: The MLS® Marks identify professional services rendered by members in good standing of CREA to effect the purchase and sale of real estate as part of a "plural system arrangement", also known as a co-operative selling system (the "MLS® services"), in compliance with CREA's By-Laws and Rules, and the REALTOR® Code as amended from time to time, and in compliance with all applicable federal and provincial/territorial laws and regulations. The MLS® Marks do not identify or describe a computer database of real estate listings.

15.2.4: An MLS® System is a co-operative selling system operated and promoted by a Board or Association in association with the MLS® Marks. An MLS® System includes an inventory of listings of participating REALTORS®, and ensures a certain level of accuracy of information, professionalism and co-operation amongst REALTORS® to effect the purchase and sale of real estate.

**15.3: Licensees of the Marks**

15.3.1: Subject to the terms of this Rule, the following Members of CREA (collectively, "Licensees") are licensed to use, reproduce and display the Marks:

15.3.1.1: Boards

15.3.1.2: Associations

15.3.1.3: REALTORS®

15.3.2: A corporation, partnership, or other entity operating as a licensed real estate firm may use, reproduce and display the Marks in the course of its business, provided that all licensed practitioners in any way affiliated with the firm are REALTORS®.

15.3.3: An individual, corporation, partnership or other entity who has been licensed by CREA in writing may use, reproduce and display one or more of the Marks for certain specific wares or services.

**15.4: Restrictions on License****15.4.1: Licensed Wares and Services**

15.4.1.1: The Marks may only be used, reproduced and displayed in association with the REALTOR® services or the MLS® services, as the case may be, and such other wares, services or business as CREA may specifically permit in writing.

15.4.1.2: All Licenses granted pursuant to this Rule shall be non-exclusive.

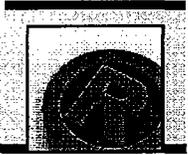
**15.4.2: Compliance with Standards**

15.4.2.1: CREA owns or controls the Marks. As such, CREA has the absolute right to withhold, withdraw or suspend any Licensee's right to use, reproduce or display the Marks, or any one of them, at any time, subject only to the terms of any specific written license agreement between CREA and each Licensee.

15.4.2.2: The terms and standards of the license to use the Marks are established in CREA's By-Laws, Rules and Policies, as amended from time to time. The right to use the Marks is conditional on strict adherence to all terms and standards.

15.4.2.3: At the request of CREA, each Licensee shall promptly provide samples of all use of the Marks, or any of them, for CREA's review, and each Licensee shall promptly take such steps or make such changes as CREA may request to rectify any non-compliance with these terms and standards.

15.4.2.4: Licensees shall have no right to use, reproduce or display the Marks, except as specifically provided for in this Rule. All other rights are reserved to and remain with CREA.



Without limiting the generality of the foregoing, Licensees shall have no right to sublicense or assign their right to use, reproduce or display the Marks, or any of them, except as may be permitted by CREA in writing.

### 15.4.3: Term and Termination

- 15.4.3.1: All Licenses granted pursuant to this Rule shall commence upon each Licensee satisfying the terms and conditions of CREA's By-Laws and Rules, and shall terminate upon each Licensee ceasing to be a Member in good standing of CREA, or upon CREA terminating the License as provided for in CREA's By-Laws and Rules, as amended from time to time.
- 15.4.3.2: Upon termination, each Licensee shall immediately cease any and all use, reproduction and/or display of the Marks, or any of them, and any and all similar marks, as, or as part of, any trademark, trade name, corporate name, domain name, or otherwise.

### 15.4.4: Estoppel

Licensees agree that they will not at any time, either during the term of, or following the termination of this license:

- 15.4.4.1: challenge the validity or distinctiveness of the Marks or any other trademarks of CREA, or CREA's ownership thereof;
- 15.4.4.2: use, display or attempt to register (as trademarks, trade names, corporate names or domain names) any word, phrase, term, acronym, initials or design that incorporate, or are confusingly similar to the Marks or any of them or any other trademark of CREA.

### 15.4.5: Business Restriction

The Marks may only be used by REALTORS® in connection with their brokerage services relating to real estate transactions, as permitted by the relevant provincial or territorial real estate licensing legislation.

## 15.5: Usage Rules

### 15.5.1: General Rule

- 15.5.1.1: The Marks must always be displayed in a manner that enforces their distinctiveness as certification marks, and emphasizes that they are not generic or descriptive words.
- 15.5.1.2: The detailed usage requirements found in CREA's Policies must be complied with in every use, display or reproduction of the Marks. Any repeated failure to comply with these requirements shall entitle CREA to terminate the license.

### 15.5.2: Form Requirements

- 15.5.2.1: The Marks must always be displayed in the exact form and manner in which they are registered, as follows:
- MLS®, Multiple Listing Service®
- REALTOR®, REALTORS®

- 15.5.2.2: The ® registration symbol must always be displayed in conjunction with the Marks except in the case of any permitted new Marks that are not registered.
- 15.5.2.3: All business and promotional material displaying any of the Marks must, where possible, include the statement "Trademark owned or controlled by The Canadian Real Estate Association. Used under license".
- 15.5.2.4: The MLS® and REALTOR® logos must only be used, reproduced and displayed in the form as registered, or in such other form as may be approved by CREA in writing, as detailed in CREA's Policies as amended from time to time.

### 15.5.3: Exceptions to Form Requirements

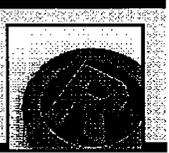
- 15.5.3.1: National and local media outlets may display the REALTOR® marks by capitalizing only the "R", and are not required to display the ® symbol following the Marks, all in accordance with the Associated Press Style Book or the United Press International Style Book.
- 15.5.3.2: Textbooks and other educational material may use the Marks without the ® symbol provided that there is, at the beginning of the book or document, an explanation of the meaning and ownership of the Marks which has been approved by CREA.

### 15.5.4: Specific Additional Requirements – REALTOR® Marks

- 15.5.4.1: The REALTOR® Marks must only be used to identify the real estate brokerage services and related professional services provided by members of CREA. The REALTOR® Marks must never be used as a generic or descriptive name to identify a salesperson, broker, or other real estate professional.
- 15.5.4.2: The REALTOR® Marks must never be used as part of a business name or trade name or corporate branding except as may be permitted by CREA in writing.

### 15.5.5: Specific Additional Requirements – MLS® Marks

- 15.5.5.1: The MLS® Marks must only be used to identify the professional services provided by Members of CREA to effect the purchase and sale of real estate as part of a "plural system arrangement", also known as a co-operative selling system. The MLS® Marks must never be used as a synonym for a "database of real estate listings";
- 15.5.5.2: When referring to the co-operative selling systems operated by Boards and Associations, the proper terminology is "the MLS® System of the \_\_\_\_\_ Board";
- 15.5.5.3: The MLS® Marks must never be used as part of a business name, trade name, or corporate branding except as may be permitted by CREA in writing.
- 15.5.5.4: A REALTOR® who does not have access to the MLS® System of a Board/Association may not use, reproduce or display the MLS® Marks.

**15.6: Use of Marks by Boards and Associations**

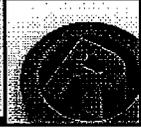
- 15.6.1: A Board may only reproduce or display the MLS® Marks if it operates, or otherwise provides its REALTOR® members with access to an MLS® System.
- 15.6.2: A Board or Association may use REALTOR® or REALTORS® as part of its corporate name and trade name, provided that:
- 15.6.2.1: the proposed name is approved in accordance with CREA's Rules; and
  - 15.6.2.2: the Board or Association executes a written license agreement with CREA prior to using the name.
- 15.6.3: Each Board and Association is licensed to use REALTOR® or REALTORS® in the name of its building and in the titles of its publications, provided that each use is first approved by CREA in writing.

**15.7: Use of the Marks in Domain Names and on the Internet**

- 15.7.1: Licensees shall not use the Marks or any of them or any other CREA trademarks in domain names, e-mail addresses, meta-tags or other Internet search fields unless specifically authorized to do so by CREA's Policies.

**15.8: Enforcement**

- 15.8.1: Boards and Associations are responsible for monitoring and enforcing the proper use, reproduction and display of the Marks in their own jurisdiction. This includes ensuring that member firm names, websites and other advertising materials (print and electronic) are compliant, and that Boards and Associations respond to complaints regarding improper uses of the Marks, and conduct discipline hearings in a prompt manner, as required.



## CREA Policy for Use of REALTOR® in Domain Names and E-mail Addresses

1. Real estate Boards, provincial/territorial Associations, member firms and individuals may all use the REALTOR® mark in domain names and e-mail addresses in accordance with this policy.
2. Real estate Boards and provincial/territorial Associations may use a domain name or e-mail address which includes the term REALTOR® and a geographically descriptive term which is related to their corporate jurisdiction and consistent with their assigned name. For example, the Alberta Real Estate Association may use "albertarealtor.ca" or "altarealtor.ca" or some other variation.
3. Individual REALTORS® are permitted to use REALTOR® in their domain name or e-mail address only if the term refers to the member or the member's firm. Punctuation, while preferred, is not mandatory. For example, "johnjones-realtor.ca" and "johnjonesrealtor.ca" are both correct, as are "johnjones-realtor@sympatico.ca" and "johnjonesrealtor@sympatico.ca".
4. The REALTOR® term can never be used with descriptive words or phrases. For example, "professionalrealtor.ca" or "realtorlistings.ca" are all improper uses of the term.
5. As a limited exception to CREA's Rules regarding the use of the REALTOR® mark, the term can appear in lower case letters in domain names and e-mail addresses.
6. The REALTOR® logo is never to be used as a hypertext link.
7. Except as set out in this policy, all rules governing the proper use of the REALTOR® mark must be adhered to by all members.

The CREA Policy for use of REALTOR® Trademark in domain names was set out in Dispatch 99-07 issued on March 5th, 1999.



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## CREA Policy for Use of MLS® in Domain Names

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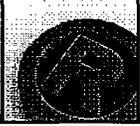
### CREA Internet Domain Name Policy

#### RULES FOR USE OF MLS® AND S.I.A® IN BOARD DOMAIN NAMES/E-MAIL ADDRESSES

(Revised May 2, 2005)

1. Only member Boards and Associations may apply to use MLS® in domain names/e-mail addresses. No individuals or firm members may use the marks in their domain names or e-mail addresses.
2. **Boards/Associations wishing to incorporate MLS® into their domain names may do so only in conjunction with a geographical modifier within their jurisdictional area.**
3. Any board/association wishing to use MLS® in domain names or e-mail addresses must sign a special license agreement in the form provided by CREA.
4. Any display of the domain name/e-mail address on any business or promotional material and in all advertising must show the MLS® initials in capital letters.
5. The MLS® initials must never be preceded or followed by any other letters or numbers. The initials must always be separated from any other text by a dot or an @.
6. All domain names/e-mail addresses incorporating MLS® must be pre-approved by CREA before they are registered.
7. Any local Board or Association entering into a contract with a supplier for Internet services must ensure that the contract specifically provides that:
  - (a) the initials MLS® cannot be used in the name of any website computer directory;
  - (b) all uses of MLS® on website pages must be approved by the local board/association before the pages are released to the Internet.
8. In all print advertising where the domain name is displayed, there must be an acknowledgment that MLS® and related logos are trademarks of The Canadian Real Estate Association.
9. All Boards/Associations currently using domain names/e-mail addresses which incorporate MLS® must modify them to conform with this policy and sign a license agreement.

The CREA policy for use of MLS® in Board/Association internet domain names and e-mail addresses as was set out in Dispatch 2005-03 issued on May 18th, 2005.



## Examples of Proper and Improper use of MLS in Domain Names, E-mail Addresses and in Advertising

### Improper Use of MLS in Domain Name

[www.mlsottawa.ca](http://www.mlsottawa.ca)  
[www.mls.ottawa.ca](http://www.mls.ottawa.ca)  
[www.mlssystem.ca](http://www.mlssystem.ca)

### Proper Use of MLS in Domain Name

[www.MLS.ottawa.ca](http://www.MLS.ottawa.ca)  
[www.ottawa.mls.ca](http://www.ottawa.mls.ca)  
[www.MLS.ottawarealestateboard.ca](http://www.MLS.ottawarealestateboard.ca)

### Improper Use of MLS in E-Mail Address

[ottawamls@ottawa.ca](mailto:ottawamls@ottawa.ca)  
[mls@ottawa.ca](mailto:mls@ottawa.ca)

### Proper Use of MLS in E-Mail Address

[MLS@ottawa.ca](mailto:MLS@ottawa.ca)  
[MLS@ottawa.mls.ca](mailto:MLS@ottawa.mls.ca)





# EXHIBIT 5

**THE CANADIAN REAL ESTATE ASSOCIATION**  
200 Catherine St. 6<sup>th</sup> Floor Ottawa, ON K2P 2K9



**L'ASSOCIATION CANADIENNE DE L'IMMEUBLE**  
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# Dispatch 2010-10

This document contains information of interest to your members.

The attached Notice contains important information about Member obligations in relation to the use or display of CREA's trademarks when partnering with non-members.

**PLEASE ENSURE THAT THE ATTACHED NOTICE IS DISTRIBUTED TO ALL OF YOUR MEMBER BROKERAGES.**

**RE: USE OF MLS<sup>®</sup> AND REALTOR<sup>®</sup> TRADEMARKS BY NON-MEMBERS WHO HAVE PARTNERED WITH MEMBERS**

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**Date:** December 15, 2010

**To:** Executive Directors of all  
Real Estate Boards and Provincial/Territorial Associations

**From:** The Canadian Real Estate Association (CREA)

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Some members have entered into arrangements with private sale or other non-member companies to offer access to a Board's MLS<sup>®</sup> System without considering the need to protect CREA's trademarks from misuse. The result of improper use by those not entitled to use the marks results in the weakening of the trademarks.

It is very important that REALTOR<sup>®</sup> members understand their obligations as licensees of CREA's trademarks when partnering with non-members. The attached Notice describes these obligations in detail. Some important points are the following:

- 1. REALTOR<sup>®</sup> members are liable to CREA and their Boards for any improper use or display of CREA's trademarks by non-members with whom they are partnering.**
- 2. When partnering with non-members, REALTOR<sup>®</sup> members are required to enter into written contracts. Each contract must, at a minimum, require the non-member to comply with the trademark restrictions set out in the attached Notice. A copy of the attached Notice should be sent to the non-member.**
- 3. It is a violation of the MLS<sup>®</sup> trademarks for a non-member to refer to "selling privately on the MLS<sup>®</sup> system", or to use words to that effect. Selling "privately"**

contradicts the entire meaning (or in legal terms, the “defined standard”) associated with the MLS® trademarks. It is acceptable to advertise that the property is listed on a named Board’s MLS® System and the seller is also selling privately. These are two very different statements since what the seller is doing is not connected to the MLS® trademarks.

**4. It is a violation of the REALTOR® trademark for a non-member to use it as a generic term. The accepted generic or descriptive term to describe an agent is a “real estate agent” or “real estate salesperson”.**

The sanctions for infringement can be substantial and may include the loss of the member’s right to use any of CREA’s trademarks.

Also, please note that pursuant to Rule 16.8 of CREA’s Rules, Boards and Associations are responsible for monitoring and enforcing the proper use of the trademarks in their own jurisdictions. Therefore, it is important that the Boards/Associations be aware of these obligations and be vigilant in ensuring that the proper steps have been taken to protect the marks by their members.

Again, we would ask that you put this notice in the hands of all of your REALTOR® members.

If you have any questions, please contact CREA’s trademark counsel, David Gray, at (613) 237-7111 extension 2232 or [dgray@crea.ca](mailto:dgray@crea.ca).

Thank you in advance for your assistance and co-operation.



Bill Harrington  
CREA Corporate Counsel

**THE CANADIAN REAL ESTATE ASSOCIATION**  
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[www.icx.ca](http://www.icx.ca)

## **NOTICE TO ALL MEMBER BROKERAGE OFFICES OF CREA**

### **RE: PROTECTION OF MLS<sup>®</sup> AND REALTOR<sup>®</sup> TRADEMARKS**

CREA's trademarks are being compromised as a result of unauthorized use by non-members who are not licensed to use or display these marks. This misuse represents a serious threat to the trademarks as it waters down their distinctiveness and weakens their ability to identify professional services rendered only by members of CREA.

This situation has become serious as a result of the increasing number of REALTOR<sup>®</sup> members who are entering into co-listing arrangements with non-member individuals and companies to offer access to a Board's MLS<sup>®</sup> System.

While it is acceptable for members of CREA to co-operate with non members in co-listing properties, many members and non-members seem to think that such co-operation includes the right of non-members to use and display CREA's trademarks. **This is not so.** It is therefore important that all members understand the limitations placed on non-members in these circumstances.

Therefore, all member brokers and salespersons should be aware of the following:

**1. Only members of CREA are licensed to use and display CREA's trademarks. Subject to the exception described below, non-members have no right to use or display CREA's trademarks in their business and promotional materials, whether in print or electronic form.**

CREA's trademarks include MLS<sup>®</sup>, Multiple Listing Service<sup>®</sup> and associated design marks (collectively, the MLS<sup>®</sup> trademark), and REALTOR<sup>®</sup>, REALTORS<sup>®</sup>, and associated design marks (collectively, the REALTOR<sup>®</sup> trademark).

**2. Members are responsible to CREA for the proper use of CREA's trademarks by non-members with whom they enter into contracts or other relationships relating to the sale of real estate.**

Any member who enters into a relationship with a non-member – including non-member "FSBO" companies and consumers – is responsible for ensuring that the non-member is aware of the restrictions regarding the display of CREA's trademarks as identified in this Notice, and undertakes to be bound by those restrictions. In particular, the member must

do the following: enter into a written agreement with the non-member; provide a copy of this Notice to the non-member; ensure that the written agreement requires the non-member to comply with these restrictions; ensure that the written agreement gives the member the right to terminate the agreement if the non-member violates these restrictions; and the member must terminate the agreement in the event of unrectified breaches.

CREA will vigorously defend its trademark rights against any unauthorized user in order to protect their validity for the benefit of all CREA members. **At the same time, CREA expects and requires its members to protect the trademarks, and will hold members accountable for unauthorized use by non-members.** In particular, CREA may file complaints with the member's Board under the REALTOR® Code, requesting the Board to initiate discipline proceedings against offending REALTOR® members who do not ensure that the non-member complies with these use restrictions or who do not terminate the contract with the non-member in the event of unrectified breaches. Sanctions may include the loss of the member's right to use any of CREA's trademarks.

**3. Non-members may only refer to CREA's trademarks in their business or promotional materials, whether in print or electronic form, in the following context:**

(a) for the purposes of disclosing to consumers, in a factual and accurate manner, that an arrangement exists between the non-member and a member of CREA, whereby the CREA member will place a listing on the MLS® System of a real estate Board to which the member belongs; and

(b) for the purpose of describing in the text of any materials, in a factual and accurate manner, and **NOT** in any heading, banner, slogan, phrase or trademark, the advantages of having a CREA member place a listing on the MLS® System of a real estate Board.

**No other use or display of CREA's trademarks is permissible.**

With respect to the notice, it must include the following:

- The name of the member brokerage (the MLS® and other marks must only be associated with an identified member);
- The fact that the listing will be placed on the Board's MLS® System by the Member (with no implication that the non-member somehow has this ability);
- The proper name of the relevant real estate Board.

An example of an acceptable notice is:

*"X Company has entered into a contract with ABC Realty, a member of the Ottawa Real Estate Board. Through this arrangement, ABC Realty will place your listing on the MLS®\* System of the Ottawa Real Estate Board."*

In addition, a prominent disclaimer must appear on each page where any of CREA's trademarks appears, stating that the MLS® [and/or REALTOR®] are trademarks owned or controlled by The Canadian Real Estate Association and that the non-member is not a member of CREA and is not licensed to use these marks with any services. An example of an acceptable disclaimer is:

*\*MLS® [and REALTOR®] are trademarks owned or controlled by The Canadian Real Estate Association (CREA). X Company is not a member of CREA and is not licensed to use these marks with any services.*

**4. The display of CREA's trademarks by non-members must comply with all of CREA's rules for the proper use and display of its trademarks.** In particular, non-members must be advised of the following:

- The MLS® trademark refers to professional services to effect the purchase and sale of real estate that meet a defined standard of quality and are performed by members of CREA. It does **not** mean a "database of real estate listings".
- As a trademark, MLS® is never to be used as a noun. So it is always wrong to refer to "the MLS®". The co-operative listing systems operated by real estate boards are properly referred to as "MLS® Systems". That is the only accurate method of describing those systems;
- The REALTOR® trademark refers to the real estate brokerage services provided by a member of CREA in good standing. The accepted generic term to describe an agent who is not a member of CREA is "real estate agent" or "real estate salesperson".
- The ® symbol **must follow** every use of either MLS® or REALTOR®;

Non-members must also be advised that they may not:

- Display or use any of CREA's design marks under any circumstances, even in the context of an allowable notice. Only the **word** marks may be used in that notice.
- Refer to listing a property on mls.ca or REALTOR.ca, or use any other terminology to suggest that there is some "national listing system". There is no such thing. A property is listed only on a Board's MLS® System, and that is the only proper reference.
- Make any reference that in any way implies membership in CREA or implies that the non-member itself offers or can offer direct access to a Board's MLS® System.

- Use any of CREA's trademarks in any manner other than in the notice described above. In particular, the marks may not be incorporated into slogans, phrases or headings (e.g. "Sell privately on MLS<sup>®</sup>", "Join our MLS<sup>®</sup> Program", "Your MLS<sup>®</sup> Connection" and "Flat Fee MLS<sup>®</sup> Listings" are prohibited), may not be used on lawn signs (e.g. "MLS<sup>®</sup> #123456 is prohibited), and may not be used as a generic term in any marketing materials (e.g. "Property listed on MLS<sup>®</sup>" and "the MLS<sup>®</sup> is a database" are prohibited).

With respect to their own use of CREA's trademarks, members are reminded of the 14 basic rules for use that are contained in CREA's Trademark Manual.

**5. Non-member companies owned by members are subject to the same rules as non-members.**

Some members have set up companies that are not members of CREA. These companies may operate primarily as technology providers or may offer FSBO services, or perform some other related function. The fact that these entities are owned by persons who are members of CREA is irrelevant for the purposes of using CREA's trademarks. **These entities are not members of CREA and are consequently subject to the trademark rules for non-members, as set out above.** The fact that these companies may be advertised in association with CREA members does not change this position.

**6. Sellers may not use CREA's trademarks except in the following context.**

Sellers who have reserved the right to sell their properties themselves, while having it listed on a Board's MLS<sup>®</sup> System, cannot advertise using CREA's trademarks. In particular, associating CREA's MLS<sup>®</sup> trademark with what is essentially a "private sale" is entirely inconsistent with the defined standard associated with this trademark, namely professional services provided by members of CREA. However, in marketing materials (excluding lawn signs), sellers may use the same notice as a non-member may use, but modified as follows:

***"ABC Realty has placed a listing for this property on the MLS<sup>®</sup> System of the DEF Real Estate Board, under no. 123456."***

# EXHIBIT 6

THE CANADIAN REAL ESTATE ASSOCIATION



L'ASSOCIATION CANADIENNE DE L'IMMEUBLE

# Dispatch 2006-13

This document contains information of interest to your members.  
We thank you in advance for your collaboration in passing this information along to your membership.

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**To:** Executive Officers and Directors of all Real Estate Boards and  
Provincial/Territorial Associations

**Date:** October 20, 2006

**Re: TEMPLATE MLS® DATA TRANSFER AGREEMENTS**

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## Background

As technology has evolved, so too has the functionality of Boards' computerized MLS® systems. Software is now available that allows for the easy and widespread manipulation and transfer of data that was never possible before.

REALTORS® in some areas are asking their Boards to electronically upload or download their own listings or listing information to them or to a third party technology service provider. The purpose of this request, typically, is to permit the REALTORS® to advertise their own listings either on their own website or on pages created for them by third parties.

The challenge for Boards in dealing with such requests is to ensure that they meet their obligations to protect their intellectual property rights in the compilation of listings that makes up each MLS® system, and in the encoded text, photographs, images and other geographic and property information that makes up each MLS® listing.

In addition, the Boards must ensure that they meet their obligations to protect the integrity and security of the MLS® database, including the encoded content, and the MLS® family of certification marks.

In order to assist Boards, CREA has developed **3 template license agreements**, which are attached to this dispatch. These agreements are discussed in greater detail below. Boards are free to adapt these agreements to their own circumstances.



## Basic Principles

**1. Boards have no legal obligation to upload or permit downloads of real estate listings, that is, the listing compilations or the encoded content for REALTORS®.** It is perfectly acceptable for a Board to adopt a policy that says it will not make Member listings available for those purposes **either to REALTORS® or to third parties.** Of course, from a competition perspective, such a policy must be made independently by the Board and applied uniformly, without regard to pricing policies of REALTORS® or third parties. A Board that agrees to upload or permit downloads of Member listings either to the REALTOR® or, at the REALTOR®'s request, to a third party, is doing so strictly as a member service to the REALTOR®.

**2. No data transfer should ever be undertaken by a Board unless and until the member or the third party has signed proper licensing agreements,** as the case may be. These license agreements are intended to delineate the relationship between the Board, as the owner of the intellectual property rights, and the licensee, by setting out the authorized uses that can be made of the Member listings and encoded content. If they are going to be used by any third party on behalf of a REALTOR® (e.g. a website operator or a Franchisor), then it is imperative that the Board contract directly with that third party.

**3. The ability of Boards to restrict the use and transmission of Member Listings is derived from their ownership of the intellectual property rights.** The Board owns the copyright in the database compilation and therefore has the right to restrict access to the Board's database and the reproduction and use of Member listings. In the opinion of our intellectual property counsel, the Board may also assert intellectual property rights both in the compilation of content that makes up each Member listing, and in the encoded content which is customarily created through the use of copyright-protected and proprietary Data Input Forms and pursuant to User Authorization Agreements. Accordingly, the Board may determine what use can be made of the Member listings and the encoded content therein.

**4. Boards that opt to facilitate uploading or downloading of Member Listings have the right to decide which fields of information will be provided.** For example, a Board may choose to make available only the necessary fields of data required for advertising purposes. The other fields could be considered confidential information, as they are not otherwise available to the general public.

**5. Boards should ensure that contracts and Board Rules confirm intellectual property ownership.** Contracts with MLS® service providers should clearly confirm the Board's ownership of the Member listings and encoded Content, all "work product" including derivative works created by the software

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applications, including the computer files themselves. Board Rules should set out the Board's copyright in the Board's database, as well as all in the Member listings and encoded content.

**6. REALTORS® have the right to use their own listing data and provide it directly to third parties.** In other words, a REALTOR® who has listed a property may, as an example, take that listing information and give it directly to a third party marketing service for advertising purposes. The Board has no control over a REALTOR®'s use of his or her own data (subject to any other agreement between the Board and the REALTOR®), **as long as** the REALTOR® is delivering that content directly, and is not asking the Board to make it available from the Board's database.

### The License Agreements

The attached license agreements are provided as templates. Boards that wish to make content available to their members are encouraged to review these agreements and customize them as required.

Note that the agreements are not general contracts for use. They are **license** agreements, because the Board is granting to the other party a limited license to access and use certain assets owned by the Board, subject to certain terms and conditions. A license agreement is consistent with the proposition that the Board is the owner of the intellectual property in the Member listings and encoded content.

There are 3 licenses agreements because CREA has identified at least 3 different scenarios:

- 1. A REALTOR® who wants to access his or her own listing information** from the Board's MLS® database for the purpose of populating his or her own website. In this scenario, the REALTOR® is the only person who will be accessing the information and the data is not being accessed by any other company on behalf of the REALTOR®. This would apply, for example, to a REALTOR® who owns and operates his or her own website, and also owns the software necessary to effect the transfer, so that all content on that website is uploaded or downloaded by the REALTOR® or by his or her staff. **In this scenario, no third party technology provider exists.** This would likely be a very rare situation. The *Member Access and License Agreement* was developed for this specific fact situation, and is to be used **only** in these circumstances
- 2. A third party who wishes to access listing information of identified REALTORS® with whom it has a contract, and is displaying that information on member pages which reside on a site owned and**



**operated by that third party.** In other words, the third party both owns and operates the web site. There is no other company involved in the data transfer. As with the Member Access scenario above, only one party fulfills both functions.

The *Third Party Access and License Agreement* applies to this scenario.

3. **A third party that owns a real estate web site and wishes to access the listing information of identified REALTORS® with whom it has a contract, but the information will be accessed by a technology company which operates the site on behalf of the third party.** In this scenario, one person owns the site, which is serviced by a technology company that maintains and populates the site on behalf of the owner. For example, a Franchisor may wish the content to be uploaded to its corporate site, but has a service contract with a technology company, and it is that technology company that will access the Board's database on behalf of the third party. In this scenario, it is important that both the site owner and the technology company enter into a contract with the Board. The same applies regardless of whether the third party is a REALTOR® or some other entity.

The *Tri-Party Access and License Agreement* applies to this scenario.

### ***Third Party Access and License Agreement and Tri-Party Access and License Agreement***

Some of the important elements of these licenses are as follows:

#### **1. Parties**

**Ensure that all necessary parties are included in the agreement.** Use the appropriate license agreement depending on which scenario applies.

#### **2. Grant of License and Restrictions**

- (a) In order for a Licensee to be able to execute either of these agreements, 2 **prerequisites** must be met:

- (i) **A contract must be in place between the Licensee and a REALTOR®.** This is referred to as the "Host Contract". The initial authority to release the information must come from the REALTOR®. In this regard, it is important that REALTORS®, Licensees, and other third parties understand that it is the terms of this license and not the Host Contract, that governs the reproduction and use of any Member listings and encoded Content made available by the Board. The Host Contract, which



is drafted by the Licensee, may extract from the REALTOR® an agreement to allow the Licensee to do anything it wishes with the Member listings and encoded content from the REALTOR®. If, however, the Member listings are provided by the Board, it is the Board that sets out the restrictions on use regardless of the terms of the Host Contract. These restrictions are set out in the license agreements.

- (ii) **The Licensee must complete an application, which is, in effect, a request for access and a license.** A sample **Application** is included with this Dispatch. The application identifies the REALTOR® whose information is being sought and sets out the purposes of the request, and how the Member listings will be uploaded or downloaded, as the case may be. If a third party technology company is also involved, then this information must be included in the application, and if accepted, the **Tri-Party Access and License Agreement** must be signed by both the Licensee and the third party. Both license agreements include the application itself as a Schedule.
- (b) **Fees** –the Board has the right to charge for its services, and the licenses provide for this. The amount of the fee, if any, and how it is calculated is up to the Board.
- (c) **Restrictions on Use**
- (i) **Permissible Use** - the template license agreement is very specific on what is allowed – the Licensee (and, if applicable, the third party) may only use the content for the purpose of populating a website of the REALTOR® that is hosted either by the REALTOR® or by the third party under the REALTOR®'s branding. In other words, the Member listings can only be displayed on websites which operate under the branding of the REALTOR®, not the third party. An exception may exist for Franchisors. The licenses provide optional wording in that regard.
- (ii) **Restrictions** – The licenses basically state that no use of the Member listings is allowed other than that specifically stated, including: copying, remarketing, or in any way commercializing the Member Listings including the encoded content; accessing any content other than that of the REALTOR® named in the license; using any of CREA's MLS® family of certification marks; using the Member Listings and encoded Content to market the third party's business; creating a searchable database of properties; maintaining a database of statistical or historical information, etc... **In essence,**

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**this licenses allow only for the display of the Member listings and encoded content on a website for a REALTOR® or group of REALTORS®, using only their branding, and nothing else.**

**(iii) Use of Other Data** – the licenses make it clear that they are not intended to deal with the REALTOR®'s own listing information which is provided to a third party by the REALTOR® directly or information that the third party legitimately obtains from other sources.

**NOTE: Boards may choose to permit a wider range of use. In that case, the license would need to be customized to reflect those allowable uses. It is crucial, however, that the license be very clear on what is allowed and what is not allowed. Otherwise, the Board may be relinquishing or harming its intellectual property rights in the Member listings and encoded content, and may be precluded from objecting to other potentially infringing or otherwise objectionable uses in the future.**

### **3. Term and Termination**

The term of the template licenses is one year, with an automatic renewal. A Board may insert a longer term, although it is recommended that the first contract at least be limited in time. It may be terminated without cause on 30 days notice. Boards should **always** ensure that their licenses allow them to terminate without cause, as they may discover at some point that continuation of these types of contracts is detrimental to the operation of the MLS® system.

### **4. Miscellaneous**

The licenses contain various other protections for the Board, including privacy, limitations on liability, and disclaimers as to the operation and availability of the Board's database and the upload or download service.

### ***Member Access and License Agreement***

This license agreement is simpler as it is only applicable when no third party is involved.

As with the third party agreement, the **Grant of License** is restricted to the REALTOR® accessing the Member listings for the purpose of displaying the listing information on his or her website, and for no other purpose. The Board again may charge a fee.

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Boards are encouraged to review these license agreements, with Board counsel, and customize as required.

Yours very truly,

William D. Harrington, B.A., LL.B.  
Legal Counsel

WDH/as

Attachments (4)

**APPLICATION FORM****Purpose of this form**

1. The [ ] Real Estate Board (the "Board") owns a computerized database of real estate listings (the "Board's Database") which is operated under the MLS® and Multiple Listing Service® certification marks owned by the Canadian Real Estate Association ("CREA") and used under license by the Board.
2. The purpose of this form is to provide certain information to the Board, so that the Board can evaluate the applicant's request that the Board permit the applicant and its technology provider to access the Board's Database, for the purpose of downloading the real estate listings of one or more Members of the Board. If the Board elects to enter into an agreement with the applicant and technology provider, this form will become a schedule to that agreement.

**Identification of applicant**

3. The applicant's full legal name is: [add]
4. The applicant's registered head office is located at: [add address]
5. The applicant's main business or businesses can be described as follows: [describe]
6. The technical contact with whom the Board should correspond is [add], and that person's contact information is as follows: [add telephone number and email address]
7. The administrative contact with whom the Board should correspond is [add], and that person's contact information is as follows [add telephone number and email address]
8. The applicant has entered into an agreement with the Member or Members of the Board whose names and contact information are provided in Schedule "A" hereto, who have authorized the applicant to access and download their real estate listings as permitted by the Board.
9. If a license is granted by the Board, the applicant wishes to make the following use of the Member's real estate listings that are downloaded from the Board's Database: [describe]

**Identification of technology provider**

10. The applicant has entered agreement with the following technology provider [add], with a head office at: [add]
11. The agreement between the applicant and the technology provider authorizes the technology provider to do following: [describe services to be provided]

- 12. The technical contact with whom the Board should correspond at the technology provider is [add], and that person's contact information is as follows: [add telephone number and email address]
- 13. The administrative contact with whom the Board should correspond at the technology provider is [add], and that person's contact information is as follows [add telephone number and email address]

**Access to Board's Database**

- 14. The following technical procedure will apply if the Board, applicant and technology provider enter into the Board's standard Access and License Agreement, and after all pre-conditions set out therein have been satisfied. Please note that the technical procedure may change at any time, as provided for in the Access and License Agreement.
- 15. [Set out technical procedure in detail]

Date: \_\_\_\_\_

Per: \_\_\_\_\_  
[signature of signing officer for applicant]

**MEMBER ACCESS AND LICENSE AGREEMENT**

BETWEEN:

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REAL ESTATE BOARD

(the "Board")

AND

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(the "Member")

**WHEREAS**, the Board owns a computerized database of real estate listings (the "Board's Database") which is operated under the MLS® and Multiple Listing Service® certification marks owned by the Canadian Real Estate Association ("CREA") and used under license by the Board;

**AND WHEREAS**, the Board's Database constitutes a compilation of real estate listings within a specific geographic area (the "Database Compilation"), all rights in which are owned by the Board;

**AND WHEREAS**, each listing constitutes a compilation of text, photographs, images, and other geographic and property information (collectively, the "Content");

**AND WHEREAS**, all rights in the compilation of Content for each listing are also owned by the Board (the "Listing Compilation");

**AND WHEREAS**, the Content for each real estate listing is input by a Member using a copyright-protected and proprietary Data Input Form created by the Board, and pursuant to a User Authorization Agreement with the Board;

**AND WHEREAS**, all rights in the coding used to organize the Content, and in the encoded Content for each listing, are owned or controlled by the Board;

**AND WHEREAS**, the Member wishes to access the Board's Database, for the purpose of downloading the Member's listings in electronic form, for the specific purpose set out below;

**NOW THEREFORE**, in consideration of the following terms and conditions, the adequacy and sufficiency of which are hereby acknowledged, the parties agree and undertake as follows:

**I. ACCESS, LICENSE AND RESTRICTIONS**

**Access and License**

**(a)** Provided that the Member complies with the terms and conditions of this Agreement, the Board hereby:

- (i) agrees to permit the Member to access the Board's Database for the purpose of downloading that Member's real estate listings, that is, the Listing Compilations including the Content, as such listings may exist during the term of this Agreement (collectively, the "Member Listings"), and
- (ii) grants to the Member a non-exclusive, non-transferable license to download the Member Listings, and to reproduce, reformat, modify, use, communicate and display the Member Listings on the Member's website located at <www. .com>, and for no other purpose (the "License").

**(b)** The Member will provide a technical contact (either the Member or another person in the Member's employment) who will be responsible for downloading, importing, decrypting, decompressing, interpreting and rendering the Content for use on the Member's website. If the technical contact is not the Member, then the Member shall ensure that the technical contact agrees in writing to be bound by the terms and conditions of this Agreement regarding the use, protection and ownership of the Member Listings, and the Member shall promptly provide a copy of said agreement to the Board upon request.

**(c)** The Member will pay the Board a setup fee of [\$ ] plus GST. This charge includes a limited amount of basic technical support by e-mail. Additional support is available at a cost of [\$ ] plus GST per hour and this cost will be levied, in the sole discretion of the Board, when the support required exceeds the basic level.

**(d)** The Member acknowledges that the Board reserves the right to establish a reasonable monthly charge for providing the Member with access to the Board's Database. The Member will have the option of accepting the monthly charge or discontinuing use of this service.

**Restrictions**

(e) The Member is specifically prohibited from doing any of the following:

- (i) using the Member Listings for any purpose other than as set out in this License, including without limitation seeking to sell, license, rent, remarket or commercialize the Member Listings;
- (ii) allowing or assisting a third party to access the Board's Database, or transferring any or all of the Member Listings to a third party other than as specifically permitted by this Agreement or authorized in writing by the Board; and
- (iii) sharing or disclosing any access codes or passwords provided by the Board for the purposes of this License.

(f) Nothing in this Agreement precludes a Member from using his or her own factual information, documents, images or photographs not obtained from the Board's Database for any purpose, including participation in a third party listing or advertising service.

**II. PRIVACY**

(a) All Content is personal information within the meaning of the applicable privacy legislation and is therefore considered confidential information.

(b) The Member will not collect, use or disclose the Content in any manner not expressly permitted by this Agreement.

(c) The Member has implemented appropriate security measures to protect the Content.

(d) "Appropriate security measures" means technical, physical and procedural controls to protect personal information against destruction, loss, alteration, unauthorized disclosure to third parties or unauthorized access by employees or contractors employed by the Member, whether by accident or otherwise, especially where such personal information is transmitted over electronic networks under the control of or as authorized by the Member.

(e) The Member shall promptly provide written notice to the Board about:

- (i) any request for the disclosure of the Member Listings or Content, including requests by law enforcement authorities, without responding to the request unless required by law or judicial order; and
- (ii) any accidental or unauthorized access to, or disclosure of, the Member Listings or Content.

**(f)** The Member will promptly address and fully co-operate with all enquiries from the Board with respect to Licensee's use of the Member Listings and Content.

**(g)** The Member will treat the Member Listings and Content at all times as confidential information and will bind its employees and agents in writing to the same terms as set out in this Agreement.

**(h)** The Member will promptly return to the Board or destroy all Content which is no longer necessary to fulfill the purpose for which it was made available, unless otherwise instructed by the Board or required by law.

### III. TERM

**(a)** This Agreement will take effect upon execution by both parties and will remain in full force and effect for a period of one (1) year, and shall renew automatically for further terms of one (1) year each, unless this Agreement is terminated as provided for herein, or unless the Member ceases to be a Member of the Board, in which case this Agreement shall terminate automatically.

### IV. AVAILABILITY

**(a)** The Board will permit the Member to access the Board's Database based on the technical procedure set out in Schedule "A" hereto.

**(b)** The Board will make reasonable efforts to provide the Member with access to the Board's Database at all times that the Board's Database is in operation, except for those times required for normal and adequate maintenance of computer hardware and software or to address any security concerns. In no circumstances shall the Board be responsible or liable for any interruption in the provision of computer access to the Member, even if the interruption occurred as a result of the Board's own negligence.

**(c)** The Member acknowledges and agrees that the Board may at any time modify or change the software and/or hardware and/or the formatting, structure and organization of the Content employed by the Board, and that such changes may affect the Member's access to the Board's Database. In no circumstances shall the Board be responsible or liable as a result of any non-compatibility, and

all costs associated with the redesign or modification to the Member's software to ensure compatibility shall be borne solely by the Member. The Board will make reasonable efforts to provide the Member with advance notice of any change or modification in the operation of the Board's Database that might affect the Member's access to the Board's Database.

(d) In the event that the Board believes, in its sole discretion, that the Member has breached any term or condition of this Agreement, the Board may, in addition to any other rights it may have, immediately suspend Member's access to the Board's Database until the breach has been remedied.

## V. TERMINATION

(a) This Agreement may be terminated:

- (i) At any time by either party, without cause, on 30 days written notice to the other;
- (ii) Immediately by the Board if the Board, in its sole discretion, determines that the Member or the Member's technical contact has used, transferred or disclosed the Member Listings or Content or has accessed the Board's Database in a manner which breaches this Agreement; or
- (iii) Immediately by either party if the other has breached any other material provision of this Agreement.

## VI. OBLIGATIONS ON TERMINATION

(a) Upon termination of this Agreement for any reason, the Member agrees as follows:

- (i) the Member shall have no right to download the Member Listings, and shall immediately cease doing so; and
- (ii) the Member shall immediately cease any unauthorized or improper use, reproduction or distribution of the Member Listings in the Member's possession, power or control, and shall destroy any and all unauthorized copies thereof.

**VII. INTELLECTUAL PROPERTY RIGHTS**

(a) The Member acknowledges that the Board owns all right, title and interest, including all copyrights, trade marks and other proprietary rights, in and to the Board's Database including the Database Compilation, the Listing Compilation, and the Member Listings including the Content provided by the Board. The Board acknowledges that the Member owns all right, title and interest in each listing contract.

(b) The Member shall comply with, observe, and be bound by all restrictions, copyright notices or other limitations on access to the Board's Database and use of the Member Listings, as may be adopted by the Board from time to time; and

(c) The Member acknowledges that MLS®, Multiple Listing Service®, REALTOR®, and associated marks and logos are trade marks owned by CREA and used under license by the Board. Any use or display of these trade marks by the Member must comply with CREA's Rules, Regulations and Policies.

**VIII. LIMITATION OF LIABILITY AND INDEMNITY**

(a) The License is granted on a strictly "as is" basis in all respects. Access to the Board's Database and Content is solely at the risk of the Member, including without limitation the risk that the Content is inaccurate and/or incomplete, or that the Content and the transmission thereof are corrupted or contain viruses, bugs or other defects.

(b) The Board makes no warranties, promises, conditions or representations of any kind, and specifically disclaims any and all warranties and conditions (including those of merchantability and fitness for any particular purpose), whether arising by statute, or operation of law, or from a course of dealing or usage of trade, or otherwise.

(c) In no event shall the Board be liable for any indirect, special, incidental, consequential or punitive damages, including but not limited to those for business interruption or loss of profits, even if the Board has been notified of the possibility of such damage.

(d) The Board's maximum liability arising from any and all claims in connection with this Agreement shall not exceed the greater of (i) all license fees and costs paid by the Member, and (ii) \$100.

(e) The Member shall indemnify the Board and its officers, directors, employees and agents, and CREA and its officers, directors, employees and agents, from

any and all claims, actions, causes of action, or liability of any kind, including all costs and legal fees, arising in any way from the exercise by the Member of its rights under this Agreement.

**IX. ASSIGNMENT**

(a) The Member shall NOT assign this Agreement or any of its rights hereunder, nor shall the Member sub-license any of its rights hereunder, without the prior written consent of the Board, and subject to such terms as the Board may reasonably request, including without limitation that any prospective assignee or sub-licensee enter into a new agreement with the Board. The Board may assign this Agreement or its rights hereunder upon written notice to the Member. This Agreement shall be binding upon and enure to the benefit of the parties and their permitted successors and assigns.

**X. NOTICE**

(a) Any notice under this Agreement is sufficiently given if delivered personally or if sent by ordinary prepaid mail or prepaid courier or electronic facsimile machine addressed as follows:

to the Board at:

and to the Member at:

or at such other addresses as the Board and the Member may designate from time to time pursuant to Article X.

(b) Any such notice shall be conclusively deemed to have been given and received upon the same day if personally delivered or sent by electronic facsimile or, if mailed, three (3) Business Days after the same is mailed, except in the event of a postal interruption or strike in which case notice shall be provided by personal delivery, prepaid courier or electronic facsimile.

**XI. SEVERABILITY**

(a) If any provision of this Agreement is held to be unenforceable or invalid by any Court of competent jurisdiction, the invalid provision shall be severable and the validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby. For any provision held unenforceable or invalid, the

parties agree to substitute a provision as like in scope and effect as may be permitted by law.

(b) The failure by a party to enforce any provision of this Agreement shall not be construed as a waiver of that provision or of any other provision. Furthermore, the intentional waiver by a party of any one provision shall not be construed as the intentional waiver of any other provision.

**XII. ENTIRE AGREEMENT**

(a) This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, negotiations, representations and proposals, written or oral, relating to the subject matter hereof. The Recitals and Schedules form part of this Agreement. This Agreement may be executed by fax and in counterparts.

**XIII. GOVERNING LAW**

(a) This Agreement shall be governed by and construed in accordance with the laws of the Province of [ ] and the laws of Canada applicable therein. The parties hereby attorn to the exclusive jurisdiction of the Superior Court of the Province of [ ] to adjudicate any and all disputes regarding the validity, interpretation and/or enforcement of this Agreement.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement and agree to be bound by its terms.

\_\_\_\_\_ REAL ESTATE BOARD

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have the authority to bind the Corporation

NAME OF MEMBER:

Per: \_\_\_\_\_

**SCHEDULE "A:**

[Describe technical procedures in detail]

**THIRD PARTY ACCESS AND LICENSE AGREEMENT**

**BETWEEN:**

\_\_\_\_\_ **REAL ESTATE BOARD**  
**(the "Board")**

**AND:**

\_\_\_\_\_  
**(the "Licensee")**

**WHEREAS**, the Board owns a computerized database of real estate listings (the "Board's Database") which is operated under the MLS® and Multiple Listing Service® certification marks owned by the Canadian Real Estate Association ("CREA") and used under license by the Board;

**AND WHEREAS**, the Board's Database constitutes a compilation of real estate listings within a specific geographic area (the "Database Compilation"), all rights in which are owned by the Board;

**AND WHEREAS**, each listing constitutes a compilation of text, photographs, images, and other geographic and property information (collectively, the "Content");

**AND WHEREAS**, all rights in the compilation of Content for each listing are also owned by the Board (the "Listing Compilation");

**AND WHEREAS**, the Content for each real estate listing is input by a Member using a copyright-protected and proprietary Data Input Form created by the Board, and pursuant to a User Authorization Agreement with the Board;

**AND WHEREAS**, all rights in the coding used to organize the Content, and in the encoded Content for each listing, are owned or controlled by the Board;

**AND WHEREAS**, the Board's Database is accessible only by Board Members ("Members") in good standing, and by others as permitted by the Board in writing;

**AND WHEREAS**, the Licensee is a vendor of computer software products and services, and has agreed to provide certain services to one or more Members, which requires that the Licensee be given access to the Board's Database;

**AND WHEREAS**, the Licensee has completed the Access and License Application Form attached as Schedule "A" hereto, which the Licensee warrants to be complete and accurate;

**AND WHEREAS**, the Board wishes to grant the Licensee access to the Board's Database, and the right to reproduce and use certain Member Listings (as defined below) and the Content contained therein, for the specific purpose set out below;

**NOW THEREFORE**, in consideration of the following terms and conditions, the adequacy and sufficiency of which are hereby acknowledged, the parties agree and undertake as follows:

**I. ACCESS, LICENSE AND RESTRICTIONS**

**Access and License**

**(a)** Provided that the Licensee strictly complies with each of the terms and conditions of this Agreement, the Board hereby:

- (i) agrees to permit the Licensee to access the Board's Database for the purpose of downloading the real estate listings, that is, the Listing Compilations including the Content, for each Member or Members identified in Schedule "A" hereto, as such listings may exist during the term of this Agreement (collectively, the "Member Listings"); and
- (ii) grants to the Licensee a limited, non-exclusive, non-transferable license to download the Member Listings and to reformat, reproduce, modify, use, communicate and display the Member Listings only as follows: (i) for a website at <www. .com> which is designed for, and only for, one or more Members identified in Schedule "A", (ii) that contains only listings of those Members identified in Schedule "A", and (iii) that is hosted by the Licensee under the branding of the Member or Members, and for no other purpose (the "License").

**(b)** The License shall not be effective until each of the following conditions have been satisfied:

- (i) the prior execution of a written agreement between the Member and Licensee identifying the specific services to be provided by the Licensee to the Member (the "Host Contract");

- (ii) the receipt by the Board of a written request by the Member that the Board enter into this Agreement, and specifically, allow the Licensee to access and download the Member Listings in accordance with the terms of this Agreement;
- (iii) the receipt by the Board of a fully completed and properly executed Application Form, a copy of which is attached as Schedule "A" hereto and is incorporated by reference herein; and
- (iv) payment by the Licensee of any license fee charged by the Board and any programming or other costs incurred by the Board in facilitating access to the Board's Database pursuant to this Agreement. The amount of any such fee and costs is set out in Schedule "B" hereto. Continuation of the License is also contingent upon payment by the Licensee of any and all fees and costs applicable to permit the downloading of the Member Listings, as may from time to time be fixed by the Board of Directors of the Board. The Board agrees to provide Licensee with at least sixty (60) days prior notice of any implementation of or increase in such fees and costs.

(c) This Agreement shall in no way be construed as granting or conveying to the Licensee any rights in the Board's Database, the Database Compilation, the Listing Compilation, the Member Listings, or the Content. To the extent that any derivative work is created by the Licensee's reformatting, modification, communication, use or display of the Member Listings and/or Content, all rights in that derivative work or works shall automatically, upon creation, vest in and be owned by the Board, and the Licensee agrees to sign such confirmatory assignments as may be requested by the Board from time to time so to transfer any and all such rights to the Board.

(d) The Licensee acknowledges that nothing in the Host Contract between Licensee and Member modifies or alters in any way the scope of the License granted herein, and that the Licensee has acquired no right to access the Board's Database, and no right, interest or license in the Member Listings and Content, other than by way of this Agreement.

(e) The Licensee acknowledges that the Board may enter into one or more license agreements with other parties, allowing them to download the identical Member Listings and Content, and to reproduce and use them in the same or similar ways as the Licensee is intending to use them, and nothing in this Agreement shall prevent the Board from so doing.

**Restrictions**

(f) All rights not specifically granted to the Licensee are reserved to the Board. Without limiting the generality of the foregoing, the Licensee is specifically prohibited from doing any of the following:

- (i) accessing any Member Listings other than for the Member(s) identified in Schedule "A" hereto
- (ii) using the Member Listings for any purpose other than as set out in this License, including without limitation seeking to copy, sell, license, rent, remarket, publish, distribute, disseminate, or in any way commercialize the Member Listings or any part thereof;
- (iii) using the Member Listings in order to advertise, market or promote the Licensee's business;
- (iv) using the Member Listings in order to create a searchable database of properties, or a database of historical and/or statistical information in any way associated with the name or branding of the Licensee or any other party except the Member or Members identified in Schedule "A" hereto and for the exclusive use of such Member or Members;
- (v) except as required by law, retaining the Member Listings or any part thereof in any form after the real property to which it relates has been sold, or after the listing has expired or been cancelled, or after this Agreement has been terminated;
- (vi) displaying in any manner the MLS® or MULTIPLE LISTING SERVICE® trade marks owned by CREA, except to populate a Member's website in accordance with CREA's Rules, Regulations and Policies;
- (vii) allowing or assisting a third party to access the Board's Database, or transferring the Member Listings or any part thereof to any third party, other than as specifically permitted by this Agreement;
- (viii) sharing or disclosing any access codes or passwords provided to the Licensee by the Board or a Member for the purposes of this License; and
- (ix) implying or holding out that the Board endorses any products or services of the Licensee.

(g) Nothing in this Agreement precludes the Licensee from:

- (i) operating a listing or advertising service which uses information, documents, images, or photographs of Members or other persons and which do not constitute Member Listings or Content provided by the Board; or
- (ii) with the consent of a Member, using that Member's own factual information, documents, images or photographs for any purpose, including the operation of a listing or advertising service.

## II. PRIVACY

(a) All Content is personal information within the meaning of the applicable privacy legislation and is therefore considered confidential information.

(b) Licensee will not collect, use or disclose the Content in any manner not expressly permitted by this Agreement.

(c) Licensee has implemented appropriate security measures to protect the Content, including taking appropriate steps to protect the Content against data scraping.

(d) "Appropriate security measures" means technical, physical and procedural controls to protect personal information against destruction, loss, alteration, unauthorized disclosure to third parties or unauthorized access by employees or contractors employed by Licensee, whether by accident or otherwise, especially where such personal information is transmitted over electronic networks under the control of or as authorized by Licensee.

(e) Licensee shall promptly provide written notice to the Board about:

- (i) any request for the disclosure of the Member Listings or Content, including requests by law enforcement authorities, without responding to the request unless required by law or judicial order; and
- (ii) any accidental or unauthorized access to, or disclosure of, the Member Listings or Content.

(f) Licensee will promptly address and fully co-operate with regard to all enquiries from the Board with respect to Licensee's use of the Member Listings and Content.

(g) Licensee will treat the Member Listings and Content at all times as confidential information and will bind its employees and agents in writing to the same terms as set out in this License.

(h) Licensee will promptly return to the Board or destroy all personal information which is no longer necessary to fulfill the purpose for which it was made available, unless otherwise instructed by the Board or required by law.

### III. TERM

(a) This Agreement will take effect upon execution by both parties and upon Licensee's compliance with Article 1, Section (b), and will remain in full force and effect for a period of one (1) year, and shall renew automatically for further terms of one (1) year each, unless this Agreement is terminated as provided for herein.

### IV. AVAILABILITY

(a) The Board will permit the Licensee to access the Board's Database based on the technical procedure set out in Schedule "A" hereto.

(b) The Board will make reasonable efforts to provide Licensee with access to the Board's Database at all times that the Board's Database is in operation, except for those times required for normal and adequate maintenance of computer hardware and software or to address any security concerns. In no circumstances shall the Board shall be responsible or liable for any interruption in the provision of computer access to the Licensee, even if the interruption occurred as a result of the Board's own negligence.

(c) The Licensee acknowledges and agrees that the Board may at any time modify or change the software and/or hardware and/or the formatting, structure and organization of the Content employed by the Board, and that such changes may affect the Licensee's access to the Board's Database. In no circumstances shall the Board be responsible or liable as a result of any non-compatibility, and all costs associated with the redesign or modification to the Licensee's software to ensure compatibility shall be borne solely by the Licensee. The Board will make reasonable efforts to provide the Licensee with advance notice of any change or modification in the operation of the Board's Database that might affect the Licensee's access to the Board's Database.

(d) In the event that the Board believes, in its sole discretion, that the Licensee has breached any term or condition of this Agreement, the Board may, in addition to any other rights it may have, immediately suspend Licensee's access to the Board's Database until the breach has been remedied.

**V. TERMINATION**

(a) This Agreement may be terminated:

- (i) At any time by either party, without cause, on 30 days written notice to the other;
- (ii) Immediately by the Board if the Board, in its sole discretion, determines that the Licensee or the Member has used, transferred or disclosed the Member Listings or Content or has accessed the Board's Database in a manner which breaches this Agreement;
- (iii) Immediately by either party if the other has breached any other material provision of this License;
- (iv) Immediately, by either party, if the Host Contract between the Member and the Licensee expires or is terminated; or
- (v) Immediately by the Board, if only one Member is identified in Schedule "A" and that Member ceases to be a Member of the Board. If more two or more Members are identified in Schedule "A", then the License will expire with respect to the non-Member, but continue with respect to the remaining Member(s).

**VI. OBLIGATIONS ON TERMINATION**

(a) Upon termination of this Agreement for any reason, the Licensee agrees as follows:

- (i) the Licensee shall have no right to access the Board's Database, and shall immediately cease doing so; and
- (ii) the Licensee shall have no right to download the Member Listings, and shall immediately cease doing so; and
- (iii) the Licensee shall have no right to continue reproducing, modifying, publishing, exhibiting, distributing, transmitting and/or using the Member Listings including the Content provided by the Board, and shall immediately cease doing so; and
- (iv) the Licensee shall immediately destroy or, at the Board's option, return to the Board, all copies of the Member Listings in the Licensee's power, possession or control; and

- (v) the Licensee shall delete from any of its software, any functionality permitting access to the Board's Database; and
- (vi) the Licensee shall immediately make any payments to the Board that are required pursuant to Article 1, Section (b)(iv), above.

**(b)** Articles II, V, VI, VII, VIII, IX, XII, XIII and XIV shall survive any termination of this Agreement and shall remain in full force and effect for the full applicable limitation period or periods.

## **VII. INTELLECTUAL PROPERTY RIGHTS**

**(a)** The Licensee acknowledges that the Board owns all right, title and interest, including all copyrights, trade marks and other proprietary rights, in and to the Board's Database including the Database Compilation, the Listing Compilation, the Member Listings, and the Content provided by the Board.

**(b)** Except as specifically provided by this Agreement, the Licensee has no right to access the Board's Database, or to produce, reproduce, use, modify, publish, exhibit, download, upload, post or distribute the Member Listings or any part thereof.

**(c)** The Licensee shall comply with, observe, and be bound by all restrictions, copyright notices or other limitations on access to the Board's Database and use of the Member Listings, as may be adopted by the Board from time to time;

**(d)** The Licensee acknowledges that MLS®, Multiple Listing Service®, REALTOR®, and associated marks and logos are trade marks owned by CREA and used under license by the Board.

**(e)** The Licensee agrees and acknowledges that it has no right to use or display any trade mark owned by CREA, except to populate a Member's Website in accordance with CREA's Rules, Regulations and Policies.

## **VIII. LIMITATION OF LIABILITY AND INDEMNITY**

**(a)** The License is granted on a strictly "as is" basis in all respects. Access to the Board's Database and Content is solely at the risk of the Licensee, including without limitation the risk that the Content is inaccurate or incomplete, or that the Content and the transmission thereof may be corrupted or contain viruses, bugs or other defects.

**(b)** THE BOARD MAKES NO WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, IN FACT OR IN LAW,

INCLUDING ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OWNERSHIP, ACCURACY, COMPLETENESS, OR FITNESS FOR A PARTICULAR PURPOSE, AND THE BOARD DISCLAIMS ANY RESPONSIBILITY REGARDING THE OPERATION OF THE BOARD'S DATABASE AND THE ACCURACY OF THE DATA, OR THEIR SUITABILITY FOR THE PURPOSES OF THE LICENSEE.

(c) To the extent permitted by law, in no event shall the Board be liable for any indirect, special, incidental, consequential or punitive damages, including but not limited to those for business interruption or loss of profits, even if the Board has been notified of the possibility of such damage.

(d) The Board's maximum liability arising from any and all claims in connection with this Agreement shall not exceed the greater of (i) all license fees and costs paid by the Licensee, and (ii) \$100.

(e) The Licensee shall indemnify the Board and its officers, directors, employees and agents, and CREA and its officers, directors, employees and agents, from any and all claims, actions, causes of action, or liability of any kind, including all costs and legal fees, arising in any way from the exercise by the Licensee of its rights under this Agreement.

#### **IX. INJUNCTIVE RELIEF**

(a) The Licensee acknowledges that any breach of this Agreement or any term thereof by the Licensee may result in irreparable and continuing damage to the Board for which there will be no adequate remedy in damages. In the event of such a breach, the Board shall be entitled to seek injunctive relief, and the Licensee consents to the issuance of an interim and interlocutory injunction, it being understood that the Board has the absolute right to terminate this Agreement without cause upon 30 days prior notice. This right to injunctive relief is in addition to any other remedies the Board may have.

#### **X. ASSIGNMENT**

(a) The Licensee shall NOT assign this Agreement or any of its rights hereunder, nor shall the Licensee sub-license any of its rights hereunder, without the prior written consent of the Board, and subject to such terms as the Board may reasonably request, including without limitation that any prospective assignee or sub-licensee agree in writing to be bound by the terms and conditions of this Agreement. The Board may assign this Agreement or its rights hereunder upon written notice to the Licensee. This Agreement shall be binding upon and enure to the benefit of the parties and their permitted successors and assigns.

**XI. NOTICE**

(a) Any notice under this Agreement is sufficiently given if delivered personally or if sent by ordinary prepaid mail or prepaid courier or electronic facsimile machine addressed as follows:

to the Board at:

and to the Licensee at:

or at such other addresses as the Board and the Licensee may designate from time to time pursuant to Article XI.

(b) Any such notice shall be conclusively deemed to have been given and received upon the same day if personally delivered or sent by electronic facsimile or, if mailed, three (3) Business Days after the same is mailed, except in the event of a postal interruption or strike in which case notice shall be provided by personal delivery, prepaid courier or electronic facsimile.

**XII: SEVERABILITY**

(a) If any provision of this Agreement is held to be unenforceable or invalid by any Court of competent jurisdiction, the invalid provision shall be severable and the validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby. For any provision held unenforceable or invalid, the parties agree to substitute a provision as like in scope and effect as may be permitted by law.

(b) The failure by a party to enforce any provision of this Agreement shall not be construed as a waiver of that provision or of any other provision. Furthermore, the intentional waiver by a party of any one provision shall not be construed as the intentional waiver of any other provision.

**XIII: ENTIRE AGREEMENT**

(a) This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, negotiations, representations and proposals, written or oral, relating to the subject matter hereof. The Recitals and Schedules form part of this Agreement. This Agreement may be executed by fax and in counterparts.

**XIV: GOVERNING LAW**

(a) This Agreement shall be governed by and construed in accordance with the laws of the Province of [ ] and the laws of Canada applicable therein. The parties hereby attorn to the exclusive jurisdiction of the Superior Court of the Province of [ ] to adjudicate any and all disputes regarding the validity, interpretation and/or enforcement of this Agreement.

**IN WITNESS WHEREOF the Parties hereto have executed this Agreement and agree to be bound by its terms.**

\_\_\_\_\_ **REAL ESTATE BOARD**

**Per:** \_\_\_\_\_

**Name:**

**Title:**

**I have the authority to bind the Corporation**

**NAME OF LICENSEE**

**Per:** \_\_\_\_\_

**Name:**

**Title:**

**I have the authority to bind the Corporation**

## SCHEDULE "A": APPLICATION FORM

**Purpose of this form**

1. The [ ] Real Estate Board (the "Board") owns a computerized database of real estate listings (the "Board's Database") which is operated under the MLS® and Multiple Listing Service® certification marks owned by the Canadian Real Estate Association ("CREA") and used under license by the Board.
2. The purpose of this form is to provide certain information to the Board, so that the Board can evaluate the applicant's request that the Board permit the applicant to access the Board's Database, for the purpose of downloading the real estate listings of one or more Members of the Board. If the Board elects to enter into an agreement with the applicant, this form will become a schedule to that agreement.

**Identification of applicant**

3. The applicant's full legal name is: [add]
4. The applicant's registered head office is located at: [add address]
5. The applicant's main business or businesses can be described as follows: [describe in detail]
6. The technical contact with whom the Board should correspond is [add], and that person's contact information is as follows: [add telephone number and email address]
7. The administrative contact with whom the Board should correspond is [add], and that person's contact information is as follows [add telephone number and email address]
8. The applicant has entered into an agreement with the Member or Members of the Board whose names and contact information are identified below, who have authorized the applicant to access and download their real estate listings as may be permitted by the Board.
9. If a license is granted by the Board, the applicant wishes to make the following use of the Member's real estate listings that are downloaded from the Board's Database: [describe in detail]

**Access to Board's Database**

- 10. The following technical procedure will apply if the Board and applicant enter into the Board's standard Access and License Agreement, and after all pre-conditions set out therein have been satisfied. Please note that the technical procedure may change at any time, as provided for in the Access and License Agreement.
- 11. [Set out technical procedure in detail]

**Name of Members**

- 12. The applicant has entered into an agreement with the following Member or Members of the Board: [identify each Member, with contact information]

Date: \_\_\_\_\_

Per: \_\_\_\_\_  
[signature of signing officer for applicant]

**TRI-PARTY ACCESS AND LICENSE AGREEMENT**

**BETWEEN:**

\_\_\_\_\_ **REAL ESTATE BOARD**

**(the "Board")**

**AND:**

\_\_\_\_\_

**(the "Licensee")**

**AND:**

\_\_\_\_\_

**(the "Technology Provider")**

**WHEREAS**, the Board owns a computerized database of real estate listings (the "Board's Database") which is operated under the MLS® and Multiple Listing Service® certification marks owned by the Canadian Real Estate Association ("CREA") and used under license by the Board;

**AND WHEREAS**, the Board's Database constitutes a compilation of real estate listings within a specific geographic area (the "Database Compilation"), all rights in which are owned by the Board;

**AND WHEREAS**, each listing constitutes a compilation of text, photographs, images, and other geographic and property information (collectively, the "Content");

**AND WHEREAS**, all rights in the compilation of Content for each listing are also owned by the Board (the "Listing Compilation");

**AND WHEREAS**, the Content for each real estate listing is input by a Member using a copyright-protected and proprietary Data Input Form created by the Board, and pursuant to a User Authorization Agreement with the Board;

**AND WHEREAS**, all rights in the coding used to organize the Content, and in the encoded Content for each listing, are owned or controlled by the Board;

**AND WHEREAS**, the Board's Database is accessible only by Board Members ("Members") in good standing, and by others as permitted by the Board in writing;

**AND WHEREAS**, the Licensee wishes to retain the Technology Provider to provide certain services to one or more Members of the Board, which requires that the Licensee be given access to the Board's Database;

**AND WHEREAS**, the Licensee has completed the Application Form attached as Schedule "A" hereto, which the Licensee warrants to be complete and accurate;

**AND WHEREAS**, the Board wishes to grant the Licensee access to the Board's Database, and the right to reproduce and use certain Member Listings (as defined below) and the Content contained therein, for the specific purpose set out below;

**NOW THEREFORE**, in consideration of the following terms and conditions, the adequacy and sufficiency of which are hereby acknowledged, the parties agree and undertake as follows:

## **I. ACCESS, LICENSE AND RESTRICTIONS**

### **Access and License**

(a) Provided that the Licensee strictly complies with each of the terms and conditions of this Agreement, the Board hereby:

(i) agrees to permit the Licensee to access the Board's Database for the purpose of downloading the real estate listings, that is, the Listing Compilations including the Content, for each Member or Members identified in Schedule "A" hereto, as such listings may exist during the term of this Agreement (collectively, the "Member Listings"); and

### **(WORDING TO BE USED WHEN SERVICES PROVIDED TO MEMBERS)**

(ii) grants to the Licensee a limited, non-exclusive, non-transferable license to download the Member Listings and to reformat, reproduce, modify, use, communicate and display the Member Listings only as follows: (a) for one or more websites located at *www. .com* that is or are designed for, and only for, one or more Members identified in Schedule "A", (b) that contain only listings of those Members identified in Schedule

"A", and (c) that is or are hosted by the Licensee under the Licensee's branding (i.e. the branding of the Member or Members), and for no other purpose (the "License").

**WORDING TO BE USED WHEN SERVICES PROVIDED TO NON-MEMBERS (E.G. REAL ESTATE FRANCHISORS, ETC.)**

(ii) grants to the Licensee a limited, non-exclusive, non-transferable license to download the Member Listings and to reformat, reproduce, modify, use, communicate and display the Member Listings only as follows: (a) for one website located at www. .com that is designed to, and only to, promote the active real estate listings offered by the Licensee's employees, agents, and franchisees only; and (b) that is hosted by the Licensee under the branding of the Licensee, and for no other purpose (the "License").

(b) The Board hereby agrees that the Licensee may permit the Technology Provider to exercise the rights set out in Section 1(a)(i) and (ii), above, as agent for the Licensee, provided the Technology Provider strictly complies with the terms and conditions of this Agreement.

(c) Should the Licensee wish to contract with a new technology provider, the Licensee shall so advise the Board, and shall provide the Board with the same type of information as set out in Schedule "A". The Board will evaluate the request, acting reasonably. Should the Board agree with the Licensee's request, the new technology provider must agree in writing to be bound by the terms and conditions of this Agreement as if it were named as a party in place of the existing Technology Provider

(d) The License shall not be effective until each of the following conditions have been satisfied:

(i) the receipt by the Board of a fully completed and properly executed Application Form, a copy of which is attached as Schedule "A" hereto and is incorporated by reference herein; and

(ii) payment by the Licensee of any license fee charged by the Board and any programming or other costs incurred by the Board in facilitating access to the Board's Database pursuant to this Agreement. The amount of any such fee and costs is set out in Schedule "B" hereto. Continuation of the License is also contingent upon payment by the Licensee of any and all fees and costs applicable to permit the downloading of the Member Listings, as may from time to time be fixed by the Board of Directors of the Board. The Board agrees to provide Licensee with at least sixty (60) days prior notice of any implementation of or increase in such fees and costs.

(e) This Agreement shall in no way be construed as granting or conveying to the Licensee or the Technology Provider any rights in the Board's Database, the Database

Compilation, the Listing Compilation, the Member Listings, or the Content provided by the Board.

**(f)** The Technology Provider acknowledges that nothing in the contract between the Technology Provider and Licensee modifies or alters in any way the scope of the License granted herein, and that the Technology Provider has acquired no right to access the Board's Database, and no right, interest or license in the Member Listings and Content, other than by way of this Agreement.

**(g)** The Licensee and Technology Provider acknowledge that the Board may enter into one or more license agreements with other parties, allowing them to download the identical Member Listings and Content, and to reproduce and use them in the same or similar ways as the Licensee and Technology Provider are intending to use them, and nothing in this Agreement shall prevent the Board from so doing.

### **Restrictions**

**(h)** All rights not specifically granted to the Licensee and Technology Provider are reserved to the Board.

**(i)** Without limiting the generality of the foregoing, the Licensee and Technology Provider are specifically prohibited from doing any of the following:

**(i)** accessing any Member Listings other than for the Member(s) identified in Schedule "A" hereto;

**(ii)** using the Member Listings for any purpose other than as set out in this License, including without limitation seeking to sell, license, rent, remarket, or commercialize the Member Listings or any part thereof;

**(iii)** using the Member Listings in order to advertise, market or promote any business other than the business of the Member or Members [OR the business of the Licensee as a real estate franchisor];

**(iv)** using the Member Listings in order to create a searchable database of properties, or a database of historical and/or statistical information, that is in any way associated with the name or branding of the Technology Provider or any party other than the Member(s).

**(v)** displaying in any manner the MLS® or MULTIPLE LISTING SERVICE® trade marks owned by CREA, except to populate the a Member's website in accordance with CREA's Rules, Regulations and Policies;

**(vi)** allowing or assisting a third party to access the Board's Database, or transferring any of the Member Listings to a third party other than as specifically permitted by this Agreement;

**(vii)** sharing or disclosing any access codes or passwords provided to the Licensee or Technology Provider by the Board; and

**(viii)** implying or holding out that the Board endorses any products or services of the Technology Provider or Licensee, unless the Licensee is a Member.

**(j)** Nothing in this Agreement precludes a Member of the Board from using his or her own factual information, documents, images or photographs not obtained from the Board's Database for any purpose, including participation in any listing or advertising service operated by the Licensee or any third party.

**(k)** Nothing in this Agreement precludes the Licensee or Technology Provider from:

**(i)** operating a listing or advertising service which uses information, documents, images, or photographs of Members or other persons that were not provided by the Board; or

**(ii)** using that Member's own factual information, documents, images or photographs that were provided by the Member and not by the Board for any purpose, including the operation of a listing or advertising service.

## II. PRIVACY

**(a)** All Content is personal information within the meaning of the applicable privacy legislation and is therefore considered confidential information.

**(b)** Licensee and Technology Provider will not collect, use or disclose the Content in any manner not expressly permitted by this Agreement.

**(c)** Licensee and Technology Provider have implemented appropriate security measures to protect the Content, including taking appropriate steps to protect the Content against data scraping.

**(d)** "Appropriate security measures" means technical, physical and procedural controls to protect personal information against destruction, loss, alteration, unauthorized disclosure to third parties or unauthorized access by employees or contractors employed by Licensee or Technology Provider, whether by accident or otherwise, especially where such personal information is transmitted over electronic networks under the control of or as authorized by Licensee or Technology Provider.

**(e)** Licensee and Technology Provider shall promptly provide written notice to the Board about:

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(i) any request for the disclosure of the Member Listings or Content, including requests by law enforcement authorities, without responding to the request unless required by law or judicial order; and

(ii) any accidental or unauthorized access to, or disclosure of, the Member Listings or Content.

(f) Licensee and Technology Provider will promptly address and fully co-operate with regard to all enquiries from the Board with respect to their use of the Member Listings and Content.

(g) Licensee and Technology Provider will treat the Member Listings and Content at all times as confidential information and will bind their employees and agents in writing to the same terms as set out in this License.

(h) Licensee and Technology Provider will promptly return to the Board or destroy all personal information that is no longer necessary to fulfill the purpose for which it was made available, unless otherwise instructed by the Board or required by law.

### III. TERM

This Agreement will take effect upon execution by all the parties and upon Licensee's compliance with Article 1, Section (d), and will remain in full force and effect for a period of one (1) year, and shall renew automatically for further terms of one (1) year each, unless this Agreement is terminated as provided for herein.

### IV. AVAILABILITY

(a) The Board will permit the Licensee or Technology Provider, as its agent, to access the Board's Database based on the technical procedure set out in Schedule "A" hereto.

(b) The Board will make reasonable efforts to provide Licensee and Technology Provider with access to the Board's Database at all times that the Board's Database is in operation, except for those times required for normal and adequate maintenance of computer hardware and software or to address any security concerns. In no circumstances shall the Board be responsible or liable for any interruption in the provision of computer access to the Licensee or Technology Provider, even if the interruption occurred as a result of the Board's own negligence.

(c) The Licensee and Technology Provider acknowledge and agree that the Board may at any time modify or change the software and/or hardware and/or the formatting, structure and organization of the Content employed by the Board, and that such changes may affect the Licensee and Technology Provider's access to the Board's Database. In no circumstances shall the Board be responsible or liable as a result of

any non-compatibility, and all costs associated with the redesign or modification to the Licensee and Technology Provider's software to ensure compatibility shall be borne solely by the Licensee and Technology Provider. The Board will make reasonable efforts to provide the Licensee and Technology Provider with advance notice of any change or modification in the operation of the Board's Database that might affect access to the Board's Database.

**(d)** In the event that the Board believes, in its sole discretion, that the Licensee or Technology Provider has breached any term or condition of this Agreement, the Board may, in addition to any other rights it may have, immediately suspend Licensee and Technology Provider's access to the Board's Database until the breach has been remedied.

## **V. TERMINATION**

This Agreement may be terminated:

**(i)** At any time by the Board or Licensee, without cause, on 30 days written notice to the other;

**(ii)** Immediately by the Board if the Board, in its sole discretion, determines that the Licensee or the Technology Provider has used, transferred or disclosed the Member Listings or Content or has accessed the Board's Database in a manner which breaches this Agreement;

**(iii)** Immediately by the Board or Licensee, if the other has breached any other material provision of this Agreement;

**(iv)** Immediately by the Board, if only one Member is identified in Schedule "A" and that Member ceases to be a Member of the Board. If more two or more Members are identified in Schedule "A", then the License will expire with respect to the non-Member, but continue with respect to the remaining Member(s).

**(v)** The Technology Provider cannot terminate this Agreement. Notwithstanding the foregoing, the Technology Provider shall cease to have any further obligations under this Agreement (except as set out in Article VI, below) immediately following the termination or expiry of the contract between the Technology Provider and the Licensee.

## **VI. OBLIGATIONS ON TERMINATION**

**(a)** Upon termination of this Agreement for any reason, the Licensee agrees as follows:

- (i) the Licensee shall have no right to download the Member Listings, and shall immediately cease doing so; and
- (ii) the Licensee shall immediately cease any unauthorized or improper use, reproduction or distribution of the Member Listings in the Member's possession, power or control, and shall destroy any and all unauthorized copies thereof.
- (b) Upon termination of this Agreement for any reason, the Technology Provider agrees as follows:
- (i) the Technology Provider shall have no right to access the Board's Database, and shall immediately cease doing so;
- (ii) the Technology Provider shall have no right to download the Member Listings, and shall immediately cease doing so;
- (iii) the Technology Provider shall have no right to continue reproducing, modifying, publishing, exhibiting, distributing, transmitting and/or using the Member Listings including the Content provided by the Board, and shall immediately cease doing so;
- (iv) the Technology Provider shall immediately destroy or, at the Board's option, return to the Board, all copies of the Member Listings in the Licensee's power, possession or control;
- (v) the Technology Provider shall delete from any of its software, any functionality permitting access to the Board's Database; and
- (vi) the Technology Provider shall immediately make any payments to the Board that are required pursuant to Article 1, Section (d)(ii), above.
- (b) Articles II, V, VI, VII, VIII, IX, XII, XIII and XIV shall survive any termination of this Agreement and shall remain in full force and effect for the full applicable limitation period or periods.

## VII. INTELLECTUAL PROPERTY RIGHTS

- (a) The Licensee and Technology Provider acknowledge that the Board owns all right, title and interest, including all copyrights, trade marks and other proprietary rights, in and to the Board's Database including the Database Compilation, the Listing Compilation, the Member Listings, and the Content provided by the Board.

(b) Except as specifically provided by this Agreement, the Technology Provider has no right to access the Board's Database, or to produce, reproduce, use, modify, publish, exhibit, download, upload, post or distribute the Member Listings or any part thereof.

(c) The Licensee and Technology Provider shall comply with, observe, and be bound by all restrictions, copyright notices or other limitations on access to the Board's Database and use of the Member Listings, as may be adopted by the Board from time to time;

(d) The Licensee and Technology Provider acknowledge that MLS®, Multiple Listing Service®, REALTOR®, and associated marks and logos are trade marks owned by CREA and used under license by the Board.

(e) The Technology Provider agrees and acknowledges that it has no right to use or display any trade mark owned by CREA, except to populate the Licensee's website or a Member's Website except in accordance with CREA's Rules, Regulations and Policies.

### **VIII. LIMITATION OF LIABILITY AND INDEMNITY**

(a) The License is granted on a strictly "as is" basis in all respects. Access to the Board's Database and Content is solely at the risk of the Licensee and Technology Provider, including without limitation the risk that the Content is inaccurate or incomplete, or that the Content and the transmission thereof may be corrupted or contain viruses, bugs or other defects.

(b) THE BOARD MAKES NO WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, IN FACT OR IN LAW, INCLUDING ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OWNERSHIP, ACCURACY, COMPLETENESS, OR FITNESS FOR A PARTICULAR PURPOSE, AND THE BOARD DISCLAIMS ANY RESPONSIBILITY REGARDING THE OPERATION OF THE BOARD'S DATABASE AND THE ACCURACY OF THE DATA, OR THEIR SUITABILITY FOR THE PURPOSES OF THE LICENSEE OR TECHNOLOGY PROVIDER.

(c) To the extent permitted by law, in no event shall the Board be liable for any indirect, special, incidental, consequential or punitive damages, including but not limited to those for business interruption or loss of profits, even if the Board has been notified of the possibility of such damage.

(d) The Board's maximum liability arising from any and all claims in connection with this Agreement shall not exceed the greater of (i) all license fees and costs paid by the Licensee, and (ii) \$100.

(e) The Licensee shall indemnify the Board and its officers, directors, employees and agents, and CREA and its officers, directors, employees and agents, from any and all claims, actions, causes of action, or liability of any kind, including all costs and legal fees, arising in any way from the exercise by the Licensee of its rights under this Agreement.

(f) The Technology Provider shall indemnify the Board and its officers, directors, employees and agents, and CREA and its officers, directors, employees and agents, from any and all claims, actions, causes of action, or liability of any kind, including all costs and legal fees, arising in any way from the exercise by the Technology Provider of its rights under this Agreement.

## **IX. INJUNCTIVE RELIEF**

(a) The Licensee and Technology Provider acknowledge that any breach of this Agreement or any term thereof by the Licensee or Technology Provider may result in irreparable and continuing damage to the Board for which there will be no adequate remedy in damages. In the event of such a breach, the Board shall be entitled to seek injunctive relief, and the Licensee and Technology Provider consent to the issuance of an interim and interlocutory injunction, it being understood that the Board has the absolute right to terminate this Agreement without cause upon 30 days prior notice. This right to injunctive relief is in addition to any other remedies the Board may have.

## **X. ASSIGNMENT**

The Licensee and Technology Provider shall NOT assign this Agreement or any rights hereunder, nor shall they sub-license any rights hereunder, without the prior written consent of the Board, and subject to such terms as the Board may reasonably request, including without limitation that any prospective assignee or sub-licensee agree in writing to be bound by the terms and conditions of this Agreement. The Board may assign this Agreement or its rights hereunder upon written notice to the Licensee and Technology Provider. This Agreement shall be binding upon and enure to the benefit of the parties and their permitted successors and assigns.

## **XI. NOTICE**

(a) Any notice under this Agreement is sufficiently given if delivered personally or if sent by ordinary prepaid mail or prepaid courier or electronic facsimile machine addressed as follows:

(i) to the Board at:

(ii) and to the Licensee at:

(iii) and to the Technology Provider at:

or at such other addresses as the parties may designate from time to time pursuant to Article XI.

(b) Any such notice shall be conclusively deemed to have been given and received upon the same day if personally delivered or sent by electronic facsimile or, if mailed, three (3) Business Days after the same is mailed, except in the event of a postal interruption or strike in which case notice shall be provided by personal delivery, prepaid courier or electronic facsimile.

## **XII: SEVERABILITY**

(a) If any provision of this Agreement is held to be unenforceable or invalid by any Court of competent jurisdiction, the invalid provision shall be severable and the validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby. For any provision held unenforceable or invalid, the parties agree to substitute a provision as like in scope and effect as may be permitted by law.

(b) The failure by a party to enforce any provision of this Agreement shall not be construed as a waiver of that provision or of any other provision. Furthermore, the intentional waiver by a party of any one provision shall not be construed as the intentional waiver of any other provision.

## **XIII: ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, negotiations, representations and proposals, written or oral, relating to the subject matter hereof. The Recitals and Schedules form part of this Agreement. This Agreement may be executed by fax and in counterparts.

## **XIV: GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the Province of [ ] and the laws of Canada applicable therein. The parties hereby attorn to the exclusive jurisdiction of the Superior Court of the Province of [ ] to adjudicate any and all disputes regarding the validity, interpretation and/or enforcement of this Agreement.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement and agree to be bound by its terms.

**REAL ESTATE BOARD**

**Per:** \_\_\_\_\_  
**Name:**  
**Title:**

**I have the authority to bind the Corporation**

**NAME OF LICENSEE**

**Per:** \_\_\_\_\_  
**Name:**

**Title:**

**I have the authority to bind the Corporation**

**NAME OF TECHNOLOGY PROVIDER**

**Per:** \_\_\_\_\_  
**Name:**

**Title:**

**I have the authority to bind the Corporation**

## SCHEDULE "A" - APPLICATION FORM

## Purpose of this form

1. The [ ] Real Estate Board (the "Board") owns a computerized database of real estate listings (the "Board's Database") which is operated under the MLS® and Multiple Listing Service® certification marks owned by the Canadian Real Estate Association ("CREA") and used under license by the Board.

2. The purpose of this form is to provide certain information to the Board, so that the Board can evaluate the applicant's request that the Board permit the applicant and its technology provider to access the Board's Database, for the purpose of downloading the real estate listings of one or more Members of the Board. If the Board elects to enter into an agreement with the applicant and technology provider, this form will become a schedule to that agreement.

## Identification of applicant

3. The applicant's full legal name is: [add]

4. The applicant's registered head office is located at: [add address]

5. The applicant's main business or businesses can be described as follows: [describe]

6. The technical contact with whom the Board should correspond is [add], and that person's contact information is as follows: [add telephone number and email address]

7. The administrative contact with whom the Board should correspond is [add], and that person's contact information is as follows [add telephone number and email address]

8. The applicant is/are Member(s) of the Board

OR

The applicant has entered into an agreement with Member or Members whose names and contact information are provided below, and who have authorized the applicant to access and download their real estate listings as may be permitted by the Board.

9. If a license is granted by the Board, the applicant wishes to make the following use of the Member's real estate listings that are downloaded from the Board's Database: [describe]

## Identification of technology provider

10.The applicant has entered agreement with the following technology provider [add], with a head office at: [add]

11.The agreement between the applicant and the technology provider authorizes the technology provider to do following: [describe services to be provided]

12.The technical contact with whom the Board should correspond at the technology provider is [add], and that person's contact information is as follows: [add telephone number and email address]

13.The administrative contact with whom the Board should correspond at the technology provider is [add], and that person's contact information is as follows [add telephone number and email address]

Access to Board's Database

14.The following technical procedure will apply if the Board, applicant and technology provider enter into the Board's standard Access and License Agreement, and after all pre-conditions set out therein have been satisfied. Please note that the technical procedure may change at any time, as provided for in the Access and License Agreement.

15. [Set out technical procedure in detail]

Name of Members

16,The applicant has entered into an agreement with the following Member or Members of the Board: [identify each Member, with contact information]

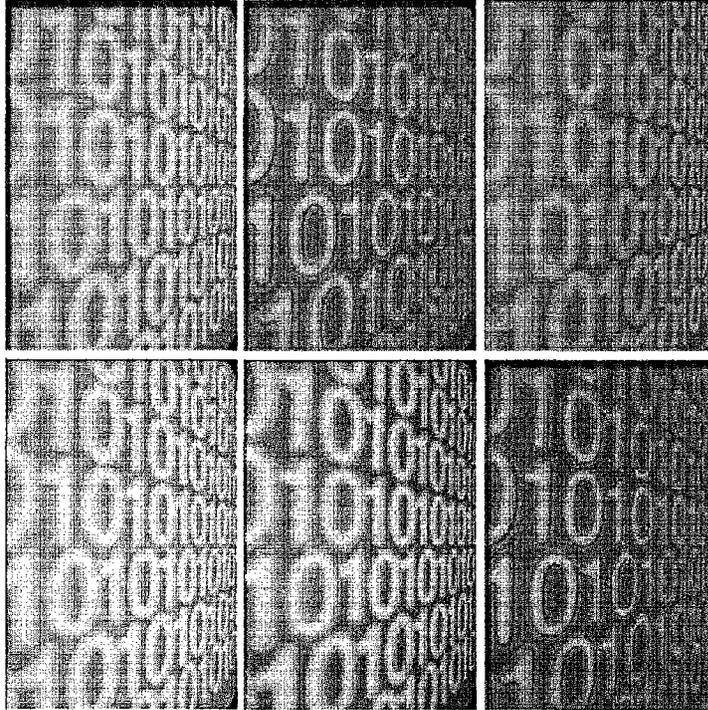
Date: \_\_\_\_\_  
\_\_\_\_\_

Per: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
[signature of signing officer for applicant]

# EXHIBIT 7

# DATA PROTECTION TOOLKIT



**CREA**

THE CANADIAN REAL ESTATE ASSOCIATION

**DATA PROTECTION TOOLKIT**

The development of the Data Protection Toolkit was an initiative of the MLS® and Technology Council. Our thanks and acknowledgement to the efforts of the MTC Data Protection Task Force - Dan Gies (Chair), Carol Mallet, John DiMichele, Hugh Woollam and Bill Harrington.

**DATA PROTECTION TOOLKIT****DATA PROTECTION TOOLKIT****1) Introduction**

It is easier today than at any other time in history to imitate, manipulate, copy and exploit the works of others without their consent. The Internet and high-tech tools have combined to create an environment where massive amounts of information are not only viewable, but also capable of being copied with the click of a mouse. The natural tendency for people is to assume that if they can see a work they have the right to take it and use it as if it was their own. As a result, it has become an enormous challenge to control copyright infringements and maintain control over the use of content.

For these reasons, it is even more important than ever for Boards/Associations and members to protect their intellectual property rights and ensure that listing information is managed and controlled properly. This includes protecting the rights both in the compilation of listings that makes up each MLS® system, and in the encoded text, photographs, images and other geographic and property information that make up each MLS® listing.

The purpose of this Toolkit is to assist Boards/Associations and members in protecting their intellectual property rights and content through the creation of a “chain of title” from seller to agent, to broker, to Board/Association, to provincial association, through the use of various license agreements. It is important to remember that any transfer of data should only be done in the context of a written contract. The agreements serve a wide range of purposes, including providing necessary consents, defining permissible uses, and protecting content from improper duplication and distribution.

**2) What is a Copyright?****a) Definition**

Copyright is defined on the Canadian Intellectual Property Office’s website, as the “right to copy”, which means that an owner is the only person who may copy the work or permit someone else to do so. Generally speaking, copyright in Canada lasts for the life of the author and 50 years following the author’s death. The kinds of works covered include: books, maps, lyrics, musical scores, sculptures, paintings, photographs, films, tapes, computer programs and databases. This toolkit will focus on the protection of databases and listing content.

**b) Rights of Copyright Owner**

You obtain copyright automatically in Canada when you create an **original** work. The owner of a copyright has a number of rights, among which is the sole right to control first publication, production, reproduction and performance of a work or its translation. These rights are protected in Canada by a combination of common law and legislation. The Copyright Act is the statute that protects owners, while at the same time promoting creativity.

**DATA PROTECTION TOOLKIT**

As the owner of a copyright, it is always a good idea to mark the work with the symbol ©, the name of the copyright owner and the year of the publication (i.e. © Joe Smith, 1999). This will indicate to others that there is a copyright and that there are ownership rights in effect. This notice may be used even if the work is not registered with the Canadian Intellectual Property Office.

c) What is a copyright infringement?

If someone publishes, performs or copies anyone else's work without their permission, this is an infringement. For example, when someone profits from the listings/listing content or if someone uses this information for his or her own business purposes when they are not entitled to do so, this is considered copyright infringement.

d) What to do if there is copyright infringement?

The owner of the copyright has to take action if he believes that his rights have been violated. Even if the copyright is registered with the Copyright Office, registration is no guarantee against infringement.

A good practice to follow is to send letters to the unauthorized users advising them of this copyright and asking that they immediately stop using and displaying the owner's materials. There may be a need to follow-up or for a second letter to be sent advising them of the consequences of non-compliance. If they still do not comply, it may be necessary to consult legal counsel to determine what other steps should be followed in order to put an end to the copyright infringement.

### **3) The Protection of Listing Content**

a) Which items of the listing can be protected?

The general rule is that "facts" are not capable of copyright protection. If, however, there has been some "originality" involved in the creation of the work, copyright will apply. In terms of listing content, the following items may be protectable through copyright:

- photographs
- images and graphics
- audio and video recordings
- virtual tours
- drawings
- floor plans
- architectural designs
- artistic renderings
- listing descriptions that include an element of "creativity"

**DATA PROTECTION TOOLKIT**Examples:

Protectable: "This home is just like wine...better with age"

Non-protectable: "3 bedroom, two-storey home".

**b) Ownership of Listing Content**

Depending on the circumstances, various parts of a listing can be owned by different individuals, but who that owner is may not always be clear. For example, photographs may be owned by the photographer, the broker, the salesperson or the Board/Association, depending on the circumstances and the contracts in place. Usually, the creator of the work owns the copyright to that work, unless there is an agreement to the contrary. However, these rights can be transferred in whole or in part to someone else. So decisions need to be made at the outset as to who should own the photographs. Does the broker require ownership? Does the salesperson want to control the use of the photograph? These questions need to be answered before the photographs are taken, and the necessary contracts or consents need to be obtained.

**4) The Importance and Benefits of Protecting Listing Content****a) Vulnerability of Data**

Companies increasingly rely on electronic data to meet their operational needs and to ensure profitability. When there is a transfer of this electronic data, there is almost always some form of loss of control, regardless of whether the information is transferred to a member, a contractor, a technology provider, or some other third party.

Given the above, Boards/Associations and members must be vigilant in protecting their MLS® systems and its content by ensuring that the content is accessed and maintained in a secure environment.

**b) Confidentiality/Privacy**

The level of risk associated with the sharing of information with others will depend on the nature of the information itself, how much of it is shared, how it is transmitted and between which parties, and what medium is used to display it.

For example, there may be a need for a more restrictive license agreement when dealing with a third party. It may be necessary to clearly define the permissible uses and to provide further explanations on the restrictions. Providing a time frame for the work to be done and a time limit on the access may also be elements to consider in this case.

**DATA PROTECTION TOOLKIT**

The extent of the use of information and the type of information being accessed should also be provided for in the license agreement. The sensitivity of the information and to whom this access is being given are factors that are always important to consider before giving access to any type of information. Access to information should only be given to authorized users and this access should not be shared, transferred or delegated.

These license agreements will also help to protect confidentiality requirements by limiting a party's access and use to what is necessary in order to accomplish the work.

As privacy legislation across the country generally imposes obligations on the holder of information to ensure that it is protected when distributed, these agreements serve to insulate Boards/Associations in this respect also.

c) Protection for Sellers/Listing Brokers/Members

The protection of listings is important not only for Boards/Associations but also for many others. For example, the seller, when retaining the services of a real estate agent, will expect that the privacy of his personal information will be protected at all times. This can only be achieved if the listing information is properly managed.

Brokers must also protect the listing information in order to prevent others from unfairly and improperly using this information to their advantage. This listing content is a key asset and is essential to the proper functioning of their business. Furthermore, the listing broker must always ensure that he has obtained the proper authorization to use the listing content in order to avoid infringing the owner's rights (e.g. obtaining permission from a photographer to use the photographs, etc.).

d) Protection of MLS® systems

It is imperative that the MLS® systems be protected at all times. These systems ensure that the content meets reasonable standards of quality and it is important that the quality of MLS® listings remains high. The protection of this content will also ensure that the listing information is processed in a consistent manner and that the same guidelines are followed. This makes the information more reliable and ensures uniformity.

The MLS® database is capable of copyright protection as a "compilation". A compilation is defined in the Copyright Act as:

*a work resulting from the selection or arrangement of literary, dramatic, musical or artistic works or of parts thereof, or*

b) *a work resulting from the selection or arrangement of data;*

What that means is that a database itself may be capable of copyright protection without the owner necessarily having any rights to the individual items that comprise the database. For example, a database may be composed entirely of "facts" which themselves have no copyright protection, yet the database as a whole does.

**DATA PROTECTION TOOLKIT**

The copyright in the MLS® database exists in the “selection” and “arrangement” of the material, not necessarily in the individual listing, or the individual components of the listing, such as photographs and remarks. Since the Board/Association owns the copyright in the database compilation, it has the right to restrict access to the database and to the reproduction and use of member listings.

This does not, and is not intended to in any way erode broker “ownership” of listing information, but rather is intended to give Boards/Associations the tools they need to protect the listing information for the benefit of its members.

**5) How to Manage and Protect Listing Content****a) Contract Law**

The protection of listing content is possible through the use of contracts or license agreements.

Contract law is based on common law rules. A contract is a legally binding agreement between 2 or more persons for a particular purpose that gives rise to obligations that can be enforced by the courts.

Through the use of license agreements – a type of contract – Boards/Associations and members will be able to better protect the listing content. The purpose of these agreements is to establish a system where the owner of the copyright still retains his rights, but permits others to use the content strictly in the manner as set out in the agreement. In most cases, the license should contain a clause stating that it is a non-exclusive license that is being granted since this will permit the owner to license others, if desired.

To protect himself from further problems, the copyright owner should also always reserve his right to terminate the agreement in the event that the licensee breaches the contract or if the continuance of the agreement does not serve the best interests of the owner’s business. For example, the Board/Association should always ensure that their licenses allow them to terminate without cause, as they may discover at some point that the continuation of these types of contracts is detrimental to the operation of the MLS® system or to the MLS® trademark.

Here are a few other basic principles to keep in mind when giving access to data:

- No data transfer should be undertaken by a Board/Association unless and until the member or the third party has signed proper license agreements.
- Contracts with service providers should clearly confirm the Board’s/Association’s ownership of the listings and encoded content, and all “work product”, including derivative works created by the software applications, including the computer files themselves.

**DATA PROTECTION TOOLKIT**

Members have the right to use their own listing data and provide it directly to third parties. For example, a member who has listed a property may take that listing information and give it directly to a third party marketing service for advertising purposes. The Board/Association does not have control over a member's use of his or her own data (subject to any other agreement between the Board/Association and the member), as long as the member is delivering that content directly, and is not asking the Board/Association to make it available from the Board's/Association's database.

**b) Management techniques and tools**

Another way to protect content is to ensure that only designated persons are accessing this information. This can be controlled through the use of passwords and personal user accounts. Creating strong passwords, protecting these passwords and changing them on a regular basis will help minimize the chances of unauthorized users accessing the data. The use of a one-time only password may also be useful in many circumstances.

For example, the Board/Association may only want to grant access for a specific purpose and for only a very short period of time. As a precaution, it is also always important to ensure that ID's for individuals with access to a Board's/Association's MLS® system have been deleted when the work is completed or when no longer needed.

**6) Creating a Chain of Title**

The marketing of a property in the course of a real estate transaction is a fluid thing, beginning with the seller, and ending with the display of the listing content on the Internet. In the process, the listing content, or portions of it, may be created by different persons and will pass through many hands including the listing salesperson, the listing brokerage, the Board/Association, CREA, all those accessing the Board's/Association's MLS® system and browsing websites, as well as countless possible third parties.

When a Board/Association, for example, seeks to obtain as many rights as possible to the listing content in order to protect it, the major limitation is that a broker can only give the Board/Association what it owns. If the broker has no rights to some of the listing content, it has no ability to assign that right to the Board/Association. By the same token, when CREA seeks to protect that same content on **REALTOR.ca**, the Board/Association can only assign whatever rights it has.

Ownership of copyright in these circumstances is based on the domino principle. Each stage is dependant on the one before. If there is no proper assignment at any given stage, everything else that follows is fundamentally flawed.

Therefore, it is absolutely crucial that a solid "chain of title" be constructed, where all of the rights of one party are assigned to the next in line. One of the advantages to an uninterrupted chain of title is that it permits the Board/Association to assert intellectual property rights both in the MLS® database as a compilation and in the listing information itself. This is an enormous advantage to the Board/Association and a powerful tool in pro-

**DATA PROTECTION TOOLKIT**

protecting the listing content. The same would apply to CREA and the *REALTOR.ca* database.

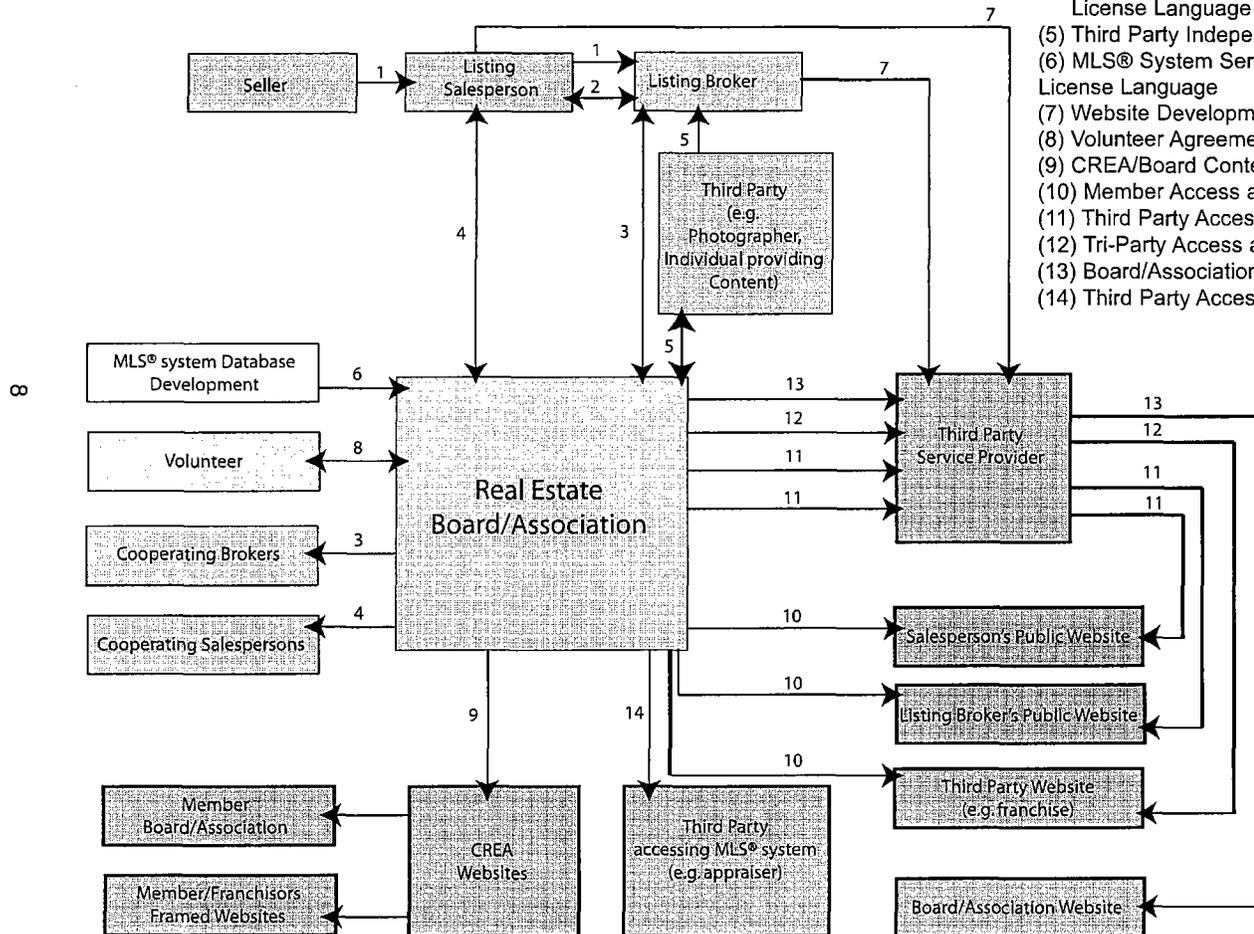
The documents set out in Schedule "B" are the building blocks of an effective chain of title.

**Schedule "A"**: Flowchart that explains the exchange of information between various parties.

**Schedule "B"**: List of Agreements/Language.

**Schedule "A":** Flowchart that explains the exchange of information between various parties.

- (1) Listing Contract – Intellectual Property License Language
- (2) Independent Contractor Agreement – Intellectual Property License Language
- (3) Broker Participation Agreement – Intellectual Property License Language
- (4) Salesperson Participation Agreement – Intellectual Property License Language
- (5) Third Party Independent Contractor Agreement
- (6) MLS® System Service Provider Agreement – Intellectual Property License Language
- (7) Website Development Agreement
- (8) Volunteer Agreement – Intellectual Property License Language
- (9) CREA/Board Content Upload Agreement
- (10) Member Access and License Agreement
- (11) Third Party Access and License Agreement
- (12) Tri-Party Access and License Agreement
- (13) Board/Association Website Agreement
- (14) Third Party Access Agreement



**NOTE:** CREA contracts dealing with the use of REALTOR.ca content are not used by Boards with members or third parties, and are therefore not included in this package.

**DATA PROTECTION TOOLKIT**

**Schedule “B”:** List of Agreements/Language

(1) Listing Contract – Intellectual Property License Language . . . . . 11

(2) Independent Contractor Agreement – Intellectual Property License Language . . . . . 13

(3) Broker Participation Agreement – Intellectual Property License Language . . . . . 15

(4) Salesperson Participation Agreement – Intellectual Property License Language . . . . . 19

(5) Third Party Independent Contractor Agreement. . . . . 23

(6) MLS® System Service Provider Agreement – Intellectual Property License Language . . . . . 27

(7) Website Development Agreement . . . . . 29

(8) Volunteer Agreement – Intellectual Property License Language . . . . . 35

(9) CREA/Board Content Upload Agreement . . . . . 37

(10) Member Access and License Agreement . . . . . 51

(11) Third Party Access and License Agreement . . . . . 61

(12) Tri-Party Access and License Agreement. . . . . 75

(13) Board/Association Website Agreement . . . . . 89

(14) Third Party Access Agreement . . . . . 93

**DATA PROTECTION TOOLKIT**

# **“SAMPLE CONTRACTS”**

**DATA PROTECTION TOOLKIT****1. Listing Contract - Intellectual Property License Language****Parties:**

**Seller and Listing Broker**

**Purpose:**

The purpose of the listing contract language is to have the seller license to the listing broker any rights that he or she may have in any of the listing content provided by the seller. This may include, for example, photographs of the house taken by the seller, a description written by the seller and any other graphics or other materials supplied by the seller and used in the listing material.

**In the absence of this license, some of the uses made of this material by the listing broker may be unauthorized, and the listing broker may not be able to adequately protect the material from unauthorized uses by third parties.**

**Notes:**

These clauses are designed for insertion into listing contracts, and are not intended to be used in a "stand-alone" fashion. The clauses may be added to the contract itself, if possible, or may be added as a schedule. If the listing contract in a particular jurisdiction already contains an intellectual property license in favor of the listing broker, these clauses are not necessary.

As a result of the federal privacy legislation, all listing contracts now contain an authorization from the seller to the listing broker to make certain uses of the information, including sharing it with the appropriate real estate board for display on its MLS® system. That power is important and necessary. However, it is not the same as an intellectual property license.

**DATA PROTECTION TOOLKIT****LISTING CONTRACT – SAMPLE INTELLECTUAL PROPERTY LICENSE  
LANGUAGE (1)****Licensing of Listing Content**

1. The Seller grants to the Broker a non-exclusive, irrevocable, royalty-free license to use, publish, display, reproduce and sub-license all photographs, images, videos, virtual tours, drawings, text, descriptions and any other copyrightable elements related to the property, submitted by the Seller to the Broker or the Broker's Salesperson (the "Seller Listing Content").
2. The Seller acknowledges and agrees that as between the Seller and the Broker, any copyrightable elements relating to the property obtained or produced by the Broker or the Broker's Salesperson (the "Broker Listing Content") is owned exclusively by the Broker and the Seller has no interest, right or title to any Broker Listing Content.

**DATA PROTECTION TOOLKIT**

## 2. Independent Contractor Agreement - Intellectual Property License Language

**Parties:**

Listing Agent and Listing Broker

**Purpose:**

The purpose of the language in these clauses is to ensure that the listing broker has obtained from the salesperson all of the necessary rights to use the listing content. The clauses are drafted to grant the broker the most rights possible, and recognize that there might be three ways to transfer rights from a listing salesperson to a listing broker:

- (i) by considering the listing content a “**work made in the course of employment**” which, in effect, makes it the property of the broker;
- (ii) by the salesperson **assigning** his rights to the broker; or
- (iii) by the salesperson **licensing** to the broker the right to use and display the listing content

**Notes:**

These clauses are designed for insertion into independent contractor agreements, and are not intended to be used in a “stand-alone” fashion. Independent contractor agreements are generally fairly detailed documents covering all aspects of the relationship between the broker and the salesperson, and vary considerably from firm to firm. The ownership of the intellectual property in the listing content is only one aspect of that relationship.

The clauses may be added in one of two ways:

- (i) they can be incorporated directly into existing or new contracts;
- (ii) they can be added as a Schedule to an existing contract.

**DATA PROTECTION TOOLKIT****INDEPENDENT CONTRACTOR AGREEMENT – SAMPLE INTELLECTUAL  
PROPERTY LICENSE LANGUAGE (2)****Assignment of Listing Content**

1. Broker and Salesperson agree that all photographs, images, videos, virtual tours, drawings, text, descriptions and any other copyrightable elements submitted to the Broker by the Salesperson in relation to any real estate listing (the "Listing Content") is "work made in the course of employment" as defined in Section 13.3 of the Copyright Act and all copyrights and other intellectual property rights in the Listing Content are owned exclusively by the Broker.
2. To the extent that any element of the Listing Content cannot, in law, be a "work made in the course of employment", the Salesperson:
  - (a) irrevocably assigns and transfers to the Broker all right, title and interest, including all copyright and other intellectual property rights in the Listing Content;
  - (b) agrees that all rights are deemed assigned at the moment of creation without further documentation;
  - (c) waives all moral rights in the Listing Content;
  - (d) warrants that each element of the Listing Content is an original work of authorship of the Salesperson or has been assigned to the Salesperson by the authors;
3. The Salesperson agrees to indemnify the Broker from any and all claims, actions, causes of action or liability of any kind, including legal fees arising from any claim that any element of the Listing Content infringes the rights of any third party.
4. The Broker grants to the Salesperson a non-exclusive license to use, publish, and display the Listing Content only as allowed by, and in accordance with, [the licensing legislation], the Broker's office policies, the Rules and Regulations of the \_\_\_\_\_ Board/Association, the (provincial real estate association) and CREA, and any other applicable laws or regulations affecting the Broker's business.

**DATA PROTECTION TOOLKIT****3. Broker Participation Agreement – Intellectual Property License Language****Parties:**

**Broker and Real Estate Board/Association (“Board”)**

**Purpose:**

As with the salesperson participation agreement, the broker participation agreement is intended to be the base contract between the broker and the Board. Although the contracts are virtually identical from the aspect of intellectual property licensing, the broker has additional obligations to the Board that should be formalized in a contract. As an example, the broker is authorizing the salespeople in that office to access the Board’s MLS® system on behalf of the brokerage.

Again, as with the salesperson participation agreement, the proposed clauses are not intended to be used in a stand-alone format.

**For more information, see the Notes under “Salesperson Participation Agreement”.**

**DATA PROTECTION TOOLKIT****BROKER PARTICIPATION AGREEMENT – SAMPLE INTELLECTUAL PROPERTY  
LICENSE LANGUAGE (3)****1. BOARD/ASSOCIATION OWNERSHIP**

- (i) The member acknowledges and agrees that the Board/Association is the owner of the copyright in the MLS® database including the database compilation (the selection and arrangement of listings) and the listing compilation (the selection and arrangement of the individual elements which constitute a listing).
- (ii) The member acknowledges and agrees that this Agreement shall in no way be construed as granting or conveying to the member any rights in the Board's/Association's database, the database compilation, the listing compilation, or the content.
- (iii) The member agrees that the right to reproduce, download or otherwise use the database compilation or listing compilation is limited to the specific uses permitted by the Board/Association.
- (iv) The member shall comply with, observe and be bound by all restrictions, copyright notices or other limitations on access to the Board's/Association's database as may be adopted by the Board/Association from time to time.
- (v) The member agrees that it will not challenge or take action inconsistent with the Board's/Association's ownership rights.
- (vi) The member acknowledges that MLS®, Multiple Listing Service®, REALTOR®, REALTORS® and associated marks and logos are trademarks owned by CREA and used under license by the Board/Association. Any use or display of these marks by the member must comply with CREA's Rules, Regulations and Policies.
- (vii) The member agrees that, during the continuation of the Agreement and thereafter, it will not challenge the validity or ownership of the CREA Marks, nor claim any right to use or register any initials, word or design that is identical with or similar to the Marks.

**DATA PROTECTION TOOLKIT****2. GRANT OF LICENSE**

- (i) The member in submitting listing information to the Board/Association hereby grants the Board/Association a non-exclusive and non-transferable, royalty-free license to use the listing information in such manner as determined by the Board/Association.
- (ii) The member also grants the Board/Association an exclusive license in copyright in the listing information for the purpose of permitting the Board/Association to commence litigation to prevent an infringement of the copyright in the Board's/Association's data-base compilation and listing compilation.

**3. PRIVACY AND CONFIDENTIALITY**

- (a) The parties shall observe the requirements of the *Personal Information Protection and Electronic Documents Act* and/or any successor legislation, any legislation of similar effect and in accordance with any other applicable laws in the Province of \_\_\_\_\_ or such other province as its business may be conducted.
- (b) The member acknowledges that he/she may have access to information that is confidential.
- (c) The member agrees to not disclose the confidential information to any third party and that it will not use any confidential information for any purpose other than for the performance of its obligations under this Agreement.
- (d) The member agrees to use all reasonable efforts to protect all confidential information from unauthorized access, distribution, copying or use.
- (e) The member agrees to establish and maintain effective security procedures to prevent unauthorized access to the information.
- (f) The member shall promptly provide notice to the Board/Association about any accidental or unauthorized access to or disclosure of any information.

**4. REPRESENTATIONS AND WARRANTIES**

- (a) The member represents and warrants with respect to each member's Listing or change to a member's listing submitted, the following:
  - (i) that the seller has assigned all of their rights in and to the Listing Content to the member;
  - (ii) that the Listing Content for each member's Listing is an original work of authorship of the member and that no other person has any rights in or to any of the Listing Content for any member's Listing.

**DATA PROTECTION TOOLKIT****5. ACCESS BY BROKER'S REPRESENTATIVES**

In the event that the member permits duly authorized employees or agents associated with his/her office to access the Board's/Association's database on the member's behalf and pursuant to the terms of this Agreement, the member agrees:

- (a) to accept full responsibility, and shall be liable to the Board/Association for the use of the database by such employee or agent;
- (b) to promptly terminate access to the Board's/Association's database by such employee or agent upon such employee or agent ceasing to be authorized as set out in the Agreement.

**DATA PROTECTION TOOLKIT**

## 4. Salesperson Participation Agreement – Intellectual Property License Language

**Parties:**

Salesperson and Real Estate Board/Association (“Board”)

**Purpose:**

The salesperson participation agreement is intended to be the base contract between the individual member and the Board.

The purpose of the proposed intellectual property clauses is to establish:

- (i) the Board’s ownership of the MLS® database;
- (ii) the rules governing access to the database and use of listing content;
- (iii) the license being granted by the salesperson to the Board to use and display the listing content;
- (iv) the license being granted by the salesperson to the Board, permitting the Board to commence action against third parties who use the listing data in an unauthorized fashion.

**Notes:**

The relationship between the member and the Board is fundamentally one of contract, and the “terms” of that contract are to be found in a number of documents, including the application for membership and the Board Bylaws, Rules and policies, all of which the member agrees to abide by, as a condition of membership. In theory, then, all of the obligations in the salesperson participation agreement could be in the Board Bylaws and Rules without the need for a separate agreement. However, in the event of a conflict between the Board and the member, a signed contract is much more compelling and enforceable. For that reason, such agreements are strongly recommended.

These clauses are designed for insertion into the salesperson participation agreement, and are not intended to be used in a “stand-alone” fashion. Salesperson participation agreements are generally fairly detailed documents covering all aspects of the relationship between the salesperson and the Board, and vary considerably from jurisdiction to jurisdiction.

The proposed clauses deal with a number of issues beyond intellectual property, including privacy and confidentiality, but do not cover the spectrum of issues between the parties.

**DATA PROTECTION TOOLKIT****SALESPERSON PARTICIPATION AGREEMENT – SAMPLE INTELLECTUAL PROPERTY LICENSE LANGUAGE (4)****1. BOARD/ASSOCIATION OWNERSHIP**

(i) The member acknowledges and agrees that the Board/Association is the owner of the copyright in the MLS® database including the database compilation (the selection and arrangement of listings) and the listing compilation (the selection and arrangement of the individual elements which constitute a listing).

(ii) The member acknowledges and agrees that this Agreement shall in no way be construed as granting or conveying to the member any rights in the Board's/Association's database, the database compilation, the listing compilation, or the content.

(iii) The member agrees that the right to reproduce, download or otherwise use the database compilation or listing compilation is limited to the specific uses permitted by the Board/Association.

(iv) The member shall comply with, observe and be bound by all restrictions, copyright notices or other limitations on access to the Board's/Association's database as may be adopted by the Board/Association from time to time.

(v) The member agrees that it will not challenge or take action inconsistent with the Board's/Association's ownership rights.

(vi) The member acknowledges that MLS®, Multiple Listing Service®, REALTOR®, REALTORS® and associated marks and logos are trademarks owned by CREA and used under license by the Board/Association. Any use or display of these marks by the member must comply with CREA's Rules, Regulations and Policies.

(vii) The member agrees that, during the continuation of the Agreement and thereafter, it will not challenge the validity or ownership of the CREA Marks, nor claim any right to use or register any initials, word or design that is identical with or similar to the Marks.

**DATA PROTECTION TOOLKIT****2. GRANT OF LICENSE**

- (i) The member in submitting listing information to the Board/Association hereby grants the Board/Association a non-exclusive and non-transferable, royalty-free license to use the listing information in such manner as determined by the Board/Association.
- (ii) The member also grants the Board/Association an exclusive license in copyright in the listing information for the purpose of permitting the Board/Association to commence litigation to prevent an infringement of the copyright in the Board's/Association's data-base compilation and listing compilation.

**3. PRIVACY AND CONFIDENTIALITY**

- (a) The parties shall observe the requirements of the *Personal Information Protection and Electronic Documents Act* and/or any successor legislation, any legislation of similar effect and in accordance with any other applicable laws in the Province of \_\_\_\_\_ or such other province as its business may be conducted.
- (b) The member acknowledges that he/she may have access to information that is confidential.
- (c) The member agrees to not disclose the confidential information to any third party and that it will not use any confidential information for any purpose other than for the performance of its obligations under this Agreement.
- (d) The member agrees to use all reasonable efforts to protect all confidential information from unauthorized access, distribution, copying or use.
- (e) The member agrees to establish and maintain effective security procedures to prevent unauthorized access to the information.
- (f) The member shall promptly provide notice to the Board/Association about any accidental or unauthorized access to or disclosure of any information.

**4. REPRESENTATIONS AND WARRANTIES**

- (a) The member represents and warrants that the Broker has consented to the member entering into this Agreement.
- (b) The member represents and warrants with respect to each Broker's listing or change to a Broker's listing submitted, the following:
  - (i) that the member and the seller have assigned all of their rights in and to the Listing Content to the Broker;
  - (ii) that the Listing Content for each Brokers' listing is an original work of authorship of the Broker and that no other person has any rights in or to any of the Listing Content for any Broker's Listing.

**DATA PROTECTION TOOLKIT****5. ACCESS BY SALESPERSON'S REPRESENTATIVES**

In the event that the member permits duly authorized employees or agents associated with his/her office to access the Board's/Association's database on the member's behalf and pursuant to the terms of this Agreement, the member agrees:

- (a) to accept full responsibility, and shall be liable to the Board/Association for the use of the database by such employee or agent;
- (b) to promptly terminate access to the Board's/Association's database by such employee or agent upon such employee or agent ceasing to be authorized as set out in the Agreement.

**DATA PROTECTION TOOLKIT****5. Third Party Independent Contractor Agreement****Parties:**

**Real Estate Board/Association (“Board”) and Third Party Independent Contractor  
OR  
Listing Broker/Agent and Third Party Independent Contractor**

**Purpose:**

This agreement is to be signed by a Board or a listing broker/agent that has retained the services of a third party, such as a photographer or virtual tour videographer to provide content that will be displayed as part of the listing content.

The intent of the agreement is to:

- (i) confirm the status of the content provider as an independent contractor;
- (ii) ensure the Board (or listing broker/agent) owns the content created by the independent contractor.

The wording of this agreement characterizes the content as “work made in the course of employment”, which affords the Board (or listing broker/agent) the greatest control. If, for any reason, that characterization is not possible, the independent contractor provides a full assignment of rights. In the absence of a contract like this, Boards (or listing brokers/agents) may find themselves with some unfortunate unintended consequences, such as:

- (i) they may not own the content even though they have paid for it;
- (ii) the uses they can legally make of it may be limited;
- (iii) any further assignment (for example by a listing broker to a Board or by a Board to CREA for display on **REALTOR.ca**) may be invalid.

**Notes:**

This is a stand-alone agreement. However, it should be customized to reflect who the parties are, and any other contractual terms agreed upon.

Schedule “A” can be used to set out the details of the content provided, and any specific requirements.

**DATA PROTECTION TOOLKIT**

**THIRD PARTY INDEPENDENT CONTRACTOR AGREEMENT (5)**

**BETWEEN:**

\_\_\_\_\_ **REAL ESTATE BOARD/ASSOCIATION**  
**(the "Board")**

**and**

\_\_\_\_\_ **(Name of Company/Individual)**  
**(the "Independent Contractor")**

**1. PURPOSE**

The Board engages the Independent Contractor to perform the work requested for the benefit of the Board as set out in this agreement.

**2. LICENSE**

(a) The Independent Contractor agrees to take, create and deliver images to the Board in accordance with the terms set out in Schedule "A".

(b) The parties agree that images include, but are not limited to, photographs, graphics, video recordings, virtual tours, and any other images taken or created by the Independent Contractor pursuant to the date of this Agreement, together with copies of such photographs or other images as saved in any medium, including the negatives of such photographs, any electronic files in which the photographs or other images are included, and any other computer code using any such photographs or other images, and any derivative works of such photographs or other images.

**3. OWNERSHIP**

(a) Independent Contractor acknowledges and agrees that all images created pursuant to this contract constitute "work made in the course of employment" as defined in the *Copyright Act* and are exclusively owned by the Board.

(b) To the extent that the images cannot, in law, be "work made in the course of employment", the Independent Contractor agrees to irrevocably assign and transfer to the Board, all right, title and interest, including all copyrights and other intellectual property rights, whether now existing or hereafter acquired, in and to all images.

(c) Independent Contractor agrees to cooperate, and take all action reasonably requested by the Board, including executing and delivering to the Board all documents reasonably requested by the Board, in connection with the assignment of the Independent Contractor's copyright rights and other rights to the Board.

**DATA PROTECTION TOOLKIT****4. REPRESENTATIONS AND WARRANTIES**

(a) Independent Contractor warrants that each image is an original work of art created by or owned exclusively by the Independent Contractor and that no other person or entity has any interest of any nature in or to any image or prior image.

(b) Independent Contractor warrants that the Assignment to the Board does not violate or infringe upon the rights, including any copyright rights, of any person or entity.

**5. ASSIGNMENT**

Independent Contractor shall not assign this Agreement or any of its rights hereunder, nor shall the Independent Contractor sub-license any of its rights hereunder, without the prior written consent of the Board, and subject to such terms as the Board may reasonably request, including without limitation that any prospective assignee or sub-licensee enter into a new agreement with the Board. The Board may assign this Agreement or its right hereunder upon written notice to the Independent Contractor. This Agreement shall be binding upon and enure to the benefit of the parties and their permitted successors and assignees.

**6. PRIVACY**

The parties shall observe the requirements of the *Personal Information Protection and Electronic Documents Act* and/or any successor legislation, any legislation of similar effect and in accordance with any other applicable laws in the Province of \_\_\_\_\_ or such other province as its business may be conducted.

**7. TERMINATION**

(a) The Board may terminate this Agreement at any time by giving 30 days written notice to the Independent Contractor.

(b) Either party may terminate this Agreement immediately if the other party has breached any material provision of this Agreement.

(c) Upon termination of this Agreement, the Independent Contractor agrees to immediately deliver all images to the Board.

**8. INDEMNIFICATION**

The Independent Contractor agrees to indemnify the Board and its officers, directors, employees and agents from any and all claims, actions, causes of action, or liability of any kind, including all costs and legal fees, arising in any way from any claim that an image infringes the right of any third party.

**DATA PROTECTION TOOLKIT**

9. **SURVIVAL OF WARRANTIES AND REPRESENTATIONS**

All warranties and representations contained herein shall survive the termination of this contract.

10. **GOVERNING LAW**

This Agreement shall be governed by the laws in the Province of \_\_\_\_\_.

SIGNED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 200\_\_.

**REAL ESTATE BOARD/  
ASSOCIATION**

**INDEPENDENT CONTRACTOR**

Print name: \_\_\_\_\_

Print name: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

**Schedule "A"**

Include the policy with regards to the creation and delivery of images.

**DATA PROTECTION TOOLKIT****6. MLS® System Service Provider Agreement – Intellectual Property License Language****Parties:**

Real Estate Board/Association (“Board”) and MLS® System Software/Hardware Supplier

**Purpose:**

The wording is intended to be included in the agreement between a Board and the company that develops and/or maintains its MLS® system or provides the hardware or software for its operation. Typically, listing content is provided to the company, through its computer systems. The content is reconfigured by the company’s software and displayed on the Board’s MLS® system. It is critically important, in terms of intellectual property protection, that the contract confirm that:

- (i) the Board owns the MLS® database;
- (ii) the MLS® database is being maintained by the company on behalf of the Board;
- (iii) the Board owns all rights in the listing content;
- (iv) the Board owns all rights in the listing content as reconfigured by the company’s software, as well as any derivative work.

Without this protection:

- (i) the Board risks the company claiming ownership in the listing content as the configuration was created by the company’s software;
- (ii) the Board’s copyright claim in the database content may be compromised;
- (iii) any further assignments (for example to CREA for display on **REALTOR.ca**) may be invalid.

**Notes:**

These clauses are not stand-alone. Most MLS® service providers require their own contracts to be signed, and they cover all of the rights and obligations between the parties. These clauses should be incorporated directly into the contract or added as a schedule. Some company contracts actually provide that the company owns the copyright in the reconfigured works. Such clauses need to be removed from the contract, or at the very least, the schedule must contain a clause providing that the terms of the schedule supersede any conflicting clauses in the contract.

**DATA PROTECTION TOOLKIT****MLS® SYSTEM SERVICE PROVIDER AGREEMENT – SAMPLE INTELLECTUAL PROPERTY LICENSE LANGUAGE (6)****Intellectual Property Rights**

1. The Developer acknowledges and agrees that:

(a) MLS®, Multiple Listing Service®, REALTOR®, REALTORS® and associated marks and logos are trademarks owned by CREA and used under license by the Board/Association. Any use or display of these trade marks by the Developer must comply with CREA's Rules, Regulations and Policies;

(b) during the continuation of the Agreement and thereafter, it will not challenge the validity or ownership of the marks, nor claim any right to use or register any initials, word or design that is identical with or similar to the marks.

2. The Developer acknowledges that the Board/Association owns all right, title and interest, including all copyrights, trademarks and other proprietary rights, in and to the Board's/Association's database including the database compilation, the listing compilation, and any other content provided by the Board/Association.

3. The Developer agrees to assign and transfer and does hereby irrevocably assign and transfer to the Board/Association any and all right, title and interest including all copyright rights and other intellectual property rights, which the Developer may have or acquire in the content, and any and all modifications or derivative works made by the Developer to the content.

4. The Developer acknowledges and agrees that this Agreement shall in no way be construed as granting or conveying to the Developer any rights in the Board's/Association's database, the database compilation, the listing compilation, or the content. To the extent that any derivative work is created by the Developer's reformatting, modification, communication, use or display of the listing content and/or content, all rights in that derivative work or works shall automatically, upon creation, vest in and be owned by the Board/Association, and the Developer agrees to sign such confirmatory assignments as may be requested by the Board/Association from time to time so to transfer any and all such rights to the Board/Association.

5. The Developer agrees that it will not challenge or take any action inconsistent with the Board's/Association's ownership rights.

**DATA PROTECTION TOOLKIT**

## 7. Website Development Agreement

**Parties:**

**Listing Broker/Salesperson and Website Developer**

**Purpose:**

This agreement protects the listing broker and/or salesperson when hiring a third party to develop a website on their behalf. As valuable proprietary information (the listing content) is being provided to the third party, it is critical that the restrictions on use by the third party, and the ownership of the content, be clearly established.

The sample agreement provides that:

- (i) the website developer will only use the listing content as provided in the agreement;
- (ii) the broker/salesperson is the owner of all of the content, including any reconfigured content;
- (iii) the website developer assigns all rights it may have in any aspect of the content;
- (iv) if a Board agrees to provide the content directly to the developer, it is acknowledged that the Board owns the content and that the terms of the contract are superseded by those of the Board contract.
- (v) A schedule "A" is attached to set out the website development details.

**Notes:**

This agreement provides the basic content use protection. The details of what services the website developer will provide, and the cost associated with those services, are terms that need to be added. The website developer may have its own contract. In that case, at the very least, the sections of this sample contract should be added as a schedule to that agreement.

**DATA PROTECTION TOOLKIT**

**WEBSITE DEVELOPMENT AGREEMENT (7)**

**BETWEEN:**

\_\_\_\_\_ **(Name of Individual/Company)**  
**(the "Member")**

**and**

\_\_\_\_\_ **(Name of Company/Individual)**  
**(the "Developer")**

**1. PURPOSE**

The Member engages the Developer to provide website development services for the benefit of the Member.

**2. LICENSE**

(a) The Member grants to the Developer a non-exclusive limited license to design and develop the Member's website as provided for in Schedule "A".

(b) The parties agree that the Member shall choose a domain name for this website.

(c) The Member agrees to provide the Developer with all Member Listings and Content ("Content") within a reasonable time, in a manner prescribed by the Member.

(d) The Developer agrees to only use the Content as provided in this Agreement and that it shall not copy, sell, license, rent, remarket, publish, distribute, disseminate or in any way commercialize the Content or any part thereof.

(e) The Developer agrees that the website shall be accessible to the Member throughout the development process.

**DATA PROTECTION TOOLKIT****3. OWNERSHIP**

(a) The Developer acknowledges and agrees that all Content is a proprietary, original work of the Member, or licensed or assigned to the Member, and is protected under Canadian copyright and trademark laws.

(b) The Developer acknowledges and agrees that all right, title, and interest in and to the Content and any portion of the Content, together with all modifications, enhancements, and derivative works of the Content, whether or not made by the Developer, are and shall remain with the Member.

(c) The Developer acknowledges and agrees that this Agreement shall in no way be construed as granting or conveying to the Developer any rights in the Content.

(d) The Developer agrees to assign and transfer and does hereby irrevocably assign and transfer to the Member any and all right, title, and interest including all copyright rights and other intellectual property rights, which the Developer may have or acquire in the Content, and any and all modifications or derivative works made by the Developer to the Content.

(e) The Developer agrees that it will not challenge or take any action inconsistent with the Member's ownership rights.

**4. PROVISION OF CONTENT BY A REAL ESTATE BOARD/ASSOCIATION**

In the event a real estate Board/Association (a "Board") has agreed to provide Content to the Developer, the parties acknowledge that:

- 1) all Content provided by the Board is owned exclusively by the Board;
- 2) all parties will execute an Agreement with the Board in the form provided by the Board;
- 3) the terms of this contract are superseded by those of the Board contract in respect of any conflict.

**5. REPRESENTATIONS AND WARRANTIES**

The Developer warrants that it is under no obligation or restriction that would in any way interfere or conflict with the work to be performed by the Developer under this Agreement.

**DATA PROTECTION TOOLKIT****6. ASSIGNMENT**

The Developer shall not assign this Agreement or any of its rights hereunder, nor shall the Developer sub-license any of its rights hereunder, without the prior written consent of the Member, and subject to such terms as the Member may reasonably request, including without limitation that any prospective assignee or sub-licensee enter into a new agreement with the Member. The Member may assign this Agreement or its right hereunder upon written notice to the Developer. This Agreement shall be binding upon and enure to the benefit of the parties and their permitted successors and assignees.

**7. PRIVACY AND CONFIDENTIALITY**

(a) The parties shall observe the requirements of the *Personal Information Protection and Electronic Documents Act* and/or any successor legislation, any legislation of similar effect and in accordance with any other applicable laws in the Province of \_\_\_\_\_ or such other province as its business may be conducted.

(b) The Developer acknowledges that he/she may have access to information that is confidential.

(c) The Developer agrees to not disclose the confidential information to any third party and that it will not use any confidential information for any purpose other than for the performance of its obligations under this Agreement.

(d) The Developer agrees to use all reasonable efforts to protect all confidential information from unauthorized access, distribution, copying or use.

(e) The Developer agrees to establish and maintain effective security procedures to prevent unauthorized access to the information.

(f) The Developer shall promptly provide notice to the Member about any accidental or unauthorized access to or disclosure of any information.

**8. TRADEMARK RIGHTS**

(a) The Member grants to the Developer a limited, non-exclusive license to use its trademarks solely for use on the website and exactly in the form as set out by the Member.

(b) The Developer acknowledges that the MLS®, Multiple Listing Service®, REALTOR®, REALTORS® and associated marks and logos are trademarks owned by The Canadian Real Estate Association and used under license by the Member.

(c) The Developer agrees that he/she has no right to use or display any of these trademarks except as provided for in this Agreement and only in accordance with CREA's Rules, Regulations and Policies.

(d) The Developer agrees that, during the continuation of the Agreement and thereafter, it will not challenge the validity or ownership of CREA's Marks, nor claim any right to use or register any initials, word or design that is identical with or similar to the Marks.

**DATA PROTECTION TOOLKIT****9. TERMINATION**

(a) The Member may terminate this Agreement at any time by giving 30 days written notice to the Developer.

(b) Either party may terminate this Agreement immediately if the other party has breached any material provision of this Agreement.

(c) Upon termination of this Agreement, the Developer agrees to immediately deliver to the Member, as prescribed by the Member, all materials and work product, including but not limited to all code, documentation, reports, images, text, artwork, etc.

**10. INDEMNIFICATION**

The Developer agrees to indemnify the Member and its officers, directors, employees and agents from any and all claims, actions, causes of action, or liability of any kind, including all costs and legal fees, arising in any way from any claim arising out of this contract.

**11. SURVIVAL OF WARRANTIES AND REPRESENTATIONS**

All warranties and representations contained herein shall survive the termination of this contract.

**DATA PROTECTION TOOLKIT**

**12. GOVERNING LAW**

This Agreement shall be governed by the laws in the Province of \_\_\_\_\_.

SIGNED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 200\_.

**MEMBER**

**DEVELOPER**

Print name: \_\_\_\_\_

Print name: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

**Schedule "A"**

Include the specifics for the design and development of the website.

**DATA PROTECTION TOOLKIT****8. Volunteer Agreement - Intellectual Property License  
Language****Parties:**

**Real Estate Board/Association (“Board”) and Volunteer**

**Purpose:**

Often, Board volunteers such as directors, committee members and others will develop materials on behalf of the Board, which are subject to intellectual property rights. Brochures, communication pieces and manuals are a few examples. This agreement acts as an assignment of all intellectual property rights those volunteers may acquire during the course of that work for the Board.

**Notes:**

This is not a stand-alone agreement. These intellectual property assignment clauses should be incorporated into the contract that will contain terms and conditions unique to the situation.

**DATA PROTECTION TOOLKIT****VOLUNTEER AGREEMENT – INTELLECTUAL PROPERTY LICENSE  
LANGUAGE (8)****1. OWNERSHIP**

(a) Volunteer acknowledges that during the course of the assignment, Volunteer may be engaged in activities sponsored by the Board/Association, whereby original works of authorship, or other intellectual property may be created, and that the Board/Association desires to retain all intellectual property rights in all projects in which Volunteer is engaged.

(b) Volunteer agrees to assign and transfer, and hereby irrevocably assigns and transfers to the Board/Association, all of the Volunteer's right, title and interest, including all copyrights and other intellectual property rights, whether now existing or hereafter acquired, in and to all materials.

(c) Volunteer agrees to cooperate, and take all action reasonably requested by the Board/Association, including executing and delivering to the Board/Association all documents reasonably requested by the Board/Association, in connection with the assignment of the Volunteer's copyright rights and other rights to the Board/Association.

(d) Volunteer agrees that it will not challenge or take any action inconsistent with the Board's/Association's ownership rights.

**2. ASSIGNMENT**

The Volunteer shall not assign this Agreement or any of its rights hereunder, nor shall the Volunteer sub-license any of its rights hereunder, without the prior written consent of the Board/Association, and subject to such terms as the Board/Association may reasonably request, including without limitation that any prospective assignee or sub-licensee enter into a new agreement with the Board/Association. The Board/Association may assign this Agreement or its right hereunder upon written notice to the Volunteer. This Agreement shall be binding upon and enure to the benefit of the parties and their permitted successors and assignees.

**DATA PROTECTION TOOLKIT****9 CREA/Board Content Upload Agreement****Parties:**

Real Estate Board/Association (“Board”) and CREA

**Purpose:**

Valuable listing content is transferred every day from Boards to CREA, for display on the various CREA websites, including **REALTOR.ca**. When content is being transferred to any third party, there is inevitably a loss of control. It is therefore essential to take prudent business steps to ensure that content is protected from any unauthorized uses.

Any transfer of data to third parties should only be done in the context of a written contract. That same rationale applies whether the third party is an outside contractor or another member of organized real estate – including CREA.

The purpose of this agreement is to protect the interests of the Board in the content itself, and ensure that it controls the uses being made of it by CREA. At the same time, the agreement confirms CREA’s ability to operate its various websites.

In essence, the agreement confirms that:

- (i) The Board (and/or brokers, as the case may be) is acknowledged to be the owner of all rights in the content being uploaded. CREA is licensed only to use the data for the purposes set out in the agreement, and for no other purposes.
- (ii) The permitted uses by CREA involve the population of the CREA websites and the display of the content on those sites, in the manner it is currently being displayed. Examples of the types of current uses are set out in schedule “A”.
- (iii) The Board provides the content on a strictly “as-is” basis, has no obligation to update or maintain the content, and can cease providing content whenever it wishes.
- (iv) CREA controls the functionality of the CREA websites and assumes full responsibility for their maintenance.
- (v) The Board grants CREA a license permitting CREA to commence litigation against third parties who attempt to make unauthorized use of the CREA websites and/or the content.

**Notes:**

While the execution of this agreement is not mandatory, it is strongly encouraged as it protects all levels of organized real estate – the REALTORS®, the Boards and CREA.

**DATA PROTECTION TOOLKIT****CREA/BOARD CONTENT UPLOAD AGREEMENT (9)****BETWEEN:****THE CANADIAN REAL ESTATE ASSOCIATION / L'ASSOCIATION  
CANADIENNE DE L'IMMEUBLE,**

(Hereinafter referred to as "CREA")

**AND: \_\_\_\_\_ REAL ESTATE BOARD**

(Hereinafter referred to as the "Board")

**Background**

(i) The relationship between the parties is governed by the "Three-Way Membership Agreement" dated August 1, 1974. The Board and its respective members are all members of CREA and must adhere to CREA's charter, by-laws, rules, regulations, code of ethics and policies, and CREA has agreed to respect the Rules, policies and by-laws of the Board.

(ii) The Board owns and operates databases containing real property and membership roster information (the "Databases"). Firms, Brokers, the Board and/or others populate the Databases with information.

(iii) CREA owns and operates the websites **REALTOR.ca** and **ICX.CA** which display property listing information available to the public, and the Intranet site REALTOR Link® located at realtorlink.ca, which is accessible only by members of CREA and by designated affiliate members and guests (the "CREA Websites").

(iv) The Board operates certain software that resides on certain of the Board's computer data servers which permits the electronic transfer of the information in the Databases to the CREA Websites on a regular basis.

(v) The Board uploads property and Member listing data and related information and data from the Databases to the **REALTOR.ca** and **ICX.CA** websites, and uploads member, staff and affiliate roster data and other information to the REALTOR Link® Intranet site and the IXN data-fields of **REALTOR.ca** and **ICX.CA** (collectively, the uploaded information and data is referred to as the "Content").

(vi) This Agreement is intended, in part, to set out the requirements for the orderly and competitive use of the property and Member listing data and related information and data in a manner which promotes the best interests of CREA, Board Members, the Board and the public.

**DATA PROTECTION TOOLKIT**

Now therefore, in consideration of the mutual undertakings contained in this agreement, the parties agree and undertake as follows:

**1. GRANT OF LICENSE AND RESTRICTIONS**

(i) The Board hereby grants CREA a non-exclusive and non-transferable, royalty-free licence to use the Content which may include Member Access Codes, to do the following:

(a) display the Content to the public in the manner in which it currently displays the Content on the CREA Websites;

(b) populate the IXN data-fields of the CREA Website, as approved by the Board, and display that Content to REALTORS® in the manner in which it currently displays the Content on the CREA Websites; and

(c) display Member roster data on the realtorlink.ca site in the manner in which it currently displays such data on that site. For the purposes of this Agreement, the realtorlink.ca site is a password protected Intranet site located at <http://www.realtorlink.ca>, which may be accessed by REALTORS®, real estate board staff and affiliate members of Boards/Associations.

(ii) The Board hereby grants CREA an exclusive license in the copyright in the Content for use and reproduction in the CREA Websites only, in the manner set forth in subsections 2(i), for the sole purpose of permitting CREA to commence litigation to prevent an infringement of the copyright in the CREA Websites, and for no other purpose. All rights not expressly granted are hereby reserved including, without limitation, the right of the Board to publish the data on any other websites or in any other media and to commence any other litigation or proceedings.

For greater clarity, examples of the current form in which CREA displays the contents on the CREA Websites and the Member roster data on the realtorlink.ca site are set forth in Schedule "A" attached hereto. For the purposes of this Agreement, the following terms have the following meanings: "Member" means all types of members of the Board and/or CREA as defined in the By-laws of the Board and who the Board has authorized in writing to have access to the Databases; and "Member Access Codes" means a Member's unique access code, which upon verification by the applicable Database(s) will allow the remote client side to access the Contents; and "Registrant" means a person admitted to, and continuing in, membership in the Real Estate Council of Ontario as a Broker.

(iii) In addition to the current uses set out in this section, CREA may from time to time develop policies involving the use of the Content by CREA members or third parties. No such policies shall be considered a breach of this agreement provided that the Board at all times reserves the right to opt out of any such policies in which case CREA shall immediately refrain from using or reproducing the Content for that particular purpose.

(iv) Any use of the Content by CREA other than for the specific uses outlined in Sections 1 and 2 is strictly prohibited, and the parties agree such unauthorized use shall constitute fundamental and material breach of this Agreement.

**DATA PROTECTION TOOLKIT****2. DELIVERY OF CONTENT**

The Board acknowledges and agrees that:

(i) In providing Content to the CREA Websites, it has met the requirements of the *Personal Information Protection and Electronic Documents Act* (PIPEDA) of Canada and/or any successor legislation, any legislation of similar effect and in accordance with any other applicable laws in the Province of \_\_\_\_\_;

(ii) The Content provided by the Board shall contain at least the minimum information required by CREA policies, as set forth in Exhibit "B" attached hereto and may, at the Board's option, also contain additional information as set out in CREA's data load specifications. CREA agrees to provide 30 days prior, written notice to the Board for any changes made to such data load specifications.

(iii) CREA shall provide the Board with all information and materials reasonably required by the Board for use in diagnosing and correcting any Content delivery problems reported by CREA to the Board.

**3. DISPLAY OF CONTENT AND OPERATION OF CREA WEBSITES**

The parties acknowledge and agree that:

(i) CREA does not, and shall not, collect, retain or disclose the Content, in whole or in part, except as expressly provided in this Agreement. CREA shall, with regard to any personal information of individuals that forms part of the Content, observe the requirements of the *Personal Information Protection and Electronic Documents Act* (Canada) and any successor legislation and any legislation of similar effect and in accordance with any other applicable Laws in the Province of \_\_\_\_\_ and shall indemnify, defend and hold the Board harmless from any and all liability in connection with CREA's failure to do so;

(ii) All maintenance and support of the CREA Websites shall be the sole responsibility of CREA;

(iii) The Content is provided by the Board on an "as-is" basis and the Board makes no covenants, warranties or representations in connection with the Contents or the delivery thereof and MAKES NO WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESSED OR IMPLIED, IN FACT OR IN LAW, INCLUDING ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OWNERSHIP, ACCURACY OR FITNESS FOR A PARTICULAR PURPOSE, AND THE BOARD DISCLAIMS ANY RESPONSIBILITY REGARDING THE INTERFACE, DATABASE, OR THE DATA OR THEIR SUITABILITY FOR CREA'S OR MEMBERS' PURPOSES;

(iv) CREA shall have control over the composition, functionality and "look and feel" of the CREA Websites and shall operate them in accordance with the policies of CREA, as amended from time to time;

**DATA PROTECTION TOOLKIT**

(v) The Board assumes no obligation to update, upgrade or maintain the Content;

(vi) Subject to the terms and conditions of this Agreement, CREA may, in its sole discretion, modify any of the CREA Websites or any functionality associated with them, and no such modification shall be deemed to be a breach of this agreement;

(vii) The Board currently devotes a limited amount of network and system resources to the provision of the Content to CREA. The Board may cease to provide such Content and/or may cease to devote such system and/or network resources to CREA, in whole or in part, at any time at the Board's sole and unfettered discretion and shall not be liable to CREA for any damages, costs or expenses it may suffer as a result. Delivery of the Content is subject to force majeure.

**4. OWNERSHIP**

(i) CREA owns all right, title and interest in and to the CREA Websites including the databases and the compilation residing on the CREA Websites, and including all copyrights and other intellectual property rights.

(ii) The Board or Brokers owns all right, title and interest in and to the Content and its MLS® system including the databases and the compilation residing on its MLS® system and including all copyrights and other intellectual property rights and the Parties acknowledge and agree that all rights in and to the Content are being licensed to CREA for the sole purpose set out in Section 1(ii) above.

(iii) All rights not expressly granted by the Board are hereby reserved.

**5. CONFIDENTIALITY**

Both parties agree to maintain the confidentiality of the Proprietary Information of the other (as defined below) and not to use it except as permitted pursuant to this Agreement. Proprietary Information includes the members' personal information, the member passwords or access codes for REALTOR Link®, any business, operational or technical information provided by either party to the other that is marked or otherwise identified as confidential or proprietary, or any business, operational or technical information of either party that the other knows or reasonably should know is confidential. These confidentiality obligations shall not apply to any Proprietary Information that (i) is or becomes a part of the public domain through no act or omission by CREA, (ii) is independently developed by employees of the receiving party without use or reference to the Proprietary Information, (iii) is disclosed to the receiving party by a third party that, to the receiving party's knowledge, was not bound by a confidentiality obligation or other prohibitive contractual obligation to the disclosing party, or (iv) is demanded by a lawful order from any court or any body empowered to issue such an order. Each party agrees to notify the other promptly of the receipt of any such order, and to provide the other party with a copy of such order.

**DATA PROTECTION TOOLKIT****6. Term And Termination**

(i) This Agreement shall continue in force until December 31, 20\_\_\_\_. Thereafter this Agreement shall automatically renew for additional one-year periods unless either party gives 60 days written notice of non-renewal to the other party;

(ii) Notwithstanding Section 6(i) above, the Board may terminate this Agreement without reason immediately at any time on written notice to CREA. CREA may terminate this Agreement without reason at any time after giving sixty (60) days prior notice to the Board; and

(iii) Upon termination of the Agreement, CREA's right to use the Content shall immediately expire and CREA shall phase out all use of the Content within thirty (30) days of the termination date.

**7. MISCELLANEOUS**

(i) This Agreement may not be assigned, in whole or in part, by either party without the written consent of the other, which consent will not be unreasonably withheld.

(ii) It is expressly understood that the parties are acting as independent contractors hereunder and that neither party shall have any authority pursuant to this Agreement to bind, commit, or otherwise obligate the other party in any manner whatsoever.

(iii) All notices, requests, approvals, consents and other communications required or permitted under this Agreement shall be in writing, and delivered by courier or by fax.

(iv) This Agreement shall be governed by and interpreted in accordance with the laws of the Province of \_\_\_\_\_ and the applicable federal laws of Canada.

**8. LIMITATION OF LIABILITY**

(i) To the extent permitted by applicable law, in no event shall the Board, its officers, directors, employees, agents or contractors be liable for any direct, indirect, special, incidental, exemplary, consequential or punitive damages, including but not limited to those for business interruption, loss of profits, goodwill, use, data or other intangible losses (even if the other part has been notified of the possibility of such damage), arising out of, or resulting from, (A) the use of or the inability to use the Content or services, (B) unauthorized access to or alteration of the Content, (C) any losses or expenses resulting from any information or data supplied in connection with this Agreement, or (D) any other matter relating to the Content or services.

**DATA PROTECTION TOOLKIT**

To the extent permitted by applicable law, in no event shall the CREA, its officers, directors, employees, agents or contractors be liable for any direct, indirect, special, incidental, exemplary, consequential or punitive damages, including but not limited to those for business interruption, loss of profits, goodwill, use, data or other intangible losses (even if the other part has been notified of the possibility of such damage), arising out of, or resulting from, (A) the use of or the inability to use the CREA Websites, (B) unauthorized access to or alteration of the CREA Websites.

**THE CANADIAN REAL ESTATE ASSOCIATION**

Per: \_\_\_\_\_

Title: \_\_\_\_\_

**REAL ESTATE BOARD**

Per: \_\_\_\_\_

Title: \_\_\_\_\_

**DATA PROTECTION TOOLKIT****SCHEDULE A****Applications**

**CREA Public Applications:** Technology supported applications available to the public over the Internet. Listing, property, REALTOR® and Broker data are used to market properties for sale, identify listing and buyer agents and to promote REALTOR® and MLS® branded services.

Application: **CREA.ca**

Functions: View news and events about organised real estate and CREA;  
View promotional material about REALTORS® and MLS® branded services;  
Link to Board and Association web sites.

Application: **ICX.CA**

Functions: Search for and display REALTOR®;  
Search for and display Broker Offices;  
Search for and display commercial properties for sale or lease;  
Link to other public sites, including Board, REALTOR®, Broker, stakeholder and third party web sites.

Application: **REALTOR.ca**

Functions: Search for and display REALTOR®;  
Search for and display Broker Offices;  
Search for and display Open Houses;  
Search for and display residential properties for sale or rent;  
Link to other public sites, including Board, REALTOR®, Broker, stakeholder and third party web sites.  
View promotional material about REALTORS® and MLS® branded services;  
View helpful information about the real estate transaction;  
Download and view REALTOR® commercials;  
Link to other public sites, including third party, Board, REALTOR®, and Broker web sites.

**DATA PROTECTION TOOLKIT**

**CREA Member Applications:** Technology supported applications available to members, temporary guests, organised real estate staff and affiliate organisation members and staff. The applications are available to authenticated visitors over the Internet. Listing, property, REALTOR®, Broker and staff data are used to support listing, permission and member management and identification functions.

Application: **Change Request System (CRS)**

Functions: Post, view and maintain issues, problems, questions and change requests;  
Set preferences for receiving alert e-mail depending on the activity against and the status of tasks;  
Search and report on the status of sets of tasks by various criteria including individuals;  
Search and report on sets of activities performed against sets of tasks.

Application: **Communications and Mailing List Management**

Functions: Maintain sets of e-mail addresses for various communications objectives;  
Send out e-mail communications;  
View reports on the success rate of e-mail communications.

Application: **CREAstats and MLS® Statistics Reports**

Functions: View statistics, and economic forecasts and opinions about trends in housing sales and prices.

Application: **Discussion Groups**

Functions: Post, view and search commentary about various topics of interest to participants and stakeholders of organised real estate;  
Set preferences for receiving alert e-mails from various discussion groups to which postings have been made.

Application: **Election Credentials Submission**

Functions: View member data populated forms for submission of election credentials;  
Edit and submit election credentials;  
Receive reports on the status of election credentials submission by available position and by candidate.

Application: **Event Registration**

Functions: View member data populated forms for registration for various events sponsored by Boards, Associations and Affiliate organisations;  
Edit and submit registration information;  
Pay the registration fees by credit or debit card.

**DATA PROTECTION TOOLKIT****Application: ICX Console**

Functions: Post, view, search and maintain data about non-“MLS®” commercial properties for sale or lease;  
Post, view, search and maintain data about commercial Wants and mandates;  
View news articles of interest to Commercial REALTORS®;  
Link to various CREA, Board, Association, stakeholder and third party websites and applications.

**Application: IXN®**

Functions: Search for and display REALTOR®;  
Search for and display Broker Offices;  
Search for and display Open Houses;  
Search for and display residential and commercial properties for sale or rent and lease;  
Link to other public sites, including Board, REALTOR®, Broker, stakeholder and third party web sites.

**Application: Listing Statistics**

Functions: View statistics concerning the number of times particular property listings are viewed and e-mail are sent from CREA, Board, Association and stakeholder websites;  
View rolled up summaries of the statistics at various levels for example: broker office, Province, Franchisor.

**Application: Listing Management**

Functions: Post, view, search and maintain various data about the listing, REALTOR®, Broker Office and property that are not provided or will later be provided in the upload. Examples are REALTOR® photograph, Broker Office logo, indicator to feed listing data to another website.

**Application: Member Management System (MMS)**

Functions: Post, view, search and maintain various data about REALTORS®, Broker Offices, Boards, Associations, Franchisors, Stakeholders, Affiliates, Suppliers, and other third parties of interest to organised real estate.

**Application: Online Education (Operated by OREA)**

Functions: Register for and take courses of interest or required to maintain real estate license;  
View reports on individual and collective status of courses taken, marks, pass rates and other information of interest.

**DATA PROTECTION TOOLKIT****Application: Permissions Management Console**

Functions: Post and view opt-in and opt-out permissions for various CREA technologies supported. The permissions control the availability and use of data provided by REALTORS®, Boards, Associations, Franchisors and large multi-office brokerages.

**Application: REALTOR Link®**

Functions: Post, view, search and maintain information, articles, documents, surveys and calendars;  
Link to various CREA, Board, Association, stakeholder and third party public and private web sites;  
Link to various CREA, Board, Association, stakeholder and third party applications.

**Application: WEBforms™ (Operated by FREB)**

Functions: View, complete, publish and manage legal forms required for the real estate transaction;  
View and maintain data about other resources required for completion of the real estate transaction.

**CREA Page Framing Applications:** Applications for which pages of data are produced by CREA technology for the purposes of being framed by member, Board, Association, stakeholder and third party websites. Access to the pages and their data is controlled by technology subsequent to an approval and an opt-in, opt-out process.

Applications and data set:

**REALTOR® Linkback** – REALTOR® listed properties;

**Broker Office Linkback** – Broker Office listed properties;

**CREA VOW Framer** – all properties of member Broker's Board on REALTOR.ca or ICX.CA, except those of opted-out Boards, Brokers or vendors; plus those of opted-in Boards;

**CREA IDX Framer** – all properties of participating Brokers, except those of opted-out Boards and vendors;

**Deep Link Framer** – all properties on REALTOR.ca or ICX.CA, except those of opted-out Boards, Brokers or vendors;

**Franchisor Framer** – all properties of franchisee Brokers, except opt-out vendors;

**Third Party Framer** – all properties relevant to third party application, except those of opted-out Boards, Brokers or vendors.

**DATA PROTECTION TOOLKIT**

**CREA Data Sharing Applications:** Applications for which extracts of certain data sets are provided by CREA technology for use by approved stakeholders and third parties. The data extracts are provided by technology subsequent to an approval and an opt-in, opt-out process.

Applications and data sets:

**Alberta First** – listing REALTOR®, Broker Office and property data for display to the public on this website sponsored by the Alberta Provincial Government;

**CREA Image Servers** – copies of REALTOR® photographs, Broker Office Logos and listed property pictures;

**Franchisor Franchisee management** – REALTOR® and Broker Office data including CREA ID for appropriate franchisees;

**Ontario Investment Services (OIS)** - listing REALTOR®, Broker Office and property data for display to the public on this website sponsored by the Ontario Provincial Government;

**OREA Member Management** – REALTOR® and Broker Office data for populating membership system of the Ontario Real Estate Association. CCC membership roster of Ontario members;

**WorldProperties.com** – REALTOR®, Broker Office and listed property data to support a roster of REALTORS® interested in trans-national referral and additional exposure of properties on this website.

**CREA Web Services Applications:** Applications for which real time extracts of certain sets of data are provided by CREA technology for use by approved stakeholders and third parties. The data extracts are provided by technology subsequent to an approval and an opt-in, opt-out process.

Applications and data sets:

**National Authentication (NAF)** – verifies member in good standing and provides some relevant membership information;

**Get Member** – all or specific sets of data about the REALTOR®;

**Get Organisation** – all or specific sets of data about the Broker Firm, Board or Association;

**Get Property** – all or specific sets of data about the listed property.

**DATA PROTECTION TOOLKIT****CREA Surveys and Ad Hoc Requests:**

**CREA Surveys:** Periodically, CREA conducts surveys of the membership to guide the development of products and services and to poll the membership on particular issues. The surveys are conducted using information provided by the Boards and Associations. E-mail address is an example.

**Information Requests:** Occasionally, CREA receives requests for information from REALTORS®, member Boards/Associations and from third parties concerning membership and listing statistics. These requests may be accepted, subject to privacy and confidentiality restrictions. Number of active members, number of active listings are examples.

**Requests concerning specific information about specific members:**

Occasionally, CREA receives requests for information about specific members from member organizations. CREA provides answers in accordance with legislation and to the extent that the data is in the upload. The number of active listings, for a particular member and their composition is an example.

**DATA PROTECTION TOOLKIT****SCHEDULE B****Minimum or Mandatory Fields**

The following fields are currently deemed “mandatory” in order to support the current functionality of the applications described in Schedule A.

**REALTOR® Data:**

- Individual Identification
- Board Identification
- Broker Office Identification
- MLS® system login information
- E-mail Address
- Full Name
- Individual CREA ID
- Individual Type
- Membership Type
- Membership Status

**Broker Office or Organisation Data:**

- Organisation Identification
- Board Identification
- Name
- Address
- Address City
- Address Postal Code
- Address Country
- E-Mail Address
- Organisation CREA ID
- Organisation Type

**Listing and Property Data:**

- Board Identification
- Listing Identification
- Geographical Location Information
- Real Estate Type
- Listing REALTOR® and Broker Information
- Address
- Address City
- Address Postal Code
- Address Country
- Price, Rent or Lease Amount
- Listing Status and Effective Date
- Transaction Information

**DATA PROTECTION TOOLKIT****(10) Member Access and License Agreement****Parties:**

**Real Estate Board/Association (“Board”) and Listing Broker/Salesperson**

**Purpose:**

This agreement is one of a “trilogy” of agreements, all of which deal with a Board uploading listing content to another website on behalf of a broker/salesperson.

The different agreements reflect the different ways the content may be uploaded - i.e. by the member directly to his or her own site, by a third party technology provider on behalf of the member to the member’s own site, or by a third party technology provider to a site owned and operated by someone other than the member.

The *Member Access and License Agreement* is to be used in the first circumstance, i.e. where a broker/salesperson wants to access his or her own listing information from the Board’s MLS® database for the purpose of populating his or her own website. In this scenario, the individual member is the only person who will be accessing the information and any other company on behalf of the broker/salesperson is not accessing the data. This would apply, for example, to a broker/salesperson who owns and operates his or her own website, and also owns the software necessary to effect the transfer, so that all content on that website is uploaded or downloaded by the individual member, or by his or her staff. **In this scenario, no third party technology provider exists.** This would likely be a very rare situation.

As listing content is being transferred from the Board to the broker or salesperson, this agreement is intended to ensure that the Board protects its intellectual property rights in the listing content. In essence, this agreement states that the Board owns all rights in the database (including the database compilation and listing compilation), and grants the broker/salesperson a license to download his or her listings (and no others) and to display them on his/her website, subject to the restrictions in the agreement. In the absence of an agreement like this, the Board risks losing control of its MLS® data.

**Boards are not required to upload or permit downloads of their listing content.** It is perfectly acceptable for a Board to adopt a policy that says it will not make member listings available for those purposes either to REALTORS® or to third parties. Of course, from a competition perspective, such a policy must be made independently by the Board and applied uniformly, without regard to pricing policies of REALTORS® or third parties.

**Notes:**

This is a stand-alone agreement and can be customized to reflect the actual terms of use negotiated between the parties.

**DATA PROTECTION TOOLKIT****MEMBER ACCESS AND LICENSE AGREEMENT (10)**

BETWEEN:

\_\_\_\_\_  
**REAL ESTATE BOARD****(the "Board")**

AND

\_\_\_\_\_  
**(the "Member")**

**WHEREAS**, the Board owns a computerized database of real estate listings (the "Board's Database") which is operated under the MLS® and Multiple Listing Service® certification marks owned by the Canadian Real Estate Association ("CREA") and used under license by the Board;

**AND WHEREAS**, the Board's Database constitutes a compilation of real estate listings within a specific geographic area (the "Database Compilation"), all rights in which are owned by the Board;

**AND WHEREAS**, each listing constitutes a compilation of text, photographs, images, and other geographic and property information (collectively, the "Content");

**AND WHEREAS**, all rights in the compilation of Content for each listing are also owned by the Board (the "Listing Compilation");

**AND WHEREAS**, the Content for each real estate listing is input by a Member using a copyright-protected and proprietary Data Input Form created by the Board, and pursuant to a User Authorization Agreement with the Board;

**AND WHEREAS**, all rights in the coding used to organize the Content, and in the encoded Content for each listing, are owned or controlled by the Board;

**AND WHEREAS**, the Member wishes to access the Board's Database, for the purpose of downloading the Member's listings in electronic form, for the specific purpose set out below;

**DATA PROTECTION TOOLKIT**

**NOW THEREFORE**, in consideration of the following terms and conditions, the adequacy and sufficiency of which are hereby acknowledged, the parties agree and undertake as follows:

**I. ACCESS, LICENSE AND RESTRICTIONS****Access and License**

(a) Provided that the Member complies with the terms and conditions of this Agreement, the Board hereby:

- (i) agrees to permit the Member to access the Board's Database for the purpose of downloading that Member's real estate listings, that is, the Listing Compilations including the Content, as such listings may exist during the term of this Agreement (collectively, the "Member Listings"), and
- (ii) grants to the Member a non-exclusive, non-transferable license to download the Member Listings, and to reproduce, reformat, modify, use, communicate and display the Member Listings on the Member's website located at <www. \_\_\_\_\_.com>, and for no other purpose (the "License").

(b) The Member will provide a technical contact (either the Member or another person in the Member's employment) who will be responsible for downloading, importing, decrypting, decompressing, interpreting and rendering the Content for use on the Member's website. If the technical contact is not the Member, then the Member shall ensure that the technical contact agrees in writing to be bound by the terms and conditions of this Agreement regarding the use, protection and ownership of the Member Listings, and the Member shall promptly provide a copy of said agreement to the Board upon request.

(c) The Member will pay the Board a setup fee of [\$ ] plus GST. This charge includes a limited amount of basic technical support by e-mail. Additional support is available at a cost of [\$ ] plus GST per hour and this cost will be levied, in the sole discretion of the Board, when the support required exceeds the basic level.

(d) The Member acknowledges that the Board reserves the right to establish a reasonable monthly charge for providing the Member with access to the Board's Database. The Member will have the option of accepting the monthly charge or discontinuing use of this service.

**DATA PROTECTION TOOLKIT****Restrictions**

- (e) The Member is specifically prohibited from doing any of the following:
- (i) using the Member Listings for any purpose other than as set out in this License, including without limitation seeking to sell, license, rent, remarket or commercialize the Member Listings;
  - (ii) allowing or assisting a third party to access the Board's Database, or transferring any or all of the Member Listings to a third party other than as specifically permitted by this Agreement or authorized in writing by the Board; and
  - (iii) sharing or disclosing any access codes or passwords provided by the Board for the purposes of this License.
- (f) Nothing in this Agreement precludes a Member from using his or her own factual information, documents, images or photographs not obtained from the Board's Database for any purpose, including participation in a third party listing or advertising service.

**II. PRIVACY**

- (a) All Content is personal information within the meaning of the applicable privacy legislation and is therefore considered confidential information.
- (b) The Member will not collect, use or disclose the Content in any manner not expressly permitted by this Agreement.
- (c) The Member has implemented appropriate security measures to protect the Content.
- (d) "Appropriate security measures" means technical, physical and procedural controls to protect personal information against destruction, loss, alteration, unauthorized disclosure to third parties or unauthorized access by employees or contractors employed by the Member, whether by accident or otherwise, especially where such personal information is transmitted over electronic networks under the control of or as authorized by the Member.
- (e) The Member shall promptly provide written notice to the Board about:
- (i) any request for the disclosure of the Member Listings or Content, including requests by law enforcement authorities, without responding to the request unless required by law or judicial order; and
  - (ii) any accidental or unauthorized access to, or disclosure of, the Member Listings or Content.

**DATA PROTECTION TOOLKIT**

(f) The Member will promptly address and fully co-operate with all enquiries from the Board with respect to Licensee's use of the Member Listings and Content.

(g) The Member will treat the Member Listings and Content at all times as confidential information and will bind its employees and agents in writing to the same terms as set out in this Agreement.

(h) The Member will promptly return to the Board or destroy all Content which is no longer necessary to fulfill the purpose for which it was made available, unless otherwise instructed by the Board or required by law.

**III. TERM**

(a) This Agreement will take effect upon execution by both parties and will remain in full force and effect for a period of one (1) year, and shall renew automatically for further terms of one (1) year each, unless this Agreement is terminated as provided for herein, or unless the Member ceases to be a Member of the Board, in which case this Agreement shall terminate automatically.

**IV. AVAILABILITY**

(a) The Board will permit the Member to access the Board's Database based on the technical procedure set out in Schedule "A" hereto.

(b) The Board will make reasonable efforts to provide the Member with access to the Board's Database at all times that the Board's Database is in operation, except for those times required for normal and adequate maintenance of computer hardware and software or to address any security concerns. In no circumstances shall the Board be responsible or liable for any interruption in the provision of computer access to the Member, even if the interruption occurred as a result of the Board's own negligence.

(c) The Member acknowledges and agrees that the Board may at any time modify or change the software and/or hardware and/or the formatting, structure and organization of the Content employed by the Board, and that such changes may affect the Member's access to the Board's Database. In no circumstances shall the Board be responsible or liable as a result of any non-compatibility, and all costs associated with the redesign or modification to the Member's software to ensure compatibility shall be borne solely by the Member. The Board will make reasonable efforts to provide the Member with advance notice of any change or modification in the operation of the Board's Database that might affect the Member's access to the Board's Database.

**DATA PROTECTION TOOLKIT**

(d) In the event that the Board believes, in its sole discretion, that the Member has breached any term or condition of this Agreement, the Board may, in addition to any other rights it may have, immediately suspend Member's access to the Board's Database until the breach has been remedied.

**V. TERMINATION**

(a) This Agreement may be terminated:

- (i) At any time by either party, without cause, on 30 days written notice to the other;
- (ii) Immediately by the Board if the Board, in its sole discretion, determines that the Member or the Member's technical contact has used, transferred or disclosed the Member Listings or Content or has accessed the Board's Database in a manner which breaches this Agreement; or
- (iii) Immediately by either party if the other has breached any other material provision of this Agreement.

**VI. OBLIGATIONS ON TERMINATION**

(a) Upon termination of this Agreement for any reason, the Member agrees as follows:

- (i) the Member shall have no right to download the Member Listings, and shall immediately cease doing so; and
- (ii) the Member shall immediately cease any unauthorized or improper use, reproduction or distribution of the Member Listings in the Member's possession, power or control, and shall destroy any and all unauthorized copies thereof.

**VII. INTELLECTUAL PROPERTY RIGHTS**

(a) The Member acknowledges that the Board owns all right, title and interest, including all copyrights, trade marks and other proprietary rights, in and to the Board's Database including the Database Compilation, the Listing Compilation, and the Member Listings including the Content provided by the Board. The Board acknowledges that the Member owns all right, title and interest in each listing contract;

(b) The Member shall comply with, observe, and be bound by all restrictions, copyright notices or other limitations on access to the Board's Database and use of the Member Listings, as may be adopted by the Board from time to time; and

**DATA PROTECTION TOOLKIT**

(c) The Member acknowledges that MLS®, Multiple Listing Service®, REALTOR®, and associated marks and logos are trademarks owned by CREA and used under license by the Board. Any use or display of these trademarks by the Member must comply with CREA's Rules, Regulations and Policies.

**VIII. LIMITATION OF LIABILITY AND INDEMNITY**

(a) The License is granted on a strictly "as is" basis in all respects. Access to the Board's Database and Content is solely at the risk of the Member, including without limitation the risk that the Content is inaccurate and/or incomplete, or that the Content and the transmission thereof are corrupted or contain viruses, bugs or other defects.

(b) The Board makes no warranties, promises, conditions or representations of any kind, and specifically disclaims any and all warranties and conditions (including those of merchantability and fitness for any particular purpose), whether arising by statute, or operation of law, or from a course of dealing or usage of trade, or otherwise.

(c) In no event shall the Board be liable for any indirect, special, incidental, consequential or punitive damages, including but not limited to those for business interruption or loss of profits, even if the Board has been notified of the possibility of such damage.

(d) The Board's maximum liability arising from any and all claims in connection with this Agreement shall not exceed the greater of (i) all license fees and costs paid by the Member, and (ii) \$100.

(e) The Member shall indemnify the Board and its officers, directors, employees and agents, and CREA and its officers, directors, employees and agents, from any and all claims, actions, causes of action, or liability of any kind, including all costs and legal fees, arising in any way from the exercise by the Member of its rights under this Agreement.

**IX. ASSIGNMENT**

(a) The Member shall NOT assign this Agreement or any of its rights hereunder, nor shall the Member sub-license any of its rights hereunder, without the prior written consent of the Board, and subject to such terms as the Board may reasonably request, including without limitation that any prospective assignee or sub-licensee enter into a new agreement with the Board. The Board may assign this Agreement or its rights hereunder upon written notice to the Member. This Agreement shall be binding upon and enure to the benefit of the parties and their permitted successors and assignees.

**DATA PROTECTION TOOLKIT****X. NOTICE**

(a) Any notice under this Agreement is sufficiently given if delivered personally or if sent by ordinary prepaid mail or prepaid courier or electronic facsimile machine addressed as follows:

to the Board at:

and to the Member at:

or at such other addresses as the Board and the Member may designate from time to time pursuant to Article X.

(b) Any such notice shall be conclusively deemed to have been given and received upon the same day if personally delivered or sent by electronic facsimile or, if mailed, three (3) Business Days after the same is mailed, except in the event of a postal interruption or strike in which case notice shall be provided by personal delivery, prepaid courier or electronic facsimile.

**XI. SEVERABILITY**

(a) If any provision of this Agreement is held to be unenforceable or invalid by any Court of competent jurisdiction, the invalid provision shall be severable and the validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby. For any provision held unenforceable or invalid, the parties agree to substitute a provision as like in scope and effect as may be permitted by law.

(b) The failure by a party to enforce any provision of this Agreement shall not be construed as a waiver of that provision or of any other provision. Furthermore, the intentional waiver by a party of any one provision shall not be construed as the intentional waiver of any other provision.

**DATA PROTECTION TOOLKIT****XII. ENTIRE AGREEMENT**

(a) This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, negotiations, representations and proposals, written or oral, relating to the subject matter hereof. The Recitals and Schedules form part of this Agreement. This Agreement may be executed by fax and in counterparts.

**DATA PROTECTION TOOLKIT**

**XIII. GOVERNING LAW**

(a) This Agreement shall be governed by and construed in accordance with the laws of the Province of [ ] and the laws of Canada applicable therein. The parties hereby attorn to the exclusive jurisdiction of the Superior Court of the Province of [ ] to adjudicate any and all disputes regarding the validity, interpretation and/or enforcement of this Agreement.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement and agree to be bound by its terms.

\_\_\_\_\_ **REAL ESTATE BOARD**

Per: \_\_\_\_\_

Name:

Title:

Per: \_\_\_\_\_

Name:

Title:

**I/We have the authority to bind the Corporation**

\_\_\_\_\_ **NAME OF MEMBER:**

Per: \_\_\_\_\_

**SCHEDULE "A:**

[Describe technical procedures in detail]

**DATA PROTECTION TOOLKIT****(11) Third Party Access and License Agreement****Parties:**

**Real Estate Board/Association (“Board”) and Third Party Website Developer**

**Purpose:**

This agreement is the second of the “trilogy” of agreements (see discussion under *Member Access and License Agreement*), and applies to the situation where a third party (generally a website developer) wishes to access listing information of identified brokers/salespersons with whom it has a contract, and is displaying that information on member pages which reside on a site owned and operated by that third party. In other words, the third party both owns and operates the web site. There is no other company involved in the data transfer.

The distinction between this contract and the *Member Access and License Agreement* is that in this case, a technology company is collecting the listing content on behalf of the broker/salesperson.

This agreement serves the same purpose as the *Member Access and License Agreement* and contains the same types of clauses, with a couple of additional requirements:

- (i) this agreement assumes that a contract is already in place between the third party and the broker/salesperson. The initial authority to release the listing content must come from the member;
- (ii) the third party must complete an application, which is, in effect, a request for access and a license to use the content;
- (iii) the agreement is very specific on the restrictions on use – the listing content can only be displayed on websites under the branding of the broker/salesperson.

**Notes:**

This is a stand-alone agreement and can be customized by the Board to reflect the terms negotiated with the third party.

**DATA PROTECTION TOOLKIT****THIRD PARTY ACCESS AND LICENSE AGREEMENT (11)****BETWEEN:**\_\_\_\_\_  
**REAL ESTATE BOARD****(the "Board")****AND:**

\_\_\_\_\_

**(the "Licensee")**

**WHEREAS**, the Board owns a computerized database of real estate listings (the "Board's Database") which is operated under the MLS® and Multiple Listing Service® certification marks owned by the Canadian Real Estate Association ("CREA") and used under license by the Board;

**AND WHEREAS**, the Board's Database constitutes a compilation of real estate listings within a specific geographic area (the "Database Compilation"), all rights in which are owned by the Board;

**AND WHEREAS**, each listing constitutes a compilation of text, photographs, images, and other geographic and property information (collectively, the "Content");

**AND WHEREAS**, all rights in the compilation of Content for each listing are also owned by the Board (the "Listing Compilation");

**AND WHEREAS**, the Content for each real estate listing is input by a Member using a copyright-protected and proprietary Data Input Form created by the Board, and pursuant to a User Authorization Agreement with the Board;

**AND WHEREAS**, all rights in the coding used to organize the Content, and in the encoded Content for each listing, are owned or controlled by the Board;

**AND WHEREAS**, the Board's Database is accessible only by Board Members ("Members") in good standing, and by others as permitted by the Board in writing;

**DATA PROTECTION TOOLKIT**

**AND WHEREAS**, the Licensee is a vendor of computer software products and services, and has agreed to provide certain services to one or more Members, which requires that the Licensee be given access to the Board's Database;

**AND WHEREAS**, the Licensee has completed the Access and License Application Form attached as Schedule "A" hereto, which the Licensee warrants to be complete and accurate;

**AND WHEREAS**, the Board wishes to grant the Licensee access to the Board's Database, and the right to reproduce and use certain Member Listings (as defined below) and the Content contained therein, for the specific purpose set out below;

**NOW THEREFORE**, in consideration of the following terms and conditions, the adequacy and sufficiency of which are hereby acknowledged, the parties agree and undertake as follows:

**I. ACCESS, LICENSE AND RESTRICTIONS**

**Access and License**

(a) Provided that the Licensee strictly complies with each of the terms and conditions of this Agreement, the Board hereby:

- (i) agrees to permit the Licensee to access the Board's Database for the purpose of downloading the real estate listings, that is, the Listing Compilations including the Content, for each Member or Members identified in Schedule "A" hereto, as such listings may exist during the term of this Agreement (collectively, the "Member Listings"); and
- (ii) grants to the Licensee a limited, non-exclusive, non-transferable license to download the Member Listings and to reformat, reproduce, modify, use, communicate and display the Member Listings only as follows: (i) for a website at <www. \_\_\_\_\_ .com> which is designed for, and only for, one or more Members identified in Schedule "A", (ii) that contains only listings of those Members identified in Schedule "A", and (iii) that is hosted by the Licensee under the branding of the Member or Members, and for no other purpose (the "License").

(b) The License shall not be effective until each of the following conditions have been satisfied:

- (i) the prior execution of a written agreement between the Member and Licensee identifying the specific services to be provided by the Licensee to the Member (the "Host Contract");

**DATA PROTECTION TOOLKIT**

- (ii) the receipt by the Board of a written request by the Member that the Board enter into this Agreement, and specifically, allow the Licensee to access and download the Member Listings in accordance with the terms of this Agreement;
- (iii) the receipt by the Board of a fully completed and properly executed Application Form, a copy of which is attached as Schedule "A" hereto and is incorporated by reference herein; and
- (iv) payment by the Licensee of any license fee charged by the Board and any programming or other costs incurred by the Board in facilitating access to the Board's Database pursuant to this Agreement. The amount of any such fee and costs is set out in Schedule "B" hereto. Continuation of the License is also contingent upon payment by the Licensee of any and all fees and costs applicable to permit the downloading of the Member Listings, as may from time to time be fixed by the Board of Directors of the Board. The Board agrees to provide Licensee with at least sixty (60) days prior notice of any implementation of or increase in such fees and costs.

**(c)** This Agreement shall in no way be construed as granting or conveying to the Licensee any rights in the Board's Database, the Database Compilation, the Listing Compilation, the Member Listings, or the Content. To the extent that any derivative work is created by the Licensee's reformatting, modification, communication, use or display of the Member Listings and/or Content, all rights in that derivative work or works shall automatically, upon creation, vest in and be owned by the Board, and the Licensee agrees to sign such confirmatory assignments as may be requested by the Board from time to time so to transfer any and all such rights to the Board.

**(d)** The Licensee acknowledges that nothing in the Host Contract between Licensee and Member modifies or alters in any way the scope of the License granted herein, and that the Licensee has acquired no right to access the Board's Database, and no right, interest or license in the Member Listings and Content, other than by way of this Agreement.

**(e)** The Licensee acknowledges that the Board may enter into one or more license agreements with other parties, allowing them to download the identical Member Listings and Content, and to reproduce and use them in the same or similar ways as the Licensee is intending to use them, and nothing in this Agreement shall prevent the Board from so doing.

**DATA PROTECTION TOOLKIT****RESTRICTIONS**

(f) All rights not specifically granted to the Licensee are reserved to the Board. Without limiting the generality of the foregoing, the Licensee is specifically prohibited from doing any of the following:

- (i) accessing any Member Listings other than for the Member(s) identified in Schedule "A" hereto;
- (ii) using the Member Listings for any purpose other than as set out in this License, including without limitation seeking to copy, sell, license, rent, remarket, publish, distribute, disseminate, or in any way commercialize the Member Listings or any part thereof;
- (iii) using the Member Listings in order to advertise, market or promote the Licensee's business;
- (iv) using the Member Listings in order to create a searchable database of properties, or a database of historical and/or statistical information in any way associated with the name or branding of the Licensee or any other party except the Member or Members identified in Schedule "A" hereto and for the exclusive use of such Member or Members;
- (v) except as required by law, retaining the Member Listings or any part thereof in any form after the real property to which it relates has been sold, or after the listing has expired or been cancelled, or after this Agreement has been terminated;
- (vi) displaying in any manner the MLS® or Multiple Listing Service® trademarks owned by CREA, except to populate a Member's website in accordance with CREA's Rules, Regulations and Policies;
- (vii) allowing or assisting a third party to access the Board's Database, or transferring the Member Listings or any part thereof to any third party, other than as specifically permitted by this Agreement;
- (viii) sharing or disclosing any access codes or passwords provided to the Licensee by the Board or a Member for the purposes of this License; and
- (ix) implying or holding out that the Board endorses any products or services of the Licensee.

**DATA PROTECTION TOOLKIT**

(g) Nothing in this Agreement precludes the Licensee from:

- (i) operating a listing or advertising service which uses information, documents, images, or photographs of Members or other persons and which do not constitute Member Listings or Content provided by the Board; or
- (ii) with the consent of a Member, using that Member's own factual information, documents, images or photographs for any purpose, including the operation of a listing or advertising service.

**II. PRIVACY**

(a) All Content is personal information within the meaning of the applicable privacy legislation and is therefore considered confidential information.

(b) Licensee will not collect, use or disclose the Content in any manner not expressly permitted by this Agreement.

(c) Licensee has implemented appropriate security measures to protect the Content, including taking appropriate steps to protect the Content against data scraping.

(d) "Appropriate security measures" means technical, physical and procedural controls to protect personal information against destruction, loss, alteration, unauthorized disclosure to third parties or unauthorized access by employees or contractors employed by Licensee, whether by accident or otherwise, especially where such personal information is transmitted over electronic networks under the control of or as authorized by Licensee.

(e) Licensee shall promptly provide written notice to the Board about:

- (i) any request for the disclosure of the Member Listings or Content, including requests by law enforcement authorities, without responding to the request unless required by law or judicial order; and
- (ii) any accidental or unauthorized access to, or disclosure of, the Member Listings or Content.

(f) Licensee will promptly address and fully co-operate with regard to all enquiries from the Board with respect to Licensee's use of the Member Listings and Content.

(g) Licensee will treat the Member Listings and Content at all times as confidential information and will bind its employees and agents in writing to the same terms as set out in this License.

**DATA PROTECTION TOOLKIT**

(h) Licensee will promptly return to the Board or destroy all personal information which is no longer necessary to fulfill the purpose for which it was made available, unless otherwise instructed by the Board or required by law.

**III. TERM**

(a) This Agreement will take effect upon execution by both parties and upon Licensee's compliance with Article 1, Section (b), and will remain in full force and effect for a period of one (1) year, and shall renew automatically for further terms of one (1) year each, unless this Agreement is terminated as provided for herein.

**IV. AVAILABILITY**

(a) The Board will permit the Licensee to access the Board's Database based on the technical procedure set out in Schedule "A" hereto.

(b) The Board will make reasonable efforts to provide Licensee with access to the Board's Database at all times that the Board's Database is in operation, except for those times required for normal and adequate maintenance of computer hardware and software or to address any security concerns. In no circumstances shall the Board be responsible or liable for any interruption in the provision of computer access to the Licensee, even if the interruption occurred as a result of the Board's own negligence.

(c) The Licensee acknowledges and agrees that the Board may at any time modify or change the software and/or hardware and/or the formatting, structure and organization of the Content employed by the Board, and that such changes may affect the Licensee's access to the Board's Database. In no circumstances shall the Board be responsible or liable as a result of any non-compatibility, and all costs associated with the redesign or modification to the Licensee's software to ensure compatibility shall be borne solely by the Licensee. The Board will make reasonable efforts to provide the Licensee with advance notice of any change or modification in the operation of the Board's Database that might affect the Licensee's access to the Board's Database.

(d) In the event that the Board believes, in its sole discretion, that the Licensee has breached any term or condition of this Agreement, the Board may, in addition to any other rights it may have, immediately suspend Licensee's access to the Board's Database until the breach has been remedied.

**DATA PROTECTION TOOLKIT****V. TERMINATION**

(a) This Agreement may be terminated:

- (i) At any time by either party, without cause, on 30 days written notice to the other;
- (ii) Immediately by the Board if the Board, in its sole discretion, determines that the Licensee or the Member has used, transferred or disclosed the Member Listings or Content or has accessed the Board's Database in a manner which breaches this Agreement;
- (iii) Immediately by either party if the other has breached any other material provision of this License;
- (iv) Immediately, by either party, if the Host Contract between the Member and the Licensee expires or is terminated; or
- (v) Immediately by the Board, if only one Member is identified in Schedule "A" and that Member ceases to be a Member of the Board. If two or more Members are identified in Schedule "A", then the License will expire with respect to the non-Member, but continue with respect to the remaining Member(s).

**VI. OBLIGATIONS ON TERMINATION**

(a) Upon termination of this Agreement for any reason, the Licensee agrees as follows:

- (i) the Licensee shall have no right to access the Board's Database, and shall immediately cease doing so;
- (ii) the Licensee shall have no right to download the Member Listings, and shall immediately cease doing so;
- (iii) the Licensee shall have no right to continue reproducing, modifying, publishing, exhibiting, distributing, transmitting and/or using the Member Listings including the Content provided by the Board, and shall immediately cease doing so;
- (iv) the Licensee shall immediately destroy or, at the Board's option, return to the Board, all copies of the Member Listings in the Licensee's power, possession or control;
- (v) the Licensee shall delete from any of its software, any functionality permitting access to the Board's Database; and

**DATA PROTECTION TOOLKIT**

(vi) the Licensee shall immediately make any payments to the Board that are required pursuant to Article 1, Section (b)(iv), above.

(b) Articles II, V, VI, VII, VIII, IX, XII, XIII and XIV shall survive any termination of this Agreement and shall remain in full force and effect for the full applicable limitation period or periods.

**VII. INTELLECTUAL PROPERTY RIGHTS**

(a) The Licensee acknowledges that the Board owns all right, title and interest, including all copyrights, trademarks and other proprietary rights, in and to the Board's Database including the Database Compilation, the Listing Compilation, the Member Listings, and the Content provided by the Board.

(b) Except as specifically provided by this Agreement, the Licensee has no right to access the Board's Database, or to produce, reproduce, use, modify, publish, exhibit, download, upload, post or distribute the Member Listings or any part thereof.

(c) The Licensee shall comply with, observe, and be bound by all restrictions, copyright notices or other limitations on access to the Board's Database and use of the Member Listings, as may be adopted by the Board from time to time;

(d) The Licensee acknowledges that MLS®, Multiple Listing Service®, REALTOR®, and associated marks and logos are trademarks owned by CREA and used under license by the Board.

(e) The Licensee agrees and acknowledges that it has no right to use or display any trademark owned by CREA, except to populate a Member's Website in accordance with CREA's Rules, Regulations and Policies.

**VIII. LIMITATION OF LIABILITY AND INDEMNITY**

(a) The License is granted on a strictly "as is" basis in all respects. Access to the Board's Database and Content is solely at the risk of the Licensee, including without limitation the risk that the Content is inaccurate or incomplete, or that the Content and the transmission thereof may be corrupted or contain viruses, bugs or other defects.

**DATA PROTECTION TOOLKIT**

(b) THE BOARD MAKES NO WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, IN FACT OR IN LAW, INCLUDING ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OWNERSHIP, ACCURACY, COMPLETENESS, OR FITNESS FOR A PARTICULAR PURPOSE, AND THE BOARD DISCLAIMS ANY RESPONSIBILITY REGARDING THE OPERATION OF THE BOARD'S DATABASE AND THE ACCURACY OF THE DATA, OR THEIR SUITABILITY FOR THE PURPOSES OF THE LICENSEE.

(c) To the extent permitted by law, in no event shall the Board be liable for any indirect, special, incidental, consequential or punitive damages, including but not limited to those for business interruption or loss of profits, even if the Board has been notified of the possibility of such damage.

(d) The Board's maximum liability arising from any and all claims in connection with this Agreement shall not exceed the greater of (i) all license fees and costs paid by the Licensee, and (ii) \$100.

(e) The Licensee shall indemnify the Board and its officers, directors, employees and agents, and CREA and its officers, directors, employees and agents, from any and all claims, actions, causes of action, or liability of any kind, including all costs and legal fees, arising in any way from the exercise by the Licensee of its rights under this Agreement.

**IX. INJUNCTIVE RELIEF**

(a) The Licensee acknowledges that any breach of this Agreement or any term thereof by the Licensee may result in irreparable and continuing damage to the Board for which there will be no adequate remedy in damages. In the event of such a breach, the Board shall be entitled to seek injunctive relief, and the Licensee consents to the issuance of an interim and interlocutory injunction, it being understood that the Board has the absolute right to terminate this Agreement without cause upon 30 days prior notice. This right to injunctive relief is in addition to any other remedies the Board may have.

**X. ASSIGNMENT**

(a) The Licensee shall NOT assign this Agreement or any of its rights hereunder, nor shall the Licensee sub-license any of its rights hereunder, without the prior written consent of the Board, and subject to such terms as the Board may reasonably request, including without limitation that any prospective assignee or sub-licensee agree in writing to be bound by the terms and conditions of this Agreement. The Board may assign this Agreement or its rights hereunder upon written notice to the Licensee. This Agreement shall be binding upon and enure to the benefit of the parties and their permitted successors and assignees.

**DATA PROTECTION TOOLKIT****XI. NOTICE**

(a) Any notice under this Agreement is sufficiently given if delivered personally or if sent by ordinary prepaid mail or prepaid courier or electronic facsimile machine addressed as follows:

to the Board at:

and to the Licensee at:

or at such other addresses as the Board and the Licensee may designate from time to time pursuant to Article XI.

(b) Any such notice shall be conclusively deemed to have been given and received upon the same day if personally delivered or sent by electronic facsimile or, if mailed, three (3) Business Days after the same is mailed, except in the event of a postal interruption or strike in which case notice shall be provided by personal delivery, prepaid courier or electronic facsimile.

**XII: SEVERABILITY**

(a) If any provision of this Agreement is held to be unenforceable or invalid by any Court of competent jurisdiction, the invalid provision shall be severable and the validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby. For any provision held unenforceable or invalid, the parties agree to substitute a provision as like in scope and effect as may be permitted by law.

(b) The failure by a party to enforce any provision of this Agreement shall not be construed as a waiver of that provision or of any other provision. Furthermore, the intentional waiver by a party of any one provision shall not be construed as the intentional waiver of any other provision.

**XIII: ENTIRE AGREEMENT**

(a) This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, negotiations, representations and proposals, written or oral, relating to the subject matter hereof. The Recitals and Schedules form part of this Agreement. This Agreement may be executed by fax and in counterparts.

**DATA PROTECTION TOOLKIT**

**XIV: GOVERNING LAW**

(a) This Agreement shall be governed by and construed in accordance with the laws of the Province of [ ] and the laws of Canada applicable therein. The parties hereby attorn to the exclusive jurisdiction of the Superior Court of the Province of [ ] to adjudicate any and all disputes regarding the validity, interpretation and/or enforcement of this Agreement.

**IN WITNESS WHEREOF the Parties hereto have executed this Agreement and agree to be bound by its terms.**

\_\_\_\_\_ **REAL ESTATE BOARD**

**Per:** \_\_\_\_\_

**Name:**

**Title:**

**I have the authority to bind the Corporation**

**NAME OF LICENSEE**

**Per:** \_\_\_\_\_

**Name:**

**Title:**

**I have the authority to bind the Corporation**

**DATA PROTECTION TOOLKIT****SCHEDULE "A": APPLICATION FORM****Purpose of this form**

1. The [ ] Real Estate Board (the "Board") owns a computerized database of real estate listings (the "Board's Database") which is operated under the MLS® and Multiple Listing Service® certification marks owned by the Canadian Real Estate Association ("CREA") and used under license by the Board.
2. The purpose of this form is to provide certain information to the Board, so that the Board can evaluate the applicant's request that the Board permit the applicant to access the Board's Database, for the purpose of downloading the real estate listings of one or more Members of the Board. If the Board elects to enter into an agreement with the applicant, this form will become a schedule to that agreement.

**Identification of applicant**

3. The applicant's full legal name is: [add]
4. The applicant's registered head office is located at: [add address]
5. The applicant's main business or businesses can be described as follows: [describe in detail]
6. The technical contact with whom the Board should correspond is [add], and that person's contact information is as follows: [add telephone number and email address]
7. The administrative contact with whom the Board should correspond is [add], and that person's contact information is as follows [add telephone number and email address]
8. The applicant has entered into an agreement with the Member or Members of the Board whose names and contact information are identified below, who have authorized the applicant to access and download their real estate listings as may be permitted by the Board.
9. If a license is granted by the Board, the applicant wishes to make the following use of the Member's real estate listings that are downloaded from the Board's Database: [describe in detail]

**DATA PROTECTION TOOLKIT**

**Access to Board's Database**

- 10. The following technical procedure will apply if the Board and applicant enter into the Board's standard Access and License Agreement, and after all pre-conditions set out therein have been satisfied. Please note that the technical procedure may change at any time, as provided for in the Access and License Agreement.
- 11. [Set out technical procedure in detail]

**Name of Members**

- 12. The applicant has entered into an agreement with the following Member or Members of the Board: [identify each Member, with contact information]

**Date:**

**Per:**  
[signature of signing officer for applicant]

**DATA PROTECTION TOOLKIT****(12) Tri-Party Access and License Agreement****Parties:**

**Real Estate Board/Association (“Board”) and Technology Provider and Website Owner**

**Purpose:**

This is the third “trilogy” agreement (see *Member Access and License Agreement* for more details). It applies when a third party that owns a real estate web site wishes to access the listing information of identified brokers/salespersons with whom it has a contract, but the information will be accessed by a technology company which operates the site on behalf of the third party. In this scenario, one person owns the site, which is serviced by a technology company that maintains and populates the site on behalf of the owner. For example, a franchisor may wish the content to be uploaded to its corporate site, but has a service contract with a technology company, and it is that technology company that will access the Board’s database on behalf of the third party. In this scenario, it is important that both the site owner and the technology company enter into a contract with the Board. The same applies regardless of whether the third party is a broker/salesperson or some other entity.

This agreement provides the same fundamental protection to the Board as the *Third Party Access and License Agreement* but involves an additional party.

**Notes:**

**This is a stand-alone agreement and can be customized by the Board to reflect the terms negotiated with the technology provider and the website owner.**

**DATA PROTECTION TOOLKIT**

**TRI-PARTY ACCESS AND LICENSE AGREEMENT (12)**

**BETWEEN:**

\_\_\_\_\_ **REAL ESTATE BOARD**

**(the "Board")**

**AND:**

\_\_\_\_\_

**(the "Licensee")**

**AND:**

\_\_\_\_\_

**(the "Technology Provider")**

**WHEREAS**, the Board owns a computerized database of real estate listings (the "Board's Database") which is operated under the MLS® and Multiple Listing Service® certification marks owned by the Canadian Real Estate Association ("CREA") and used under license by the Board;

**AND WHEREAS**, the Board's Database constitutes a compilation of real estate listings within a specific geographic area (the "Database Compilation"), all rights in which are owned by the Board;

**AND WHEREAS**, each listing constitutes a compilation of text, photographs, images, and other geographic and property information (collectively, the "Content");

**AND WHEREAS**, all rights in the compilation of Content for each listing are also owned by the Board (the "Listing Compilation");

**AND WHEREAS**, the Content for each real estate listing is input by a Member using a copyright-protected and proprietary Data Input Form created by the Board, and pursuant to a User Authorization Agreement with the Board;

**DATA PROTECTION TOOLKIT**

**AND WHEREAS**, all rights in the coding used to organize the Content, and in the encoded Content for each listing, are owned or controlled by the Board;

**AND WHEREAS**, the Board's Database is accessible only by Board Members ("Members") in good standing, and by others as permitted by the Board in writing;

**AND WHEREAS**, the Licensee wishes to retain the Technology Provider to provide certain services to one or more Members of the Board, which requires that the Licensee be given access to the Board's Database;

**AND WHEREAS**, the Licensee has completed the Application Form attached as Schedule "A" hereto, which the Licensee warrants to be complete and accurate;

**AND WHEREAS**, the Board wishes to grant the Licensee access to the Board's Database, and the right to reproduce and use certain Member Listings (as defined below) and the Content contained therein, for the specific purpose set out below;

**NOW THEREFORE**, in consideration of the following terms and conditions, the adequacy and sufficiency of which are hereby acknowledged, the parties agree and undertake as follows:

## **I. ACCESS, LICENSE AND RESTRICTIONS**

### **Access and License**

Provided that the Licensee strictly complies with each of the terms and conditions of this Agreement, the Board hereby:

(i) agrees to permit the Licensee to access the Board's Database for the purpose of downloading the real estate listings, that is, the Listing Compilations including the Content, for each Member or Members identified in Schedule "A" hereto, as such listings may exist during the term of this Agreement (collectively, the "Member Listings"); and

### **(WORDING TO BE USED WHEN SERVICES PROVIDED TO MEMBERS)**

*(ii) grants to the Licensee a limited, non-exclusive, non-transferable license to download the Member Listings and to reformat, reproduce, modify, use, communicate and display the Member Listings only as follows: (a) for one or more websites located at www. \_\_\_\_\_ .com that is or are designed for, and only for, one or more Members identified in Schedule "A", (b) that contain only listings of those Members identified in Schedule "A", and (c) that is or are hosted by the Licensee under the Licensee's branding (i.e the branding of the Member or Members), and for no other purpose (the "License").*

**DATA PROTECTION TOOLKIT****WORDING TO BE USED WHEN SERVICES PROVIDED TO NON-MEMBERS (E.G. REAL ESTATE FRANCHISORS, ETC.)**

*(ii) grants to the Licensee a limited, non-exclusive, non-transferable license to download the Member Listings and to reformat, reproduce, modify, use, communicate and display the Member Listings only as follows: (a) for one or more websites located at www.\_\_\_\_\_.com that are designed to, and only to, promote the active real estate listings offered by the Licensee's employees, agents, and franchisees only; and (b) that is hosted by the Licensee under the branding of the Licensee, and for no other purpose (the "License").*

**(b)** The Board hereby agrees that the Licensee may permit the Technology Provider to exercise the rights set out in Section 1(a)(i) and (ii), above, as agent for the Licensee, provided the Technology Provider strictly complies with the terms and conditions of this Agreement.

**(c)** Should the Licensee wish to contract with a new technology provider, the Licensee shall so advise the Board, and shall provide the Board with the same type of information as set out in Schedule "A". The Board will evaluate the request, acting reasonably. Should the Board agree with the Licensee's request, the new technology provider must agree in writing to be bound by the terms and conditions of this Agreement as if it were named as a party in place of the existing Technology Provider

**(d)** The License shall not be effective until each of the following conditions have been satisfied:

**(i)** the receipt by the Board of a fully completed and properly executed Application Form, a copy of which is attached as Schedule "A" hereto and is incorporated by reference herein; and

**(ii)** payment by the Licensee of any license fee charged by the Board and any programming or other costs incurred by the Board in facilitating access to the Board's Database pursuant to this Agreement. The amount of any such fee and costs is set out in Schedule "B" hereto. Continuation of the License is also contingent upon payment by the Licensee of any and all fees and costs applicable to permit the downloading of the Member Listings, as may from time to time be fixed by the Board of Directors of the Board. The Board agrees to provide Licensee with at least sixty (60) days prior notice of any implementation of or increase in such fees and costs.

**(e)** This Agreement shall in no way be construed as granting or conveying to the Licensee or the Technology Provider any rights in the Board's Database, the Database Compilation, the Listing Compilation, the Member Listings, or the Content provided by the Board.

**DATA PROTECTION TOOLKIT**

**(f)** The Technology Provider acknowledges that nothing in the contract between the Technology Provider and Licensee modifies or alters in any way the scope of the License granted herein, and that the Technology Provider has acquired no right to access the Board's Database, and no right, interest or license in the Member Listings and Content, other than by way of this Agreement.

**(g)** The Licensee and Technology Provider acknowledge that the Board may enter into one or more license agreements with other parties, allowing them to download the identical Member Listings and Content, and to reproduce and use them in the same or similar ways as the Licensee and Technology Provider are intending to use them, and nothing in this Agreement shall prevent the Board from so doing.

**Restrictions**

**(h)** All rights not specifically granted to the Licensee and Technology Provider are reserved to the Board.

**(i)** Without limiting the generality of the foregoing, the Licensee and Technology Provider are specifically prohibited from doing any of the following:

**(i)** accessing any Member Listings other than for the Member(s) identified in Schedule "A" hereto;

**(ii)** using the Member Listings for any purpose other than as set out in this License, including without limitation seeking to sell, license, rent, remarket, or commercialize the Member Listings or any part thereof;

**(iii)** using the Member Listings in order to advertise, market or promote any business other than the business of the Member or Members [OR the business of the Licensee as a real estate franchisor];

**(iv)** using the Member Listings in order to create a searchable database of properties, or a database of historical and/or statistical information, that is in any way associated with the name or branding of the Technology Provider or any party other than the Member(s);

**(v)** displaying in any manner the MLS® or MULTIPLE LISTING SERVICE® trade marks owned by CREA, except to populate the a Member's website in accordance with CREA's Rules, Regulations and Policies;

**(vi)** allowing or assisting a third party to access the Board's Database, or transferring any of the Member Listings to a third party other than as specifically permitted by this Agreement;

**(vii)** sharing or disclosing any access codes or passwords provided to the Licensee or Technology Provider by the Board; and

**DATA PROTECTION TOOLKIT**

(viii) implying or holding out that the Board endorses any products or services of the Technology Provider or Licensee, unless the Licensee is a Member.

(j) Nothing in this Agreement precludes a Member of the Board from using his or her own factual information, documents, images or photographs not obtained from the Board's Database for any purpose, including participation in any listing or advertising service operated by the Licensee or any third party.

(k) Nothing in this Agreement precludes the Licensee or Technology Provider from:

(i) operating a listing or advertising service which uses information, documents, images, or photographs of Members or other persons that were not provided by the Board; or

(ii) using that Member's own factual information, documents, images or photographs that were provided by the Member and not by the Board for any purpose, including the operation of a listing or advertising service.

**II. PRIVACY**

(a) All Content is personal information within the meaning of the applicable privacy legislation and is therefore considered confidential information.

(b) Licensee and Technology Provider will not collect, use or disclose the Content in any manner not expressly permitted by this Agreement.

(c) Licensee and Technology Provider have implemented appropriate security measures to protect the Content, including taking appropriate steps to protect the Content against data scraping.

(d) "Appropriate security measures" means technical, physical and procedural controls to protect personal information against destruction, loss, alteration, unauthorized disclosure to third parties or unauthorized access by employees or contractors employed by Licensee or Technology Provider, whether by accident or otherwise, especially where such personal information is transmitted over electronic networks under the control of or as authorized by Licensee or Technology Provider.

(e) Licensee and Technology Provider shall promptly provide written notice to the Board about:

(i) any request for the disclosure of the Member Listings or Content, including requests by law enforcement authorities, without responding to the request unless required by law or judicial order; and

(ii) any accidental or unauthorized access to, or disclosure of, the Member Listings or Content.

**DATA PROTECTION TOOLKIT**

**(f)** Licensee and Technology Provider will promptly address and fully co-operate with regard to all enquiries from the Board with respect to their use of the Member Listings and Content.

**(g)** Licensee and Technology Provider will treat the Member Listings and Content at all times as confidential information and will bind their employees and agents in writing to the same terms as set out in this License.

**(h)** Licensee and Technology Provider will promptly return to the Board or destroy all personal information that is no longer necessary to fulfill the purpose for which it was made available, unless otherwise instructed by the Board or required by law.

**III. TERM**

This Agreement will take effect upon execution by all the parties and upon Licensee's compliance with Article 1, Section (d), and will remain in full force and effect for a period of one (1) year, and shall renew automatically for further terms of one (1) year each, unless this Agreement is terminated as provided for herein.

**IV. AVAILABILITY**

**(a)** The Board will permit the Licensee or Technology Provider, as its agent, to access the Board's Database based on the technical procedure set out in Schedule "A" hereto.

**(b)** The Board will make reasonable efforts to provide Licensee and Technology Provider with access to the Board's Database at all times that the Board's Database is in operation, except for those times required for normal and adequate maintenance of computer hardware and software or to address any security concerns. In no circumstances shall the Board be responsible or liable for any interruption in the provision of computer access to the Licensee or Technology Provider, even if the interruption occurred as a result of the Board's own negligence.

**(c)** The Licensee and Technology Provider acknowledge and agree that the Board may at any time modify or change the software and/or hardware and/or the formatting, structure and organization of the Content employed by the Board, and that such changes may affect the Licensee and Technology Provider's access to the Board's Database. In no circumstances shall the Board be responsible or liable as a result of any non-compatibility, and all costs associated with the redesign or modification to the Licensee and Technology Provider's software to ensure compatibility shall be borne solely by the Licensee and Technology Provider. The Board will make reasonable efforts to provide the Licensee and Technology Provider with advance notice of any change or modification in the operation of the Board's Database that might affect access to the Board's Database.

**DATA PROTECTION TOOLKIT**

**(d)** In the event that the Board believes, in its sole discretion, that the Licensee or Technology Provider has breached any term or condition of this Agreement, the Board may, in addition to any other rights it may have, immediately suspend Licensee and Technology Provider's access to the Board's Database until the breach has been remedied.

**V. TERMINATION**

This Agreement may be terminated:

- (i)** At any time by the Board or Licensee, without cause, on 30 days written notice to the other;
- (ii)** Immediately by the Board if the Board, in its sole discretion, determines that the Licensee or the Technology Provider has used, transferred or disclosed the Member Listings or Content or has accessed the Board's Database in a manner which breaches this Agreement;
- (iii)** Immediately by the Board or Licensee, if the other has breached any other material provision of this Agreement;
- (iv)** Immediately by the Board, if only one Member is identified in Schedule "A" and that Member ceases to be a Member of the Board. If two or more Members are identified in Schedule "A", then the License will expire with respect to the non-Member, but continue with respect to the remaining Member(s).
- (v)** The Technology Provider cannot terminate this Agreement. Notwithstanding the foregoing, the Technology Provider shall cease to have any further obligations under this Agreement (except as set out in Article VI, below) immediately following the termination or expiry of the contract between the Technology Provider and the Licensee.

**VI. OBLIGATIONS ON TERMINATION**

- (a)** Upon termination of this Agreement for any reason, the Licensee agrees as follows:
  - (i)** the Licensee shall have no right to download the Member Listings, and shall immediately cease doing so; and
  - (ii)** the Licensee shall immediately cease any unauthorized or improper use, reproduction or distribution of the Member Listings in the Member's possession, power or control, and shall destroy any and all unauthorized copies thereof.

**DATA PROTECTION TOOLKIT**

**(b)** Upon termination of this Agreement for any reason, the Technology Provider agrees as follows:

**(i)** the Technology Provider shall have no right to access the Board's Database, and shall immediately cease doing so;

**(ii)** the Technology Provider shall have no right to download the Member Listings, and shall immediately cease doing so;

**(iii)** the Technology Provider shall have no right to continue reproducing, modifying, publishing, exhibiting, distributing, transmitting and/or using the Member Listings including the Content provided by the Board, and shall immediately cease doing so;

**(iv)** the Technology Provider shall immediately destroy or, at the Board's option, return to the Board, all copies of the Member Listings in the Licensee's power, possession or control;

**(v)** the Technology Provider shall delete from any of its software, any functionality permitting access to the Board's Database; and

**(vi)** the Technology Provider shall immediately make any payments to the Board that are required pursuant to Article 1, Section (d)(ii), above.

**(c)** Articles II, V, VI, VII, VIII, IX, XII, XIII and XIV shall survive any termination of this Agreement and shall remain in full force and effect for the full applicable limitation period or periods.

## **VII. INTELLECTUAL PROPERTY RIGHTS**

**(a)** The Licensee and Technology Provider acknowledge that the Board owns all right, title and interest, including all copyrights, trade marks and other proprietary rights, in and to the Board's Database including the Database Compilation, the Listing Compilation, the Member Listings, and the Content provided by the Board.

**(b)** Except as specifically provided by this Agreement, the Technology Provider has no right to access the Board's Database, or to produce, reproduce, use, modify, publish, exhibit, download, upload, post or distribute the Member Listings or any part thereof.

**(c)** The Licensee and Technology Provider shall comply with, observe, and be bound by all restrictions, copyright notices or other limitations on access to the Board's Database and use of the Member Listings, as may be adopted by the Board from time to time;

**(d)** The Licensee and Technology Provider acknowledge that MLS®, Multiple Listing Service®, REALTOR®, and associated marks and logos are trademarks owned by CREA and used under license by the Board.

**DATA PROTECTION TOOLKIT**

(e) The Technology Provider agrees and acknowledges that it has no right to use or display any trademark owned by CREA, except to populate the Licensee's website or a Member's Website except in accordance with CREA's Rules, Regulations and Policies.

**VIII. LIMITATION OF LIABILITY AND INDEMNITY**

(a) The License is granted on a strictly "as is" basis in all respects. Access to the Board's Database and Content is solely at the risk of the Licensee and Technology Provider, including without limitation the risk that the Content is inaccurate or incomplete, or that the Content and the transmission thereof may be corrupted or contain viruses, bugs or other defects.

(b) THE BOARD MAKES NO WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, IN FACT OR IN LAW, INCLUDING ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OWNERSHIP, ACCURACY, COMPLETENESS, OR FITNESS FOR A PARTICULAR PURPOSE, AND THE BOARD DISCLAIMS ANY RESPONSIBILITY REGARDING THE OPERATION OF THE BOARD'S DATABASE AND THE ACCURACY OF THE DATA, OR THEIR SUITABILITY FOR THE PURPOSES OF THE LICENSEE OR TECHNOLOGY PROVIDER.

(c) To the extent permitted by law, in no event shall the Board be liable for any indirect, special, incidental, consequential or punitive damages, including but not limited to those for business interruption or loss of profits, even if the Board has been notified of the possibility of such damage.

(d) The Board's maximum liability arising from any and all claims in connection with this Agreement shall not exceed the greater of (i) all license fees and costs paid by the Licensee, and (ii) \$100.

(e) The Licensee shall indemnify the Board and its officers, directors, employees and agents, and CREA and its officers, directors, employees and agents, from any and all claims, actions, causes of action, or liability of any kind, including all costs and legal fees, arising in any way from the exercise by the Licensee of its rights under this Agreement.

(f) The Technology Provider shall indemnify the Board and its officers, directors, employees and agents, and CREA and its officers, directors, employees and agents, from any and all claims, actions, causes of action, or liability of any kind, including all costs and legal fees, arising in any way from the exercise by the Technology Provider of its rights under this Agreement.

**DATA PROTECTION TOOLKIT****IX. INJUNCTIVE RELIEF**

(a) The Licensee and Technology Provider acknowledge that any breach of this Agreement or any term thereof by the Licensee or Technology Provider may result in irreparable and continuing damage to the Board for which there will be no adequate remedy in damages. In the event of such a breach, the Board shall be entitled to seek injunctive relief, and the Licensee and Technology Provider consent to the issuance of an interim and interlocutory injunction, it being understood that the Board has the absolute right to terminate this Agreement without cause upon 30 days prior notice. This right to injunctive relief is in addition to any other remedies the Board may have.

**X. ASSIGNMENT**

The Licensee and Technology Provider shall NOT assign this Agreement or any rights hereunder, nor shall they sub-license any rights hereunder, without the prior written consent of the Board, and subject to such terms as the Board may reasonably request, including without limitation that any prospective assignee or sub-licensee agree in writing to be bound by the terms and conditions of this Agreement. The Board may assign this Agreement or its rights hereunder upon written notice to the Licensee and Technology Provider. This Agreement shall be binding upon and enure to the benefit of the parties and their permitted successors and assignees.

**XI. NOTICE**

Any notice under this Agreement is sufficiently given if delivered personally or if sent by ordinary prepaid mail or prepaid courier or electronic facsimile machine addressed as follows:

- (i) to the Board at:
- (ii) and to the Licensee at:
- (iii) and to the Technology Provider at:

or at such other addresses as the parties may designate from time to time pursuant to Article XI.

(b) Any such notice shall be conclusively deemed to have been given and received upon the same day if personally delivered or sent by electronic facsimile or, if mailed, three (3) Business Days after the same is mailed, except in the event of a postal interruption or strike in which case notice shall be provided by personal delivery, prepaid courier or electronic facsimile.

**XII: SEVERABILITY**

(a) If any provision of this Agreement is held to be unenforceable or invalid by any Court of competent jurisdiction, the invalid provision shall be severable and the validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby. For any provision held unenforceable or invalid, the parties agree to substitute a provision as like in scope and effect as may be permitted by law.

**DATA PROTECTION TOOLKIT**

(b) The failure by a party to enforce any provision of this Agreement shall not be construed as a waiver of that provision or of any other provision. Furthermore, the intentional waiver by a party of any one provision shall not be construed as the intentional waiver of any other provision.

**XIII: ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, negotiations, representations and proposals, written or oral, relating to the subject matter hereof. The Recitals and Schedules form part of this Agreement. This Agreement may be executed by fax and in counterparts.

**XIV: GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the Province of [ ] and the laws of Canada applicable therein. The parties hereby attorn to the exclusive jurisdiction of the Superior Court of the Province of [ ] to adjudicate any and all disputes regarding the validity, interpretation and/or enforcement of this Agreement.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement and agree to be bound by its terms.

**REAL ESTATE BOARD**

Per: \_\_\_\_\_  
Name:  
Title:

I have the authority to bind the Corporation

**NAME OF LICENSEE**

Per: \_\_\_\_\_  
Name:  
Title:

I have the authority to bind the Corporation

**NAME OF TECHNOLOGY PROVIDER**

Per: \_\_\_\_\_  
Name:  
Title:

I have the authority to bind the Corporation

**DATA PROTECTION TOOLKIT****SCHEDULE "A" - APPLICATION FORM**

## Purpose of this form

1. The [ ] Real Estate Board (the "Board") owns a computerized database of real estate listings (the "Board's Database") which is operated under the MLS® and Multiple Listing Service® certification marks owned by the Canadian Real Estate Association ("CREA") and used under license by the Board.

2. The purpose of this form is to provide certain information to the Board, so that the Board can evaluate the applicant's request that the Board permit the applicant and its technology provider to access the Board's Database, for the purpose of downloading the real estate listings of one or more Members of the Board. If the Board elects to enter into an agreement with the applicant and technology provider, this form will become a schedule to that agreement.

## Identification of applicant

3. The applicant's full legal name is: [add]

4. The applicant's registered head office is located at: [add address]

5. The applicant's main business or businesses can be described as follows: [describe]

6. The technical contact with whom the Board should correspond is [add], and that person's contact information is as follows: [add telephone number and email address]

7. The administrative contact with whom the Board should correspond is [add], and that person's contact information is as follows [add telephone number and email address]

8. The applicant is/are Member(s) of the Board

OR

The applicant has entered into an agreement with Member or Members whose names and contact information are provided below, and who have authorized the applicant to access and download their real estate listings as may be permitted by the Board.

9. If a license is granted by the Board, the applicant wishes to make the following use of the Member's real estate listings that are downloaded from the Board's Database: [describe]

**DATA PROTECTION TOOLKIT**

Identification of technology provider

- 10. The applicant has entered agreement with the following technology provider [add], with a head office at: [add]
- 11. The agreement between the applicant and the technology provider authorizes the technology provider to do the following: [describe services to be provided]
- 12. The technical contact with whom the Board should correspond at the technology provider is [add], and that person's contact information is as follows: [add telephone number and email address]
- 13. The administrative contact with whom the Board should correspond at the technology provider is [add], and that person's contact information is as follows [add telephone number and email address]

Access to Board's Database

- 14. The following technical procedure will apply if the Board, applicant and technology provider enter into the Board's standard Access and License Agreement, and after all pre-conditions set out therein have been satisfied. Please note that the technical procedure may change at any time, as provided for in the Access and License Agreement.
- 15. [Set out technical procedure in detail]

Name of Members

- 16. The applicant has entered into an agreement with the following Member or Members of the Board: [identify each Member, with contact information]

Date:

Per:

[signature of signing officer for applicant]

**DATA PROTECTION TOOLKIT****(13) Board/Association Website Agreement****Parties:**

Real Estate Board/Association ("Board") & Third Party Website Developer

**Purpose:**

This agreement protects the Board when hiring a third party to develop a website on its behalf. As valuable proprietary information (the listing content) is being provided to the third party, it is critical that the restrictions on use by the third party, and the ownership of the content, be clearly established.

The sample agreement provides that:

- (i) the website developer will only use the listing content as provided in the agreement;
- (ii) the Board is the owner of all of the MLS® database and the content, including the reconfigured content;
- (iii) the website developer assigns all rights it may have in any aspect of the content;
- (iv) A schedule "A" is attached to set out the website development details.

**Notes:**

This agreement provides the basic content use protection. The details of what services the website developer will provide, and the cost associated with those services are terms that need to be added. The website developer may have its own contract. In that case, at the very least, the sections of this sample contract should be added as a schedule to that agreement.

**DATA PROTECTION TOOLKIT**

**BOARD/ASSOCIATION WEBSITE AGREEMENT (13)**

**BETWEEN:**

\_\_\_\_\_

**REAL ESTATE BOARD/ASSOCIATION**  
**(the "Board")**

**and**

\_\_\_\_\_

**(Name of Company/Individual)**  
**(the "Developer")**

**1. PURPOSE**

The Board engages the Developer to provide website development services for the benefit of the Board.

**2. LICENSE**

(a) The Board grants to the Developer a non-exclusive limited license to access the Board's database for the purpose of designing and developing the Board's website as provided for in Schedule "A".

(b) The Developer agrees to only use the Content as provided in this Agreement and agrees that it shall not copy, sell, license, rent, remarket, publish, distribute, disseminate or in any way commercialize the Content or any part thereof.

**3. OWNERSHIP**

(a) The Developer acknowledges and agrees that all right, title, and interest including all copyrights, trademarks and other proprietary rights, in and to the Board's database, the database compilation, the listing compilation and Content or any portion of the Content, together with all modifications, enhancements, and derivative works of the Content, whether or not made by the Developer, are and shall remain with the Board.

(b) The Developer acknowledges and agrees that this Agreement shall in no way be construed as granting or conveying to the Developer any rights in the Board's database, the database compilation, the listing compilation, or the content.

(c) The Developer agrees to assign and transfer and does hereby irrevocably assign and transfer to the Board any and all right, title, and interest including all copyright rights and other intellectual property rights, which the Developer may have or acquire in the Content, and any and all modifications or derivative works made by the Developer to the Content.

(d) The Developer agrees that it will not challenge or take any action inconsistent with the Board's ownership rights.

**DATA PROTECTION TOOLKIT****4. REPRESENTATIONS AND WARRANTIES**

The Developer warrants that it is under no obligation or restriction that would in any way interfere or conflict with the work to be performed by the Developer under this Agreement.

**5. ASSIGNMENT**

The Developer shall not assign this Agreement or any of its rights hereunder, nor shall the Developer sub-license any of its rights hereunder, without the prior written consent of the Board, and subject to such terms as the Board may reasonably request, including without limitation that any prospective assignee or sub-licensee enter into a new agreement with the Board. The Board may assign this Agreement or its right hereunder upon written notice to the Developer. This Agreement shall be binding upon and enure to the benefit of the parties and their permitted successors and assignees.

**6. PRIVACY AND CONFIDENTIALITY**

(a) The parties shall observe the requirements of the *Personal Information Protection and Electronic Documents Act* and/or any successor legislation, any legislation of similar effect and in accordance with any other applicable laws in the Province of \_\_\_\_\_ or such other province as its business may be conducted.

(b) The Developer acknowledges that he/she may have access to information that is confidential.

(c) The Developer agrees to not disclose the confidential information to any third party and that it will not use any confidential information for any purpose other than for the performance of its obligations under this Agreement.

(d) The Developer agrees to use all reasonable efforts to protect all confidential information from unauthorized access, distribution, copying or use.

(e) The Developer agrees to establish and maintain effective security procedures to prevent unauthorized access to the information.

(f) The Developer shall promptly provide notice to the Board about any accidental or unauthorized access to or disclosure of any information.

**7. TRADEMARK RIGHTS**

(a) The Developer acknowledges that the MLS®, Multiple Listing Service®, REALTOR®, REALTORS® and associated marks and logos are trademarks owned by The Canadian Real Estate Association and used under license by the Board.

(b) The Developer agrees that he/she has no right to use or display any of these trademarks except as provided for in this Agreement and only in accordance with CREA's Rules, Regulations and Policies.

**DATA PROTECTION TOOLKIT**

(c) The Developer agrees that, during the continuation of the Agreement and thereafter, it will not challenge the validity or ownership of CREA's Marks, nor claim any right to use or register any initials, word or design that is identical with or similar to the Marks.

(d) The Developer shall comply with, observe and be bound by all restrictions, copy-right notices or other limitations on access to the Board's database as may be adopted by the Board from time to time.

**8. TERMINATION**

(a) The Board may terminate this Agreement at any time by giving 30 days written notice to the Developer.

(b) Either party may terminate this Agreement immediately if the other party has breached any material provision of this Agreement.

(c) Upon termination of this Agreement, the Developer agrees to immediately deliver to the Board, as prescribed by the Board, all materials and work product, including but not limited to all code, documentation, reports, images, text, artwork, etc.

**9. INDEMNIFICATION**

The Developer agrees to indemnify the Board and its officers, directors, employees and agents from any and all claims, actions, causes of action, or liability of any kind, including all costs and legal fees, arising in any way from any claim arising out of this contract.

**10. SURVIVAL OF WARRANTIES AND REPRESENTATIONS**

All warranties and representations contained herein shall survive the termination of this contract.

**11. GOVERNING LAW**

This Agreement shall be governed by the laws in the Province of \_\_\_\_\_.

SIGNED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 200\_.

**REAL ESTATE BOARD/ASSOCIATION**

**DEVELOPER**

Print name: \_\_\_\_\_

Print name: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

**Schedule "A"**

Include the specifics for the design and development of the website.

**DATA PROTECTION TOOLKIT****(14) Third Party Access Agreement****Parties:**

**Real Estate Board/Association (“Board”) and Subscriber**

**Purpose:**

A number of Boards allow limited MLS® access to third parties who are not member REALTORS®. For example, some Boards give appraisers access to certain fields of MLS® content to help facilitate accurate valuations. CREA has strongly recommended that if such access is given, Boards should ensure that it is given by way of contract, so that content ownership and restrictions on use of the information are clearly defined. This agreement contains clauses that:

- (i) confirm the Board’s ownership of the MLS® database and of the listing content;
- (ii) restrict the uses of the content to those set out in the contract;
- (iii) protect the Board from liability from any action based on incomplete or inaccurate content;
- (iv) allow for the termination of the access at any time.

**Notes:**

While this is a stand-alone agreement, it requires customization in Schedule A to set out the specific uses allowed. These uses may vary depending on the nature of the third party, but they should always be very carefully and very specifically defined so that there can be no confusion as to what uses are allowable.

**DATA PROTECTION TOOLKIT**

**THIRD PARTY ACCESS AGREEMENT (14)**

**BETWEEN:**

\_\_\_\_\_ **REAL ESTATE BOARD/ASSOCIATION**  
(the "Board")

and

\_\_\_\_\_ **(Name of Company/Individual)**  
(the "Third Party")

**1. PURPOSE**

The Board agrees to provide the Third Party with access to specific information from the Board's database as set out in this Agreement.

**2. LICENSE**

(a) The Board grants to the Third Party a non-exclusive limited license to access a certain portion of the Board's database information as provided for in Schedule "A".

(b) The Third Party shall not copy, modify, sell, license, rent, remarket, publish, distribute, disseminate or in any way commercialize the information or any part thereof, except as permitted in this Agreement.

(c) The Third Party shall not use or provide any of the information supplied hereunder to any other individual or firm for marketing or forecasting purposes or for any other purposes, except as permitted in this Agreement.

(d) The Third Party agrees that the Board may deny access to the information to any individual at any time for any reason.

**3. OWNERSHIP**

(a) The Third Party acknowledges and agrees that all right, title, and interest including all copyrights, trademarks and other proprietary rights, in and to the Board's database, the database compilation, the listing compilation and Content or any portion of the Content, together with all modifications or enhancements, are and shall remain with the Board.

(b) The Third Party acknowledges and agrees that this Agreement shall in no way be construed as granting or conveying to the Third Party any rights in the Board's database, the database compilation, the listing compilation, or the content.

(c) The Third Party agrees that it will not challenge or take any action inconsistent with the Board's ownership rights.

**DATA PROTECTION TOOLKIT****4. ASSIGNMENT**

The Third Party shall not assign this Agreement or any of its rights hereunder, nor shall the Third Party sub-license any of its rights hereunder, without the prior written consent of the Board and subject to such terms as the Board may reasonably request, including without limitation that any prospective assignee or sub-licensee enter into a new agreement with the Board. The Board may assign this Agreement or its right hereunder upon written notice to the Third Party. This Agreement shall be binding upon and enure to the benefit of the parties and their permitted successors and assignees.

**5. PRIVACY AND CONFIDENTIALITY**

(a) The parties shall observe the requirements of the *Personal Information Protection and Electronic Documents Act* and/or any successor legislation, any legislation of similar effect and in accordance with any other applicable laws in the Province of \_\_\_\_\_ or such other province as its business may be conducted.

(b) The Third Party acknowledges that the listing content and other information on the Board's MLS® database contains personal information and is all to be considered confidential.

(c) The Third Party agrees to not disclose any information to any third party and that it will not use any information for any purpose other than for the performance of its obligations under this Agreement.

(d) The Third Party agrees to use all reasonable efforts to protect all information from unauthorized access, distribution, copying or use.

(e) The Third Party agrees to establish and maintain effective security procedures to prevent unauthorized access to the information.

(f) The Third Party shall promptly provide notice to the Board about any accidental or unauthorized access to or disclosure of any information.

(g) The Third Party acknowledges that the password provided by the Board is not to be shared with or disclosed to any other party.

**6. INTELLECTUAL PROPERTY RIGHTS**

(a) Except as specifically provided by this Agreement, the Third Party has no right to access the Board's database, or to produce, use, modify, publish, exhibit, download, upload, post or distribute the Board's database information.

(b) The Third Party shall comply with, observe and be bound by all restrictions, copyright notices or other limitations on access to the Board's database, as may be adopted by the Board from time to time.

(c) The Third Party acknowledges that the MLS®, Multiple Listing Service®, REALTOR®, REALTORS® and associated marks and logos are trademarks owned by The Canadian Real Estate Association. The Third Party agrees that he/she has no right to use or display any of these trademarks.

(d) The Third Party agrees that, during the continuation of the Agreement and thereafter, it will not challenge the validity or ownership of the CREA Marks, nor claim any right to use or register any initials, word or design that is identical with or similar to the Marks.

**DATA PROTECTION TOOLKIT****7. TERMINATION**

(a) Either party may terminate this Agreement at any time on 30 days written notice to the other.

(b) The Board may terminate this Agreement immediately if:

- (i) the Third Party has breached any material provision of this Agreement;
- (ii) the Third Party's password is disclosed to or used by any other person, or in any unauthorized fashion;
- (iii) for any reason the Board determines that the continuation of this Agreement does not serve the best interests of its members or of organized real estate.

**8. LIMITATION OF LIABILITY AND WARRANTIES**

(a) The license is granted on a strictly "as is" basis in all respects. Access to the Board's database and information is solely at the risk of the Third Party, including without limitation the risk that the information is inaccurate or incomplete, or that the information and the transmission thereof may be corrupted or contain viruses, bugs or other defects.

(b) The Board makes no warranties, conditions or representations, express or implied, in fact or in law including any warranty of merchantability, non-infringement, ownership, accuracy, completeness, or fitness for a particular purpose, and the Board disclaims any responsibility regarding the operation of the Board's database and the accuracy of the data, or their suitability for the purposes of the Third Party.

(c) To the extent permitted by law, in no event shall the Board be liable for any indirect, special, incidental, consequential or punitive damages, including but not limited to those for business interruption or loss of profits, even if the Board has been notified of the possibility of such damage.

**9. INDEMNIFICATION**

The Third Party agrees to indemnify the Board and its officers, directors, employees and agents from any and all claims, actions, causes of action, or liability of any kind, including all costs and legal fees, arising in any way from any claim arising out of this contract.

**10. SURVIVAL OF WARRANTIES AND REPRESENTATIONS**

All warranties and representations contained herein shall survive the termination of this contract.

**DATA PROTECTION TOOLKIT**

**11. GOVERNING LAW**

This Agreement shall be governed by the laws in the Province of \_\_\_\_\_.

SIGNED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 200\_.

**REAL ESTATE BOARD/ASSOCIATION**

**THIRD PARTY**

Print name: \_\_\_\_\_

Print name: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

**Schedule "A"**

Provide details on which specific information can be accessed and by whom.

# EXHIBIT 8



The Canadian Real Estate Association

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### REALTOR® Codes

<a href="#">Code of Ethics</a>
<a href="#">Privacy</a>
<a href="#">Pledge of Competition</a>
<a href="#">Principles of Competition</a>

### Privacy

[Privacy Code](#)  
[Privacy FAQs](#)

#### Privacy and REALTORS®

In the usual course of real estate transactions, REALTORS® may require from buyers and sellers, personal and property information. Some of this information may be considered private. Collecting and sharing this and the real estate transaction information is an essential part of the buying and selling process.

At the same time, few things are more important to individuals than their privacy. REALTORS® recognize the rights of buyers and sellers to protect and control their personal information. REALTORS® are committed to using fair information practices when dealing with your personal information.

The federal government and three provincial governments now have laws in place dealing with how companies can collect and use your personal information. In British Columbia and Alberta, businesses abide by the Personal Information Protection Act (PIPA) of each province; in Québec, it is the Act Respecting the Protection of Personal Information in the Private Sector.

In all other provinces and territories, the Personal Information Protection and Electronic Documents Act (PIPEDA), the federal legislation, applies.

The basic concept of all of these laws is protection of consumer privacy. The laws require that consumers consent to the collection of their personal information, and provide restrictions on how that information may be used, disclosed, and kept. They allow consumers to access any of their own personal information that companies may have collected, and they provide for remedies in the event that the information on file is incomplete or inaccurate.

The CREA Privacy Code is based on the 10 principles of PIPEDA, the privacy legislation. Our Code has been in place since 2001, and is the declaration of organized real estate to the public that we respect the privacy rights of individuals and have adopted policies and procedures to protect those rights.

The Privacy Code of The Canadian Real Estate Association sets out the commitment of REALTORS® make regarding the privacy of your personal information. We will:

- Obtain your consent when we collect, use or disclose your personal information
- Only use the information for the purposes we discussed with you
- Allow you access to your information
- Have privacy policies that are clear and understandable

#### Privacy Code

##### PRINCIPLE 1 - ACCOUNTABILITY

Members are responsible for the proper management of all personal information under their control, and shall designate one or more persons to be accountable for compliance.

##### PRINCIPLE 2 - IDENTIFYING THE PURPOSES OF PERSONAL INFORMATION

Members shall identify the purposes of collecting information before or at the time the information is collected.

##### PRINCIPLE 3 - OBTAINING CONSENT

The knowledge and consent of the consumer are required for the collection, use or disclosure of personal information except where inappropriate.

##### PRINCIPLE 4 - LIMITING COLLECTION OF PERSONAL INFORMATION

Members shall limit the collection of personal information to that which is necessary for the purposes identified.

##### PRINCIPLE 5 - LIMITING USE, DISCLOSURE AND RETENTION OF PERSONAL INFORMATION

Members shall use or disclose personal information only for the reason it was collected, except with the consent of the consumer or as required by law.

##### PRINCIPLE 6 - ACCURACY OF PERSONAL INFORMATION

Members shall keep personal information as accurate, complete, current and relevant as necessary for its identified purpose.

**PRINCIPLE 7 - PROTECTING INFORMATION**

Members shall protect personal information with safeguards appropriate to the sensitivity of the information.

**PRINCIPLE 8 - OPENNESS CONCERNING POLICIES AND PRACTICES**

Members shall make readily available to consumers specific information about their policies and practices relating to the management of personal information.

**PRINCIPLE 9 - CONSUMER ACCESS TO PERSONAL INFORMATION**

Upon request, members shall inform a consumer of the existence, use and disclosure of his or her personal information and shall give the individual access to that information.

**PRINCIPLE 10 - CHALLENGING COMPLIANCE**

A consumer shall be able to address a challenge concerning compliance with the above principles to the designated accountable person or persons in the member office.

**Frequently Asked Privacy Questions (FAQs)**

**1. What is personal information?**

Personal information is any information about an identifiable individual. This does not include information which is publicly available such as a phone directory listing your name, address and telephone number.

**2. How do REALTORS® collect personal information?**

Most information will be obtained directly from you, the client. REALTORS® may also collect information from other sources such as credit bureaus and government agencies, as needed. At the time information is collected, you will be told what uses will be made of it, and your consent to that collection and use will be obtained.

**3. What do REALTORS® do with my information?**

Your information is used to facilitate the real estate transaction. Effectively marketing your house involves advertising the property in any medium, including electronic media (newspapers, real estate publications, Internet web sites) and will also disclosing property information to other salespersons and prospective buyers. If the listing is on MLS®, the property information will be given to the real estate Board or Boards operating the Multiple Listing Service(s)®.

The listing information will be distributed through the MLS® system to any persons authorized to use the service (which may include other REALTORS®, appraisers, government departments and others) and may be marketed by the Board in various media, including the Internet. Property information, including sales data, is kept in the MLS® database following the completion of the transaction and is available to users of the system for comparative market analysis and valuation purposes.

Both current and historical data is essential to the operation of the MLS® system and by placing your listing on the MLS® system, you are agreeing to allow this ongoing use of listing and sales information.

**4. How do I find out what personal information a REALTOR® has about me?**

You should be able to see your personal information held by a realty firm or real estate Board/Association by calling, writing or visiting the organization in person. There may be specific procedures you have to follow or forms you have to fill out, and the firm or Board/Association has the right to charge a minimal fee for the service.

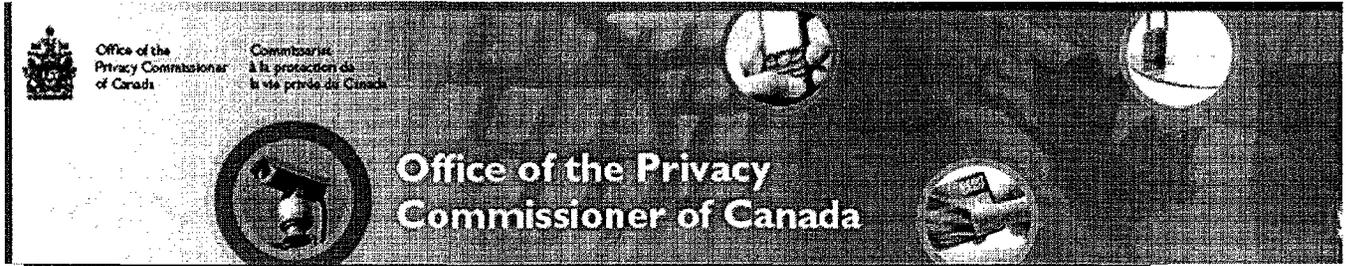
**5. Can I correct my personal information that is wrong?**

Yes, you can. Contact the particular firm or Board/Association, explain the correction you are requesting and why. If you can show the information is inaccurate or incomplete, you can request that a document or record with the corrected information be included in the file.

**6. Is there a review process?**

Yes. If you have any questions or concerns about the way your personal information has been collected, used or disclosed or if access to your personal information has been improperly refused, or if the company has refused to correct erroneous information, try to settle the matter directly with the firm. It has procedures in place to respond to complaints. If you're not satisfied, you can contact the Privacy Commissioner of Canada, at [info@privcom.gc.ca](mailto:info@privcom.gc.ca) or by calling 1-800-282-1376.

# EXHIBIT 9



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<p><b>Got Spam?</b> Learn how to protect yourself</p> <p><b>GO</b></p>	<p><b>Securing Personal Information for Organizations</b></p> <p><b>GO</b></p>	<p><b>Build a privacy plan for your business</b></p> <p><b>GO</b></p>	<p><b>Privacy Quiz</b> for Private Sector Organizations</p> <p><b>GO</b></p>
<p><b>Research</b> funded by the OPC</p>	<p><b>Privacy Breach?</b> Information for Organizations</p> <p><b>GO</b></p>	<p><b>How to lodge a Privacy complaint</b></p> <p><b>GO</b></p>	

### Commissioner's Findings

- [Findings under the \*Privacy Act\*](#)

Year

- [Findings under the \*Personal Information Protection and Electronic Documents Act\* \(PIPEDA\)](#)

Year

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**PIPEDA Case Summary #2009-002****Realtor advertises purchase price of condominium  
in trade publication without buyer's consent**

[Principle 4.3; paragraph 7(3)(h.1) and subsection 2(1)]

**Lessons Learned**

- In some contexts, "personal information" can include the purchase price of real estate since it can reveal something of a personal nature about the buyer/individual.
- It is not enough for personal information to be simply *available* from a public source (e.g. a municipal/provincial property registry) for an organization to be able to lawfully disclose it without obtaining the individual's consent: The information must also have been *collected* from the publicly available source for the specific purpose of making the disclosure.

Two months after purchasing a condominium, a woman noticed an advertisement for it in a weekly real estate newspaper. The ad showed the condo building photo, the street and unit address, and a large caption from which the actual purchase price could be calculated. The buyer complained that the price she paid was personal information and that she had not authorized its disclosure.

The Assistant Commissioner agreed that the purchase information is personal and that consent should have been sought before publishing it in this case, even though such information can be publicly available.

*The following is an overview of the investigation and the Assistant Commissioner's findings.*

**Summary of Investigation**

The complainant entered into an agreement to purchase a condominium. Two months after the sale, the salesperson placed an advertisement in a weekly real estate publication that showed the number of the condo unit, the building address, a photograph of its exterior, and the caption "Sold for 99.3% of asking price". The complainant claims that her consent for this advertisement and the disclosure of her personal information had not been obtained.

The complainant then lodged a complaint against the salesperson with the organization governing the real estate industry in her province. The organization recognized the salesperson's actions as being in violation of its profession's code of ethics and consequently reprimanded him.

The complainant was not satisfied with the resolution and filed a complaint with this Office. Both the salesperson and the real estate company employing him acknowledged that the disclosure was made in error and without the consent of the complainant. The company also committed to developing policy and procedure to institute an appropriate degree of oversight and to advise its salespeople accordingly with respect to obtaining the appropriate consent before disclosing client personal information.

### Findings

Issued February 20, 2009

Subsection 2(1) defines "personal information" as information about an identifiable individual, but does not include the name, title or business address or telephone number of an employee of an organization.

*Application:* Principle 4.3 stipulates that the knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except where inappropriate.

Paragraph 7(3)(h.1) states that for the purpose of Principle 4.3, and despite the note that accompanies that clause, an organization may disclose personal information without the knowledge or consent of the individual only if the disclosure is of information that is publicly available and is specified by the regulations.

In making her determinations, the Assistant Commissioner deliberated as follows:

- This Office's case summary # 2008-390 explains how residential appraisal documents, including market value of a property, may constitute personal information in some contexts. Moreover, the Act defines personal information as information about an identifiable individual. In the Assistant Commissioner's view, in this case the combination of the condominium address and the purchase price paid by the new owner is sufficient information to identify the complainant.
- This Office concluded in another case (case summary # 2006-349) that information about property is personal information if it reveals something of a personal nature about an individual. For example, the purchase price in post-sale advertising could reveal personal traits of the complainant, such as the abilities to pay or to bargain.
- Thus, the purchase price of a property can be considered personal information.
- The Assistant Commissioner also examined whether the respondent obtained consent from the complainant to disclose her personal information, pursuant to Principle 4.3. Since the complainant and the respondent stated to this Office that consent was not obtained, the facts were not disputed, and the Assistant Commissioner found that Principle 4.3 was contravened.
- Lastly, the Assistant Commissioner determined that the disclosure of the purchase price in the present case is not allowable under the exclusion from consent provision of paragraph 7(3)(h.1). This provision states that consent need not be sought if the personal

information is publicly available. The price paid by the complainant for her property would quite likely be accessible to the public through public property registries.

- However, this Office interprets paragraph 7(3)(h.1) to apply in situations where the information is actually collected from a publicly available source. In the case at hand, the information would have been collected from purchase agreements that the salesperson was privy to in the course of his duties as sales agent for the seller.

### **Conclusion**

The Assistant Commissioner concluded that the complaint was well-founded and resolved.

#### ***See also***

Case Summary # 2008-390

Case Summary # 2006-349

Date Modified: 2009-05-14

  
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[Important Notices](#)

# EXHIBIT 10



# ADVERTISING GUIDELINES

## UPDATE:

On June 1, 2006, the Ministry of Government Services amended Section 36 of Ontario Regulation 580/05 by adding the following subsection:

(4.1) Clauses (4) (a) and (b) do not apply to a registrant who advertises before January 1, 2007.

The amendment relates specifically to the terms used by a brokerage, broker of record or sole proprietor in advertising materials.

Effective March 31, 2006



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## Introduction

These guidelines have been developed to assist registrants in complying with advertising requirements found in the RECO Code of Ethics: Ontario Regulation 580/05 under the *Real Estate and Business Brokers Act, 2002* (the "Act").

The types of advertising issues that are commonly reviewed in relation to the Code of Ethics are the principal topic of this guide. These guidelines will not encompass every type of promotional material being used or contemplated by registrants, however, they convey the principles that Discipline Committees use in determining whether an advertisement complies with the Code of Ethics.

These Guidelines refer to the Code of Ethics under the *Real Estate and Business Act, 2002*. Registrant conduct prior to March 31, 2006 is covered by the Code of Ethics enacted under RECO By-law No. 10. Although there are differences between the two Codes, the requirements associated with these guidelines are similar to those that apply to the Code of Ethics enacted under RECO Bylaws.

*Please note that in addition to complying with the Code of Ethics, registrant advertising must also comply with a number of other provisions in the Act and its regulations as well as other applicable federal and provincial laws related to advertising.*

## I. Application

- 1.1 These Guidelines apply to all advertising by or on behalf of all registrants. This includes all brokerages, brokers and salespersons.
- 1.2 Advertising includes any activity, public notice or representation authorized, made by or on behalf of a registrant that promotes a registrant or the business, services or real estate trades of a registrant in any medium including print, radio, television or publication on the Internet. Advertising includes all promotional events, printed material however distributed, circulars, pamphlets, bill boards, signs, business cards, letterheads, bench signs, fax cover sheets and other similar material.

## II. Registrant Identification

### a) Identification of Brokerage

- 2.1 All advertising by registrants, including brokerages, brokers and salespersons, must prominently identify the name of the relevant brokerage and provide contact information for the brokerage (CODE, Subsec. 36 (1) and (3)). It must be clear that it is the brokerage that is the party advertising.
- 2.2 Any advertising identifying salespersons and brokers must also prominently identify the brokerage that they are employed by using the brokerage's registered name and designation (CODE, Subsec. 36 (3)).
- 2.3 A salesperson or broker must not, in any advertising, identify himself or herself as being registered with a brokerage, other than the brokerage with which he or she is actually registered (CODE, Subsec. 36(3)).

### b) Use of Registered Names

- 2.4 Registrants must clearly and prominently identify themselves in all advertising and use their registered name when advertising. A registrant must not, in any advertising, identify himself, herself or itself using any name other than his, her or its name, as applicable (CODE, Subsec. 36(1)).
- 2.5 Any advertising by a brokerage that identifies salespersons or brokers it employs must use the registered names of those salespersons or brokers. Brokerages may refer to the registrant certificates or consult the RECO website to verify this information (CODE, Subsec. 36(2)).
- 2.6 Any advertising by brokers or salespersons must refer to the employer brokerage by using the brokerage's registered name. Registrants may refer to the wall certificate posted in the brokerage office or consult the RECO website to verify this information (CODE, Subsec. 36(3)).

- 2.7 A registrant must not, in any advertising, use another registrant's name in any way that might reasonably cause confusion about who caused the advertisement to be made. A registrant must not, in any advertising, use another registrant's name in any way that might cause persons seeking to contact that other registrant to instead contact the registrant who made or on whose behalf the advertisement was made. For example, a registrant must not register domain names on the Internet that are identical or very similar to the unique name of another registrant, so that persons seeking to contact that other registrant contact the registrant that registered the "similar" domain name (CODE, Subsec. 36(1)).

#### c) Franchises

- 2.8 All advertising by or on behalf of a brokerage that is a franchise must disclose the name of that brokerage, exactly as registered. To clarify, a franchise name is not the name, as registered, of a brokerage. In these situations the franchise name would precede the registered name of the brokerage (example: Franchise Name ABC Realty Inc. Brokerage). There must not be any doubt in a consumer's mind as to who is advertising.
- 2.9 All advertising by or behalf of a brokerage that includes the name and/or marks of another entity in addition to the registered name of the brokerage, including for example the name and/or marks of a franchisor or licensor, must clearly disclose that the brokerage is a separate entity, independently owned and operated. For example:

Franchise Name ABC Realty Inc. Brokerage\*

\* Independently owned and operated

#### d) Contact Information

- 2.10 All advertising must disclose a means by which the brokerage can be contacted. This may be a phone number, mailing address or e-mail address that has been provided to the Registrar. In the case of advertising by brokers and salespersons, brokerage contact information must directly connect to a person other than the individual salesperson or broker on

whose behalf an advertisement was made (CODE, Subsec. 36(3)).

- 2.11 Advertising by or on behalf of individual salespersons and brokers may also include the means by which the individual salesperson or broker may be contacted, but such information must be accompanied by disclosure that this contact information is that of the individual salesperson or broker and not that of the relevant brokerage, e.g. "direct", "residence" or some other similar description.

*NOTE: Advertisements that come into question under this Guideline are sometimes tested on this point by removing the salesperson's name and contact information and the question is posed: "Is the brokerage and its contact information obvious so a person can contact the brokerage directly."*

#### e) Registration Status

##### i) Salesperson

- 2.12 All advertising must use the terms "salesperson", "real estate salesperson", "sales representative" or "real estate sales representative" to describe any salesperson referred to the advertisement (CODE, Subsec. 36(4)(d)). Examples include:
- Mary Smith, Salesperson
  - Mary Smith, Real Estate Salesperson
  - Mary Smith, Sales Representative
  - Mary Smith, Real Estate Sales Representative

##### ii) Broker

- 2.13 After April 1, 2008, all advertising must use the terms "broker" or "real estate broker" to describe any broker referred to in the advertisement. Up until April 1, 2008 the terms "associate broker" and "associate real estate broker" may also be used to describe any broker referred to in the advertisements. Examples include:
- Mary Smith, Broker
  - Mary Smith, Real Estate Broker
  - Mary Smith, Associate Broker (until April 1, 2008)
  - Mary Smith, Associate Real Estate Broker (until April 1, 2008)

### iii) Broker of Record

- 2.14 All advertising must use the terms "broker of record" or "real estate broker of record" to describe any broker of record referred to in the advertisement (CODE, Subsec. 36(4)(b)). Examples include:
- Mary Smith, Broker of Record
  - Mary Smith, Real Estate Broker of Record

### iv) Brokerage

- 2.15 All advertising referring to brokerages must use the term "brokerage" or "real estate brokerage" to describe any brokerage referred to in the advertisement (CODE, Subsec. 36(4)(a)). Examples include:

*Corporation:*

Smith Professionals Ltd., Brokerage  
Smith Professionals Ltd., Real Estate  
Brokerage

*Partnership:*

Smith and Jones, Brokerage  
Smith and Jones, Real Estate Brokerage

*Sole Proprietor:*

Brenda Smith, Brokerage, Broker of Record  
Brenda Smith, Real Estate Brokerage,  
Broker of Record  
Brenda Smith, Brokerage, Real Estate  
Broker of Record  
Brenda Smith, Real Estate Brokerage,  
Real Estate Broker of Record

*NOTE: Because a sole proprietor must be the broker of record, registrant advertising should be clear when advertising that the individual is both a registered brokerage and broker of record for the purposes of the Act.*

### v) Confusing Terms/Registration Status Unclear

- 2.16 Registrants must not use any terms to describe registrants in advertising that could be easily confused with the designations required by this section of the guidelines. For

example, registrants are not permitted to use terms such as sales agent, sales associate, sales or real estate consultant and agent when referring to themselves in advertising (CODE, Subsec. 36(6)).

Please note that under Section 8 of REBBA 2002 registrants are prohibited from using specialist designations until such time as regulations are passed identifying areas of specialization and creating a process for the certification of specialist designations.

- 2.17 Registrants must clearly identify their registration status in all advertising. For example an advertisement that contained the following reference:
- Smith and Jones, Real Estate Brokerage  
Mary Smith

does not comply with Code requirements because the registration status of Mary Smith is not clear in the advertisement (CODE, Subsec. 36(4)).

### vi) Multiple Registrants

- 2.18 Full-page newspaper and tabloid pages are often inserted on behalf of a company, and there is a desire to eliminate the costs associated with repetition of such terms as "salesperson" and "broker" throughout the page. Registrants are permitted to utilize the practice of using a clear and visible asterisk (\*) to denote a status throughout the page. The asterisk and associated reference must be clearly visible and an appropriate size for the medium in question (CODE, Subsec. 36(4)). In multiple page advertisements both the asterisk and accompanying designation reference must appear on every page of the advertisement that refers to the registrant.

An example might be:

- \* Denotes Salesperson
- \*\* Denotes Broker

vii) *Other Terms*

- 2.19 Subject to other advertising guidelines and requirements, registrants are permitted to use terms denoting an affiliation with a real estate group or association, but such terms must not appear as a substitute for the registration designations required by this section (CODE, Subsec. 36(4)).

### III. Prominence Of Advertising Displays

#### a) General

- 3.1 In all advertising, registrant identification and contact information must be sufficiently clear and prominent so that it can reasonably be noticed and understood. In all advertising, all disclosures relevant to a claim, promise or statement, including all registrant and brokerage contact information, must be made in the same advertisement where the relevant claim, promise or statement is made. This is a general guideline that governs the specific Guidelines dealing with disclosures that are set out below. What is "clear and prominent" will depend on what is appropriate to the medium used.

#### b) Disclaimers

- 3.2 All written disclaimers or qualifiers must be clear and prominent and of a size that is at least as large as the minimum size of text that is used to convey promotional information in that advertisement. In determining what is "clear and prominent" Discipline Committees will consider such factors as:
- (a) size of print;
  - (b) clarity, legibility of print;
  - (c) clarity, legibility of font;
  - (d) prominence of the disclosure compared with promotional information in the advertisement.

#### c) Billboards/Signs

- 3.3 All disclosure, including salesperson, broker and brokerage names and contact information, appearing in billboards and roadway signs must be of a size and be sufficiently prominent so that it can be read by a motorist travelling at a reasonable speed on the road from which the billboard or sign can be seen, up to the speed limit for that road.

#### d) Broadcast Media

- 3.4 All disclosure appearing in broadcast and electronic advertising, whether provided orally or in writing or by any other means, must appear or be presented for a sufficient length of time in order that it can reasonably be noticed and understood.

#### e) Internet

- 3.5 In all Internet advertising, registrants must include all of the disclosures required by Section II of these guidelines, regarding registrant identification, on every screen (CODE, Subsec. 36).
- 3.6 All Internet advertising must be provided in a manner so that the person attempting to access information is not required to incur any obligation or provide confidential information in order to do so (CODE, Subsec. 37).
- 3.7 Any disclaimers appearing in Internet advertising must be provided on the same screen as the promotional information to which the disclaimer relates (Sec. 37).
- 3.8 All written disclaimers or qualifiers must be clearly linked to the relevant claim. For example, an asterisk, double asterisk, cross, etc., which appears after the statement to which the disclaimer relates, must be unique in that advertisement to that statement and the accompanying disclaimer and be the same size in relation both to the relevant statement and the accompanying disclaimer. For example:
- |                |                |
|----------------|----------------|
| Claim A*       | Promise B*     |
| * Disclaimer A | * Disclaimer B |

## IV. Advertising Claims, Promises and Statements

### a) General

- 4.1 Registrants must not make any advertising claims, promises or statements that are ambiguous, inaccurate or incomplete. This includes any claims or statements about the services provided by, or business activities of, the registrant or claims or statements about properties or businesses related to a trade in real estate. Inaccurate representation may occur due to the registrant providing incorrect, incomplete, unclear, unqualified, unverifiable or out of date information in an advertisement. These general guidelines apply to all advertising claims and statements in addition to the specific guidelines set out below (CODE, Subsec. 37).
- 4.2 Where a registrant discovers an inaccurate representation in any advertisement on or behalf of the registrant, the registrant must correct the inaccurate representation as soon as possible.

### b) Business Trading

#### i) Comparative Claims

- 4.3 All advertising that expressly or by implication makes a comparative claim regarding a registrant's business performance, must disclose the basis of that comparison or claim including disclosure of the details of the information used to make the claim and the source of the information (CODE, Subsec. 37). For example:
- Brokerage A was the number one brokerage in Anytown two years in a row.\*\*
- \*\* *Based on number of properties listed on the Anytown Real Estate Board Multiple Listing Service for [prior two years].*

#### ii) Business Volume/Trading Activity

- 4.4 All claims that include, imply, allude or refer to a volume of business or trading activity must be accompanied by disclosure of how that

claim is determined, including the relevant time period. By way of illustration, reference to terms such as "transaction" or "transaction side" or "end" or similar concepts must be accompanied by disclosure of how those terms are being used in that advertisement, including whether a transaction in which the salesperson, broker or brokerage, as applicable, represents more than one party to a particular transaction is being counted as one or two "sides", ends or transactions (CODE, Subsec. 37). For example:

Salesperson A was involved in 100 transactions in [prior year].\*

\* *Transactions completed in [prior year].*

*Transaction can mean a purchase or sale.*

*Where both buyer and seller are represented, two transactions are counted.*

#### iii) Business Volume/Trading Activity—Registrant Identification

- 4.5 All claims that refer to volume of business or trading activity must be accompanied by disclosure of the identity of the registrant, registrants or brokerage about whom that reference is made. If the basis of the claim concerns more than one registrant, including where the information concerns the brokerage activity or other registrant(s) activities within the brokerage cooperating as a team, then the claim must clearly disclose such brokerage or team activity as applicable. When a "team" claim is used all of the registrants whom form part of that "team" must be identified (CODE, Subsec. 37).

### c) Commissions

- 4.6 Registrants must not in any advertising indicate, directly or by implication, that commission, other remuneration, or fees are fixed, set or mandated by law, by custom or practice, by RECO, by any government or public authority, by a real estate board, by a trade association or by any other person, organization or authority (CODE, Subsec. 9).

- 4.7 All claims that refer to commission rates must be accompanied by disclosure of any situations in which that commission rate is not in fact charged, unless the commission rate referred to is in fact charged in all transactions. This applies even when qualifying language, including for example "as low as" or similar language accompanies the claim (CODE, Subsec. 37). For example:

Commissions as low as 1%\*

\* When [advertising registrant] represents both buyer and seller. In other situations a higher rate may be negotiated.

- 4.8 All claims of savings or comparisons regarding commission or other remuneration must be accompanied by sufficient information to enable an informed comparison to be made. Comparative claims between an advertised and hypothetical commission rate must be accompanied by information that clearly indicates the hypothetical rate as such and discloses that the hypothetical rate is not a fixed rate that is charged by all real estate brokerages (CODE, Subsec. 37). For example:

Save up to \$2000 in commission with Brokerage A.\*

\* Based on the difference between a 2% commission rate when Brokerage A represents both buyer and seller versus a hypothetical 5% commission rate. If the selling brokerage is another firm, including Brokerage A, a higher commission rate than 2% may apply. Commission rates may vary from brokerage to brokerage.

#### **d) Honours/Awards**

- 4.9 Registrants must not in any advertising refer to an award or honour unless the source and date of that award or honour is provided (CODE, Subsec. 37).
- 4.10 Registrants must not in any advertising refer to an award or honour shared with other registrants without first obtaining the consent of those other registrants (CODE, Subsec. 37).

- 4.11 Registrants must not in any advertising call anything an award or honour or refer to anything called an award or honour that was purchased by or on behalf the registrant or the brokerage with which that registrant is associated or by anyone else, as applicable (CODE, Subsec. 37).

## **V. Information About Parties, Properties And Transactions: Required Written Consents**

### **a) Real Estate:**

- 5.1 A registrant must not identify any real estate in any advertising without the informed written consent of the owner of that real estate. The provisions of a listing agreement signed by the seller are typically drafted to give authority to the listing registrant to advertise the property and may include permission for that property to be advertised on a real estate board Multiple Listing Service system and/or other media (CODE, Subsec. 36(8)).

### **b) Parties to Transactions:**

- 5.2 A registrant shall not include anything in an advertisement that could reasonably be used to identify a party to a real estate transaction without the written consent of the party (CODE, Subsec. 36 (7)).

### **c) Completed Transactions/Sold Properties:**

- 5.3 A registrant, with the seller's written consent, may advertise that a property has sold, for example with a sold sign or distribution of sold cards, once a transaction has been entered into provided that no information related to terms of the agreement are included in the advertisement and provided that the seller is the owner of the property at the time of the advertisement (see 5.4 below). Once title to the property has transferred to the buyer (i.e. once the

transaction has closed), a registrant would need the buyer's written consent to make any reference to the property in sold cards or other advertisements (CODE, Sec. 36 (8)).

- 5.4 A registrant must not include any information in any advertisement that could be used to identify anything in relation to the terms of a real estate transaction without the written consent of both parties to the trade. For example, a registrant wishing to distribute sold cards that indicate a property sold for 95 % of asking price, would need the written consent of both the buyer and seller, regardless of who was the owner of the property at the time of the advertisement (CODE, Sec. 36 (9)).
- 5.5 In situations where a registrant requires the written consent of a party to a transaction to advertise and that party was not represented by the registrant, the registrant wishing to obtain written consent of the party must communicate through the other party's brokerage to seek that written consent (CODE, Sec. 7).

## Definitions

These definitions are provided for the purpose of interpreting the Advertising Guidelines only.

### **Advertising/Advertisement**

Advertising includes any activity, public notice or representation authorized, made by or on behalf of a registrant that promotes a registrant or the business, services or real estate trades of a registrant in any medium including print, radio, television or

publication on the Internet. This includes all advertising, promotional events, printed material however distributed, circulars, pamphlets, billboards, signs, business cards, letterheads, and other material.

### **Broadcast and Electronic**

Broadcast and electronic when used to describe advertising or an advertisement means any advertisement in any electronic medium, including the Internet, radio and television.

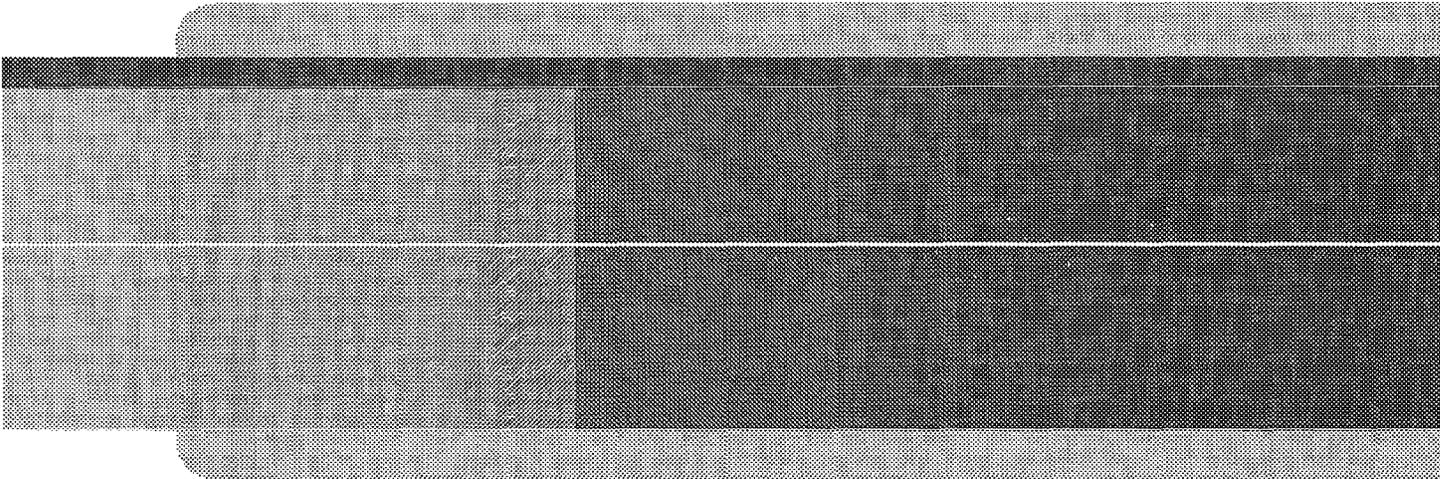
### **Disclaimer**

A disclosure (see definition of disclosure below) that must be included in an advertisement to explain, modify or qualify a claim or promise made in that advertisement to provide accurate and complete information and avoid ambiguity, confusion, deception or misrepresentation that might be caused by the omission of the disclaimer.

### **Disclosure**

Any and all information, including disclaimers (see definition above) that must be included in an advertisement in order to provide accurate and complete information and to avoid ambiguity, confusion, deception or misrepresentation that might otherwise be caused by the omission of information or by information that, without the disclosure, is inaccurate, incomplete, unclear or unverifiable.

In many advertisements, it is necessary to provide disclosure with respect to a number of statements that appear in the advertisement and in those cases "disclosure" is used to refer to all the information that is required to be disclosed in that advertisement.



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# EXHIBIT 11



**The Canadian Real Estate Association  
MLS® & Technology Council**

**Policy Manual**

CREA MLS® & TECHNOLOGY COUNCIL  
POLICY MANUAL

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CREA MLS® & TECHNOLOGY COUNCIL  
POLICY MANUAL**General Access To REALTOR.ca and ICX.ca Data by Third Parties  
(from Chapter 4 - EDU Task Force Report)**

(Document #79129)

**BACKGROUND**

The Electronic Data Usage Task Force recognizes that Third Party Suppliers are constantly requesting access to REALTOR.ca and ICX.CA data in order to provide a product or service that may be of benefit and/or of value to members. For CREA / MLS® and Technology Council (MTC) to provide the best possible service to the membership and in order not to overlook a potential opportunity, the Task Force recommends that the MTC and/or CREA staff investigate and review requests for access to data by Third Parties for merit, feasibility and costing provided that due consideration is given to the following guidelines. (Please note these guidelines are specific to the REALTOR.ca (CREA) data and the Member Boards would be free to act in their own best interests).

**The following guidelines are factors CREA may consider in assessing an application, but are not exhaustive:**

**1. General**

- a) For the purpose of this policy any member(s) creating technology products for commercial use that incorporate CREA technology and data will be considered Third Parties.
- b) "Access" means deep linking only - no downloading, scraping and storing or altering permitted unless agreed to by MTC/CREA.
- c) In reviewing the nature of the request, access to the data will cause no undue strain on existing system resources and the requested access facility will not degrade the existing system performance.
- d) There will be no exclusive access agreements with Third Parties.
- e) The requested access will not aid in providing a product or service that would be in direct competition to a product or service being offered by any Stakeholder.
- f) Stakeholders can develop future products which may be competitive with those offered by Third Parties with access.
- g) The Third Party will ensure compatibility to CREA systems.
- h) All applications will be assessed by the MTC or delegated CREA staff person. Any approvals, however, must be ratified by CREA's Board of Directors to be effective.
- i) CREA has the right, in its sole and absolute discretion, to approve or decline any particular application and under no circumstances will the approval of one application serve to commit CREA to the approval of another application.

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- j) Any consent granted by CREA can be withdrawn at any time without cost to CREA. All suppliers must acknowledge and agree to this condition prior to receiving approval.
- k) CREA may, at its option, require a written contract or letter of agreement.
- l) CREA may, as a condition of approval, impose any condition it deems necessary, including the requirement that the supplier not use CREA's trademarks, that any marketing or educational material be approved by CREA or that payment be made to CREA as licensing or other fee.

## 2. Confidentiality and Security

- a) Confidentiality and limitations will be maintained with respect to use and redistribution of the membership (member) databases.
- b) Caution, care and control will be exercised by all parties in the release of and in providing access to all data.
- c) The Third Party will maintain strict confidentiality with respect to any and all system and/or data information.
- d) The Third Party may not redistribute data or create any derivatives of the data in any format whatsoever.
- e) The Third Party will maintain strict security mechanisms with respect to computer systems and/or personnel that have access to CREA systems.
- f) The MTC/CREA will have the right to monitor and control access and use of data.
- g) Access will be controlled through authentication facilities. The Third Party must keep authentication facilities confidential and must specify URL and IP addresses of requesting website(s).

## 3. Third Party Fiscal and Administrative Responsibilities

- a) All costs, hard and soft, in the development and for the ongoing maintenance of the access facility, are the responsibility of and are to be borne entirely by the requesting Third Party.
- b) Use of system resources shall be logged and billed to the Third Party (i.e. bandwidth).
- c) The Third Party will be responsible for all billing processes and administration of such to the Member directly.
- d) All help desk and support services specific to the services and/or products provided are the responsibility of the Third Party.
- e) The Third Party will provide all education requirements specific to the product or service to the members directly unless otherwise agreed to by CREA.

## 4. Trademark

- a) The Third Party agrees to display the "Powered by REALTOR.ca" logo prominently in any display of CREA data.

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- b) The supplier may not use any trademark or CREA identifier without express consent and authority from CREA.

**5. Ownership**

- a) All CREA intellectual property will remain the property of CREA.
- b) Upon termination or conclusion of any agreement, all software and/or data shall be returned to CREA.
- c) All suppliers agree to abide by all MTC policies and MLS® rules when delivering a product and/or service to or on behalf of a member.

CREA MLS® & TECHNOLOGY COUNCIL  
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## Web Service Policy For Specific Read Only Data Requests

(Document # 83577)

To include policies for Web Services (such as RETS) in the EDU Report. Web Services is defined as real time requests from a server, for specific sets of data rather than for specific REALTOR.ca or ICX.CA or IXN® pages.

To avoid scraping of CREA website pages, CREA will be developing and prototyping web services during 2004 in support of anticipated Third Party requests that cannot be supported by deep linking and framing.

The Real Estate Board of Greater Vancouver has also expressed the wish to use REALTOR.ca Web Services rather than aggregate data on their physical website [www.realtylink.ca](http://www.realtylink.ca)

CREA aggregated REALTOR.ca, ICX.ca and IXN® listing data will be made available through Web Services (a Canadian equivalent of RETS) according to the following policy:

1. Real Estate Boards may access, use and display their own aggregated data on the Board branded website in the manner and style they see fit provided: provincial regulations are followed, there is display of the REALTOR® and MLS® trademark and of a Powered By REALTOR.ca icon and that the listing Board is given credit as the source of the data on a listing details display or print.
2. Real Estate Boards can provide co-branded (Board brand and a member brand) non-commercial use solutions in the same manner.
3. Third party access policies are as described in Chapter Four of the EDU report, adding "Web Services" as an access method in paragraph 1.b.
4. Web Services support will include support for Board controlled opt-in and opt-out permission maintenance for each Web Service arrangement. Opt-in permissions to be at the Board level and opt-in and opt-out permissions to be at the Broker level.
5. Customised navigation and data search support to be provided as priority and resources (CREA, Board or Consulting) permit on a cost-recovery basis.

CREA MLS® & TECHNOLOGY COUNCIL  
POLICY MANUAL**Access To National Authentication Facility (NAF) By Third Parties**

(Document # 97634)

This is to define the policy regarding real time web services access to CREA's National Authentication Facility by Third Parties for the purpose of confirming if the visitor to the Third Party's website is a member of organized real estate in Canada.

Effective Date: December 16, 2005

**Policy:**

Access to NAF through real time web services will be granted on a contractual basis to Third Parties subject to the following rules:

1. Third Parties are business entities that are not members of Real Estate Boards, Provincial, Territorial or National Real Estate Associations in Canada.
2. The MTC will review for approval or not, a proposal or business case from each Third Party for each product.
3. The Board opt-in / opt-out permission for this facility will be on a case-by-case basis, that is, allow or not each Third Party approved by the MTC to have access to that Board's portion of the NAF database, based on the Board's own assessment of the Third Party business case.
4. Data and information supplied by NAF to the Third Party technology application is limited to an indication whether or not the member is currently active and if so, the type of membership, the role (e.g. staff), participation in REALTOR Link® groups and other similar information about participation in the affairs of organised real estate.
5. The data and information supplied by NAF to the Third Party technology application is subject to the data use policies for Third Parties documented in Chapter Four of the October 2003 EDU Task Force Report.
6. A Board or Association must initiate the request for Third Party access.

CREA MLS® & TECHNOLOGY COUNCIL  
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**Organizations / Boards Approved by MTC for Access to NAF**

<b>MTC Meeting Date</b>	<b>Organisation / Board</b>	<b>MTC Agenda Doc. #</b>
Dec. 16, 2005	Internet Crusade	97251
Dec. 16, 2005	Realty Nuance	97251
April 21, 2006	Touchbase Real Estate	99755
	Chilwack	
	Fraser Valley	
	Vancouver	

Updated: April 26, 2006

(Same as document #99913)

CREA MLS® & TECHNOLOGY COUNCIL  
POLICY MANUAL**Access to National Authentication Facility (NAF) by Franchisors and Multi-Office Corporate Brokerages**

(Document # 97294)

This policy defines real time web services access to CREA's National Authentication Facility (NAF) by Franchisors and multi-office Corporate Brokerages for the purpose of confirming if the visitor to the Franchisor's or Corporate Brokerage's website is a member of organized real estate in Canada.

Franchisors and multi-office Corporate Brokerages regularly offer technology products to REALTORS®, which require confirmation of the membership status of the REALTOR® and of the status and role of other members of organized real estate (staff, for example).

**Effective Date:** December 16, 2005

**Policy:**

Access to NAF through real time web services will be granted on a contractual basis to Franchisors and multi-office Corporate Brokerages subject to the following rules:

1. Franchisors and multi-office Corporate Brokerages are business entities that are not members of Real Estate Boards, Provincial, Territorial or National Real Estate Associations in Canada.
2. The MTC will review for approval or not, a proposal or business case from Franchisor and multi-office Corporate Brokerage.
3. The Board opt-in / opt-out permission for this facility will be on a blanket basis (that is, allow all Franchisor and multi-office Corporate Brokerages approved by the MTC to have access to that Board's portion of the NAF database or allow no access by any Franchisor or multi-office Corporate Brokerage.
4. Data and information supplied by NAF to the Franchisor or multi-office Corporate Brokerage technology application is limited to an indication whether or not the member is currently active and if so, the type of membership, the role (e.g. staff), participation in REALTOR Link® groups and other similar information about participation in the affairs of organized real estate.
5. The data and information supplied by NAF to the Franchisor or multi-office Corporate Brokerage technology application is subject to the data use policies for Third Parties documented in Chapter Four of the October 2003 EDU Task Force Report.

CREA MLS® & TECHNOLOGY COUNCIL  
POLICY MANUAL**Web Services Requests By Franchisors And Multi-Office Brokerages  
(Read Only)**

(Document 97634)

This is to define the policy regarding the use of web services access to REALTOR.ca and ICX.CA public data by Franchisors and multi-office corporate Brokerages.

**Effective Date:** December 16, 2005

**Policy:**

The Web Services Policies will be extended to grant each Franchisor and multi-office Corporate Brokerage web services access, if requested, to the REALTOR.ca and ICX.CA public data, of the properties listed by their client REALTORS® and of the Boards who have agreed to this use of REALTOR.ca and ICX.ca public data.

1. The policy does not include access to IXN® data.
2. The MTC will review for approval or not, a proposal or business case from Franchisor and multi-office Corporate Brokerage.
3. The Third Party Access to REALTOR.ca data described in EDU Task Force Report October 2003 and Web Services 2003 policies apply.
4. That the Board opt-in / opt-out permission for this facility be on a blanket basis (that is, allow all Franchisors and multi-office Corporate Brokerages access to a particular Board's data or allow no access by Franchisors and multi-office Corporate Brokerages.)
5. That, if the data is for display on a public website, it can only be used for a public Franchisor website (all Franchisor listings) or for individual REALTOR® or office websites of that Franchisor.
6. To be provided on a cost-recovery basis.

CREA MLS® & TECHNOLOGY COUNCIL  
POLICY MANUAL**Web Services Access Granted To Third Parties**

(Document # 97634)

**Effective Date:** December 16, 2005

**Policy:**

Third parties will be granted access to web services to the CREA REALTOR.ca, ICX.CA and Membership Management databases, when technically feasible and according to existing policies.

1. That the access be limited to the data currently requested for support of their product. That is, auto-populate property listing information and co-operating REALTOR® information. Additional data will necessitate an additional request.
2. That an appropriate fee be determined and charged for the service.
3. That the access may NOT be used to market the product or for "setting up new members" of the product user group.
4. A Board or Association initiate this Third Party access request.
5. Provide for such Third Party requests through a contract.

Third Parties Approved:

Realty Nuance – April 21, 2006

CREA MLS® & TECHNOLOGY COUNCIL  
POLICY MANUAL**Search and Write Access Web Services For CREA Databases**

(Document # 100391)

**Effective Date:** May 29, 2006

For many Boards and for CREA, updating the CREA REALTOR.ca, ICX.ca, IXN® and Member Management databases through real time, industry standard web services, would be more efficient and effective than the current daily batch upload. Overall efficiency and the timeliness of the data would be improved.

Some Franchisor organisations would like to provide more data to the CREA databases, from members, than is currently possible through some Board MLS® systems. This additional data could be used for CREA, member, Board, Association, Franchisor and third party applications. However conflicts could arise or redundant database structures could be necessary if the capability to add the data is subsequently made available through the Board MLS® systems.

Some Members, Boards, Franchisors and third parties would like to develop applications that involve searching the CREA databases. For example with this feature, the Vancouver Board could depend completely on the CREA databases for the data required for [www.realtylink.org](http://www.realtylink.org) and [www.clslink.ca](http://www.clslink.ca). However, large result sets will have an adverse effect on REALTOR.ca, ICX.ca, IXN® and Member Management hardware and network resources.

**Policy:**

Approved the following policies with respect to search and write access web services for the CREA databases.

**1) CREA Resources for Web Services Applications**

- a. CREA resources will be assigned to web services implementation and modification projects on a first-come-first-serve basis.
- b. Implementation as well as any modifications to the applications in their use of web services must be co-ordinated and tested with CREA.
- c. Use of the Shared Development Protocol is encouraged for all web services application development.

**2) Web Services as a Replacement for the CREA Upload**

- a. When technically feasible, Boards and Associations may elect to provide data to the CREA databases through the CREA transactional Web Services rather than through the batch upload.
- b. The data may be provided either through web services or through the batch upload but not by both means.

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**3) Web Services For Franchisors To Provide Data Not Available Through Board / Association MLS® System**

- a. When technically feasible, Franchisors may use CREA create, update and delete access web services to provide and maintain data in the CREA data bases when the data cannot be provided and maintained through the Board / Association MLS® system.
- b. A business case must be provided to the MTC for consideration and approval.
- c. If the business case is approved by the MTC, affected Boards and Associations must:
- d. Opt-in to the application. The Board / Association may subsequently opt-out;
- e. Elect to administer the application themselves or allow the application to be made available to their members
- f. The application must be made available at least through REALTOR Link® in accordance with and under the auspices of the shared development protocol. Exclusivity periods, if any, are to be negotiated on a case-by-case basis.
- g. If the data is subsequently available through a Board / Association MLS® system, the application must be withdrawn for that Board / Association.

**4) Web Services for Searching the CREA Databases**

- a. When technically feasible, web services for searching the CREA databases will be made available to applications created by members, Boards, Associations, Franchisors and Third Parties on a monitored and controlled basis.
- b. Search applications will not be allowed to have an adverse effect on CREA technology resources.
- c. The policies for acceptable search applications are the same as those established for acceptable read only web services.

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**Advertising On CREA Technology Websites**  
**(REALTOR.ca, IXN® and REALTOR Link®)**

(Document # 100124)

**Effective Date:** January 1, 2004

**Motion:** CREA Annual General Assembly March 23, 2003 (Motion # 18-2002(2))

**All advertising be eliminated from REALTOR.ca and REALTOR Link® effective January 1, 2004.**

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POLICY MANUAL

**Advertising on ICX.ca**

**Effective Date:** March 1, 2001

**Policy:**

1. No banner, button or content sponsorship advertising will be accepted:
  - from organisations involved in the sale of real property such as REALTORS®, Brokers, Franchisors, builders and developers except as noted in 2. below.
  - from organisations wishing to advertise products and services that compete with the products and services of organised real estate;
  - from political parties, government lobby groups and other organisations with a socio-political agenda;
  - for alcohol, cigarettes, adult products and other objectionable material;
  - for any product whose advertising creative generates a number of complaints from the membership or the public.
2. REALTOR®, Broker and real estate company advertising will be accepted on the property detail feature sheets of their own listings and on thumbnail result sets containing only their listings.
3. No advertising sponsored by organised real estate is permitted on the technology product pages created by a link back URL to specific REALTOR®, Broker Office or real estate company listings. Advertising on these pages is at the discretion of the listing REALTOR® or his firm.
4. Content sponsorships will be considered by the Council on a case-by-case basis.
5. Permission e-mail campaigns and the sponsorship of e-mail newsletters to members will be considered on a case-by-case basis.
6. Boards and Associations can specify different policies, including:
  - no advertising on pages representing their geographical jurisdiction;
  - special campaigns to include advertising in Board and Association publications.

CREA MLS® & TECHNOLOGY COUNCIL  
POLICY MANUAL

**Availability of Data Downloads from REALTOR.ca and IXN® to Broker  
Offices**

(Document # 73335)

The objective of the policy is to recognize the technical resource constraints of IXN® as mandated by the General Assembly.

**Effective Date:** November 1, 2001

**Policy:**

Subject to written authorization from the respective Real Estate Boards or Associations, downloading of data from IXN® is available to Broker offices or groups of Broker offices on a cost- recovery basis, when technically feasible.

**Enforcement:**

There are no enforcement provisions for this policy.

CREA MLS® & TECHNOLOGY COUNCIL  
POLICY MANUAL

### **Confidentiality of IXN® Passwords**

This policy applies to all REALTORS®, Boards and Associations.

The objective of the policy is to ensure that the MLS® data stored on IXN® is made available only to REALTORS® and to the appropriate staff of Boards and Association. At this time an IXN® password allows a REALTOR® to view data provided for REALTORS® by all participating Boards and Associations.

**Effective Date:** November 1, 2001

**Policy:**

Regardless of the "Affiliations" established by various Boards and Associations, IXN® passwords may only be distributed to REALTORS® and appropriate staff. They may NOT be given to any third parties.

REALTORS® may not make their passwords available to other parties for any reason whatsoever.

**Enforcement:**

Passwords made available to other parties will be revoked. Further action may be taken by the member's home (or local) Board and other authorities may be advised.

**Notes and guidelines:**

When IXN® is integrated with the National Authentication Facility (NAF), Boards and Associations will be able to give IXN® passwords which only allow viewing of that Board's or that Association's MLS® data to third parties. IXN® will be integrated with NAF in the fourth quarter of 2001.

CREA MLS® & TECHNOLOGY COUNCIL  
POLICY MANUAL**Co-ordination of MLS® System Changes with REALTOR.ca**

(Document # 73335)

This policy applies to those situations when a Board or Association wishes to make changes to its MLS® system that will have an impact on the way REALTOR.ca displays the data of that Board or Association. For example, a Board may want to add or remove geographical sub-areas from the representation of its jurisdictional area or a Board may want to add additional feature codes to its system for indicative display on REALTOR.ca.

The objective of the policy is to ensure that both the MLS® System and REALTOR.ca can be changed in a timely and predictable manner with minimum impact on the activities in progress. The policy outlines the procedure a Board or Association should follow.

**Effective Date:** November 1, 2001

**Policy:**

To synchronize changes between REALTOR.ca and the MLS® systems of Boards and Associations, the following procedure must be followed:

1. Advise [helpdesk@crea.ca](mailto:helpdesk@crea.ca) that you wish to make changes to the MLS® system and supply as many details of the planned changes as possible.
2. CREA will reply as soon as possible if more information is needed and if not, with a date when the REALTOR.ca changes will be ready for testing with the changes made to the Board system.
3. The Board then makes the changes to the MLS® system and conducts appropriate in-house testing.
4. When the appropriate changes have been made to REALTOR.ca by CREA, the Board conducts end to end testing with REALTOR.ca by verifying the information displayed on CREA's REALTOR.ca test system.

Note that the Board must verify that the properties are displayed by REALTOR.ca as expected. If adequate testing and verification are not performed by the Board, CREA cannot guarantee that adjustments can be made to what is displayed to the public in a short time frame.

**Enforcement:**

There are no enforcement provisions for this policy.

CREA MLS® & TECHNOLOGY COUNCIL  
POLICY MANUAL**Nomination and Election Process for MTC Chair and Vice Chair****Candidacy Process**

1. Prior to the meeting of the MTC Board of Directors that occurs following the MTC AGM to elect the Chairperson and Vice-Chairperson, a letter will be sent to all Directors requesting that any Director interested in running for either position submit an Officer Candidacy Form. The Candidacy Form will be requested to be submitted two one weeks prior to the MTC meeting date.
2. A week prior to the MTC AGM, a list of all candidates who have expressed interest in either or both positions, including forms and qualifications/credentials submitted, will be distributed to MTC Directors. Any additional Officer Candidacy Forms submitted will be distributed as received.
3. At any time, up to and including the meeting held to elect the MTC Officers, any Director may indicate his/her interest in being a candidate.

**Election Process**

1. MTC Officers election meeting will be held immediately following MTC and CREA AGMs. In 2005 the CREA Immediate Past President will chair the meeting. Effective 2006 the MTC Past Chair will chair MTC Officers election meeting. The MTC Past Chair is defined as the immediate Past Chair, not the outgoing Past Chair. At the Officer election meeting the Chair will ask if there are any additional candidates wishing to have their names included on either ballot. Any candidates so wishing will then have their names written into appropriate ballots. Where only one candidate has expressed interest in running for either position, that person shall be elected by acclamation. The Chairperson election will be held first. Each candidate will be provided with an opportunity to address Directors for two minutes prior to the election. Each candidate shall speak only once, prior to the first ballot. In the event of multiple ballots no further speeches will be permitted. The order of speeches will be determined by random lot.
2. Paper ballots will be provided to all MTC Directors for Chairperson and Vice-Chairperson positions, assuming elections are required. The MTC Past Chair as well as the remaining MTC Directors have the right to vote. If additional candidates declare at the election meeting their names will be added by hand to the appropriate ballot. Any candidate will be required to receive a majority of votes. For example if there are seven Directors attending the meeting the successful candidate will have to receive a minimum of four votes. In the event of a tie on the last vote, the Past Chair's vote will be removed. Therefore, the Past Chair, and only the Past Chair, is required to sign their ballot. Should no candidate receive a majority of votes after three consecutive ballots, the candidate with the

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lowest number of votes will be removed from any subsequent ballots. Teller(s) for the election process will be CREA legal staff.

CREA MLS® & TECHNOLOGY COUNCIL  
POLICY MANUAL**Extraction of Data From REALTOR.ca, ICX.ca and IXN® Pages**

(Document # 73335)

This policy applies to all websites. The objective of the policy is to ensure that listing data is not used without the permission of the listing REALTOR®, Board, Association or CREA as the case may be and to ensure that the data is only used for the purpose for which it was gathered.

**Effective Date:** November 1, 2001

**Policy:**

Data may not be extracted from the Internet pages created by REALTOR.ca, ICX.ca or IXN® by any means whatsoever.

Data is made available through secure directories on passive ftp servers in accordance with the permissions granted by the owners of the data.

**Enforcement:**

Programming code in REALTOR.ca and various programs, which monitor the data requested from REALTOR.ca will enforce the policy to the extent that is technically possible while remaining cost-effective. If necessary, legal action will be taken to protect the interests of the owners of the data.

CREA MLS® & TECHNOLOGY COUNCIL  
POLICY MANUAL**IXN® – Minimum Data to be Uploaded**

(Document # 73335)

This policy applies to the data uploaded to IXN® from the MLS® Systems of Boards and Associations. Although the purpose of the policy is to ensure that IXN® is a meaningful CREA Technology Product, it is based on voluntary participation. It will ultimately be the Broker and / or individual REALTOR® who will determine where and how much of the property data is published. Each Board will have to assess the merits of participation based on the direction they get from their members.

**Effective Date:** January 1, 2002

**Policy:**

1. The minimum amount of data required for participation in IXN® is the same as what is currently (October 2001) provided for REALTOR.ca plus the permissions authentication fields. (Refer to CREA Draft Standard Data Elements).

Note that Field 079 – “Corporate Identification” is included in the minimum data set to permit data downloads to Corporate Franchisor systems and websites.

2. Boards may provide additional fields of data as defined in the manual “MTC Standard Data Elements”.

**Enforcement:**

There are no enforcement provisions for this policy.

CREA MLS® & TECHNOLOGY COUNCIL  
POLICY MANUAL**Mandatory Fixed Referring IP Address for all Deep Links to  
REALTOR.ca And ICX.ca**

(Document # 83502)

This policy is in preparation for CREA to be able to adequately support, monitor and police the use of nationally aggregated data. The referring IP address cannot be counterfeited in the Internet request header. The referring IP addresses are necessary to uniquely identify the IDX and VOW websites.

**Effective Date:** December 4, 2003.

**Policy:**

When technically feasible, only CREA authorized IP addresses can access the CREA REALTOR.ca and ICX.ca website pages, other than at the website home page, for the purpose of deep-linking and framing. No deep linking and framing will be supported unless CREA is aware of the referring IP address and has granted access.

As part of the development of REALTOR.ca v4, CREA will implement:

1. Authorized IP address deep linking only if technically possible.
2. Opt-out VOW support at the Board, Broker and Agent level.
3. Opt-in and opt-out IDX support at the Franchisor, Board, Broker and Agent level.

**Enforcement:****Notes and guidelines:**

Existing deep linking REALTORS®, Offices, Boards and Franchisors will have to acquire a fixed IP address and advise CREA. Fixed IP addresses may not be supplied by most Third Party hosting companies, especially ADSL high-speed access providers. Options could be:

1. CREA hosts the website (real time access to make changes would not be available);
2. CREA acquires blocks of IP addresses on behalf of REALTORS®.

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**Linking To REALTOR.ca and ICX.ca and Framing REALTOR.ca and ICX.ca Pages**

(Document # 82242)

This policy applies to all websites that wish to hypertext link to REALTOR.ca and ICX.ca and that may wish to cause the web pages of REALTOR.ca and ICX.ca created in response to that hypertext link, to appear on the visitor's browser screen inside a frame created by the linking website. The objective of the policy is to help ensure that trademark legislation and other Best Practices Guidelines are respected.

**Effective Date:** November 1, 2001

**Policy:**

1. **Boards and Associations of CREA:**

The websites of Boards and Associations of CREA are permitted to cause any of the pages of REALTOR.ca to appear within frames of their own design.

Diagram 1 on page 25 shows how web pages created by REALTOR.ca are presented on a visitor's browser inside a frame created by the website of the Fraser Valley Real Estate Board.

2. **REALTORS® or offices using a frame with a corporate or personal logo** are permitted to cause any of the pages of REALTOR.ca to appear within frames of their own design provided the property information displayed by REALTOR.ca in the frame is for the properties listed by those REALTORS or Offices only or for the properties for which the REALTOR has written permission to frame.

For clarity, this section refers to the websites of individual REALTORS®, groups of REALTORS®, Broker Offices and Corporate Franchisors.

3. **REALTORS® or offices using a frame without a corporate or personal logo:**

(a) A REALTOR® is permitted to cause any of the pages of REALTOR.ca to appear within frames of their own design provided the REALTOR® frame does not contain any corporate or other business or personal logos, trademarks, design marks, tag lines or any other distinctive marks or terms. The REALTOR® can only display contact information as required by the provincial regulatory body. REALTORS® are encouraged to utilize the graphic link as indicated on the next page or the link must include an explanation that the browser will be linked to REALTOR.ca. eg. "View Canadian listings". Under no circumstances can trademarks be used as links.

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(b) CREA has the absolute discretion to determine whether a site breaches these rules and REALTORS® and offices will immediately remove or amend frames upon notification by CREA.

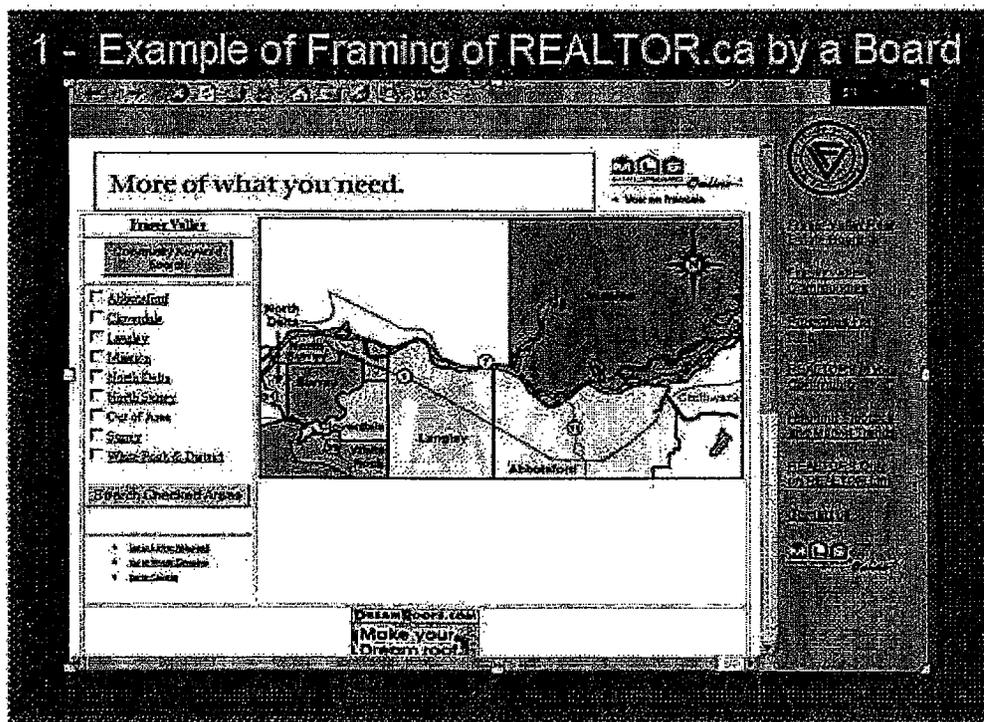
4. All Others:

All other hypertext linking to ® must result in a new, fully functional, full screen browser window occupied by the pages created by REALTOR.ca.

5. Deep Linking to the REALTOR.ca results sets:

REALTORS® or offices may create their own search page provided the criteria for searching are consistent with REALTOR.ca. The search criteria data can be re-formatted within their frame in order to create their own user experience. The thumbnail (results set) or feature sheet may not be altered in any way. The framing rules apply to the result sets and feature sheets.

Diagram 2 on page 27 shows how a new fully functional window for the REALTOR.ca pages has been specified by the REALTOR Link® website. The policy further states that this new window must, in fact, occupy the entire screen of the visitor's computer.



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Example – Deep Linking to REALTOR.ca search page

**DAN BENNETT AGENCIES**  
*Real Estate has always been done the same way... until now*  
604.888.8888

RESIDENTIAL:  House,  Condo,  Townhouse,  Mobile Home,  Lot

RECREATIONAL:  With a building,  Without a building

ACREAGE:  Acreage,  Duplex,  Multiplex,  Farm/Ranch,  Other

Choose property details:

Price: Minimum: \$0, Maximum: \$1,000,000 | Bedrooms: 0, Maximum: 10 | Bathrooms: 0, Maximum: 10

Features:  
Note: Some boards do not differentiate between different types of views and waterfront. This means that if you select "Ocean view", you will match all properties with a "View".

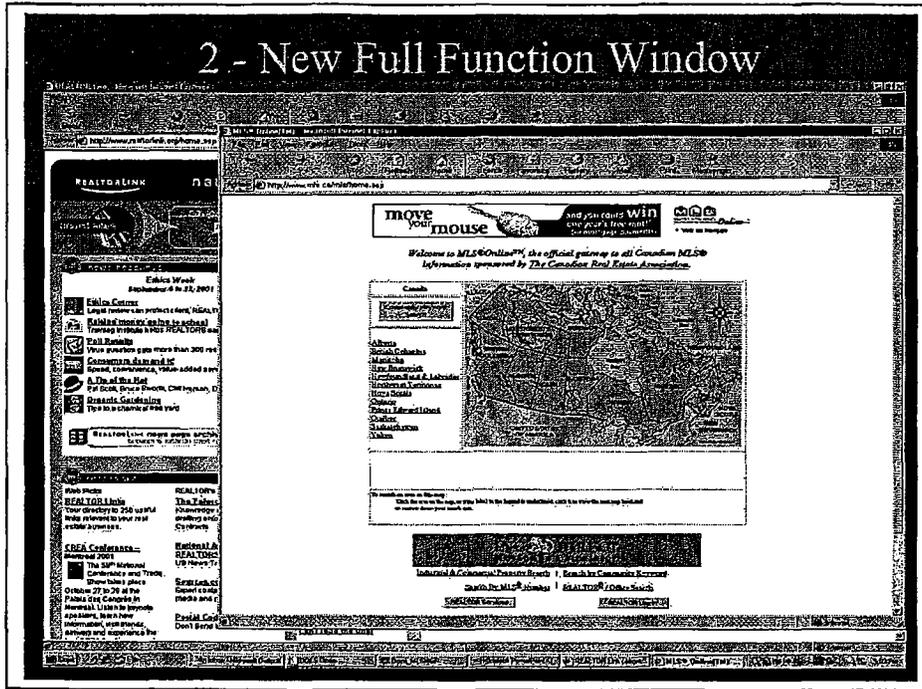
Ocean View,  Lake view,  Mountain View,  Ocean waterfront,  Lake waterfront,  River waterfront

All of the selected features,  At least one of the selected features

Number of Properties to display per page: 25 |  Sort by ascending price,  Sort by descending price

MLS® 2012 The Canadian Real Estate Association. All rights reserved. Site created by Onpage Web Services Inc. REALTOR is a trademark owned by REALTOR Canada Inc. a corporation owned by the National Association of REALTORS® and The Canadian Real Estate Association. REALTORS accept and respect a strict Code of Ethics which is the cornerstone assurance of integrity. MLS® is a co-operative marketing system used only by Canadian Real Estate Boards to ensure maximum exposure of properties for sale.

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Note that the policy requires that the new window with the REALTOR.ca pages must be specified as a full size window. The window is offset in the example 2 above for illustration purposes only.

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### **Alternate Feature Sheet**

This policy applies to linking options for members/brokers with respect to displaying feature sheets from members/brokers own websites.

**Effective Date:** October 25, 2004

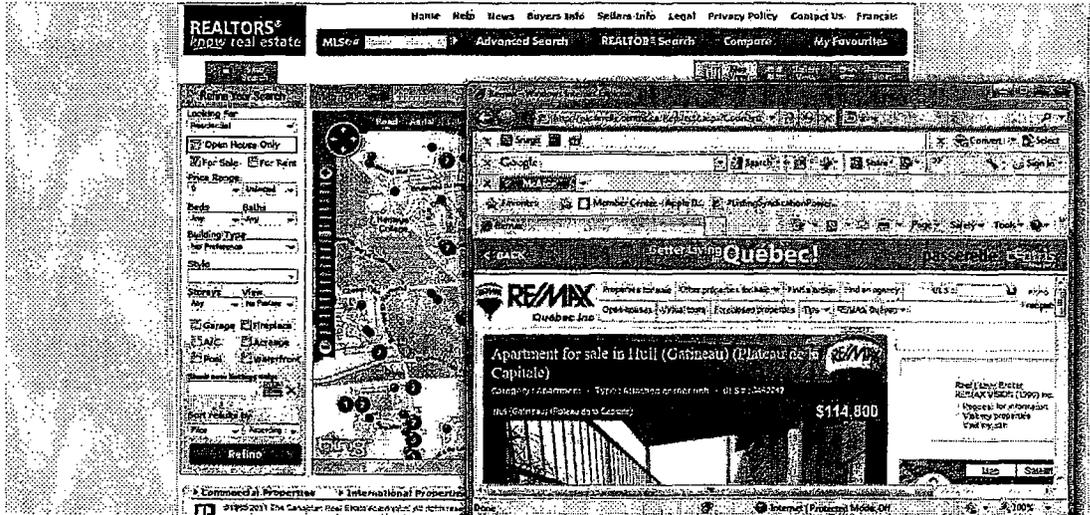
**Policy:**

Linking to feature sheets other than those supplied by REALTOR.ca or ICX.ca may occur subject to:

1. The member / broker site generated feature sheet opens a new window smaller than the REALTOR.ca window;
2. The feature sheet shall include a "Return to REALTOR.ca" button which results in the member/broker window being closed;
3. The link from the thumbnail to the feature sheet is for the specific property on the thumbnail result set;
4. The link must be permission based on an individual property basis and an agent specified URL is provided and supported; and
5. Seller contact information must not appear on alternate feature sheets (see Seller Contact Information policy).

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Example of Alternate Feature Sheet:



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**Non-Licensee / Affiliate Use Of REALTOR Link®**

(Document # 73335)

The membership, Boards and Associations can benefit from content posted on REALTOR Link® by affiliates (non-members) from related disciplines, associate agencies and organisations.

Affiliates are defined below in the context of access to MLS® since MLS® is one of the most sensitive sets of information that will eventually be available to REALTORS® through the REALTOR Link® authentication facilities. Accordingly, the policy draws heavily on Dispatch 1995-83.

Examples of possible affiliates are (and not limited to): appraisers, financial institutions, CMHC, municipalities, associated organisations such as industry regulators, insurance (E & O) exchanges, The Land Centre and private stakeholders such as national real estate organisations.

While additions can be made to this definition, the intent of this policy is to continue the philosophy that the Boards have responsibility for granting access to “members only” data or information such as REALTOR Link®. In other words, the following policy sustains the practice that the Board or Association that posts information on REALTOR Link® has control of who views that content.

**Effective Date:** February 1, 2002

**Policy:**

1. Board / Affiliate Contract:

There must be a contract between the Board / Association and the affiliate organization detailing at least:

- a) Use and protection of the user identification and password sets
- b) Exactly which information and functionality the sponsoring Board / Association intends to make available to the affiliate (read only, content provider, user of the REALTOR Link® Intranet infrastructure for the affiliate’s own Intranet)
- c) Confidentiality concerns regarding all information accessible with each user identification and password set
- d) Linking and framing limitations – the affiliate pages can link to what types of websites, the affiliate pages can be framed under what circumstances
- e) Terminating access
- f) Removing content.

A sample contract is available from Bill Harrington at CREA (bharrington@crea.ca).

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2. Access to REALTOR Link® information:

Affiliate security group access may be granted to those non-member associate organisations as determined by each local posting Board, Association or Affiliate organization.

3. Posting Content on REALTOR Link®:

Affiliates as defined above and as determined to be suitable by the sponsoring Board / Association or MLS® & Technology Council may post and manage any content to their assigned area of REALTOR Link®. The site may only be accessed through the REALTOR Link® authentication process.

**Fees:**

The fees for both viewing and posting access shall be on a cost-recovery basis. Costs include design, programming and testing costs as well as ongoing costs for delivery of pages to the Internet.

**Enforcement:**

The Boards and Associations are responsible for granting and / or denying password access to REALTOR Link®. Any abuses of password access are also the responsibility of the Boards and Associations. However, the MLS® & Technology Council retains the authority to terminate access or remove undesirable content if the Posting Affiliate is unwilling or unable to do so.

**Notes And Guidelines For MLS® Information  
(Adapted From Dispatch 1995-83)**

**A. Background**

Boards and Associations have for some time been grappling with the issue of what, if any, limited MLS® information or services should be provided to certain non-licensees. By "non-licensee", we are referring to persons or groups who are not licensed salesperson/Broker members. This group includes appraisers, financial institutions, government departments and other interests seeking MLS® services beyond advertising type information provided to the public.

At the 1994 CREA General Assembly, the membership voted in favour of MLS® Rules and Regulation amendments which provided that:

1. non-licensed persons not have listing privileges; and,
2. Boards may permit limited non-member access to MLS® information.

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The effective date for Board compliance was January 1, 1996.

Having adopted the principle of limited access to certain target groups, the question has remained as what groups should receive what information.

### **B. Affiliate Membership Versus Non-Licensee Access to MLS®**

The investigation of the non-licensee access to limited MLS® information or services necessarily involved the study of Boards' affiliate membership categories. This was so because non-licensee access to MLS® services, where permitted, was usually allowed as a privilege of affiliate membership.

There is nothing inherently wrong with the existence of affiliate membership categories. Rule V of CREA's Rules and Regulations provides in part that each Board may maintain an affiliate membership class which would be composed of non-licensed persons (i.e. not real estate practitioners). It is not MTC's position that Boards should eliminate affiliate membership categories. MTC's concern arises not from the existence of the categories themselves, but rather from the fact that many Boards offer MLS® services to their affiliates as a privilege of membership.

MTC strongly recommends that MLS® services not be offered to non-licensees as a privilege of affiliate membership. It is MTC's position that affiliate memberships should be equivalent to "social" memberships, providing information regarding Board functions and activities, access to Board publications and other information which may be of interest to these groups but would not constitute access to MLS® services or information.

### **C. Potential Users of MLS® Information**

The attached chart identifies those groups which the MTC feels could obtain some form of limited MLS® information and the nature of the information to be provided. The underlying assumption is that information should only be supplied when it is necessary for the user to do its job and there is a benefit to organized real estate in supplying this information. The rationale for the attached chart is as follows:

#### **1. CERTIFIED FEE Appraisers**

The function of FEE appraisers has a direct connection to the work of REALTORS®. The ability of FEE appraisers to establish property values quickly and accurately facilitates real estate transactions and benefits not only REALTORS® but the parties to a transaction.

#### **2. Certified Staff Appraisers**

Some institutions employ duly certified appraisers as staff appraisers. Some Boards may wish to give limited MLS® access to these staff appraisers. But access should only be provided when all potential recipients of listing information have been identified on the listing agreement.

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**3. CMHC**

It is one of CREA's general objectives that CREA and its member Boards and provincial Associations be the providers of statistical data on the housing market, using the MLS® system as a focal point. To rely on CMHC to carry out this function is contrary to that objective. Accordingly, CMHC generally should be restricted to statistical information already published in hard copy by Boards and CREA.

Furthermore, CREA produces quarterly CREAstata reports plus a year-end review for each participating Board. These reports are targeted to the needs of individual Boards and have far greater accuracy than reports from outside sources. All computerized Boards are encouraged to join the CREAstata survey program.

Appraisals for market value and mortgage insurance purposes can be obtained by CMHC through FEE appraisers, who will have access to the necessary MLS® information or through staff appraisers who may have access.

**4. Financial Institutions**

The appraisal function, which is the primary reason financial institutions need access to certain MLS® information is, or should be performed by certified FEE appraisers or certified staff appraisers. Beyond this, lenders should be informed of market trends, which, as in the situation of CMHC, can be satisfied through the provision of statistical information already published in hard copy by Boards and CREA.

**5. Municipalities**

The relationship between real estate Boards and municipal governments vary from region to region. In some areas, virtually all public record and related information, such as zoning building permits, assessments, work orders, and legal descriptions, can be obtained either free or at minimal cost. In other jurisdictions, Boards pay city and municipal authorities considerable amounts of money to get necessary information.

It must be recognized that municipal governments already have a large base of information on all properties. In order to keep abreast of market trends, they should only need the statistical information already published in hard copy by Boards and CREA.

Where appropriate, however, Boards might want to consider a reciprocal arrangement whereby certain limited data is supplied in return for defined information from the municipality. It is recommended that Board data transmitted to municipalities have the average price and dollar value deleted to discourage attempts at using the data to set mill rates and impose market value criteria for property taxation.

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**6. Revenue Canada/Federal Agencies**

Revenue Canada should be restricted to hard copy statistical information. There seems no basis for providing any more extensive MLS® information.

**D. General**

There are other proposed users which have not specifically been dealt with, but which fit into categories already discussed. Insurance companies, for example, should receive the same information as financial institutions. Similarly, any market value assessments done by insurance companies could be conducted by FEE appraisers or through certified staff appraisers. The same rationale applies to land developers.

Certain groups, such as moving companies and similar organizations (which use the information as mailing lists), lawyers and other non-industry interests should not access any MLS® information.

Regardless of which groups Boards decide to permit some form of access to MLS® information, they should be aware of the potential concern with regard to REALTOR liability for exposing the vendor's property listing information to non-licensees without the vendor's knowledge. It is therefore the MTC's recommendation that Boards revise their listing forms to identify clearly for the vendor all potential recipients of the information and, further, that Boards ensure that the person who has access to limited MLS® information concurs with the list of recipients on the listing agreement.

	Fee Appraiser	CMHC	Financial Institution	Municipality	Revenue Canada	Federal Gov't Agencies	Industry Regulators Insurance Exchanges (E&O)
<b>COMPLETE DOWNLOADING</b>	No	No	No	No	No	No	No
<b>CURRENT LISTING INFORMATION</b>		No*	No*	No*	No	No	No
- Price	Yes						
- Address	Yes						
- Zoning	Yes						
- Lot description	Yes						
- Vendor's name	No						
- Taxes	Yes						
- Building Info (e.g. bedrooms, bathrooms, structural, etc.)	Yes						
- Photo	Yes						
<b>SOLD</b>		No*	No*	No*	No	No	No

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<b>INFORMATION</b>							
- Price	Yes						
- Vendor	No						
- Purchaser	No						
- Closing date	Yes						

- Terms (e.g. buyer Broker, commissions)	Yes						
- Photo	Yes						
- Building info	Yes						

<b>EXPIRED LISTING</b>		No*	No*	No*	No	No	No
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- Price	Yes						
- Address	Yes						
- Zoning	Yes						
- Lot description	Yes						
- Vendor's name	No						
- Taxes	Yes						
- Building info (e.g. bedrooms, bathrooms, structural, etc.)	Yes						
- Photo	Yes						

<b>STATISTICAL INFO</b>							
-------------------------	--	--	--	--	--	--	--

- Raw (B)	No						
- MLS® Total Board Stat	Yes	Yes	Yes	Yes	No	No	No
- CREAsat	Yes						

<b>INTERCONNECT- IVITY TO OTHER BOARDS</b>							
--	--	--	--	--	--	--	--

Access of above information	No						
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\* Except through certified appraisers and only when all potential recipients of the listing information have been identified on the listing agreement.

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### Security Groups

(Document # 73335)

This policy defines and describes the Security Groups recognized by the National Authentication Facility (NAF). As this application controls access to information considered sensitive by CREA, the MTC and other entities of organized real estate, the assignment of a security group should be consistent with these definitions.

**Effective Date:** March 1, 2002

**Policy:**

The following table defines the currently recognized Security Groups.

Group	Definition	Status
<b>Mutually Exclusive (Must be one of)</b>		
REALTOR®	A licensed real estate practitioner and member of CREA.	Y
STAFF	Staff of an organised real estate or affiliate entity.	Y
AFFILIATE	A member of an affiliated entity.	Y
GUEST	An anonymous visitor.	Test
<b>Additional Security (May be one of)</b>		
PRESIDENT	Elected President of an organised real estate or affiliated entity.	Y
DIRECTOR	Elected Director of an organised real estate or affiliated entity.	Y
EO	Executive Officer (Staff) of an organised real estate or affiliated entity.	Y
MTC	A member of the CREA MLS® & Technology Council.	Y
CCC	A member of the CREA Canadian Commercial Council.	Y
AEC	A member of the CREA Association Executive Council.	Y
PAC	A Political Action Group representative for an organised real estate entity.	Y
COMMITTEE	A member of a standing or ad-hoc Committee or	Not

Last Updated March 6, 2012

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	Task Force.	supported
BROKER	The owner of a Broker office who employs REALTORS.	Test
LICENSED	Licensed real estate practitioner who is not a member of CREA, Board or Association.	Not supported
TECHNICAL	Staff of an organised real estate or affiliated entity who is participating in shared application development.	Not supported
ADMINISTRATOR	Staff of an organised real estate or affiliated entity who is responsible for data entry with EO security level.	Not supported

**Supplementary Security (provided by the particular computer application being used)**

Of CREA.
Of a particular Board.
Of a particular association.
Of a particular Committee or Task Force.
Of a particular type of affiliation entity.
Of a particular affiliated entity.

**Enforcement:**

The rules associated with each group will be enforced electronically.

The Boards and Associations and other suppliers of REALTOR Link® functionality are responsible for granting and / or denying specific security group labels to individuals and organizations.

**Examples:**

When a visitor signs on through NAF, the visitor is assigned to the appropriate Mutually Exclusive and Additional Security Groups and the information required for Supplementary Security checking by the application is made available to the application.

**REALTOR Link®**, as a particular application, tests through NAF and its connection to CREA's National Membership System (iMIS) to determine the Supplementary Security Group that should be applied.

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Certain **REALTOR Link®** documents (in FileNet) can be restricted to the Presidents “of a particular Board”, for example, if the appropriate group (“President”) is selected from the FileNet security groups when a particular document is posted.

Certain Discussion Groups (in Webboard) can be restricted to REALTORS® or Executive Officers “of a particular Board” for example, because there is programming code in Webboard to provide this additional supplementary security.

If Boards and Associations use NAF as the authentication facility for their MLS® system, the MLS® system, as an application, will have to check, for example, with which Board or Association an Affiliate is associated if there are different access rules for non-member affiliates.

CREA MLS® & TECHNOLOGY COUNCIL  
POLICY MANUAL**Use Of Multimedia Links**

REALTOR.ca is a member developed and financed site, the purpose of which is to augment the member-to-member Board MLS® Systems. This policy ensures that the member-to-member aspect is respected on REALTOR.ca and on direct multimedia links from REALTOR.ca to facilitate ongoing member participation on the site. Further, this policy ensures that REALTOR.ca displays information that consumers expect to see based on the link they wish to use. It is inappropriate to use links for any other purpose than what they are intended for. It is also not appropriate to have an advertisement of private sales on webpages linked directly from multimedia links. For the purpose of this policy, "advertisement of private sales" means calling to the attention of the public that a listing is a private sale. Examples of advertisement of private sales would include, but are not limited to:

- Any reference to "selling privately"
- References to dealing directly with the seller e.g. for showings, offers, etc.
- For Sale By Owner branded marketing materials e.g. a brochure that refers to or is branded with the logo or name of a FSBO company
- Directions or links to a FSBO company or website or otherwise referring to a FSBO company.

Seller contact information is itself a form of advertisement of private sales and should not appear on webpages linked directly from multimedia links. Advertisement of private sales, including seller contact information, is permitted on the REALTOR®'s own website or his or her brokerage website (subject to the Seller Contact Information policy set out above).

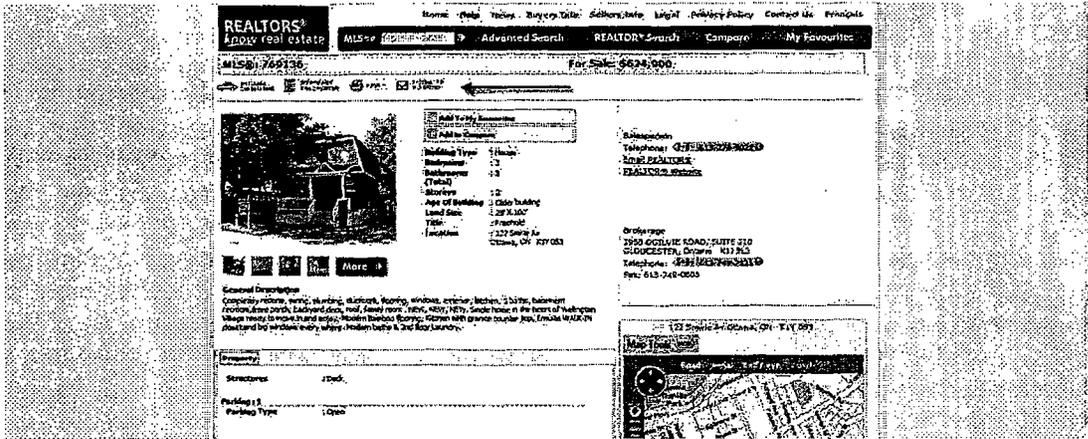
**Effective Date:** June, 2008

**Revised:** April, 2011

**Policy:**

1. Multimedia links displayed on REALTOR.ca must be as defined in the CREA dataload specifications version 5.2.

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2. Each field provided through the upload for multimedia links must be used as a link to the identified service and must contain only property-specific information.

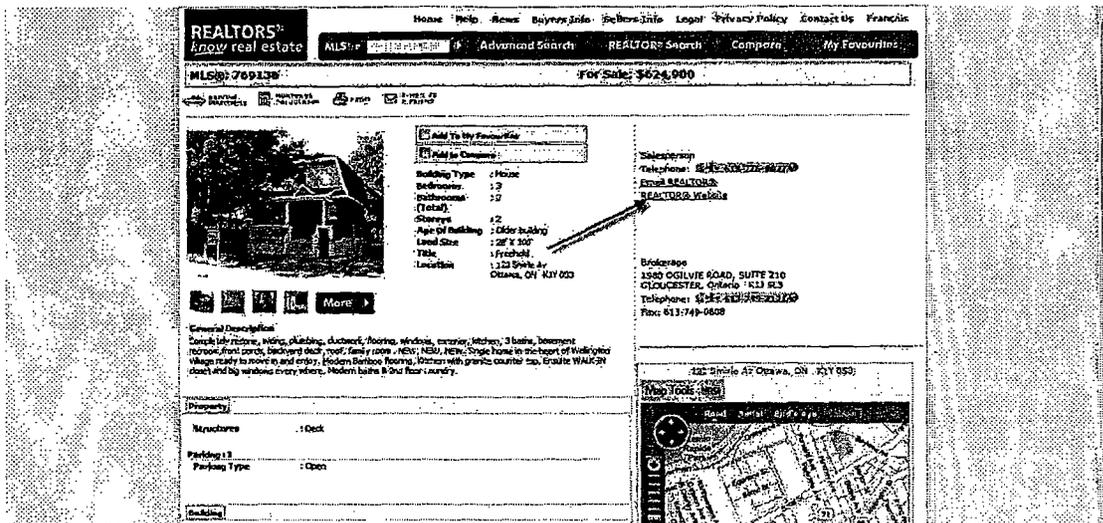
- Field 63 – alternate feature sheet
- Field 64 – virtual tour
- Field 65 – sound bites
- Field 66 – sales brochure
- Field 67 – additional photos
- Field 84 – Board preferred map service to locate property

3. Real estate Boards and Associations that provide a facility through their upload to REALTOR.ca are responsible for ensuring that the appropriate links are in their respective fields. In order to display multimedia links on REALTOR.ca, multimedia links must be provided through the Board/Association upload facility. Should the Board/Association not have a facility to provide such URLs through the upload facility, then the Board/Association must provide CREA with permission to upload multimedia links on their behalf through the CREA Helpdesk or FTP server.

4. Multimedia links that are provided to CREA as authorized by Boards and Associations must also be displayed as appropriate links in their respective fields.

5. The 'REALTOR® Website' link must be used as a link to the REALTOR®'s own website or to his or her brokerage website.

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6. Advertising of private sales is not permitted on REALTOR.ca or on the webpages linked directly from REALTOR.ca through the multimedia links. For example, this means that multimedia links cannot be used to link to webpages that contain seller's contact information, a brochure that refers to a for-sale-by-owner company, etc.

7. Webpages linked directly from REALTOR.ca through the multimedia links cannot be used to link to webpages that indicate where private sale information can otherwise be located (e.g., brochures cannot say "see my website for seller contact information").

8. Webpages linked directly from REALTOR.ca through multimedia links or through the 'REALTOR® Website' link must not automatically redirect users to a third party site.

Fees: There are no fees associated with this program.

#### Enforcement:

1. CREA will review all multimedia links it uploads via the CREA Helpdesk or FTP server. Any links that are identified as not complying with this policy will be removed.

2. Boards and Associations are required to conduct regular audits of multimedia links that they provide to REALTOR.ca to identify violations of this policy. Audits should be done on at least 10% of all listings processed by the Board/Association. A Board/Association shall remove any links that are identified as not complying with this policy.

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POLICY MANUAL

### **Seller Contact Information**

This policy relates to CREA Rule 17.2.4, which states that where the seller directs the listing REALTOR® to do so, the seller's contact information may appear in the REALTOR® only remarks (non-public) section of a listing on a Board/Association's MLS® System. The seller's contact information shall not appear on REALTOR.ca or in the general (public) remarks section of a listing on a Board/Association's MLS® System. The listing REALTOR® may include a direction in the General Description section on REALTOR.ca or on websites operated by CREA or a Board/Association to visit the REALTOR® website to obtain additional information about the listing (but the nature of such additional information shall not be specified).

**Effective Date:** April, 2011

**Policy:**

1. Seller contact information may be displayed on a listing REALTOR® / brokerage website subject to paragraph 2 immediately below.
2. The listing REALTOR® / brokerage website may be linked to from REALTOR.ca through the 'REALTOR® Website' link that appears on REALTOR.ca feature sheets, but this specific page of the REALTOR®/brokerage website must not display seller contact information (see Use of Links policy for more details).
3. Seller contact information must not be displayed on alternate feature sheets.
4. Seller contact information must not be displayed on webpages that are linked directly from REALTOR.ca through multimedia links.

CREA MLS® & TECHNOLOGY COUNCIL  
POLICY MANUAL

**Use of REALTOR.ca, ICX.ca and REALTOR Link® Image Servers**

(Document # 97634)

This is to define policy regarding the use of CREA's image servers by stakeholders. It was suggested we treat the pictures the same way we are treating data.

**Effective Date:** December 16, 2005

**Policy:**

1. Members of Boards and Associations will be granted free unrestricted access to the pictures for their own listings, to their own personal photograph and to their Broker office logo, residing on the REALTOR.ca, ICX.ca and REALTOR Link® image servers, for use on the respective member's websites.
2. Members of Boards and Associations will be granted free access, in accordance with the CREA DLF, VOW and IDX Rules, to the pictures for other Brokers' listings, their personal photographs and to their Broker office logos, residing on the REALTOR.ca, ICX.ca and REALTOR Link® image servers, for use on the respective member's websites.
3. Other stakeholder and Third Party use will be considered on a case-by-case basis.

**Enforcement:**

This policy will be enforced through technology when possible within MTC priorities.

CREA MLS® & TECHNOLOGY COUNCIL  
POLICY MANUAL**Permissions Management & Frame Breaking Code**

(Document # 84357)

In the absence of an authorized URL from Permissions Management, REALTOR.ca and ICX.ca will deliver frame-breaking code with each page.

**Effective Date:** May 16, 2005

**Policy:****Definitions:**

**CREA IDX:** a website that includes the properties of a particular group of Brokers on framed and customized REALTOR.ca pages.

**CREA VOW:** a website that includes all the property data of a particular Board from REALTOR.ca and IXN® on framed and customized REALTOR.ca pages. Some IXN® data needs to be hidden (REALTOR® remarks, for example).

**CREA DLF (Deep Link and Framer):** a website that includes all REALTOR.ca properties on framed and customized REALTOR.ca pages. For example, the FVREB website.

**Linkback Framer:** a website that includes a particular Broker's properties or the properties of a particular REALTOR® on framed and customized REALTOR.ca pages. This REALTOR.ca feature continues to be available on request through [helpdesk@crea.ca](mailto:helpdesk@crea.ca)

**Franchisor Framer:** a website that includes a particular Franchisor's Brokers' properties on framed and customize REALTOR.ca pages. For example, RE/MAX Ontario & Atlantic. This REALTOR.ca feature continues to be available on request through [helpdesk@crea.ca](mailto:helpdesk@crea.ca)

**Web Services:** a website using REALTOR.ca data for all properties and displaying or using the data in a prearranged and approved manner. For Boards and Associations only. This feature is available only through [helpdesk@crea.ca](mailto:helpdesk@crea.ca) .

**Deep Linker:** an unknown website linking to REALTOR.ca and causing the display of all REALTOR.ca properties on standard REALTOR.ca pages in a new window.

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**Rules for all:**

1. The requesting REALTOR®, Office or Board must have a valid e-mail address.
2. All websites must adhere to CREA rules.
3. Unless the requesting URL received by REALTOR.ca or ICX.ca has the logged arrangement identification, frame-busting code is included in the REALTOR.ca or ICX.ca page. Implementation of this will be delayed while websites conform.
4. The permissions of the first listing REALTOR® / Broker / Board in the data upload from the Board, are used when a property is processed.
5. A Broker who opts out of the CREA IDX concept cannot set up or participate in any CREA IDX. A Broker who opts out of the CREA VOW concept, cannot set up or participate in a CREA VOW. A Broker who opts out of the CREA DLF concept or Web Service concept, cannot set up or participate in an CREA IDX, a CREA VOW or a CREA DLF.

Third Parties, after submitting a proposal and obtaining permission of the MTC, can set up CREA DLF Web Services websites. Administration of the Third Party access to data would also occur through the Permission Management facility.

CREA MLS® & TECHNOLOGY COUNCIL  
POLICY MANUAL

2 - Defaults and Permission Hierarchy - CREA IDX

Website Type	Explanation	Options Available (Read Down)		
		Board	Broker	Vendor
CREA IDX	<p>A CREA IDX is a website that includes the properties of a particular group of Brokers on framed and customized REALTOR.ca pages. Unless a Broker has made an arrangement with one or more other Brokers, his properties are not included.</p> <p>Brokers need to be aware of these websites if they have been included.</p> <p>Boards need to be aware of these websites in order to monitor compliance.</p>	Default is opted-in for own data and for use of data in all other IDX.	Default is opted-out (i.e. not included.) Has not set up an IDX arrangement with other Brokers.	Default is opted-in.
		Can opt-out of concept	Can set-up or participate in a CREA IDX*. Contains Board data if Board has not opted-out of concept.	Can opt-out of all websites through Board MLS® system.
		Can opt-in to use of data in own member's IDX only.	Can opt-out of concept*.	
		Can opt-in to use of data in own and all other CREA IDX.		
		Can opt-in to use of data in own and all other CREA IDX only where home Board has also opted-in to all other CREA IDX.		

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POLICY MANUAL

3 - Defaults and Permission Hierarchy – CREA VOW

Website Type	Explanation	Options Available (Read Down)			
		Board	Broker	REALTOR®	Vendor
<b>CREA VOW</b>	<p>A CREA VOW is a website that includes all the property data of a particular Board from REALTOR.ca and IXN® on framed and customised REALTOR.ca pages</p> <p>Some IXN® data needs to be hidden (REALTOR remarks for example). Unless opted-out, all properties of all Brokers from a particular Board are included in the pages for the CREA VOW website. Brokers need to be aware of these websites so they can opt-out of the concept if they wish. Boards need to be aware of these websites in order to monitor compliance.</p>	Default is opted-in to concept for use of data in own member's VOW.	Default is opted-in.	Default is opted-in through Broker	Default is opted-in
		Can opt-out of concept.	Can opt-out of concept*	Can set-up a CREA VOW if Broker not opted-out of concept. Contains Board data if Board has not opted-out of concept.	Can opt-out of all websites through Board MLS® system.
		Can opt-in to use of data in own member's VOW only.	Can set-up a CREA VOW*. Contains Board data if Board has not opted-out of concept.		
		Can opt-in to use of data in own and all other CREA VOW			
		Can opt-in to use of data in own and all other CREA VOW only where home Board has also opted-in to all other CREA VOW			

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4 - Defaults and Permission Hierarchy – CREA DLF

Website Type	Explanation	Options Available (Read Down)			
		Board	Broker	REALTOR®	Vendor
<b>CREA DLF (Deep Link and Framer)</b>	<p>A CREA DLF is an approved website that includes all REALTOR.ca properties on framed and customized REALTOR.ca pages.</p> <p>This service is available to Boards, Associations, Brokers and REALTORS. Boards and Brokers need to be made aware of these websites so they can opt-out of the concept if they wish. Boards need to be aware of these websites in order to monitor compliance.</p>	Default is opted-in to concept for own data and use of data in all other DLF.	Default is opted-in.	Default is opted-in through Broker	Default is opted-in.
		Can opt-out of concept.	Can opt-out of concept*	Can set up a CREA DLF if Broker not opted-out of concept. Contains Board data if Board has not opted-out of concept.	Can opt-out of all websites through Board MLS® system.
		Can set-up a CREA DLF.	Can set-up a CREA DLF*. Contains Board data if Board has not opted-out of concept.		
		Can opt-in to use of data in own member's DLF only.			
		Can opt-in to use of data in own and all other CREA DLF.			
		Can opt-in to use of data in own and in all other CREA DLF only where home Board has also opted-in to all other CREA DLF.			

\* A Broker who opts out of the CREA IDX concept cannot set-up or participate in any CREA IDX. A Broker who opts-out of the CREA VOW concept, cannot set-up a CREA VOW. A Broker who opts out of the CREA DLF (Deep Link & Framer) concept or Web Service concept, cannot set up an CREA IDX, a CREA VOW or a CREA DLF (Deep Link & Framer).

Third Parties can, after submitting a proposal and obtaining permission of the MTC set-up Deep Link & Framers and Web Services websites. Administration of the Third Party access to data would also occur through the Permission Management facility.

CREA MLS® & TECHNOLOGY COUNCIL  
POLICY MANUAL

5 - Defaults and Permission Hierarchy – Linkback Framer

Website Type	Explanation	Options Available (Read Down)				
		Board	Franchisor	Broker	REALTOR®	Vendor
<b>Linkback Framer</b>	A Linkback Framer is a website that includes a particular Broker's properties or the properties of a particular REALTOR® on framed and customized REALTOR.ca pages. Other Brokers do not need to be aware of these websites and do not need to opt-out. Boards need to be aware of these websites in order to monitor compliance.	Default is opted-in.	Default is opted-in.	Default is opted-in.	Linkback Framer option set by Broker	Default is opted-in.
		No Linkback Framer opt-out options available	No Linkback Framer opt-out options available	Can set-up a Linkback Framer	Can set-up a Linkback Framer	Can opt-out of all websites through Board MLS® system.

<b>Franchisor Framer</b>	A website that includes a particular Franchisor's Brokers' properties on framed and customize REALTOR.ca pages. For example, RE/MAX Ontario & Atlantic the Franchisor's Brokers are automatically opted-in. Boards need to be aware of these websites in order to monitor compliance.	Default is opted-in.	Can set-up a Franchisor Framer	Assumed that Franchisor has obtained permission from Brokers	Franchisor Framer option set by Broker	Default is opted-in.
		No Franchisor Framer opt-out options available.				Can opt-out of all websites through Board MLS® system.

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POLICY MANUAL

6 - Defaults and Permission Hierarchy – Web Service

Website Type	Explanation	Options Available (Read Down)		
		Board	Broker	Vendor
<b>Web Services</b>	<p>A website using Web Services is a website using all REALTOR.ca data properties and displaying or using the data in a prearranged and approved manner. That is the pages are not produced by REALTOR.ca. For Boards and Associations only so they can provide different displays of their data.</p> <p>Since service is arranged by the Board, the default for the Broker is opted-in. That is the Board would get permission from the Brokers first.</p>	Default is opted in to concept for own data	Default is opted-in to home Board's choice	Default is opted-in.
		Can opt-out of concept	Can opt-out of concept*	Can opt-out of all websites through Board MLS® system.
		Can set-up a Web Service for their data only.		
		Can opt-in to an other website with a Web Service		

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POLICY MANUAL

7 - Defaults and Permission Hierarchy – Deep Linker

Website Type	Explanation	Options Available (Read Down)		
		Board	Broker	Vendor
Deep Linker	Third party or unknown websites linking to REALTOR.ca and causing the display of all REALTOR.ca properties on standard REALTOR.ca pages in a new window.	Default is opted-in.	Default is opted-in.	Default is opted-in.
		No Deep Linker opt-out options available	No Deep Linker opt-out options available	Can opt-out of all websites through Board MLS® system.

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POLICY MANUAL

### **Interactive Mapping Mandatory Upload Fields**

(Document 108861 – MTC Minutes December 7, 2007)

This is to define the policy regarding fields Boards / Associations must provide to ensure the effectiveness of interactive mapping.

**Effective Date:** December 7, 2007

**Policy:**

Boards / Associations must supply, on a mandatory basis, the postal code and city / township / municipality for upload (not display) purposes. Boards / Associations will be encouraged to provide the civic address and / or XY coordinates, if the latter is owned by the Board and can be used for purposes other than locating the property on REALTOR.ca and ICX.ca.

CREA MLS® & TECHNOLOGY COUNCIL  
POLICY MANUAL**Access to Technology Products and Services**

The objective of the policy is to ensure that members who are not otherwise entitled to receive access to MLS® information and services at a local level are not able to achieve the same through access to MLS® information on IXN® at a national level.

**Effective Date:** May 23, 2007

**Policy:**

At present all members are able to access IXN® information via REALTOR Link®. There are some members who cannot access MLS® information because they belong to a Board that does not supply an MLS® system and they do not participate or pay for MLS® services through another Board or they belong to a Board that does provide MLS® services but their membership status within that Board is one that does not include access to their local Board's MLS® system. Accordingly, members who have chosen to not pay for or participate in accessing information from their local service should not be able to obtain or access the same or similar information through the IXN® service (*REALTOR.ca* or *ICX.ca*)

It shall be the responsibility of each Board and Association to maintain in their membership data upload to CREA identification of any member who should not receive access to IXN® information based on that member not participating or not paying for access to MLS® services through their local Board or another Board who provides MLS® services.

CREA MLS® & TECHNOLOGY COUNCIL  
POLICY MANUAL

**Technical Peer Group  
Terms of Reference**

**Objective**

The objective of the TPG (Technology Peer Group) is to provide a forum to encourage dialogue between the technical staff of Boards and Associations to share technical projects, ideas and experiences in order to enhance technical and IT services to the REALTOR® community. Creating a spirit of cooperation among technical staff will reduce redundancies, increase project successes, reduce costs and ultimately support standardizations across Canada.

**Effective Date:** April, 2010

**Revised:** April, 2011

Standing agenda items are:

- Round table with reports from all participating Boards and Associations
- CREA Update
- CREA Service Performance Reports and Review
- WEBForms™ update

Other example agenda items are:

- Industry presentations i.e. Microsoft
- Security
- MLS® systems
- Membership systems

**Mandate**

1. To discuss technical issues relating to technologies affecting the Boards, Associations and their members;
2. Provide policy recommendations to the MTC;
3. Facilitate and support implementation of MTC policies regarding technology sharing and reuse;
4. Share information on current and future projects;

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5. Suggest technology for investigation by MTC;
6. Provide feedback on national technology initiatives;
7. Promote MTC initiatives locally.

### **Deliverables**

TPG prepares reports and recommendations on technology for the MTC.

### **Meetings**

Meetings are scheduled twice a year either immediately before or after the CREA AGM (spring) and SGM/MTC Forum (fall). Meetings may be for one or two days depending on the agenda. Agenda preparation will be facilitated by CREA staff and CREA will provide a chair for each meeting in order to ensure continuity.

Meeting logistics are handled by the CREA Conference Department. Additional meetings / Webinars may be scheduled as required.

### **MTC Funding**

The MTC currently budgets for one meeting and two conference calls per year. One technical staff or appointed consultant per each Board or Association will be funded, but the Board or Association is free to fund additional participants. The MTC budget covers travel, accommodation and meals in accordance with CREA's non-Director travel policy. If meals are offered at organised TPG events, expenses can't be claimed for the same meals. All expense claims must be supported by full receipts (credit card transaction receipts are not acceptable), and submitted within one month after the event.

### **Participants**

Preferred participants are those staff whose responsibilities include involvement with the management, application, helpdesk or development of technology at the Board or Association. Consultants actively employed by Boards and Associations on technology projects are also invited. As TPG is partially funded by MTC, TPG members are expected to actively participate in TPG meetings through presentations, chairing discussions or workshops or providing valuable feedback via the TPG facilities on REALTOR Link®.

### **Confidentiality & Governance**

Boards and Associations may have third party technical staff attend the TPG meetings and have access to the TPG mailing list. However, Boards / Associations are responsible to ensure the third party "consultant" signs a non disclosure agreement (NDS) and must return a signed copy to CREA for their records. Third parties may attend TPG meetings. However, the costs for travel will be the responsibility of the Board / Association. It is also

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the responsibility of the Board / Association to provide the third party "consultant" with an email address and the Board / Association agrees to advise CREA of any changes. Usage of an email address that is not provided by a Board / Association is subject to approval by CREA and may be subject to conditions. Due to the sensitive discussions that may arise from these meetings, MLS® service providers or their representatives are not permitted to participate on the TPG or be a member of the TPG mailing list. MLS® service provider staff may be explicitly invited for selected presentations, workshops or such.

Access to TPG member contact information is confidential information and may be used for the sole purpose of participating in TPG activities as outlined in this Terms of Reference.

### **Roles and Responsibilities**

#### **Chairperson**

The Chairperson for the TPG meetings is determined and appointed by CREA. Chairperson will perform the following duties:

1. Set the meeting dates. Dates for the following meeting should be announced at least at the previous event.
2. Agenda: through an email poll of TPG members, the chair will solicit agenda items for the meeting. CREA administrative assistant prepares the agenda.
3. Guest Speakers: TPG members or the chair may propose guest speakers, the chair will invite selected guest speakers.
4. Ensure arrangements are made for the entire group at a restaurant for the evening between meeting days.

#### **CREA Staff Liaison**

The CREA Staff Liaison is the CREA IT Services administrative assistant. CREA Staff Liaison will perform the following duties:

1. Based on feedback from TPG, creates, updates and circulates the meeting agenda.
2. Arranges for meeting space and food/beverages.
3. Prepares and distributes meeting material and minutes.
4. Assists TPG members with expense claims.

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**MTC Liaison**

The MTC Liaison is responsible to update the MTC with issues raised by the TPG group and update the TPG with MTC initiatives as well as activities. The MTC liaison brings TPG recommendations to the MTC, represent the context of discussions, and promote directions the TPG identifies for the industry. The MTC liaison also presents the MTC's views on TPG proposals or recommendations back to the TPG. The MTC Liaison must be an MTC Director and should attend all TPG meetings.

**TPG Member**

TPG members are expected to actively participate as outlined on page 56. The MTC Liaison and the TPG Chair may recommend cancellation of MTC funding or exclusion from the group for TPG if individuals that make no efforts to contribute or violate these Term of Reference in other ways. The MTC makes the final decision.

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## Shared Application and Development Protocol

### Introduction

Boards, Associations, Franchisors and other interested organisations are encouraged to participate with CREA and the MLS® and Technology Council in the shared development of technology applications.

The objective of this initiative is to eliminate duplication of effort, to reduce the cost of technology for REALTORS®, Boards and Associations and to provide the opportunity for Boards and Associations to influence the direction and priority of the development of products and services for members.

This protocol defines the responsibilities, accountabilities, decision-making authorities and performance expectations of the MTC and the technical units of CREA and of participating Boards and Associations, in the provision of CREA and MTC sponsored Technology Products and Services (referred to herein as Technology Products).

By formalising these organisational dynamics, the MTC wishes to encourage the technical units to act as a single, trans-Canada technology team whose strategic objective is to develop or acquire and deliver superior Technology Products that enhance members' success.

### Single Technology Team and Open Source

The MTC encourages a single team approach in order to stimulate the sharing of technology development effort and resources as well as application administration activities.

In support of this objective, the MTC makes available to the technical units of Boards, Associations and Third Parties, copies of the documentation and source code of the Technology Products owned by CREA.

Usage of source code owned by CREA must follow the following guidelines:

- can be used by Boards, Associations and Third Parties to augment existing MTC technology products and services
- can be used to create new MTC technology products and services which do not duplicate or compete with MTC technology products and services.
- can be provided to Boards, Associations and Third Parties in trust and any license to use will be terminated at end of shared development
- cannot be used to create commercially sold technology products and services
- exclusive use for Boards, Associations and Third Parties
- exclusive use for members, offices and franchisors and
- subject to approval from MTC.

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A participating organisation should have an in-house technical team or have the resources to employ and manage technical consultants.

The MTC will negotiate the purchase of the intellectual property, documentation and source code of Technology Products developed and owned by Boards, Associations, Third Parties and Stakeholders if the following criteria can be applied:

1. The Technology Product is consistent with the CREA / MTC Strategic Plan and Development Plan for the Product;
2. The Technology Product can be made available to all Boards, Associations and members; and
3. The technical unit that developed the purchased Technology Product can continue to participate in the development of the Technology Product.

Examples of Technology Products that have previously been purchased for these objectives are REALTOR Link® and WEBForms™. A sample Purchase and Shared Development Agreement is included as Appendix A.

### **Shared Application Development Participation**

To initiate participation in the shared development of Technology Products (become a Developer Organisation) the organisation and its technical team would have to implement the following steps.

1. Sign the limited use agreement governing the use of the source code, ownership and deployment conditions for the developed applications and enhancements.
2. Set up a development workstation with the following configuration and components:
  - Visual Studio .Net 2003 / 2005
  - SQL Server 2000 / 2005
  - NET framework 1.1/2.0

Note: CREA wishes to stay open to other technologies if Boards have the expertise to develop and support it. Alternate technology will be reviewed on a per application basis. However, it is strongly recommended that development use Microsoft technologies if CREA is expected to maintain and support the application.

3. Request a copy of REALTOR.ca, ICX.CA, WEBForms™, REALTOR Link® or the appropriate application source code and links to the current versions of the NDS Data Model documentation and CREA's Business Activity Models on REALTOR Link®.

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4. Prepare a Requirements or Specifications document describing the application or enhancements for which development will be performed. The requirements should make specific reference to:
  - Additions or changes to the NDS Data Model and entity documentation;
  - Additions or changes to the CREA Business Activity Models.

And should include sections on:

  - Physical database model including tables, stored procedures and functions
  - Application architecture diagrams
  - List of technologies used
  - List of system dependencies.

5. Obtain approval for and feedback on the proposed development from the CREA development team.
6. Develop and unit test the enhancements or application according to CREA development standards.
7. Transfer the source code to CREA for integration in the CREA test environment.
8. Participate in the quality and usability testing of the applications or enhancements.

#### **Shared Application Development Process**

The participating organisation is expected to follow the Technology Product planning and development process as follows.

1. In conjunction with CREA staff and the MTC, a joint development plan describing the strategic, tactical and operational development and management of the Technology Product is maintained by the participating organisation. Details of the plan include a list of projected development, maintenance, management and marketing activities as well as a budget for the anticipated expenses associated with the activities;
2. The priorities for development of the Technology Product are reviewed each six months by the MTC and adjusted as necessary. A project plan describing the timelines for the delivery of the priorities is jointly maintained by CREA and the participating organisation;
3. The budget for the development of the Technology Product is reviewed and approved by the MTC once a year for submission to the CREA Board each fall;
4. All software design, development and change management activities follow the CREA / MTC application development life cycle and project planning procedures,

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policies and assignment of responsibilities, accountabilities and decision-making authorities;

5. CREA staff and the staff of the participating organisation are expected to meet the performance standards and expectations documented in this protocol.

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**Appendix A – Sample Agreement**  
APPLICATION TRANSFER AGREEMENT

**BETWEEN:**

THE CANADIAN REAL ESTATE ASSOCIATION  
(CREA)

**AND**

<ORGANISATION NAME>  
(ORGANISATION ACRONYM)

**WHEREAS** <ORGANISATION ACRONYM> has developed an Internet-based application that .....(the “Application”);

**AND WHEREAS** CREA wishes to purchase from <ORGANISATION ACRONYM> all components of the Application;

In consideration of the mutual covenants set out in this Agreement, the parties agree as follows:

**1. TRANSFER OF RIGHTS**

<ORGANISATION ACRONYM> hereby transfers to CREA all of its right, title and interest in and to the Application, including, without limitation, all intellectual property rights, and all associated goodwill. The Application consists of the following:

- (i) All programs, statements, instructions, and data, however fixed, stored or recorded, all source codes, object codes, program files, data files, tools, libraries, application programming interfaces, data field and data definition specifications, data models, program and system logic, interfaces, program modules, routines, sub-routines, algorithms, program architecture, design concepts, system designs, program sequence and program organization, and all other forms of computer software that operate the Application, and the copyright in the works authored or created by or on behalf of and owned by <ORGANISATION ACRONYM> (the “Software”);
- (ii) The content, look and feel of the Application, including text, graphic designs and images provided by <ORGANISATION ACRONYM> and the copyright in the works authored or created by or on behalf of <ORGANISATION ACRONYM> (the “Content”);
- (iii) Documentation provided for the Software or any portion of the Software, and any documentation concerned with the operation of the Software which has been authored

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by or on behalf of <ORGANISATION ACRONYM>, if any, including the copyright in any such documentation (the “Documentation”)

- (iv) Where such exist, the trade-mark and any other marks, names, business names, domain names and the like and any relevant registrations or applications, and all associated goodwill (the “Marks and Names”);
- (v) Ongoing contracts with suppliers of services, if any, which are concerned exclusively with support, maintenance or operation of the Software, or the Application generally (the “Contracts”); and
- (vi) All other things as reasonably may be deemed necessary by CREA to operate the Application.

## 2. OWNERSHIP

<ORGANISATION ACRONYM> warrants that it is the owner of all rights being transferred, and has not assigned, licensed or otherwise alienated its right, title and interest in the Application or any of its components of to any third party. With regard to any of the works in which <ORGANISATION ACRONYM> is transferring copyright, <ORGANISATION ACRONYM> agrees that:

- (i) such works are original;
- (ii) to the extent that any such works were created by employees of <ORGANISATION ACRONYM>, the works were created in the course of their employment and waivers of moral rights have been obtained from the relevant employees; and
- (iii) to the extent that any such works were created by third parties, including employees of <ORGANISATION ACRONYM> outside the course of their employment, assignments of copyright and waivers of moral rights have been obtained from the relevant third parties.

## 3. PAYMENT

CREA shall pay the sum of \$ N.00 upon execution of this Agreement by both parties.

## 4. LICENSE

- (a) <ORGANISATION ACRONYM> shall be licensed on a sole, royalty-free basis to develop and manage the Application on behalf of CREA, in accordance with the process outlined in Section 5 below. Under this license, <ORGANISATION ACRONYM> shall provide services substantially the same, and at least as high quality, as those services performed on its own account prior to entering into this Agreement.
- (b) <ORGANISATION ACRONYM>’s development and management obligations will include participation in the Application software design, development, promotion and support, as requested by or as arranged with CREA, including testing, quality assurance, documentation, second level technical support and marketing.

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- (c) <ORGANISATION ACRONYM> will develop and maintain a User Guide for use of the Application or contribute the Application section of the mls.ca / ICX.CA / IXN® guide as the case may be.
- (d) <ORGANISATION ACRONYM> will be responsible for hosting a server in <ORGANISATION NAME> for software development and testing purposes and shall have remote access to the necessary CREA source code management, development and testing environment, when technically feasible and not later than <date>.
- (e) CREA will pay for all mutually agreed-upon development and maintenance costs associated with the Application, including a minimum monthly programming allowance of 40 hours of maintenance a month, at a rate of \$85.00 per hour, in accordance with the process outlined in Section 5 below.

**5. DEVELOPMENT AND MODIFICATION PROCESS**

- (a) <ORGANISATION ACRONYM>, in conjunction with CREA staff and the MLS® and Technology Council (MTC), shall formulate a joint development plan regarding the development and management of the Application, the first version of which is to be completed by the end of <date>, and thereafter reviewed on an annual basis no later than the end of June of each subsequent year. The development plan shall include a list of projected development, maintenance, management and marketing activities and a budget for anticipated expenses in connection with these activities. The annual review shall include an assessment of the compensation paid to <ORGANISATION ACRONYM>.
- (b) CREA and the MTC shall, in its absolute discretion, determine which development and/or maintenance initiatives to undertake.
- (c) The development plan for <year> shall focus on the transfer of the Application and Internet URLs to CREA's web sites infrastructure and on the establishment of a functional development environment in <ORGANISATION NAME>.
- (d) All modifications, enhancements and additional functionality developed under this Agreement form part of the Application and are the sole property of CREA.
- (e) All software design and development must follow the then current CREA application development life cycle and project planning procedures, policies and staff role assignments.
- (f) All Application and related infrastructure code changes shall follow CREA change management policies, procedures and staff role assignments. By way of clarification, there shall be no direct access to the CREA infrastructure other than what is granted to all development teams according to CREA policies and procedures.
- (g) Any press release or other communication dealing with new developments in the Application will be issued only by CREA.

**6. LIMITATION ON LICENSE**

The License granted to <ORGANISATION ACRONYM> in this Agreement does not include the right of <ORGANISATION ACRONYM> to sublicense any components of the Application,

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including any modifications or enhancements or to commercialize the Application, either during the term of this contract or any time after its termination or expiry.

## **7. CONFIDENTIALITY**

<ORGANISATION ACRONYM> acknowledges that the Application is a valuable trade secret, and is considered extremely confidential information. <ORGANISATION ACRONYM> agrees not to disclose any aspect of the Software, the Content, or any information relating to the operation of the Application to any third parties except necessary development staff for the purpose of complying with this agreement.

## **8. TERMINATION**

- (a) This license granted to <ORGANISATION ACRONYM> under this Agreement shall terminate immediately upon any of the following:
- (i) The issuance of a receivership, bankruptcy or winding up order in respect of <ORGANISATION ACRONYM>;
  - (ii) The cancellation of <ORGANISATION ACRONYM>'s Articles of Incorporation;
  - (iii) The withdrawal or termination of <ORGANISATION ACRONYM>'s membership in CREA;
  - (iv) Any breach of this Agreement by <ORGANISATION ACRONYM>, which <ORGANISATION ACRONYM> has failed to correct within thirty (30) days of receiving written notice from CREA.
- (b) CREA or <ORGANISATION ACRONYM> may terminate the License under this Agreement at any time on six (6) months written notice to the other party.
- (c) On termination:
- (i) All rights and obligations contained in the license to <ORGANISATION ACRONYM>, as set out in paragraphs 4 and 5 shall cease;
  - (ii) Ownership of the Internet URL, (if applicable) will be transferred to <ORGANISATION ACRONYM>;
  - (iii) Provided the termination is not under Section 8(a) (i) to (iii), <ORGANISATION ACRONYM> may apply under CREA's then current Shared Application Development Protocol for a copy of the source code of the application of which the Application is a component at the time of termination.

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**9. SURVIVAL OF WARRANTIES AND REPRESENTATIONS**

All warranties and representations contained herein shall survive the termination of this contract.

**10. NON-TRANSFERABLE**

This agreement, including the Application License, is non-transferable, by both parties.

**11. GOVERNING LAW**

This agreement shall be governed by the law of Ontario and the federal laws of Canada applicable in Ontario.

SIGNED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008.

THE CANADIAN REAL ESTATE  
ASSOCIATION

<ORGANISATION NAME>  
\_\_\_\_\_

per: \_\_\_\_\_ per: \_\_\_\_\_  
TITLE TITLE

TITLE per: \_\_\_\_\_

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## Minimum Security Compliance

### Objective

The MTC has established a best practice that each year an IT security audit shall be conducted by an independent external Auditor on the security of IT services delivered by or on behalf of CREA. The 2010 audit identified several vulnerabilities classified as 'high' by the auditor. CREA staff implemented counter measures to address those within its control. However, not all could be closed as some require changes by Boards and Associations that either contribute to CREA IT service delivery or access CREA IT services.

CREA staff proposed to the MTC that a policy should be implemented that requires all Member organisations of CREA to comply with minimum security standards, to make the required changes on their systems and environment to allow CREA to mitigate vulnerabilities classified as "high" or "critical" by an independent security auditor.

**Effective Date:** December 5, 2011

### Policy

1. Provided that the MTC has approved the required budget, CREA must execute a security audit every year. This audit shall investigate CREA IT infrastructure and services for security vulnerabilities. This shall include services delivered by or on behalf of CREA.
2. CREA must address or mitigate any vulnerability classified as "critical" and "high" as result of such audits on a timely basis.
3. If reduction or elimination of such an identified vulnerability requires changes to an IT system or the IT environment of a Board or Association, the Board or Association is responsible for implementation of such changes within 90 days after being notified by CREA.
4. CREA may request an immediate change to the Board of Association depending on the nature of the vulnerability identified in the Audit.

### Constraints:

The intent of this policy is not to define or mandate security policies or rules for a Board's / Association's operation or for IT services delivered by a Board / Association. This remains the responsibility and accountability of the Board / Association. Only services delivered by CREA and relevant interfaces are in scope of this policy.

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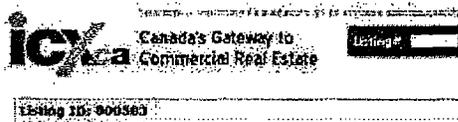
## Use of Listing ID # on REALTOR.ca

### Objective

The objective of this policy is due to concerns about non-members advertising the MLS®# of a property on REALTOR.ca and to ensure proper use of the MLS® trademark.

CREA's legal department had received several complaints about non-members advertising the MLS®# of a property displayed on REALTOR.ca. The use of MLS® numbers to identify properties listed on Board/Association MLS® Systems perpetuates the false believe that MLS® Systems are merely databases.

Because of this concern, and in light of the fact that there could potentially be more MLS® listing content on the Internet soon as a result of the DDF, it was recommended that the use of MLS®# numbers to identify properties on REALTOR.ca, as shown below, be changed to instead refer to Listing ID, like on ICX.ca.



While each feature sheet could be branded with the MLS® logo to indicate that the property is listed on a Board's /Association's MLS® System and associated with MLS® services, it was recommended to move away from using the MLS® trademark with an identifier number.

**Effective Date:** December 5, 2011

### Policy

That all occurrences of MLS® # on REALTOR.ca be changed to Listing ID.

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## Search Engine Indexing of REALTOR.ca

### Objective

The objective of this policy is to provide more exposure to property listings by being accessible to search engines. Indexing the full text of the web allows the search engine to go beyond simply matching single search terms. Most search engines give more priority to pages that have search terms near each other and in the same order as the query. They can also match multi-word phrases and sentences

Indexing gives a “richer” search result. As an example, if indexing were allowed on REALTOR.ca, and a user entered a property address as a search term, a link to that specific property on REALTOR.ca would be displayed in the search results. Clicking on the link would take a user directly to the thumbnail or feature sheet of the property. Currently, CREA does not allow indexing of REALTOR.ca content and that facility does not exist on REALTOR.ca. No one doing a property search through Google, for example, could enter an address and get a link to a specific property in the results.

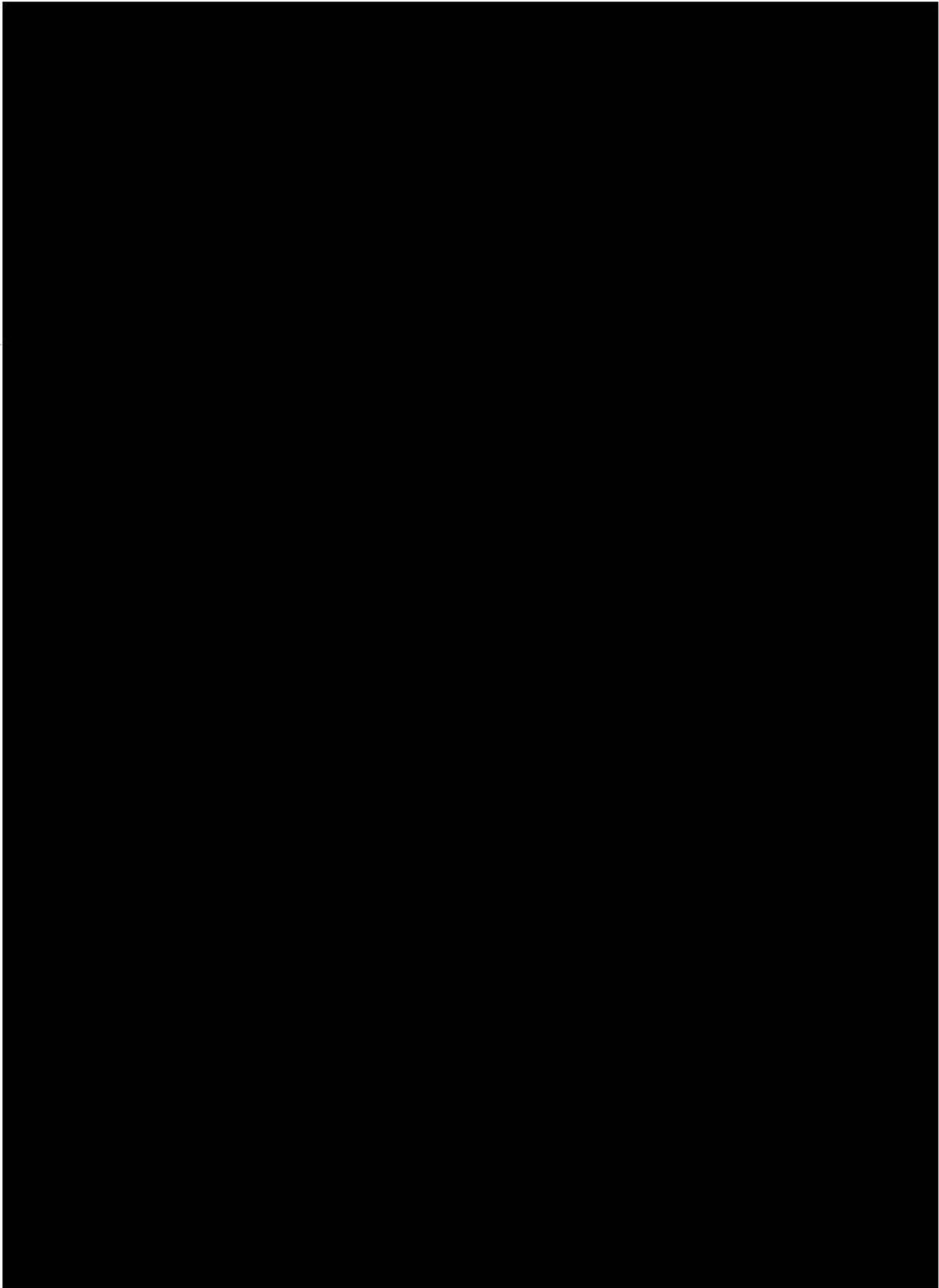
**Effective Date:** December 5, 2011

### Policy

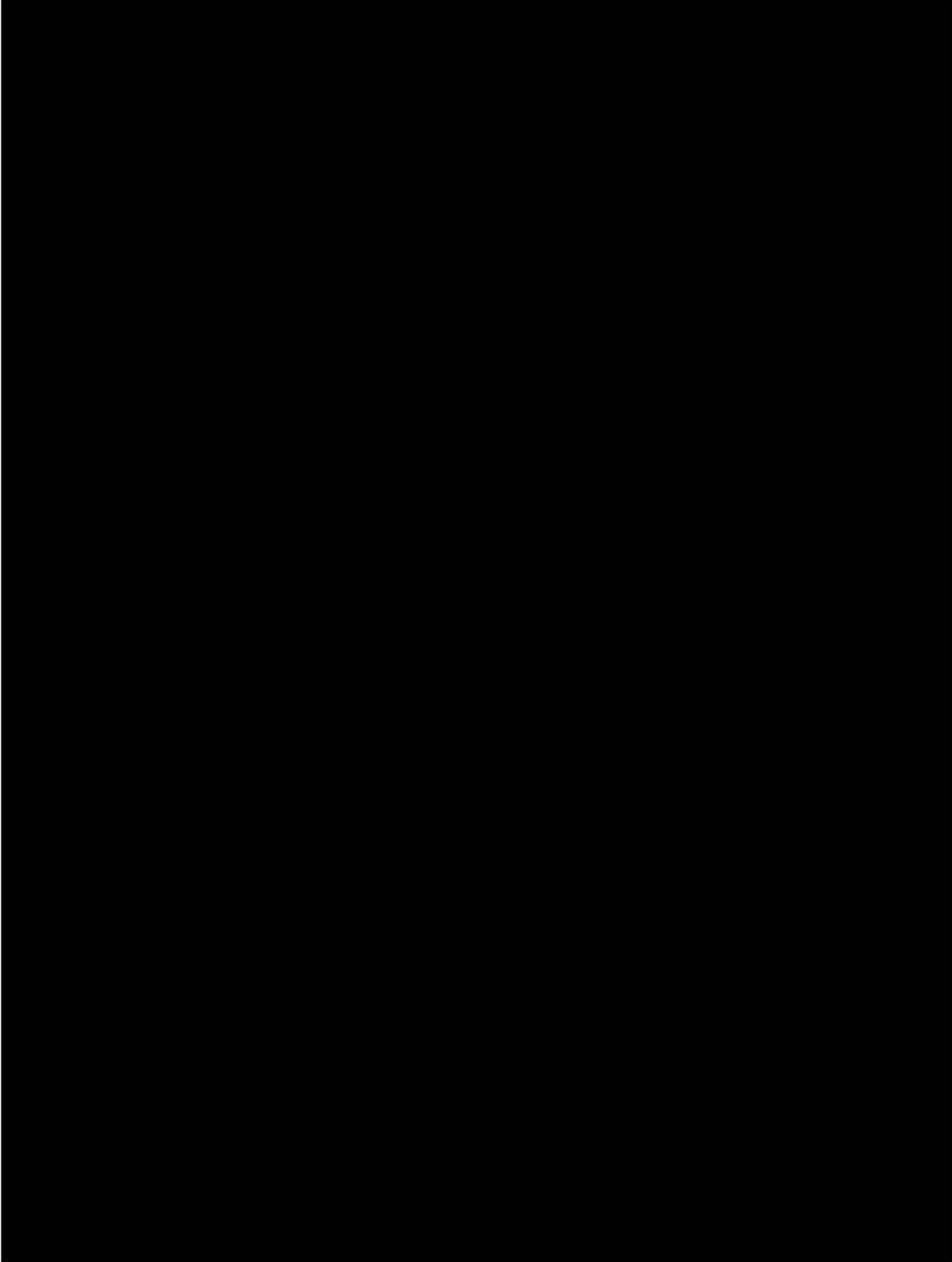
The indexing of listings on REALTOR.ca is permitted.

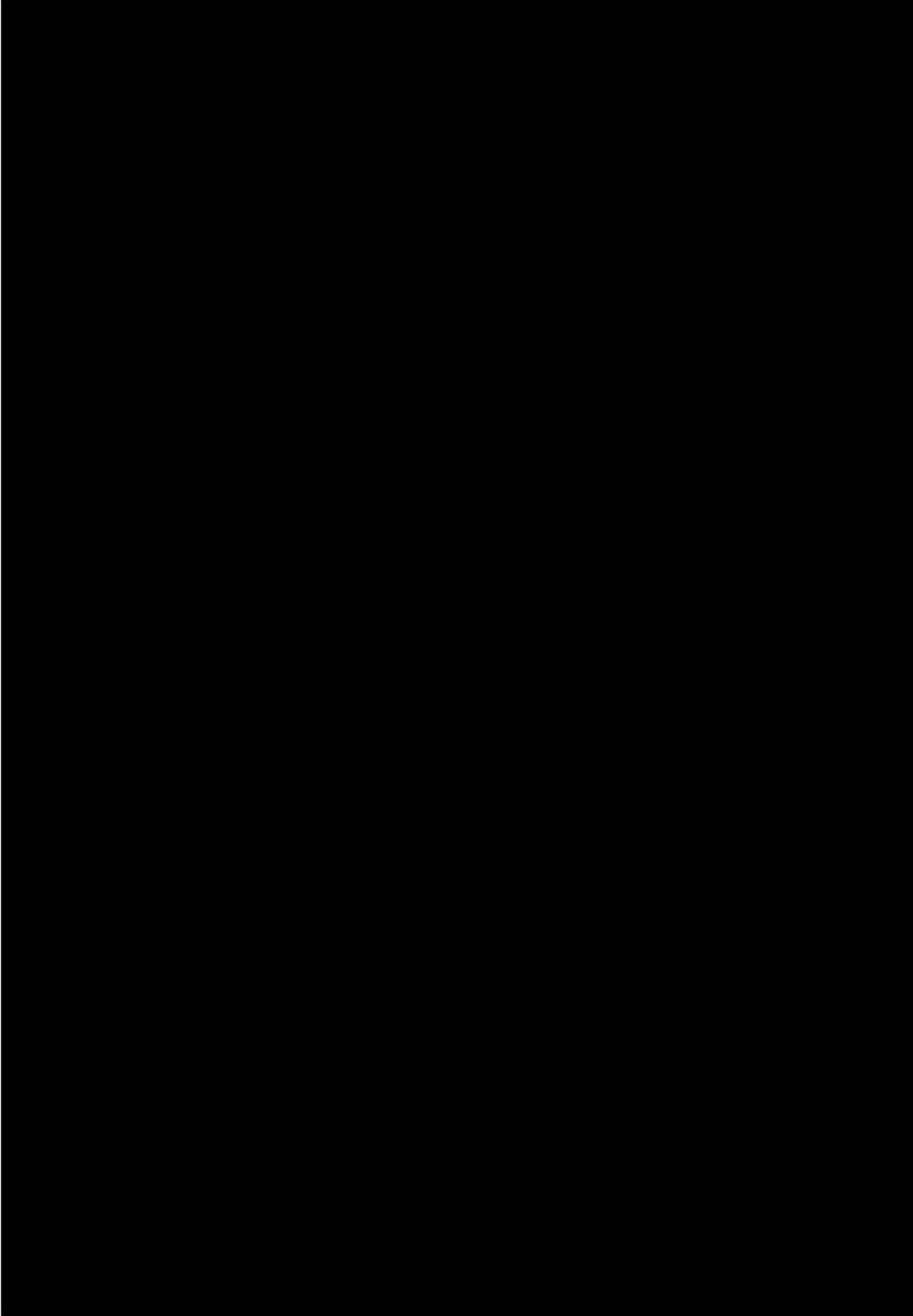
# EXHIBIT 12

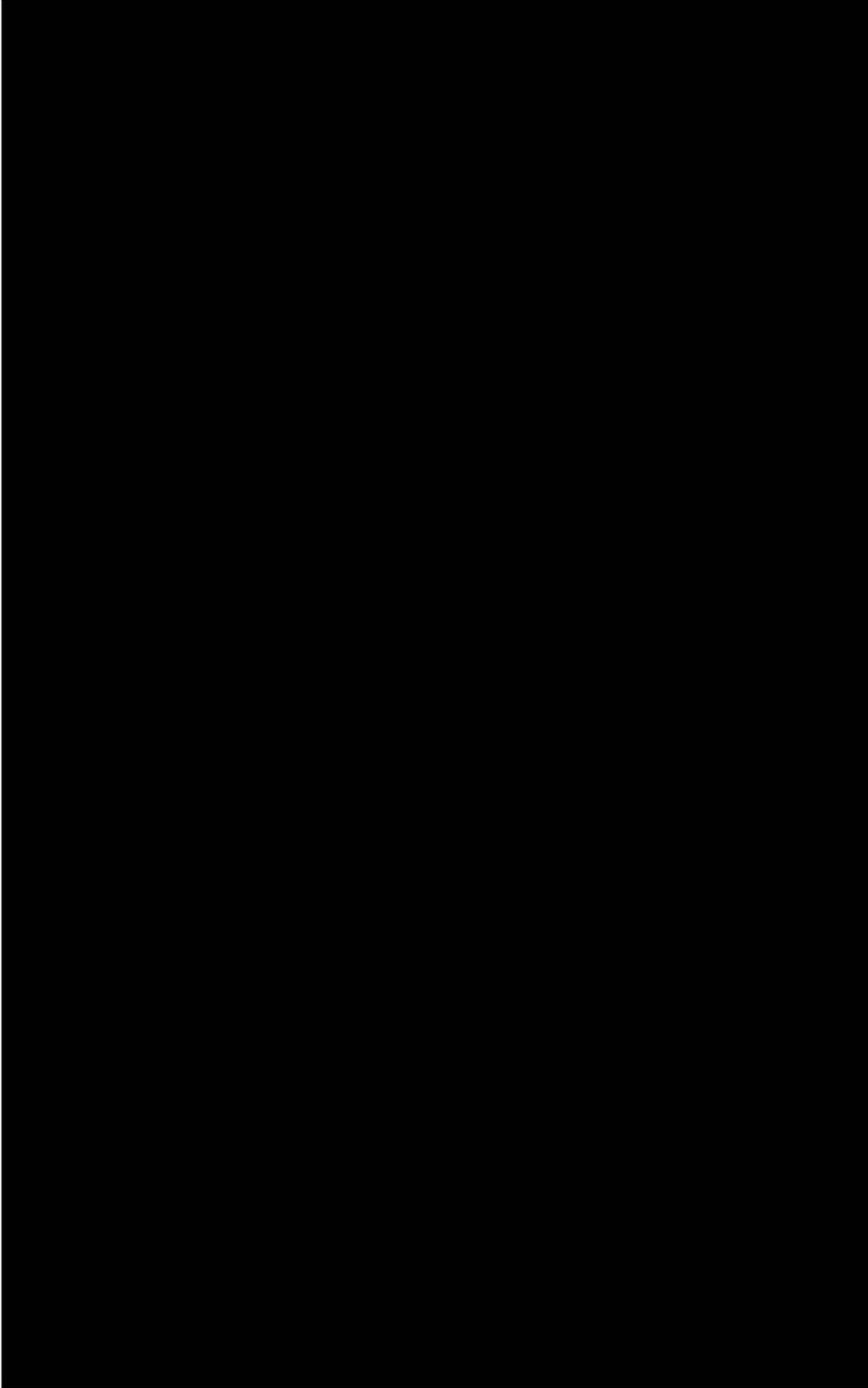
CONFIDENTIAL

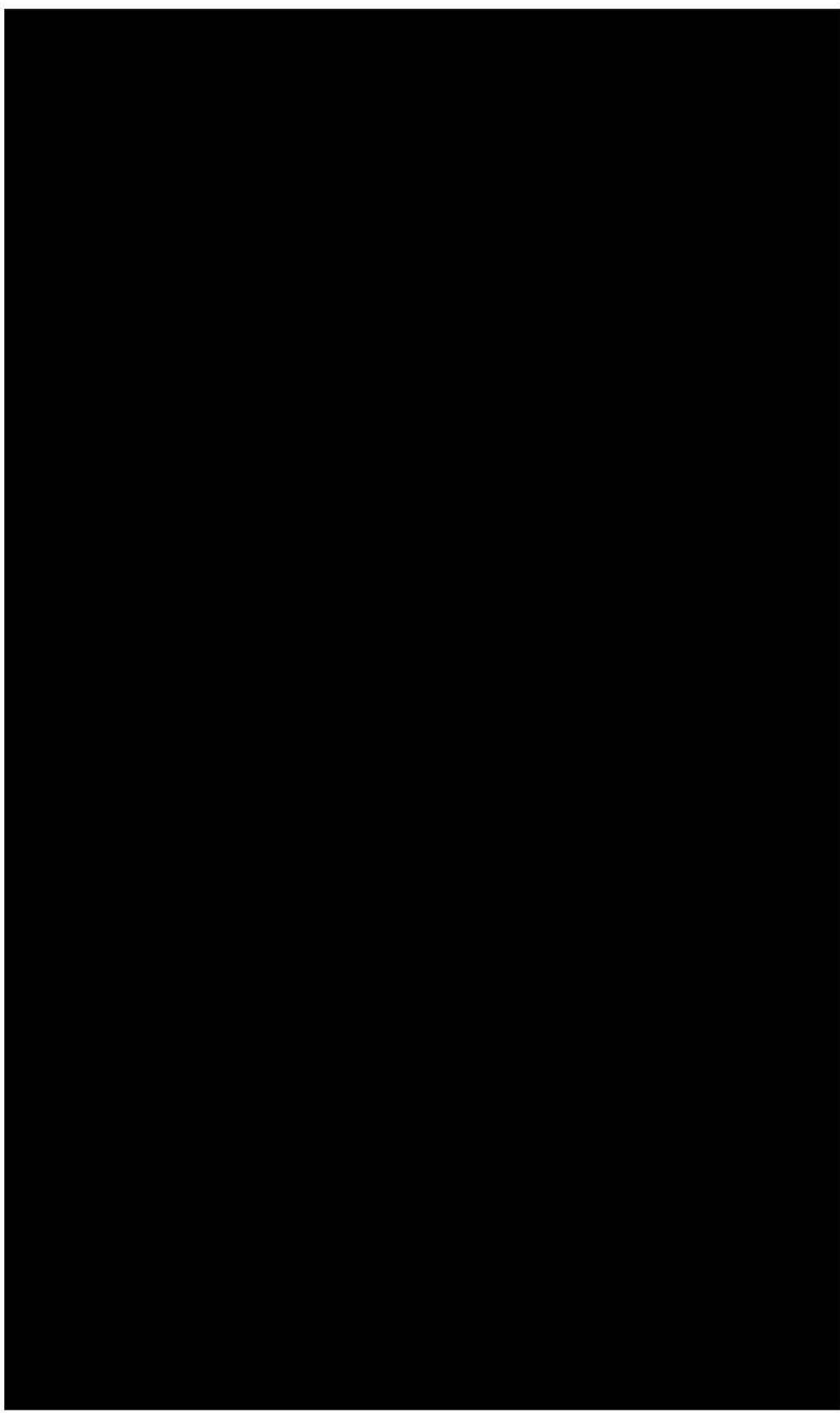


CONFIDENTIAL









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# EXHIBIT 13



### What is Connect?

The vision of providing Ontario REALTORS® with access to all MLS® listings has been a reality since October 2009, with the launch of **Connect**, a joint venture of the Toronto Real Estate Board, the REALTORS® Association of Hamilton-Burlington, the London and St. Thomas Association of REALTORS® and the Ottawa Real Estate Board. **Connect** offers members of participating boards the ability to search and view active listings and recent sales history of all other participating boards without the complexities of actual data exchange. By the end of 2011, there will be twenty-four boards participating in this project, representing 86% of OREA members in Ontario. A complete list of participating boards appears at the end of this document.

Through **Connect**, participating boards are required to provide enough information for REALTORS® from other areas to gain sufficient knowledge of the market to better represent their clients. **Connect** does not replace the value of membership in a local board, nor does it offer the full functionality of a board's MLS® system. It offers a simple, yet elegant, solution to obtain information on MLS® listings in other market areas.

### Log-in Instructions

Sign onto the Ottawa Connect website at <http://onconnect.oreb.ca>. Enter your Board public ID and password in **upper case**. Read the Terms of Use and click the appropriate button to accept them. Please note that you must click on the "I Agree" button, do not simply hit the return key. You will then be logged into the list of boards which are participating in this project. Then, simply click the button with the name of the board you wish to access. The search function is similar to MLXchange, so there should be virtually no learning curve. To get to know the areas in these other boards, simply click on their respective maps (they will appear, if provided, on the right hand side of the screen) and you're off and running.

### Please remember:

- You are getting "live" Active listings at these other boards.
- You are getting 2 years of Solds for residential, and 4 years of solds for commercial.
- It's not an MLS® system.
- Connect is for Member Use Only.
- Connect is not a data distribution system.
- Security is paramount and we will be monitoring usage very closely.
- Search screens are dynamic and will change depending on the specifics from each board.
- Reports from the various Boards will differ according to local requirements and naming conventions.
- Field values will vary as well (e.g. Yes/No; 1, 2, 3 etc; wood, oil, pellet).
- You may print off a copy of the information on a listing but you cannot e-mail the reports as per Board rules due to privacy requirements.
- Two different report views are available – one for members with private information and one for clients (similar to the Client and Salesperson reports on MLXchange). The Salesperson report is strictly for members, not clients.
- Browser: Windows Internet Explorer (IE) Version 7.0 is the lowest browser version that is supported by Connect. You may be asked to download Active X controls to be able to access Connect.

### Tips for better use

#### ***Exceeding 100 Listings in a set of Results***

There is a limit of 100 listings in the list of results. If you choose too many areas or too large a price range, you will quickly run into a problem as there will almost always be more than 100 listings returned. The downside to this is that you will never see "all" of the listings which matched your criteria. You should continue to pare down the price range or number of areas until your set of results is under 100, so that you can be assured that you are looking at all available listings.

### ***Different Geographical Board Areas***

There will be challenges when you initially start to search on other boards' information due to the differences in geographical coding. Many boards have three levels of geographic breakdown and when you get to the lowest level they use the same codes for many 3<sup>rd</sup> level codes.

As you can see it would get very confusing if you choose East and South and then ended up with codes like A,A, B,B,C,C, etc. One solution is to carefully look at the maps for each board, if available, to ensure you are receiving the correct results by keeping your searches simple. In some cases you may be better to do two searches.

### ***Measurements***

Each board will have its own requirements for lot sizes and/or room sizes. Some boards are strictly metric while others are imperial. In some cases, as in our Board, the room sizes are imperial and members have the option of showing the lot size in metric or imperial measurement. Check carefully when viewing measurement information so that you have the correct idea of the size of the room or lot size. The information will not be converted, as the information must remain in the format that the originating board has available.

### **List of Participating Boards on Connect**

TREB	The Brampton Real Estate Board (access through TREB)
CAMB	Real Estate Board of Cambridge, Inc.
CKAR	Chatham-Kent Association of REALTORS®
CDREB	Cornwall and District Real Estate Board
TREB	Durham Region Association of REALTORS® (access through TREB)
KLREA	Kawartha Lakes Real Estate Association (Fall 2011)
KWAR	Kitchener-Waterloo Association of REALTORS®
KREA	Kingston & District Real Estate Association (Fall 2011)
LSTAR	London & St. Thomas Association of REALTORS®
TREB	Mississauga Real Estate Board (access through TREB)
NIAG	Niagara Association of REALTORS®
TREB	Orangeville & District Real Estate Board (access through TREB)
ODREB	Orillia and District Real Estate Board
OMDREB	The Oakville, Milton and District Real Estate Board (Fall 2011)
OREB	Ottawa Real Estate Board
PKAR	Peterborough and the Kawarthas Association of REALTORS® Inc.
QDREB	Quinte & District Real Estate Board (Fall 2011)
RAHB	REALTORS® Association of Hamilton-Burlington
OREB	Renfrew County Real Estate Board (access through OREB)
RSLREB	Rideau St. Lawrence Real Estate Board
LSTAR	Tillsonburg District Real Estate Board (access through LSTAR)
TREB	Toronto Real Estate Board
WECREB	The Windsor-Essex County Real Estate Board
WIDREB	Woodstock-Ingersoll & District Real Estate Board (access through LSTAR) (Fall 2011)

### **For Additional Assistance**

If you have any questions or problems, please contact the Operations Department at the Board Office (do not contact the other boards directly). Our staff will be glad to answer your questions and can be reached at [orebadmin@oreb.ca](mailto:orebadmin@oreb.ca) or 613-225-2240.

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# EXHIBIT 14

**Policy governing use of MLS data in connection with  
Internet brokerage services offered by MLS Participants  
("Virtual Office Websites")**

**I. Definitions and Scope of Policy.**

1. For purposes of this Policy, the term Virtual Office Website ("VOW") refers to a Participant's Internet website, or a feature of a Participant's Internet 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 data, subject to the Participant's oversight, supervision, and accountability.

a. A Participant may designate an Affiliated VOW Partner ("AVP") to operate a VOW on behalf of the Participant, subject to the Participant's supervision and accountability and the terms of this Policy.

b. A non-principal broker or sales licensee, affiliated with a Participant, may, with the Participant's consent, operate a VOW or have a VOW operated on its behalf by an AVP. Such a VOW is subject to the Participant's supervision and accountability and the terms of this Policy.

c. Each use of the term "Participant" in this Policy shall also include a Participant's non-principal brokers and sales licensees (with the exception of references in this section to the "Participant's consent" and the "Participant's supervision and accountability," and in section III.10.a, below, to the "Participant acknowledges"). Each reference to "VOW" or "VOWs" herein refers to all VOWs, whether operated by a Participant, by a non-principal broker or sales licensee, or by an AVP.

2. The right to display listings in response to consumer searches is limited to display of MLS data supplied by the MLS(s) in which the Participant has participatory rights. This does not preclude a firm with offices participating in different MLSs from operating a master website with links to such offices' VOWs.

3. Participants' Internet websites, including those operated for Participants by AVPs, may also provide other features, information, or services in addition to VOWs (including the Internet Data Exchange ("IDX") function).

4. The display of listing information on a VOW does not require separate permission from the Participant whose listings will be available on the VOW.

5. Except as permitted in Sections III and IV, MLSs may not adopt rules or regulations that conflict with this Policy or that otherwise restrict the operation of VOWs by Participants.

**II. Policies Applicable to Participants' VOWs.**

1. A Participant may provide brokerage services via a VOW that include making MLS active

listing data available, but only to consumers with whom the Participant has first established a lawful consumer-broker relationship, 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 agreement(s).

2. A Participant’s VOW must obtain the identity of each Registrant and obtain each Registrant’s agreement to Terms of Use of the VOW, as follows:

- a. A Registrant must provide his or her name and a valid email address. 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 c below). The Registrant may be permitted to access the VOW only after the Participant has verified that the email address provided is valid and that Registrant received the Terms of Use confirmation.
- b. The Registrant must supply a user name and a password, the combination of which must be different from those of all other Registrants on the VOW, before being permitted to search and retrieve information from the MLS database via the VOW. The user name and password may be established by the Registrant or may be supplied by the Participant, at the option of the Participant. An email address may be associated with only one user name and password. The Registrant’s password and access must expire on a date certain but may be renewed. The Participant must at all times maintain a record of the name and email address supplied by the Registrant, and the username and current password of each Registrant. Such records must be kept for not less than 180 days after the expiration of the validity of the Registrant’s password. If the MLS has reason to believe that a Participant’s VOW has caused or permitted a breach in the security of the data or a violation of MLS rules related to use by one or more Registrants, the Participant shall, upon request, provide to the MLS a copy of the record of the name, email address, user name, current password, and audit trail, if required, of any Registrant identified by the MLS to be suspected of involvement in the violation.
- c. The Registrant must be required affirmatively to express agreement to a “Terms of Use” provision that requires the Registrant to open and review an agreement that provides at least the following:
  - i. That the Registrant acknowledges entering into a lawful consumer-broker relationship with the Participant;
  - ii. That all data obtained from the VOW is intended only for the Registrant’s personal, non-commercial use;
  - iii. 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. That the Registrant will not copy, redistribute, or retransmit any of the data or

information provided, except in connection with the Registrant's consideration of the purchase or sale of an individual property;

- v. That the Registrant acknowledges the MLS's ownership of, and the validity of the MLS's copyright in, the MLS database.

After the Registrant has opened for viewing the Terms of Use agreement, a "mouse click" is sufficient to acknowledge agreement to those terms. 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.

The Terms of Use agreement shall also expressly authorize the MLS, and other MLS Participants or their duly authorized representatives, to access the VOW for the purposes of verifying compliance with MLS rules and monitoring display of Participants' listings by the VOW.

- d. An 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.
3. 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 properties 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.
4. A Participant's VOW must protect the MLS data from misappropriation by employing reasonable efforts to monitor for and prevent "scraping" or other unauthorized accessing, reproduction, or use of the MLS database.
5. A Participant's VOW must comply with the following additional requirements:
- a. No VOW shall display listing or property address of any seller who have affirmatively directed its listing broker to withhold its listing or property address from display on the Internet. The listing broker or agent shall communicate to the MLS that a 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 listing or property address of a seller who has determined not to have the listing or address for its 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 conforms to the form attached to this Policy as Appendix A. The Participant shall retain such forms for at least one year from the date they are signed.

c. With respect to any VOW that:

- (i) allows third-parties to write comments or reviews about particular listings or displays a hyperlink to such comments or reviews in immediate conjunction with particular listings, or
- (ii) displays an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing,

the VOW shall disable or discontinue either or both of those features as to the seller's listing at the request of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all Participants' websites. Except for the foregoing and subject to subparagraph (d), a Participant's VOW may communicate the Participant's professional judgment concerning any listing. Nothing shall prevent a VOW from notifying its customers that a particular feature has been disabled "at the request of the seller."

d. A VOW shall maintain a means (e.g., e-mail address, telephone number) to receive comments about the accuracy of any data or information that is added by or on behalf of the VOW operator beyond that supplied by the MLS and that relates to a specific property displayed on the VOW. The VOW operator shall correct or remove any false data or information relating to a specific property upon receipt of a communication from the listing broker or listing agent for that property explaining why the data or information is false. However, the VOW operator shall not be obligated to remove or correct any data or information that simply reflects good faith opinion, advice, or professional judgment.

e. Each VOW shall refresh MLS data available on the VOW not less frequently than every 3 days.

f. Except as provided elsewhere in this Policy or in MLS rules and regulations, no portion of the MLS database may be distributed, provided, or made accessible to any person or entity.

g. Every VOW must display a privacy Policy that informs Registrants of the ways in which information obtained from them will be used.

h. A 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, or whether the listing broker is a Realtor®.

6. A Participant who intends to operate a VOW must notify the MLS of its intention to establish a VOW and must make the VOW readily accessible to the MLS and to all MLS Participants for purposes of verifying compliance with this Policy and any other applicable MLS rules or policies.

7. A Participant may operate more than one VOW itself or through an AVP. A Participant who operates a VOW itself shall not be precluded from also operating VOWs in conjunction with AVPs.

### **III. Policies Applicable to Multiple Listing Services.**

1. A Multiple Listing Service shall permit MLS Participants to operate VOWs, or to have VOWs operated for them by AVPs, subject to the requirements of state law and this Policy.
2. An MLS shall, if requested by a Participant, provide basic “downloading” of all MLS non-confidential listing data, including without limitation address fields, listings types, photographs, and links to virtual tours. Confidential data includes only that which Participants are prohibited from providing to customers orally and by all other delivery mechanisms. They include fields containing the information described in paragraph IV(1) of this Policy, provided that sold data (i.e., listing information relating to properties that have sold) shall be deemed confidential and withheld from a download only if the actual sales prices of completed transactions are not accessible from public records. For purposes of this Policy, “downloading” means electronic transmission of data from MLS servers to a Participant’s or AVP’s server on a persistent basis. An MLS may also offer a transient download. In such case, it shall also, if requested, provide a persistent download, provided that it may impose on users of such download the approximate additional costs incurred by it to do so.
3. This Policy does not require an MLS to establish publicly accessible sites displaying Participants’ listings.
4. If an MLS provides a VOW-specific feed, that feed must include all of the non-confidential data included in the feed described in paragraph 2 above except for listings or property addresses of sellers who have elected not to have their listings or addresses displayed on the Internet.
5. An MLS may pass on to those Participants who will download listing information the reasonably estimated costs incurred by the MLS in adding or enhancing its “downloading” capacity to enable such Participants to operate VOWs.
6. An MLS may require that Participants (1) utilize appropriate security protection, such as firewalls, as long as such requirement does not impose security obligations greater than those employed concurrently by the MLS, and/or (2) maintain an audit trail of Registrants’ activity on the VOW and make that information available to the MLS if the MLS has reason to believe that any VOW has caused or permitted a breach in the security of the data or a violation of applicable MLS rules.
7. An MLS may not prohibit or regulate display of advertising or the identification of entities on VOWs (“branding” or “co-branding”), except to prohibit deceptive or misleading advertising or co-branding. For purposes of this provision, 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 by or for 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.
8. Except as provided in this Policy, an MLS may not prohibit Participants from enhancing their VOWs by providing information obtained from sources other than the MLS, additional

technological services (such as mapping functionality), or information derived from non-confidential MLS data (such as an estimated monthly payment derived from the listed price), or regulate the use or display of such information or technological services on any VOW.

9. Except as provided in generally applicable rules or policies (such as the Realtor® Code of Ethics), an MLS may not restrict the format of data display on a VOW or regulate the appearance of VOWs.

10. Subject to the provisions below, an MLS shall make MLS listing data available to an AVP for the exclusive purpose of operating a VOW on behalf of a Participant. An MLS shall make MLS listing data available to an AVP under the same terms and conditions as those applicable to Participants. No AVP has independent participation rights in the MLS by virtue of its right to receive data on behalf of a Participant, or the right to use MLS data except in connection with operation of a VOW for a Participant. AVP access to MLS data is derivative of the rights of the Participant on whose behalf the AVP is downloading data.

a. A Participant, non-principal broker or sales licensee, or AVP may establish the AVP's right to receive and use MLS data by providing to the MLS a writing in which the Participant acknowledges its or its non-principal broker's or sales licensee's selection of the AVP to operate a VOW on its behalf.

b. An MLS may not charge an AVP, or a Participant on whose behalf an AVP operates a VOW, more than a Participant that chooses to operate a VOW itself (including any fees or costs associated with a license to receive MLS data, as described in (g), below), except to the extent that the MLS incurs greater costs in providing listing data to the AVP than the MLS incurs in providing listing data to a Participant.

c. An MLS may not place data security requirements or restrictions on use of MLS listing data by an AVP that are not also imposed on Participants.

d. An MLS must permit an AVP to download listing information in the same manner (e.g., via a RETS feed or via an FTP download), at the same times and with the same frequency that the MLS permits Participants to download listing information.

e. An MLS may not refuse to deal directly with an AVP in order to resolve technical problems with the data feed. However, the MLS may require that the Participant on whose behalf the AVP is operating the VOW participate in such communications if the MLS reasonably believes that the involvement of the Participant would be helpful in order to resolve the problem.

f. An MLS may not condition an AVP's access to a data feed on the financial terms on which the AVP provides the site for the Participant.

g. An MLS may require Participants and AVPs to execute license or similar agreements sufficient to ensure that Participants and AVPs understand and agree that data provided by the MLS may be used only to establish and operate a VOW on behalf of the Participant and not for any other purpose.

h. An MLS may not (i) prohibit an AVP from operating VOWs on behalf of more than one Participant, and several Participants may designate an AVP to operate a single VOW for them collectively, (ii) limit the number of entities that Participants may designate as AVPs for purposes of operating VOWs, or (iii) prohibit Participants from designating particular entities as AVPs except that, if an AVP's access has been suspended or terminated by an MLS, that MLS may prevent an entity from being designated an AVP by another Participant during the period of the AVP's suspension or termination.

i. Except as stated below, an MLS may not suspend or terminate an AVP's access to data (a) for reasons other than those that would allow an MLS to suspend or terminate a Participant's access to data, or (b) without giving the AVP and the associated Participant(s) prior notice and the process set forth in the applicable provisions of the MLS rules for suspension or termination of a Participant's access. Notwithstanding the foregoing, an MLS may immediately terminate an AVP's access to data (a) if the AVP is no longer designated to provide VOW services to any Participant, (b) if the Participant for whom the AVP operates a VOW ceases to maintain its status with the MLS, (c) if the AVP has downloaded data in a manner not authorized for Participants and that hinders the ability of Participants to download data, or (d) if the associated Participant or AVP has failed to make required payments to the MLS in accordance with the MLS's generally applicable payment policies and practices.

11. An MLS may not prohibit, restrict, or impede a Participant from referring Registrants to any person or from obtaining a fee for such referral.

#### **IV. Requirements That MLSs May Impose on the Operation of VOWs and Participants.**

1. An MLS may impose any, all, or none of the following requirements on VOWs but may impose them only to the extent that equivalent requirements are imposed on Participants' use of MLS listing data in providing brokerage services via all other delivery mechanisms:

a. A Participant's VOW may not make available for search by or display to Registrants the following data intended exclusively for other MLS Participants and their affiliated licensees:

- i. Expired, withdrawn, or pending listings.
- ii. Sold data unless the actual sales price of completed transactions is accessible from public records.
- iii. The compensation offered to other MLS Participants.
- iv. The type of listing agreement, i.e., exclusive right to sell or exclusive agency.
- v. The seller(s) and occupant(s) name(s), phone number(s) and email address(es), where available.

- vi. Instructions or remarks intended for cooperating brokers only, such as those regarding showing or security of the listed property.
  - b. The content of MLS data that is displayed on a VOW may not be changed from the content as it is provided in the MLS. MLS data may be augmented with additional data or information not otherwise prohibited from display as long as the source of such other data or information is clearly identified. This requirement does not restrict the format of MLS data display on VOWs or display of fewer than all of the listings or fewer authorized data fields.
  - c. There shall be a notice on all MLS data displayed indicating that the data is deemed reliable but is not guaranteed accurate by the MLS. A Participant's VOW may also include other appropriate disclaimers necessary to protect the Participant and/or the MLS from liability.
  - d. Any listing displayed on a VOW shall identify the name of the listing firm in a readily visible color, and reasonably prominent location, and in typeface not smaller than the median typeface used in the display of listing data.
  - e. The number of current or, if permitted, sold listings that Registrants may view, retrieve, or download on or from a VOW in response to an inquiry may be limited to a reasonable number. Such number shall be determined by the MLS, but in no event may the limit be fewer than 100 listings or 5% of the listings in the MLS, whichever is less.
  - f. Any listing displayed on a VOW shall identify the name of the listing agent.
2. An MLS may also impose the following other requirements on the operation of VOWs:
- a. Participants displaying other brokers' listings obtained from other sources, e.g., other MLSs, non-participating brokers, etc. shall display the source from which each such listing was obtained.
  - b. A maximum period, no shorter than 90 days and determined by the MLS, during which Registrants' passwords are valid, after which such passwords must be changed or reconfirmed.
3. An MLS may not prohibit Participants from downloading and displaying or framing listings obtained from other sources, e.g., other MLSs or from brokers not participating in that MLS, etc., but may require either that (i) such information be searched separately from listings obtained from other sources, including other MLSs, or (ii) if such other sources are searched in conjunction with searches of the listings available on the VOW, require that any display of listings from other sources identify such other source.

**EFFECTIVE DATE:**

MLSs have until not later than [90 DAYS AFTER ENTRY OF THE FINAL JUDGMENT] to adopt rules implementing the foregoing policies and to comply with the provisions of section III above, and (2) Participants shall have until not later than 180 days following adoption and implementation of rules by an MLS in which they participate to cause their VOW to comply with such rules.

See Appendix A for Seller Opt-Out Form

**Appendix A**  
**Seller Opt-Out Form**

1. [Check one]

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

b. [Check here] 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

# EXHIBIT 15

**PROPOSED SETTLEMENT BETWEEN NAR AND DOJ**

The settlement between NAR and the DOJ includes:

- (i) Proposed Final Judgment (an order prohibiting NAR from engaging in certain kinds of conduct such as discriminating against brokers who operate VOWs);
- (ii) revised Virtual Office Website Policy in "Exhibit A" (which replaces NAR's previous VOW and ILD policies) and which among other things does not permit brokers participating in a NAR-affiliated MLS® from opting-out of having their listings providing to other brokers who operate VOWs; and
- (iii) Definition of an MLS Participant in "Exhibit B" (must "offer and accept cooperation and compensation").

NAR perspective:

- From NAR's perspective, it was a win because it clarifies that an MLS Participant must: (i) be actively endeavor during the operation of its real estate business to list real property of the type listed on the MLS®; and (ii) and/or to accept offers of cooperation and compensation made by listing brokers or agents in the MLS.
- In other words, MLSs will be able to terminate the access of a broker who makes no effort to either list or sell property on an MLS (i.e., cannot simply use the MLS feed to attract consumers to refer them to other brokers).
- There is a one year grace period to allow brokers who no longer qualify for MLS participation a full year to start engaging in brokerage.
- In the words of Laurie Janik, NAR's general counsel: "This will ensure that MLSs are used for what they were originally intended to do, which is help real estate professionals find buyers for people who want to sell their homes".
- It also gives sellers the right to decide that they do not want their property or property's address displayed on the Internet and protects sellers from having false information about their listings appear on the VOWs of a member of the MLS.
- It also gives sellers the right to prohibit certain features, such as home-value estimates and blog posts, to accompany the display on VOWs.
- The final order expressly provides that NAR does not admit any liability or wrongdoing, and NAR will make no payments in connection with the settlement.

DOJ perspective:

- The DOJ also considers it a win on the basis that discrimination against brokers who operate VOWs will not be allowed.
- Brokers participating in a NAR-affiliated MLS will not be permitted to withhold their listings from brokers who serve their customers through a VOW (i.e., blanket opt-out is not permitted).
- Brokers will be able to use VOWs to educate consumers, make referrals, and conduct brokerage services.
- MLSs will need to adopt the revised VOW policy within 90 days of the date of the final order is entered (likely September) which means that they would likely have until the end of the year to adopt the revised VOW policy.

**OVERVIEW OF PROPOSED SETTLEMENT** (provisions of note are bolded)**I. FINAL JUDGEMENT****Prohibited conduct - NAR will not:**

- Prohibit a broker from using a VOW or prohibit a broker using a VOW from providing to customers on its VOW all of the listing information that a broker is permitted to provide to customers by hand, mail, fax, etc.
- Unreasonably discriminate against or disadvantage a broker in the use of a VOW to provide to customers all of the listing information that broker is permitted to provide.
- Prohibit or impede referral of customers whose identities are obtained from a VOW by a broker who uses a VOW to any other person or establish the price of such referral.
- Impose fees on broker who operates VOW or any person that that operates a VOW for a broker exceeding the reasonably estimated costs incurred by a person that operates VOW or discriminate between fees imposed on a broker who operates a VOW and a person who operates a VOW for a broker (unless the Board incurs greater costs).
- Is inconsistent with the Modified VOW Policy (see Exhibit "A" below)

**Required conduct – NAR will:**

- Repeal ILD Policy and direct member Boards to repeal any rules implementing its VOW Policy or ILD policy.
- Adopt the Modified VOW Policy and will not change it without the advice of DOJ or order of the Court.
- Direct member Boards to adopt the Modified VOW Policy and to act consistently with the Modified VOW Policy and not adopt any rule, policy etc. that NAR is forbidden from adopting under the Final Judgment.
- Advise a Board in writing if it has not adopted the Modified VOW Policy or is adopting a rule, policy etc. that NAR is forbidden from adopting under Final Judgment and also deny the Board coverage under any NAR insurance policy and notify DOJ.
- Designate an antitrust compliance officer – includes ensuring compliance, reporting on Boards who haven't complied with the VOW policy, hold annual program for Boards and their lawyers that includes discussion of anti-trust laws and Final Judgment.
- Provide to DOJ on quarterly basis communications about any Board's non-compliance.
- Publish Final Judgment, Modified VOW Policy, and notification that Boards must repeal implementing any old ILD or VOW policy.

## II. EXHIBIT A – MODIFIED VOW POLICY

### 1. Policies applicable to Participants' VOWS

- a. VOW is defined as the website of a Participant (defined in Exhibit "B" below) through which he/she is capable of providing real estate brokerage services to consumers with whom the Participant (includes non-principal brokers and sales agents) has first established a broker-consumer relationship (as defined by state law) where the consumer has the opportunity to search MLS data, subject to Participant's oversight, supervision, accountability.
- b. A Participant may designate an Affiliated VOW Partner (AVP) to operate a VOW on behalf of the Participant.
- c. The right to display listings in response to consumer searches is limited to display of MLS data supplied by the MLS in which the Participant has participatory rights. Firms with offices in different MLS can operating a master website with links to such offices' VOWs.
- d. **The display of listing information on a VOW does not require separate permission from the Participant whose listings will be available on the VOW.**
- e. Participant's VOW must obtain identity of each Registrant and obtain Registrant's agreement to Terms of Use (details included).
- f. Participant's VOW must have email address by which consumer may contact Participant and Participant must be able to knowledgeably respond to inquiries from Participants about properties within market area.
- g. Participant's VOW must protect the MLS data from misappropriation by employing reasonable efforts to monitor for and prevent "scraping" or other unauthorized accessing, reproduction or use of the MLS database.
- h. **No VOW can display listings or property addresses of sellers who have affirmatively directed their listing brokers to withhold their listing or property address from display on the internet (seller must execute a document conforming to Appendix A). However, Participant who operates a VOW may provide to consumers via other delivery mechanisms (fax, email, etc.), the listings of sellers who have determined not to have the listing for their property displayed on the internet.**
- i. VOWs who allow third parties to write comments or displays automated market value of listing shall disable or discontinue at request of seller. VOW Participant may still communicate professional judgment about a listing.
- j. VOW shall maintain means to receive comments about accuracy of listing data and remove any false data upon receipt of communication from listing broker explaining why data is false.
- k. VOW must refresh MLS data not less frequently than every 3 days.

- l. Except in accordance with the policy, no portion of MLS database may be distributed, etc.
- m. Every VOW must display a privacy policy.
- n. **A VOW may exclude listings based on objective criteria including geography, list price, type of property, cooperative compensation offered by the listing broker or whether listing broker is a REALTOR®.**
- o. A Participant who intends to operate a VOW must notify the MLS and make the VOW accessible to MLS and MLS Participants for purposes of verifying compliance with this policy and other rules and regulations.
- p. A Participant may offer operate more than one VOW itself or through an AVP.

## 2. Policies Applicable to Multiple Listing Services

- A MLS shall allow Participants to operate VOWs (or AVPs on their behalf).
- **A MLS, if requested by Participant, shall provide basic downloading of MLS non-confidential listing data (including address, listing types, photographs, links to virtual tours). Confidential data includes only information that Participants are prohibited from providing to customers orally, etc. (see below for confidential info.). Sold data is deemed confidential only if actual sales prices of completed transactions are not accessible from public records.**
- **MLS are not required to establish publicly accessible websites displaying Participants' listings.**
- MLS may pass on cost incurred by adding/enhancing its downloading capacity to enable Participants to operate VOWs.
- MLS may require that Participants use appropriate security protection as long as it is not more onerous than used by MLS and/or maintain an audit trail of Registrants activity and make information available to the MLS if the MLS has reason to believe that any VOW has caused or permitted a breach in security data/MLS rules.
- **MLS may not prohibit or regulate display of advertising or the identification of entities on VOWs (branding or co-branding) except to prohibit deceptive or misleading advertising or co-branding. Co-branding will not be presumed to be deceptive if Participant's logo and contact information is displayed in conjunction with that of every party and is as large as the logo of the AVP and larger than that of any third party.**
- Except as provided in the Policy, an MLS may not prohibit Participants from enhancing their VOWs by providing information obtained from sources other than the MLS (mapping, monthly payments, etc.).

- **Except as provided in generally applicable rules or policies (e.g., REALTOR® Code), MLS may not restrict format of data display on a VOW or regulate the appearance of VOWs.**
  - An MLS shall make MLS listing data available to an AVP for exclusive purpose of operating a VOW on behalf of participant (same terms and conditions; AVP has no independent right to data or to use data except in connection with VOW; etc.).
  - **An MLS® may not prohibit, restrict or impede a Participant from referring Registrants to any person or from obtaining a fee for such referral.**
- 3. Requirements that MLSs may impose on the operation of VOWs and Participants** (must have equivalent requirements on Participant use of data through other means)
- A Participant's VOW may not make available for search by or display the following data intended exclusively for other MLS participants:
    - Expired, withdrawn or pending listings.
    - **Sold data (unless actual sales price is accessible from public records)**
    - **Compensation offered to other MLS Participants**
    - **Type of listing agreement – exclusive right to sell or exclusive agency**
    - **The seller and occupant name, phone number and email address**
    - Instructions or remarks intended for cooperating brokerages only
  - While content of MLS® data displayed on VOW may not be changed from MLS® content it can be augmented with additional data (as long as not otherwise prohibited and source is identified).
  - Must be a notice on all MLS data indicating that the data is deemed reliable but not guaranteed.
  - **Any listing on a VOW must identify the listing firm in readily visible color, reasonably prominent location, in typeface not smaller than median typeface used in display of listing data.**
  - **The number of current (or if permitted, solds) may be limited to a reasonable number (cannot be less than 100 listings or 5% of listings in MLS, whichever is less).**
  - **Any listing displayed on a VOW shall identify name of listing agent.**
  - An MLS can impose the following other requirements:

- **Participants displaying brokers' listings from other sources (e.g. non-participating brokers, other MLSs) must display source of listing**
- **An MLS can determine maximum period for validity of password (no shorter than 90 days)**
- **An MLS may not prohibit Participant from downloading and displaying or framing listings from other sources but may require:**
  - **That the information be searched separately from listings obtained from other sources (including other MLSs) or require that any display of listings from other sources identify the other source**

\* MLS have no later than 90 days after final judgment to adopt rules complying with the policies and no later than 180 days following adoption and implementation by MLS® to cause their VOW to comply with the rules

### III. EXHIBIT B – Definition of MLS participant

Participant:

- a. Must hold a valid real estate broker's license and accept and offer cooperation to and from other Participants (or are an appraiser)
- b. Mere possession of a broker's license is not sufficient.
- c. **“Accept and offer cooperation” means that the Participant actively endeavors during the operation of its real estate business to list real property of the type listed on the MLS and/or to accept offers of cooperation and compensation made by listing brokers or agents in the MLS.**
- d. “Actively” means on a continual and on-going basis during the operation of the Participant's real estate business.
- e. MLS is not permitted to deny participation if Participant operates a VOW (including a VOW that the Participant uses to refer customers to other Participants) if the Participant or potential Participant actively endeavors to make or accept offers of cooperation and compensation.
- f. An MLS may evaluate whether a Participant “actively endeavors during the operation of its real estate business” to “offer and accept cooperation and compensation” only if the MLS has a reasonable basis to believe that the Participant or potential Participant is not doing so.
- g. The membership requirement must be applied on a non-discriminatory manner to all Participants.
- h. “Actively” is not intended to:

- i. preclude MLS participation by a Participant or potential Participant that operates a real estate business on a part-time, seasonal, etc. basis
- ii. deny MLS Participation to a Participant who has not achieved a minimum number of transactions despite good faith efforts
- iii. deny participation based on the level of service provided by the Participant as long as it satisfies state law.

# EXHIBIT 16

**FAQs on the VOW Policy and the Model VOW Rules****Updated August, 2009****Timeline / Implementation**

**Q 1.1** What does our MLS need to do – and when – to comply with the new VOW policy?

MLSs need to adopt the new VOW policy, model rules implementing that policy and the amendment to Section 3 or 4 of the model bylaws, which defines MLS “Participation”. Adoption must occur in the 90 day period beginning November 18, 2008, when the settlement of the case brought by the Department of Justice was made final by the court.

**Q 1.2** Will NAR review our VOW-specific MLS rules as part of the compliance process?

No. Once Associations of REALTORS® or their MLSs adopt the model VOW rules they will submit a completed “MLS VOW Certification of Compliance” to NAR. Except as to options specifically described in the Model VOW rules, MLSs may not make modifications to those rules, so, generally, no individual review of an MLS’s VOW rules will be necessary.

**Q 1.3** If our MLS never adopted VOW-specific rules, must we now adopt the model VOW rules?

Yes. Every MLS owned or operated by one or more association of REALTORS® must adopt the revised VOW policy, model VOW rules, and amendment to the definition of MLS Participation.

**Q 1.4** Do we have to adopt both the model VOW rules and the VOW policy itself?

Yes. Every MLS owned or operated by one or more associations of REALTORS® must adopt both the model VOW rules and the VOW policy.

**General**

**Q 2.1** How is “listing information” defined?

As defined in the Final Judgment, “‘Listing Information’ means all records of residential properties (and any information related to those properties) stored or maintained by a multiple listing service”.

**Q 2.2** Does the VOW policy impose a cap on the fees for VOW data feeds?

No, except that fees charged may not exceed the reasonably estimated costs incurred in adding or enhancing its downloading capacity to enable Participants, subscribers or Affiliated VOW Partners to operate VOWs.

**Q 2.3** Will NAR provide software that automatically monitors participants’ VOWS for compliance with the VOW rules?

No, NAR has not developed such software.

**Participants and Subscribers - Rights and Obligations**

Q 3.1 Can MLS Participants ‘opt-out’ of having their listings shown on the VOW sites of other Participants?

No. The policy does not provide for broker opt-outs.

Q 3.2 Our state regulators have taken the position that Internet display of listing information is advertising, and that listing brokers’ consent to display their listings on other brokers’ sites is required. How does this impact the “no opt-out” aspect of the VOW policy?

To the extent that state law or regulation requires that MLS Participants have the right to “opt out” of having their listings shown on the VOW sites of other Participants, those requirements of law or regulation take precedence over NAR policy.

Q 3.3 Can sales-associates and non-principal brokers have their own VOWs?

Yes, subject to the Participant’s consent, supervision and accountability.

Q 3.4 Can the MLS limit the right to operate VOWs to MLS Participants only (and not permit subscribers to have their own VOWs)?

No. Whether or not subscribers (sales-associates and non-principal brokers) may have their own VOWs is left to the sole discretion of their principal broker.

Q 3.5 Our MLS participates in a reciprocal data-sharing agreement with other MLSs. Under the agreement, participants in the other MLSs receive the same information our participants receive, and the offers of cooperation and compensation are extended to all Participants of all of the MLSs. Can we limit the right to use the listing information our MLS generates to the VOWs of our Participants and subscribers? Must we include listings from the other MLSs in the VOW feed we provide to Participants and subscribers to our MLS?

Participants and subscribers are entitled to display on their VOWs all of the listings they are eligible to receive pursuant to their participation in the MLS, including any listings that are available to them as a result of a reciprocal data-sharing agreement with another MLS.

Q 3.6 Can I exclude listings from display on my VOW where the listing broker offers less cooperative compensation than I’m willing to work for?

Yes. VOWS can exclude listings from display based on objective criteria including, but not limited to, geography, list price, type of property, cooperative compensation offered by the listing broker, or whether the listing broker is a REALTOR®.

Q 3.7 I belong to a large regional MLS. I am not familiar with, and don’t market or sell in some areas the MLS services. Can I exclude listings in those areas from display on my VOW?

Yes. As noted above, geography is an objective criterion for categorizing listings, and for excluding them from display on VOWs.

Q 3.8 I’m a broker in Illinois. A Participant in an MLS in Arizona gave me permission to display her Arizona listings on my website. Can I do this under the VOW policy?

If you are a Participant in the Arizona MLS, you have the same right to display listings in the Arizona MLS as any other Participant. If you are not a Participant in the Arizona MLS, then the VOW policy doesn't apply to your use of listings from that MLS because you are not entitled to use those listings in any event. The Arizona broker may authorize you to display *her* listings on your VOW, but she must supply them to you directly and you cannot simply take those listings from the Arizona MLS unless that MLS expressly permits you to do that.

- Q 3.9 If a seller withholds consent for the listing of her property to be published in the MLS and the Participant takes an "office exclusive" listing, can the Participant display information about the seller's property on the Participant's VOW?

Yes.

- Q 3.10 Section 19.21 of the model VOW rules provides, in part: 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". If an MLS does not adopt Section 19.21, does that mean VOW operators may not advertise or "co-brand" on their VOWs?

No. Section III.7 of the VOW Policy precludes an MLS from prohibiting or regulating advertising on a VOW except to prohibit deceptive or misleading advertising or co-branding. The first sentence of Section 19.21 simply restates this right of a Participant operating a VOW to display advertising or co-branding, but Section III.7 of the VOW Policy gives Participants that right even absent this language. The balance of the text of Section 19.21 is the heart of this rule. It establishes the MLS's authority to discipline a Participant who advertises or co-brands in a deceptive or misleading manner, and provides a presumption "standard" for Participants to follow to insure that their advertising or co-branding will not be deemed deceptive or misleading. (added 1.27.09)

### Sellers' Rights

- Q 4.1 Can sellers "opt-out" of display of their property listings on VOWs?

Sellers may "opt-out" of having their property listing displayed on any Internet sites or, alternatively sellers can "opt-out" of having their property address displayed on any Internet sites. Sellers may not opt out of having their listings shown on some, but not all, VOW sites. This means that if a seller opts out of having his listing or property address displayed on VOWs, the listing (or property address) cannot be displayed on IDX sites, third-party aggregators' sites or elsewhere on the Internet. (revised 12.24.08)

- Q 4.2 Can sellers direct that their listings appear on third-party aggregators' websites (e.g. Realtor.com) but not on other Participants' VOWs?

No. As noted in Question 4.1, if sellers withhold consent for display of their property or display of their property address on the Internet, display on VOW, IDX and on third-party aggregators' sites is likewise precluded. (revised 12.24.08)

- Q 4.3 Can a seller require that any VOW displaying their property not show an automated valuation of the property in connection with the listing? What about blogging, that is, showing comments of third parties about the property in connection with the display of the property listing on VOW?

Sellers can direct that automated valuation and/or blogging features of VOWs be disabled or discontinued with respect to their properties.

- Q 4.4 If a seller wants a VOW to turn off automated valuation or blogging of their property, how do they make the VOW do that?

Sellers who wish to have automated valuation and/or blogging features of VOWs disabled or discontinued with respect to their properties should communicate that request to their listing broker, who will in turn transmit that request to the MLS.

- Q 4.5 Can the listing input process include “yes/no” “checkboxes” regarding the seller’s right to withhold consent for AVM or blogging on his listing shown on a VOW (e.g. “AVM - yes/no”, “Blogging - yes/no”)?

Yes. Also see Question 11.1 detailing the RETS Advisory Board’s recommendations regarding implementation. (revised 12.24.08)

- Q 4.6 Can MLSs adopt rules to ensure sellers’ requests that automated valuation features or blogging on VOWs be turned off are met on a timely basis?

Yes.

- Q 4.7 Can sellers require that false information about their property be deleted from VOWs? How?

If a seller believes that information appearing on a VOW about his property is false, he should share that concern with the listing broker who, in turn, will bring the false information to the attention of the VOW operator, with an explanation as to why the information is false. The VOW operator will then have an obligation to remove any false information.

- Q 4.8 If a seller won’t permit information about his property to be displayed on other Participants’ VOWs but wants it marketed on the listing firm’s website, can a Participant accept the listing? Can it be submitted for inclusion in the MLS?

If a seller withholds consent for Internet display on all sites except the listing broker’s, the listing broker may take the listing but it would not be eligible for inclusion in MLS.

- Q 4.9 May a seller prohibit display of her property address, AVMs, and blogging related to her property on VOWs while permitting those functionalities on non-VOW Internet advertising?

With respect to display of the seller’s property address, VOW model rule Section 19.6 bars display of the seller’s property or property address (or both) where the seller has “affirmatively directed the listing broker to withhold the listing or property address from display on the Internet”. “Display on the Internet” includes “non-VOW Internet advertising,” such as IDX display and third-party aggregator sites. This is reinforced in the wording of the “Seller Opt-Out Form”.

With respect to AVMs and blogging features, Section 19.7 (b) of the model VOW rules deals with sellers who have “elected to have on or both of these features disabled or discontinued on Participants’ websites”. While not as broad as the prohibition established in Section 19.6, it applies to all websites of participants including their IDX sites. (added 1.27.09)

**Sold Information**

Q 5.1 How is “sold information” defined?

The VOW policy defines “sold information” as “listing information relating to properties that have sold”.

Q 5.2 Can MLSs limit Participants’ display or use of sold information on VOWs?

MLSs may prohibit display of sold information on VOWs only if the actual sale prices of completed transactions are not accessible from public records.

Q 5.3 If we prohibit display of sold information on VOWs, must we also prohibit giving sold information to consumers in Participants’ physical offices?

Yes.

Q 5.4 Is sold information synonymous with “property history” or “listing history”.

No.

Q 5.5 Do the rules regarding distribution of “sold” information apply to data acquired by the MLS from third-party sources (other than participants)?

No. If the MLS licenses data from third parties for access only by Participants and subscribers, Participants would not be permitted to provide access to those third-party databases to consumers registering on their VOWs. Participants may independently secure from such third parties their own licenses to display the information on their VOW.

Q 5.6 In our state, sale prices are not specifically matters of public record but can be computed multiplying the conveyance tax by the tax rate per thousand. Would this be considered publicly accessible sold information under the VOW policy and rules?

If that information is publicly accessible, and if the calculation accurately reflects the actual sales price of a completed transaction, then the information described above could be fairly characterized as “sold information”.

Q 5.7 In our state, sold information is not publicly accessible. We provide participants with sold information for their “back-office” systems, but participants may not distribute that information to clients and customers. Must we permit display of sold information on participants’ VOWs?

No.

Q 5.7.1 Must an MLS collect and make available to participants “sold” data?

No. An MLS may, but is not required to, collect sold data and provide it to participants. Any sold data provided must be provided on equal terms to all Participants, whether directly or through a vendor, irrespective of the manner in which Participants operate their businesses. If sold data is provided in electronic form it must be made available in that format for use by all participants. MLSs may, however, restrict the use of sold data on VOWs if it is not publicly available (see Model VOW Rule 19.5). (added 8.06.09)

- Q 5.8 Where sold data is not “publicly accessible” and the MLS prohibits sold data from being displayed/accessible on VOWs under optional Rule 19.15(f), the rules require an “equivalent requirement must be imposed on Participant’s use of MLS Listing Information in providing brokerage service through all other mechanisms.” What requirement must be imposed on use of sold data in the “bricks and mortar” context? Does that mean that a broker may not use and disclose sold listings in connection CMA’s or other advice to a client or customer – either in their offices or via their VOWs?

If the MLS chooses to prohibit display of sold data on the VOW (or, for that matter, expired, withdrawn or pending listing data), Participants may still provide clients and customers with a limited number of such listings in connection with providing brokerage services, including CMA’s. This is permissible both on a VOW and “in the office.”

The distinction between display of such data and permitted uses is based on whether the sold listings provided to the consumer are chosen by the consumer (or selected pursuant to criteria chosen by the consumer), or are selected by the broker in the course of providing brokerage services to the consumer. For example, where the MLS prohibits display of sold data on VOWs, the MLS must also prohibit brokers from offering consumers the opportunity to freely review or search sold listing data in the office. A broker may, however, develop a CMA for a client or customer and provide the underlying comparable sales data (including sold listings) on which that CMA is based, so long as the broker, rather than the consumer, chose a reasonable number of listings to provide in connection with developing, explaining, and justifying the CMA. Conversely, where the MLS prohibits sold data display on VOWs, a broker may not provide a client or customer an unrestricted opportunity to review sold data, such as the sale prices of homes in a geographic area (such as a neighborhood or zip code) selected by the seller, unrelated to the broker’s efforts in marketing the property (added 01.27.09).

### Other Issues

- Q 6.1 Our MLS licenses databases such as public records, mortgage information and neighborhood information at considerable cost, for access only by Participants and subscribers. The license agreement does not give the MLS authority to permit access to those databases to consumers on brokers’ websites. Is the MLS required to re-negotiate these license agreements to allow for consumer access via brokers’ VOWs?

If the MLS licenses databases from third parties for access only by participants and subscribers, the MLS has no obligation to re-negotiate those license agreements and can prohibit Participants and subscribers from providing unauthorized access to those databases by third-parties.

- Q 6.2 Our MLS allows participants and subscribers in their offices and by email to give potential buyers hard copy lists of street addresses (“thumbnails”) of properties in MLS. Names of listing firms do not appear on these lists. Can our participants and subscribers still provide these lists if we require that the names of listing firms be shown in connection with listings displayed on VOWs?

No. If the MLS chooses to require that the names of listing firms be displayed on VOWs, the same requirement must be imposed on participants providing brokerage services via all other delivery mechanisms.

- Q 6.3 Sections 19.15 – 19.19 of the model VOW rules are provisions that can be adopted at the discretion of the MLS. It's clear that if adopted, equivalent requirements must be adopted related to delivery of MLS Listing Information in providing brokerage services using other delivery mechanisms (e.g. in participants' physical offices, by email, by fax. etc.). Must an MLS adopt either all, or none, of the "optional" rules? If an MLS may adopt some, but not all, of the optional rules, can it, for example, adopt certain subsections of a rule (e.g. Section 19.15 which has 6 subsections)?

MLSs can adopt some, none, or all of the "optional" rules found in the model rules as Sections 19.15-19.19. With respect to Section 19.15 which has several subsections, MLSs can adopt some, none or all of the subsections or, with respect to 19.15 (a), some, none or all of the individual items listed (i.e. expired, withdrawn, or pending) in that subsection.

In addition, because these rules are optional, they may be omitted upon initial adoption of the VOW rules and adopted at a later time or, once adopted, may subsequently be deleted. (added 12.24.08)

- Q 6.4 May we adopt Section 19.18 of the model VOW rules but delete the words "listing broker or agent" so that all that's required is display of the name of the listing firm?

Yes (added 1.27.09)

- Q 6.5 Can an MLS set limits to the number of "expired", "withdrawn", and "pending" listings that can be viewed, retrieved or downloaded in response to an inquiry?

Yes. However the number should be reasonable and any limits established will require an equivalent limit on participants' delivery of that information "through all other delivery mechanisms". (added 1.27.09)

- Q 6.6 May a business or legal entity be a "Registrant" on a VOW site?

Yes. The VOW policy authorizes MLS participants to provide brokerage services to VOW "Registrants." Registrants are consumers with whom the broker has formed a lawful consumer-broker relationship. Although the VOW policy does not address whether consumers who become VOW Registrants may be business or legal entities (that is, entities other than natural persons, such as corporations or partnerships), the Final Judgment approving the VOW policy requires VOW services to be available to "customers." "Customer" is defined to include "any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental." Under this definition, any business or legal entity (such as a corporation or a partnership) that is a seller or who has expressed an interest in purchasing residential property and who has described the type, features or location of the property in which it has an interest may be a customer, and, therefore, may also be a Registrant. (added 8.06.09)

**Affiliated VOW Partners (“AVPs”)**

Q 7.1 What is an Affiliated Vow Partner (“AVP”)?

An Affiliated Vow Partner (“AVP”) is a vendor or other service provider that operates a VOW on behalf of a Participant, subject to the Participant’s supervision, accountability and the terms of the VOW policy.

Q 7.2 Must an MLS provide a VOW feed to an AVP?

Yes. An MLS must, at the request of a Participant, provide a direct data feed to the Participant’s AVP, and may not require that MLS Information be retransmitted by the Participant to their AVP.

Q 7.3 Can the fees charged AVPs be higher than the fees charged Participants and subscribers?

AVPs can be charged fees higher than those charged to Participants only if the MLS incurs greater cost in providing service to an AVP. In any instance, the costs charged must reasonably relate to the actual costs incurred in providing the service to Participants or to AVPs.

Q 7.4 If an AVP operates VOWs on behalf of several Participants, can we charge the AVP fees based on the number of VOWs it operates?

If the MLS charges a single fee to all VOWs that combines both the fixed costs of supporting VOWS and the variable costs associated with delivery of a data feed, and the variable costs of providing the feed are insubstantial, then the MLS may charge the AVP a fee based on the number of VOWs they operate. If the MLS charges a separate fee for providing the data feed, and an AVP only receives one feed, it may only be charged one fee.

Q 7.5 If an AVP operates several VOWs for different Participants and misuses MLS information with respect to one of the VOWs, can we terminate the data feed?

Yes, although the MLS should be sure to give the Participants and the AVP notice and an opportunity to correct the problem so that the use of the feed to service the VOWs of the other Participants is not unnecessarily interrupted.

**Definition of MLS “Participation”**

Q 8.1 What is changed by the revised MLS “membership” rule?

The revised membership rule is similar to the longstanding definition of MLS “Participation” except that it requires that Participants “offer or accept cooperation and compensation to and from other Participants”. This differs from the earlier policy that merely required that Participants be “capable of offering and accepting cooperation and compensation”. The official definition of MLS “Participant” can be found in Multiple Listing Policy Statement 7.9, *Definition of MLS “Participant”*.

The new requirement that a Participant be engaged in making or accepting offers of cooperation and compensation to other Participants is explained further in the informational “Note” that accompanies Section 3, Participation, in the model MLS Bylaws, which provides:

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

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

*The membership requirement shall be applied on a nondiscriminatory manner to all Participants and potential Participants.*

Q 8.2 Must we adopt the revised definition of MLS Participation?

Yes.

Q 8.3 Once adopted, how does the revised definition affect current Participants who do not meet its requirements? Must we terminate their participatory rights? If yes, how quickly?

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

Q 8.4 Will NAR defend our MLS if we terminate a Participant who doesn't meet the new criteria?

A lawsuit against an MLS filed by a participant terminated for failure to satisfy the new membership requirements would be generally covered under the NAR-provided professional liability insurance policy. Coverage for such a claim under that policy would be available on the same terms and conditions as it is in any other case, and in particular, would apply only if the rules and policies of the MLS were in compliance with those imposed by NAR.

Q 8.5 Can an MLS require that Participants engage in listing and selling?

No. The fact that a broker engages in either listing or selling satisfies the requirement.

Q 8.6 How do we determine the intent of prospective Participants seeking admission to the MLS to list or sell property?

The MLS may include a provision in the application for participatory rights by which the applicant would be required to affirmatively state his or her intent to list and/or sell real property.

Q 8.7 How do we determine whether a Participant (or potential Participant) is able to “respond knowledgeably” to questions about property displayed on the Participant’s VOW?

It should be assumed that individuals who qualify for MLS participatory rights will be able to respond knowledgeably until such time as an issue arises that calls this ability into question.

Q 8.8 Is the requirement that Participants “actively endeavor” to list property or accept offers of cooperation and compensation merely a requirement to gain participatory rights in MLS, or is it an ongoing obligation?

Actively endeavoring to list real property and/or to accept offers of cooperation and compensation from other Participants is an ongoing requirement of MLS participation.

Q 8.9 Can we conduct periodic audits or evaluations to ensure Participants are continuously engaged in actively listing or selling property?

Yes, as long as the audits are performed uniformly and consistently.

Q 8.10 Some of our Participants are part-time or “seasonal” (e.g. they list and sell property only during the summer and early fall). Are they eligible for ongoing MLS participatory rights under the revised membership rule?

Yes. The explanatory “Note” explaining Section 3 – Participation, in the model MLS Bylaws confirms that such individuals are entitled to participation so long as they are engaged in the business “on a continual and ongoing basis during the operation of (their) real estate business.”

Q 8.11 How does the revised membership rule apply to MLS Participants who spend all their time running real estate companies (e.g. hiring, training, marketing, etc.) and where the firm’s non-principal brokers and sales associates do the listing and selling?

The fact that the real estate brokerage company is actively engaged on an ongoing basis in listing or selling satisfies the requirement.

Q 8.12 What are the consequences if an MLS determines a Participant is not actively listing or selling property?

If it is established that a Participant is no longer engaged in either listing or selling real property, he is not eligible for participatory rights.

Q 8.13 Does the requirement to actively endeavor to list or sell property also apply to subscribers?

No.

Q 8.14 Can we require applicants to demonstrate a history, e.g. 6 months or a year, of actively endeavoring to list or sell?

No. The fact that an applicant can show he or she is currently and intends to continue to be engaged in listing or selling real property is sufficient.

Q 8.15 What effect does the membership rule have on appraisers – both those currently participating in our MLS and those who apply in the future?

The requirement that a Participant be engaged in listing or selling does not apply to appraisers, who are granted participatory rights on the basis of their appraisal activities.

Q 8.16 Can an MLS participation application require applicants to confirm that they are (or will be) actively endeavoring to list real property or accept (or will accept) offers of cooperation and compensation from other Participants in the MLS?

Yes.

Q 8.17 Is an exclusive buyer's broker who rejects the offer of compensation offered by listing brokers and is compensated only by the buyer still eligible for MLS participation?

Yes.

Q 8.18 Does a broker qualify for MLS participation if the broker continuously seeks, or regularly obtains, seller clients, if the listings obtained by the broker are co-listed with another broker Participant in the MLS?

Yes. A co-listing arrangement is one in which two or more brokers jointly list a property by executing a listing agreement with a seller, assume the legal responsibilities for such listing, and provide brokerage services for the listing. The MLS Participation rule does not require a broker to be the sole listing or selling broker in order to qualify as a Participant. To qualify for MLS Participation, a broker must actively endeavor during the operation of its real estate business to list or sell properties of the type listed on the MLS and/or to accept offers of cooperation and compensation. This requirement is not intended to permit an MLS to deny participation based on the level of services provided by the Participant or potential Participant as long as the level of service satisfies state law. (added 8.06.09)

Q 8.19 If a co-listing broker is paid a commission by the seller and payment of that commission is shown on a HUD-1, does payment of the commission constitute evidence of the broker's "offering or accepting cooperation and compensation?"

Yes. The MLS Participation rule requires that a broker "actively endeavor" to secure listings, and that such activity occur "on a continual and ongoing basis." Evidence of such effort by the broker would include his or her receipt of compensation resulting from successful transactions through the MLS as disclosed on the seller's HUD-1 statement. An occasional, isolated report of compensation on a HUD-1 may not, however, be sufficient to satisfy the criteria. (added 8.06.09)

**IDX**

Q 9.1 What's the difference between a VOW and an IDX site?

An IDX site is considered advertising – and listing brokers' consent is required before another broker may advertise his or her listings. A VOW is considered on-line brokerage. Listing brokers' consent is not required to display on a VOW any listing otherwise available to MLS participants and subscribers for Internet display. Sellers retain the ability to withhold their properties from Internet display or to withhold the display of their property's address from Internet display. A website that offers online MLS listing searching capability that does not comply with the detailed requirements of the VOW policy is, by definition, an IDX site.

Q 9.2 Does the settlement agreement affect the IDX policy?

No.

Q 9.3 Can we “graft” elements of the new VOW policy onto our existing IDX rules?

Not at this time. It is possible that the IDX policy may be amended by NAR to incorporate certain elements of the VOW policy.

Q 9.4 If we limit the number of listings that can be viewed, retrieved or downloaded in response to a Registrant's inquiry on a VOW (per Section 19.19 of the model VOW rules), must we establish a similar requirement for display in participants' physical offices? Does the limit we establish apply to participants' IDX sites as well?

A limit on the number of listings that may be viewed, retrieved or downloaded in response to a Registrant's inquiry on a VOW requires a similar limit to Participants' use of MLS Listing Information in **providing brokerage services** through all other delivery mechanisms. Display on an IDX site is considered advertising rather than brokerage and the limits as to the number of listings that may be displayed in response to a consumer's search on an IDX site may be different. (added 12.24.08)

**The Settlement Agreement**

Q 10.1 After the settlement agreement is final, can the VOW policy be changed?

It is possible, although unlikely, that NAR may at some future time propose changes to the VOW policy. Any changes would require approval by the Department of Justice. Once MLSs adopt the VOW policy and VOW rules they may not make changes to them unless those changes are permitted by the current VOW policy.

Q 10.2 Does the settlement agreement have implications for Commercial Information Exchanges?

No.

**Real Estate Transaction Standards (“RETS”)**

Q 11.1 Does the RETS Advisory Board have any recommendations for implementing the VOW policy and rules?

The Advisory Board suggests:

*When implementing the policy, the addition of several data points to the representation of a listing are obvious and that those data points should have the following names:*

<i>Visible Long Name</i>	<i>System/Standard Name</i>
<i>VOWEntireListingDisplay</i>	<i>VOWList</i>
<i>VOWAddressDisplay</i>	<i>VOWAddr</i>
<i>VOWAutomatedValuationDisplay</i>	<i>VOWAVM</i>
<i>VOWConsumerComment</i>	<i>VOWComm</i>

*The data type of each point is boolean with '0' (zero) representing false and '1' (one) representing true.*

*Specifically, the listing input form should have check-box selections for the selling party to explicitly Opt Out of each of displaying a listing; displaying the address of the listing; displaying an automated valuation; displaying consumer comments. In the interests of having consistent representations of these data points and the intent of the RETS Schema workgroup to add these data points to the Listings schema model, the group decided on these representations.*

*The interpretation of the data points are that the seller has opted in to each of the actions of displaying the listing, address, automated valuation and consumer comment when the value is true. (added 12.24.08)*

(8.06.09.v.10.1)

# EXHIBIT 17

### Model Virtual Office Website (VOW) Rules for MLSs

**Note: Adoption of Sections 19.1 through 19.14 is required.**

**Section 19.1 (a):** A Virtual Office Website (“VOW”) 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. A non-principal broker or sales licensee affiliated with a Participant may, with his or her Participant’s consent, operate a VOW. Any VOW of a non-principal broker or sales licensee is subject to the Participant’s oversight, supervision, and accountability.

**(b)** As used in Section 19 of these Rules, the term “Participant” includes a Participant’s affiliated non-principal brokers and sales licensees – except when the term is used in the phrases “Participant’s consent” and “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 sales licensee, or by an Affiliated VOW Partner (“AVP”) on behalf of a Participant.

**(c)** “Affiliated VOW Partner” (“AVP”) 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)** As used in Section 19 of these Rules, the term “MLS Listing Information” refers to active listing information and sold data provided by Participants to the MLS and aggregated and distributed by the MLS to Participants.

**Section 19.2 (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 MLS Participants whose listings will be displayed on the Participant’s VOW.

**Section 19.3 (a):** 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 its user name and password. The Participant must also assure that any email address is associated with only one user name and password.

**(b)** 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)** 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 MLS rules, the Participant shall, upon request of the MLS, 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 MLS, provide an audit trail of activity by any such Registrant.

**(d)** 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)** That the Registrant acknowledges entering into a lawful consumer-broker relationship with the Participant;

**(ii)** That all information obtained by the Registrant from the VOW is intended only for the Registrant's personal, non-commercial use;

(iii) 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) That the Registrant will not 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) That the Registrant acknowledges the MLS's ownership of, and the validity of the MLS's copyright in, the MLS database.

(e) 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) The Terms of Use Agreement shall also expressly authorize the MLS, and other MLS Participants or their duly authorized representatives, to access the VOW for the purposes of verifying compliance with MLS 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 19.4:** 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 19.5:** 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 MLS.

(NOTE: MLSs may adopt rules requiring Participants to employ specific security measures, provided that any security measure required does not impose obligations greater than those employed by the MLS.)

**Section 19.6 (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 MLS 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.

OR

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 from the date they are signed, or one year from the date the listing goes off the market, whichever is greater.

**Section 19.7 (a):** Subject to subsection (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) display an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing

(b) Notwithstanding the foregoing, 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 or agent shall communicate to the MLS 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 19.8, 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 19.8:** 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 MLS 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 19.9:** A Participant shall cause the MLS Listing Information available on its VOW to be refreshed at least once every three (3) days.

**Section 19.10:** Except as provided in these rules, the NATIONAL ASSOCIATION OF REALTORS® 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 19.11:** 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 19.12:** 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 19.13:** A Participant who intends to operate a VOW to display MLS Listing Information must notify the MLS of its intention to establish a VOW and must make the VOW readily accessible to the MLS 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 19.14:** 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.

**Note: Adoption of Sections 19.15 –19.19 is at the discretion of the MLS. However, if any of the following sections are adopted, an equivalent requirement must be imposed on Participants' use of MLS Listing Information in providing brokerage service through all other delivery mechanisms.**

**Section 19.15:** A Participant's VOW may not make available for search by, or display to, Registrants any of the following information:

- a. Expired, withdrawn, or pending ("under contract") listings.
- b. The compensation offered to other MLS Participants.
- c. The type of listing agreement; i.e., exclusive right to sell or exclusive agency.
- d. The seller's and occupant's name(s), phone number(s), or e-mail address(es).
- e. Instructions or remarks intended for cooperating brokers only, such as those regarding showings or security of listed property.
- f. Sold information

**(Important Note:** If sold information is publicly accessible in the jurisdiction of the MLS, Subsection 19.15 (f) must be omitted.)

**Section 19.16:** A Participant shall not change the content of any MLS Listing Information that is displayed on a VOW from the content as it is provided in the MLS. The Participant may, however, augment MLS Listing Information with additional information not otherwise prohibited by these Rules or by other applicable MLS rules or policies as long as the source of such other information is clearly identified. This rule does not restrict the format of display of MLS Listing Information on VOWs or the

display on VOWs of fewer than all of the listings or fewer than all of the authorized information fields

**Section 19.17:** A Participant shall cause to be placed on his or her VOW a notice indicating that the MLS Listing Information displayed on the VOW is deemed reliable but is not guaranteed accurate by the MLS. A Participant's VOW may include other appropriate disclaimers necessary to protect the Participant and/or the MLS from liability.

**Section 19.18:** A Participant shall cause any listing that is displayed on his or her VOW to identify the name of the listing firm and the listing broker or agent in a readily visible color, in a reasonably prominent location, and in typeface not smaller than the median typeface used in the display of listing data.

**Section 19.19:** A Participant shall limit the number of listings that a Registrant may view, retrieve, or download to not more than \_\_\_ current listings and not more than \_\_\_ sold listings in response to any inquiry.

(Note: The number of listings that may be viewed, retrieved, or downloaded should be specified by the MLS in the context of this rule but may not be fewer than 100 listings or 5% of the listings in the MLS, whichever is less.)

**Note: Adoption of Sections 19.20–19.25 is at the discretion of the MLS. It is not required that equivalent requirements be established related to other delivery mechanisms.**

**Section 19.20:** A Participant shall require that Registrants' passwords be reconfirmed or changed every \_\_\_ days.

(Note: The number of days passwords remain valid before being changed or reconfirmed must be specified by the MLS in the context of this rule and cannot be

shorter than 90 days. Participants may, at their option, require Registrants to reconfirm or change passwords more frequently.)

**Section 19.21:** 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 19.22:** 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 MLS, to identify the source of the listing.

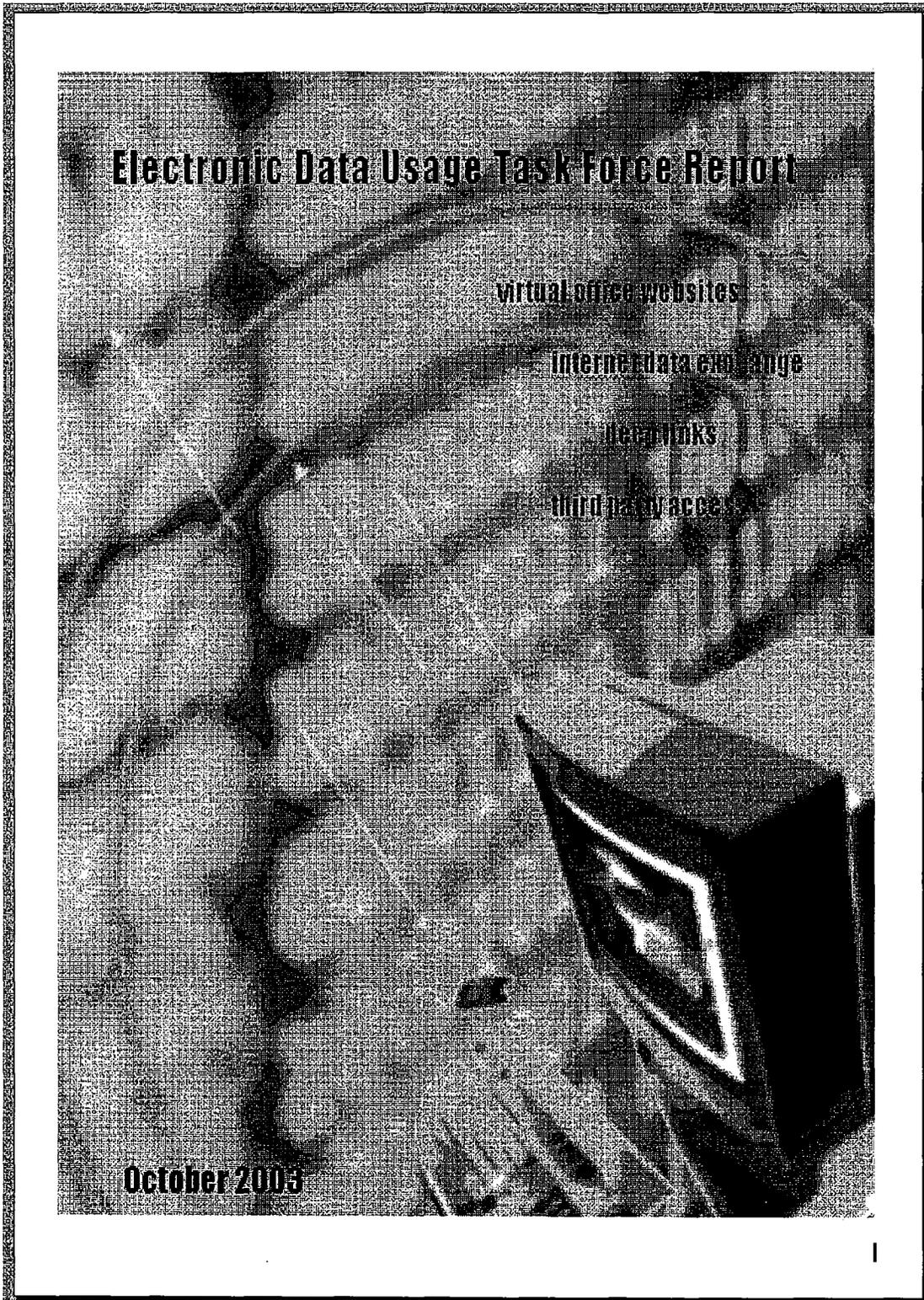
**Section 19.23:** A Participant shall cause any listing displayed on his or her VOW obtained from other sources, including from another MLS or from a broker not participating in the MLS, to be searched separately from listings in the MLS.

**Section 19.24:** Participants and the AVPs operating VOWs on their behalf must execute the license agreement required by the MLS.

**Section 19.25:** Where a seller affirmatively directs their listing broker to withhold either the seller's listing or the address of the seller's listing from display on the Internet, a copy of the seller's affirmative direction shall be provided to the MLS within 48 hours.

(11.03.08)

# EXHIBIT 18



**MLS® and Technology Council (MTC)  
ELECTRONIC DATA USAGE TASK FORCE**

**Report submitted September 3<sup>rd</sup>, 2003**

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	Richard Silver REALTOR
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# Electronic Data Usage

## Report of the EDU Task Force

### Purpose

This discussion paper is for the purpose of developing guidelines for the effective, efficient and beneficial use of electronic data for Boards, Associations and REALTORS.

There is a legitimate fear on one hand of capitulating to misuse of REALTORS' hard earned data banks, and on the other hand of being left behind in an electronic revolution moving at the speed of light.

The objective always is to ensure the REALTOR remains central to the real estate transaction and that efforts to guide the use of MLS<sup>®</sup> data are to that end.

### In the Beginning

The Multiple Listing Service<sup>®</sup> has a long and successful history. It was first developed in the mid 1950s under various names and at about the same time in several locations in North America. It provided a unilateral offering of compensation and cooperation among REALTORS. Cooperative selling was not new to REALTORS at that time. Records at the Winnipeg Real Estate Board dating back to the very early 1900s note members of that Board meeting for breakfasts to share listing information and to encourage cooperation to sell properties.

An organized and structured MLS<sup>®</sup>, complete with forms and agreements, sprang forward in the 1950s. Photo listings followed and in the mid-1970s MLS<sup>®</sup> books or catalogues replaced tear sheets. By the end of the 1970s computers began to organize our listings, sales and expired listings.

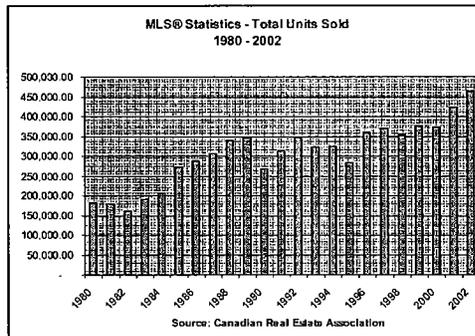
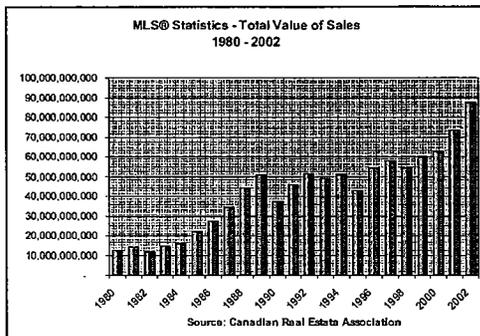
MLS<sup>®</sup> flourished. It satisfied two distinct needs: the consumer's and the REALTOR's. Consumers want an efficient and effective system to market their properties. REALTORS want an efficient system to help them effectively serve their customers.

Two cornerstones are fundamental to the success of MLS<sup>®</sup>: quality and quantity. The quality of the listing and sales information is very high and is available on a timely basis. Members, through their Boards and Associations, have developed rules and regulations to ensure fast reporting and accurate data. Errors are corrected quickly, sales are reported promptly and well in advance of any other source of such data. Confidence and reliability accompanied the success of the system.

Consumers and REALTORS have come to rely on the ability of MLS<sup>®</sup> to market properties. The fact that REALTORS and consumers can find nearly all listed properties, and the very best and timely sales information, in one place is of enormous importance to the continuing success of MLS<sup>®</sup>.

In 2002 there were 725,255 properties listed on MLS® systems across Canada. That year, 464,276 sales were reported for a dollar value of \$ 87.1 billion.

The growth of MLS® has been phenomenal both in terms of REALTOR endorsement and consumer use.



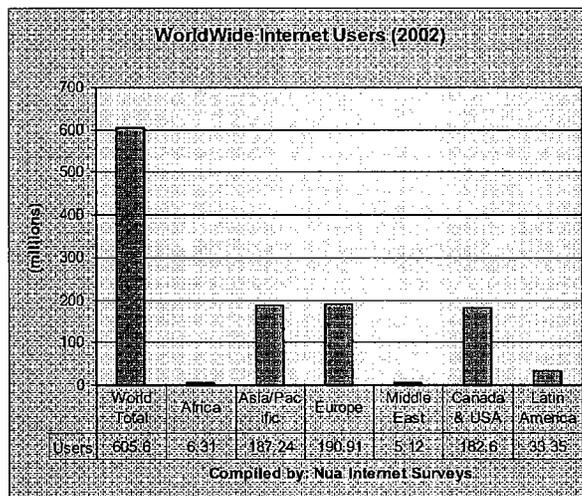
**And Then the Internet**

The history of the Internet dates back to 1969 when four American university computer sites were networked under the direction of the Advanced Research Projects Agency (ARPA) to provide the US military with a communications network that could survive a nuclear strike.

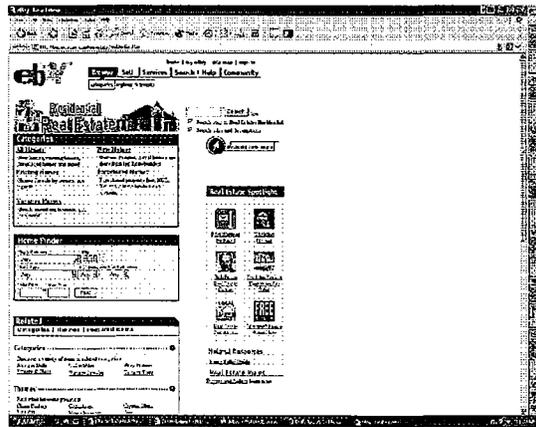
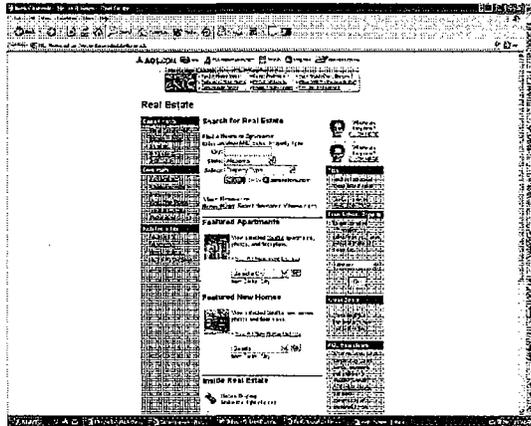
From the original four hosts and a handful of users, the Internet has erupted to some 15 million hosts and nearly a billion worldwide users.

The effect of the Internet on the real estate industry has been enormous.

We have heard dire predictions of disintermediation, which basically implies removal from involvement in the transaction. We have heard wild projections of financial windfalls. Those have not come to pass. Nonetheless, the Internet has had a profound effect on us.

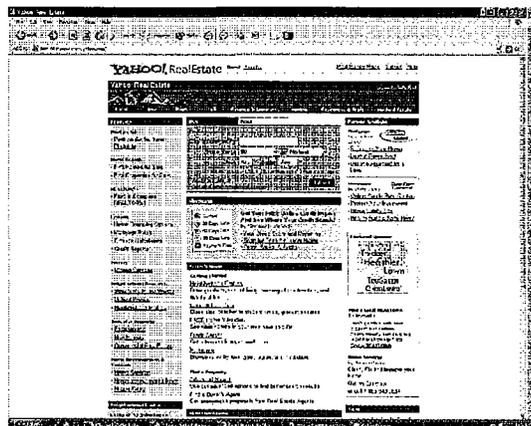


The threat of disintermediation has certainly affected other industries. Travel agents and stock brokers have been heaviest hit. Bankers are scrambling to change with the new technologies. Others offering homogeneous products have and will continue to be affected as well. The major determination of disintermediation seems to be the type of product and the degree of complication in the transaction. If the consumer can be sure of getting exactly the same thing from various sources, like an airline ticket or even an automobile, the likelihood of using the Internet increases dramatically.



The public adoption of the Internet has created many new challenges for REALTORS. We don't know who are friends or competitors. They switch back and forth, sometimes overnight. Some of the dot coms expressed their avowed goals to do away with real estate agents. Total estimates of commissions were calculated and dollar signs danced like sugar plums in the dreams of techies. Academics, theorists and Internet visionaries heralded doom for any brokerage enterprise. The consumer, however, didn't follow the predicted path. So far, the public has determined that the Internet is a great place to get information, but they still need experts to help them make sense of the information they're getting online, and expert advice before making major investments in complicated transactions.

Other pressures from some pretty impressive corners loom still. Gateways like Microsoft with MSN, AOL, CompuServe, AT&T, and Prodigy have, will have or would like to have the 'eyes' of real estate consumers. So, too, would search engines enjoy that traffic with Google, Yahoo, MSN and others all offering extensive "real estate" results to all and sundry. E-bay Canada has announced a major initiative to launch a competitive marketing system to challenge MLS®



<b>Most Popular Search Engines</b>	
% of total number of users	
1. Google	55.2
2. Yahoo	21.7
3. MSN Search	9.6
4. AOL Search	3.8
5. Terra Lycos	9.6
	National Post

Source: Onestat.com June 2003

We see tremendous amounts of consumer research occurring but, when it comes to the actual transactions, consumers increasingly seek out the experts in a field for quality advice and assistance. Just as REALTORS are encountering consumers with print-outs of listings in hand, doctors are encountering patients with Internet research on disease and anatomy.

The real estate industry has embraced the changes but we must remain vigilant. We are still in the early stages of the technological revolution.

### **Followed by *mls.ca***

The real estate industry responded to the challenges of the 1990s with outstanding success. Both the National Association of REALTORS and The Canadian Real Estate Association decided that the Internet was as much an opportunity for REALTORS as it was a threat. They independently launched initiatives designed to wrestle with the technological revolution. Keeping the REALTOR central to the transaction was the objective.

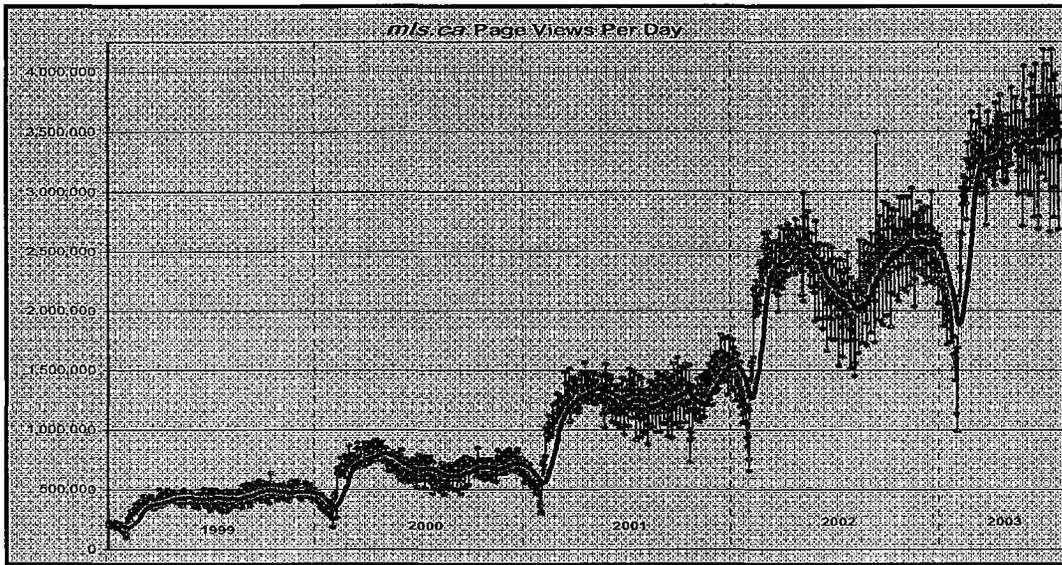
In the United States, NAR launched the REALTORS Information Network (RIN). It had a limited buy-in from Boards and members. After a few stumbles and a lot of money, RIN transformed into a private venture with Homestore using the industry web site now known as REALTOR.com. REALTOR.com has emerged as the primary source of MLS® data in the US after several years competing with others, and in spite of its own development and management issues. All is still not perfect in the US market as the following Inman News article by Marcie Geffner depicts:

“The Internet is quietly becoming something of a disappointment for home buyers. Indeed, the glorious cyberspace frontier that once promised to provide for-sale homes information in a simple and comprehensive way now is horribly fragmented into hundreds of Web sites and cluttered with faulty search functions, advertisements and out-dated data.

But all is not lost. Realty brokers and online listings Web sites can still repair the damage if they dismantle the stumbling blocks they've placed in front of home buyers and allow the Internet to live up to its full potential. Include all the listings, all the addresses and all the details. Fix the search functions. Add more pictures and video tours. Curtail the advertisements and kill the pop-ups. Make sure the data is accurate and updated in real time. Do it now.”

In Canada, *mls.ca* was launched in 1995 with the cooperation of most Real Estate Boards across the country. It was an immediate success with an information hungry consumer and an anxious membership.

The Canadian industry's initiative thrived from the onset and outright exploded once The Canadian Real Estate Association took over its operation in 1999. Today, *mls.ca* enjoys great success with as many as four million page views per day by more than one million unique viewers every month.



The efforts and successes of adapting to the Internet have served the industry well. Without the efforts of organized real estate, REALTORS would be left scrambling as the Internet giants rushed to replace REALTORS with technology. Not like lions, but more like jackals scrapping over the remains of a proud and vibrant industry. The industry stood strong in the face of that challenge and responded with an enhanced Multiple Listing Service<sup>®</sup> driven by both consumer and REALTOR needs.

### The Challenges Today

Technology changes at an unprecedented rate. Just keeping up with new developments is a challenge. We develop systems and guidelines for one venture and another springs up before we get the first one properly in place.

At the same time, outside interests are continuously snapping at our heels looking for a piece of the REALTOR's commission.

Following our successful Internet marketing strategies through the MLS<sup>®</sup>, data aggregators have sprung up in the form of commission sharers. Their business plan is to take the REALTORs information, build their own Internet site using the REALTOR's data and attract the consumer to their sites. They then sell the consumer, in the form of "leads", back to the REALTOR for a referral fee of 25 – 35% of the commission.

Some techno savvy REALTORS have also developed their own systems and devices to capture the new electronic consumer in various ways. Sorting out the friend from the competitor is becoming difficult as the lines between REALTOR and free-rider blur.

To address these challenges, the real estate industry has designed or adapted three vehicles of Internet marketing along with guidelines for their use and implementation. We also have a model contract for use with third parties who wish to provide these services to REALTORS.

**Broker Reciprocity or Information Data Exchange (IDX)** is a simple form of a reciprocal agreement among Brokers to allow the advertising of each other's listings on their web sites.

**Virtual Office Web sites (VOWs)** are usually more sophisticated systems of allowing consumers access to more of the MLS® data, but requiring the consumer to register thus giving the REALTOR the ability to "capture" information about the consumer for follow-up.

**Deep Linking or Framing** is a newer system designed to give a very inexpensive Internet marketing option to REALTORS using the current technology of *mls.ca* for both display and searching.

### What will it Cost?

The following table is a rough estimate of costs a REALTOR may expect. These costs will vary widely depending on the complexity of sites and competition among third parties.

	Set-up Costs	Operating Costs	Lead Capture	Comments
<b>IDX/ Broker Reciprocity</b>	+/- \$1,000*	~\$40/month*	No	Typically set up by a Board.
<b>VOWs - Virtual Office Web Sites</b>	+/- \$10,000*	~\$90/month*	Yes	Typically set up by a 3 <sup>rd</sup> Party with auto follow-up. 3 <sup>rd</sup> party set up costs may be shared or absorbed.
<b>Deep Linking/ Framing</b>	+/- \$1,000*	None*	No	Typically set up by a REALTOR with some assistance in Web Page design.

**\*Rough Estimates Only**

**Opting In/Out**

One of the underlying principles of these guidelines is that the ultimate control of MLS® information rests with the proper authorities. Home owners have rights to privacy. Brokers have rights in their listings. Boards have rights in their compilation of data, photographs and information.

**Opting Options**

	Board	Broker	Owner
<b>IDX/ Broker Reciprocity</b>	Opt in available	Opt out available	Opt out available
<b>VOWs - Virtual Office Web Sites</b>	Opt out available	Opt out available	Opt out available

**Policy Statement**

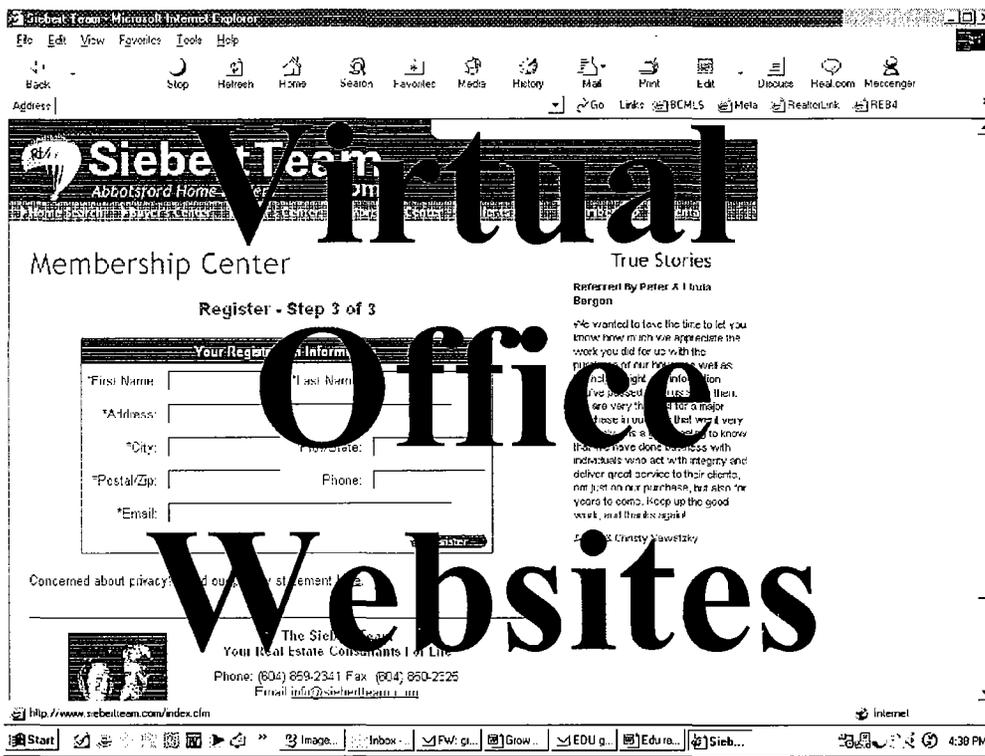
Boards and Associations of The Canadian Real Estate Association are encouraged to enable MLS® Participants to display on Participants “public Web sites” aggregated MLS® active listing information subject to provincial legislation or regulation and Board or Association bylaws, rules or regulations. To facilitate requests from brokers, Boards are encouraged, if requested by a Participant, to provide basic framing of active MLS listings for display on Participants’ Web sites by one or more of the Electronic Data Usage facilities offered. This policy does not require a Board or Association to establish publicly accessible sites displaying Participants’ listings. A simple, inexpensive alternative for Boards and Associations could be to look to the MTC to provide the technology infrastructure that would allow the Boards or Associations to provide Deep Linking to their members.

Unless provincial legislation or Board/Association bylaws, rules and regulations requires prior written consent from listing brokers, listing brokers’ consent for such display may be presumed unless a listing broker affirmatively notifies the Board or Association that the listing broker refuses to permit display. If a participant refuses to permit the display of their listings, then that participant should not be allowed to frame the aggregated MLS® data of other participants.

Participants need to understand that in some jurisdictions participation requires display of all listings. There may be no option to display on a “listing by listing” basis. However, provisions are in effect that protect legitimate requests from sellers not to advertise their listings.

Access to MLS® databases of current listing information or any part of such databases may not be provided to any person or entity not expressly authorized such access under the MLS® rules.

## Chapter One



### Description/overview

Virtual Office Web Sites, or VOWs, are the latest development in REALTORS' continuing efforts to differentiate themselves from competitors. It will no doubt not be the last such attempt to attract consumers.

The proponents of VOWs make the assertion that a virtual office is no different than its "bricks and mortar" counterpart. A REALTOR should be able to provide the same information to an Internet surfer, as does a REALTOR to a drop-in at his traditional office. Certainly the advent of kiosk displays with on-duty REALTORS would support that contention.

Others assert that VOWs are the death knell of the industry and nothing more than unauthorized and unwarranted advertising of someone else's hard earned listings.

Both arguments have merit. What then is an industry to do? Should we ignore them? Outlaw them? Or put guidelines in place to regulate them?

**The MLS® and Technology Council, through its Electronic Data Usage Task Force, has concluded that it is best to recognize that VOWs exist. The challenge is to provide the industry with guidelines for such programs and models that will work. At the same time, the MTC wants to leave brokers, sellers and Boards with choices.**

The following VOW guidelines encompass that philosophy.

## **Proposed guidelines governing use of MLS<sup>®</sup> data in connection with VOWs.**

Real Estate Boards may permit Participants (i.e. licenced members) to use MLS<sup>®</sup> data in connection with providing brokerages services over the Internet (or by other electronic means) in accordance with the policies set forth below.

### **I. Definitions and Scope of Policy.**

1. For purposes of this policy, the term Virtual Office Website (“VOW”) refers to a Participant’s Internet website, or a feature of a Participant’s Internet website, through which the Participant provides real estate brokerage services to consumers with whom the Participant has first established a relationship where the consumer has the opportunity to search for MLS<sup>®</sup> data, subject to the Participant’s oversight, supervision and accountability. As used herein “Participant’s VOWs” and “VOWs” also refers to such websites, or features of websites, operated by non-principal brokers and sales licensees affiliated with MLS<sup>®</sup> Participants, where permitted by this policy.
2. The right to display listings in response to consumer searches is limited to display of MLS<sup>®</sup> data supplied by the Board or Association in which the Participant has participatory rights and only where expressly permitted by the Board or Association from which listings are to be displayed. (“MLS<sup>®</sup> opt out”) and excluding any specific listings designated by a Listing Broker as “not to be displayed on the Internet” or “not to be displayed on VOWs” or equivalent wording. This does not preclude a firm with offices participating in different MLS<sup>®</sup>s from operating a master website with links to such offices’ VOWs.
3. Participant’s Internet websites may also provide other features, information, or services in addition to the VOW (including the Internet Data Exchange function), which other features, information, or services are not subject to this policy. Use of MLS<sup>®</sup> active listing data on a VOW is subject to the permission of the listing brokers whose listings may be available to consumers via a VOW. Unless prohibited by provincial law or regulation, such permission is presumed unless a listing broker “opts out” by directing that his or her listings not be available for search or display on the VOWs of other participants. A listing broker may independently elect to opt out of the VOWs of all other participants in the MLS<sup>®</sup> (“Blanket opt out, however, if a broker opts out thusly, that broker may not operate a VOW using other broker’s listings
4. A Master Franchise may provide or host a VOW service for its franchisees on behalf of and identified as the site of the franchisee broker, non-principal broker or sales licensee affiliated with the franchisee. Any other display of MLS<sup>®</sup> data by a Master Franchise is subject to 3<sup>rd</sup> party agreements as may be approved by CREA’s MTC from time to time.

## **II. Policies Applicable to Participants' VOWs.**

1. Participants may provide additional brokerage services via a VOW in addition to making MLS<sup>®</sup> active listing data available, but only to consumers (hereinafter "Registrants") with whom the Participants have first established relationships, including completion of all actions and/or forms respecting agency disclosure required by provincial law or regulation in connection with providing real estate brokerage services to clients and customers.

2. Participants' VOWs must obtain the identity of each Registrant and obtain each Registrant's agreement to Terms of Use of the VOW, as follows:

- a. A Registrant must provide his or her name and a valid email address. The Participant must send an email to the address provided by the Registrant and confirming that the Registrant has agreed to the Terms of Use (described in subsection c below). The Registrant may be permitted to access the VOW only after the Participant has verified that the email address provided is valid the Registrant's agreement to the VOW's Terms of Use is confirmed.
- b. The Registrant must supply a user name and a password, the combination of which must be different from those of all other Registrants on the VOW, before being permitted to search and view information from the MLS<sup>®</sup> database via the VOW. The user name and password may be established by the Registrant or may be supplied by the Participant, at the option of the Participant. An email address may be associated with only one user name and password. The Registrant's password and access must expire on a date certain at a maximum of 30 days but may be renewed. The Participant must at all times maintain a record of the name, telephone number and email address supplied by the Registrant, and the username and current password of each Registrant, such records to be kept for not less than 180 days after the expiration of the validity of the Registrant's password. If the Board/Association has reason to believe that a Participant's VOW has caused or permitted a breach in the security of the data or a violation of MLS<sup>®</sup> rules related to use by one or more Registrants, the Participant shall, upon request, provide to the Board/Association a copy of the record of the name, email address, telephone number, username, current password, and audit trail, if required, of any Registrant identified by the Board/Association to be suspected of involvement in the violation.
- c. The Registrant must be required to affirmatively express agreement to a "Terms of Use" provision that requires the Registrant to open and review an agreement that provides at least the following:
  - i. That the Registrant acknowledges that the Terms of Use do not create an agency relationship with the Participant;
  - ii. That all data obtained from the VOW is intended only for the Registrant's personal, non-commercial use;

- iii. 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. That the Registrant will not copy, redistribute or retransmit any of the data or information provided;
- v. That the Registrant acknowledges the Board/Association ownership of and the validity of the copyright in the MLS<sup>®</sup> database.
- vi. That the Registrant agrees that all information provided may be provided to the relevant Board and may be used to administer and operate the VOW and to investigate any breach of security of the data or the MLS<sup>®</sup> rules.

After the Registrant has opened for viewing the Terms of Use agreement, a “mouse click” is sufficient to acknowledge agreement to those terms. 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.

- d. An agreement entered into at any time between the Participant and Registrant imposing a financial obligation on the Registrant or creating agency representation of the Registrant by the Participant must be established separately from the Terms of Use, must be prominently labelled and may not be accepted solely by mouse click
3. A Participant’s VOW must protect the MLS<sup>®</sup> data from misappropriation by employing reasonable efforts to monitor for and prevent “scraping” or other unauthorized accessing, reproduction or use of the MLS<sup>®</sup> database.
4. A Participant’s VOW must comply with the following additional requirements:
- a. 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 websites or VOWs) shall not be accessible to Registrants. Notwithstanding the foregoing, listing brokers may display on their VOWs or their other website(s) the listing or property address of a consenting seller.
  - b. If authorized by the Board/Association, non-principal brokers or sales licensees affiliated with Participants may operate VOWs if their Principal Broker consents, such VOW to be subject to the control of the Principal Broker. In such cases both the Principal Broker and the non-principal shall be accountable for compliance with these policies.
  - c. MLS<sup>®</sup> data available on a VOW shall be refreshed not less frequently than every seven (7) days and must indicate the date of last update.
  - d. Except as provided elsewhere in this policy or elsewhere in the MLS<sup>®</sup> rules and regulations of a Board/Association, a VOW or a Participant operating a VOW may not distribute, provide or make any portion of the MLS<sup>®</sup> database accessible to any person or entity.

- e. A Participant's VOW must display a privacy policy that informs Registrants of the ways in which information obtained from them will be used.
- f. A Participant may exclude listings from display on the Participant's VOW based only on objective criteria such as geography, list price, or type of property.
- g. A Participant may not provide the identity of a Registrant to any other entity for compensation. Notwithstanding the foregoing, a Participant may provide the identity of a Registrant to another broker for compensation if (1) the Participant's real estate brokerage activities principally consist of listing or selling the types of properties filed with the Board/Association (2) the Registrant is seeking property of a type, in a price range, or in a location for which the Participant does not ordinarily provide real estate brokerage services and (3) the number of Registrant identities provided or the corresponding revenue generated is an insignificant portion of the Participant's real estate brokerage activities.

For purposes of this paragraph, selling does not include making referrals of prospective purchasers to other real estate brokers and listing does not include making referrals of prospective sellers to other real estate brokers.

5. Participants must notify the Board/Association of their intention to establish a VOW and make their VOW directly accessible to the Board/Association for purposes of monitoring/ensuring compliance with applicable rules and policies.

6. The Participant also expressly authorize the Board/Association, and other MLS<sup>®</sup> Participants or their duly authorized representatives, to access the VOW for the sole purpose of monitoring compliance with MLS<sup>®</sup> rules.

### **III. Policies Applicable to Boards and Associations.**

1. Real Estate Boards/Associations may enable Participants to operate VOWs, subject to the requirements of provincial law or regulation and the requirements above.

2. Boards/Associations may, if requested by a Participant, provide basic "downloading" of listing information sufficient to operate a VOW, but excluding the listing or the property address, respectively, of any seller who affirmatively directs that the listing or the property address not appear on the Internet or other electronic forms of display or distribution. For purposes of this policy, "downloading" means electronic transmission of data from MLS<sup>®</sup> servers to Participants' servers on a persistent or transient basis, at the discretion of the Board/Association. In addition, Boards/Associations can also offer alternative display options including framing of the Board, or other publicly accessible sites displaying Participants' listings (with permission of the framed site). This policy does not require Boards/Associations to establish publicly accessible sites displaying Participants' listings.

3. Boards/Associations may charge the costs of adding or enhancing their “downloading” capacity to enable Participants to operate VOWs to those Participants who will download listing information for that purpose. Assessment of such costs should reasonably relate to the actual costs incurred by the Board/Association.

4. Boards/Associations that allow persistent downloading of the MLS<sup>®</sup> database by Participants for display or distribution on the Internet or by other electronic means must require that Participants (1) utilize appropriate security protection, such as firewalls, which requirement may not impose on Participants security obligations greater than those employed concurrently by the Board/Association, and/or (2) maintain an audit trail of Registrants’ activity on the VOW and make that information available to the Board/Association if they have reason to believe that a Participant’s VOW has caused or permitted a breach in the security of the data or a violation of MLS<sup>®</sup> rules related to use by one or more Registrants. Boards/Associations should require any third party providing a Participant with a VOW service to complete the Third Party Agreement (as approved or revised by CREA’s MTC from time to time).

#### **IV. Requirements That Boards/Associations May Impose on the Operation of VOWs and Participants.**

1. Boards/Associations may impose the following requirements on VOWs:

- a. A Participant’s VOW may not make available for search by or display to Registrants the following data intended exclusively for other Board members and their affiliated licensees:
  - i. Expired, cancelled, withdrawn, pending or sold listings.
  - ii. The compensation offered.
  - iii. The seller(s) and occupant(s) name(s), phone number(s) and email address(es), where available.
  - iv. Instructions or remarks intended for cooperating brokers only, such as those regarding showing or security of the listed property.
- b. No advertising may be visible on a page displaying any portion of the listings of other Participants, except that the name, address, phone number, and company logo of the Participant operating the VOW, the name, address and phone number of the non-principal or sales licensee operating the VOW (where such VOWs are permitted), and any other information required by provincial law or regulation, is not prohibited advertising.
- c. MLS<sup>®</sup> data fields authorized for display may not be changed. The MLS<sup>®</sup> data may be augmented with additional data not otherwise prohibited from display so long as the source of such other data is clearly identified. This requirement does not restrict

the format of MLS<sup>®</sup> data display or display of fewer than all of the listings or fewer authorized data fields.

d. There shall be a notice on all MLS<sup>®</sup> data displayed indicating that the data is deemed reliable but is not guaranteed accurate by the Board/Association. A Participant's VOW may also include other appropriate disclaimers necessary to protect the Participant and/or the Board/Association from liability.

e. Any listing displayed on a VOW shall identify the name of listing firm, and relevant telephone numbers in typeface not smaller than the median used in the display of listing data.

f. The number of current listings that Registrants may view on or from a VOW in response to an inquiry may be limited to a reasonable number, such number to be determined by the Board/Association. It is recommended that the number to be viewed be limited to 50.

2. Boards/Associations may also impose the following other requirements on the operation of VOWs:

a. Participants displaying other brokers' listings obtained from other sources, e.g., other Boards/Associations, non-participating brokers, etc. shall display the source from which each such listing was obtained.

b. A lesser maximum period, determined by the Board/Association, during which Registrants' passwords are valid, after which such passwords must be changed or reconfirmed.

c. The Board/Association may allow non-principal brokers and sales licensees affiliated with Participants to operate VOWs, subject to Section II.4.b of these policies.

## Suggested MLS<sup>®</sup> Rules/Virtual Office Websites (VOWs)

### Section 1:

**Section 1.1.1: VOW Defined:** VOW means a Participant's Internet website (and, where authorized, websites of non-principal brokers and sales licensees affiliated with MLS<sup>®</sup> Participants) through which consumers receive real estate brokerage services, including the opportunity to search for MLS<sup>®</sup> data subject to the Participant's overview, supervision and responsibility.

**Section 1.1.2: Copyright:** Participants acknowledge that the Board/Association has copyright ownership of the MLS<sup>®</sup> content and acknowledge that no copyright ownership of MLS<sup>®</sup> content flows to the Participant.

**Section 1.1.3: Remedy for Failure to Comply:** Participants acknowledge that the Board may, in addition to all other remedies available for violation of its regulations and without limiting those remedies, require the Participant to immediately cease and close the operation of the Participant's VOW upon written demand for any violation of these Rules.

### Section 1.1.4:

**Authorization:** Participants' use of listings of other Participants on VOWs is subject to the consent of such other Participants. Participants' consent for display of their listings by other Participants on VOWs pursuant to these rules is presumed unless a Participant independently and affirmatively withholds that consent ("opts out").

Participants may independently "opt out" of the VOWs of other Participants on a blanket basis ("blanket opt out") of all other Participants' VOWs.

"Blanket opting out" can be accomplished by:

- Notifying the Board/Association, which shall withhold the listings of any "blanket opt out" Participant from its VOW download of listing information; or
- Notifying the Board/Association, which shall compile and maintain a list of the names of any "blanket opt out" Participants and make such list available to all Participants operating VOWs. In this instance it is the responsibility of Participants to refrain from displaying the listings of "blanket opt out" Participants on their VOWs; or
- Notifying the Board/Association, which shall cause a data field to be completed indicating that particular listing(s) has/have been designated as "opt out" listing(s). In this instance it is the responsibility of Participants to refrain from displaying the listings of "blanket opt out" Participants on their VOWs.

(Note: The Board or Association may select one or more of the "opt out" options shown immediately above.)

**Section 1.2:**

Participants operating VOWs shall comply with the following:

**Section 1.2.1:** Participants may provide brokerage services via a VOW that include making MLS<sup>®</sup> active listing data available, but only to consumers (hereinafter "Registrants") with whom the Participants have first established relationships, including completion of all actions and/or forms respecting agency disclosure required by provincial law or regulation in connection with providing real estate brokerage services to clients and customers.

**Section 1.2.2:** Participants must obtain the name and valid email address of each Registrant.

**Section 1.2.3:** Participants must send an email to any Registrant confirming that the Registrant has agreed to the VOW's Terms of Use.

**Section 1.2.4:** Participants can provide access to their VOW only after a Registrant's email address is verified as valid and the Registrant's agreement to the VOW's Terms of Use is confirmed.

**Section 1.2.5:** Participant's Terms of Use shall include the following terms.

- (a) The Registrant acknowledges that these Terms of Use do not create an agency relationship with the Participant;
- (b) That all data obtained from the VOW is only for the Registrant's personal, non-commercial use;
- (c) 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;
- (d) That the Registrant will not copy, redistribute or retransmit any of the data or information provided; and
- (e) That the Registrant acknowledges the Board or Association ownership of and the validity of the copyright in the MLS<sup>®</sup> database.

The Participant's Terms of Use may also include other provisions determined by the Participant.

**Section 1.2.6:** Participants' Terms of Use may not impose a financial obligation on a Registrant. Financial obligations, if any, must be established separately from the Participants' Terms of Use, must be prominently labelled, and may not be accepted solely by a "mouse click."

**Section 1.2.7:** Participants' Terms of Use may not create any representation agreement between a Registrant and the Participant. Representation agreements, if any, must be established separately from the Participants' Terms of Use, must be prominently labelled, and may not be accepted solely by a "mouse click."

**Section 1.2.8:** The Registrant must supply a user name and a password, the combination of which must be different from those of all other Registrants of the VOW, before being permitted to search and view information from the MLS<sup>®</sup> database via the VOW. The user name and password may be established by the Registrant or may be supplied by the Participant, at the option of the Participant.

**Section 1.2.9:** Participants' VOWs must protect MLS<sup>®</sup> data from misappropriation by employing reasonable efforts to monitor for and prevent "scraping" and other unauthorized accessing, reproduction or use of the MLS<sup>®</sup> database.

**Section 1.2.10:** Listings or property addresses of sellers who have directed their listing brokers to withhold their listing or their property address from display on the Internet (including, but not limited to, publicly-accessible websites or VOWs) shall not be accessible to Registrants. This does not preclude listing brokers from displaying on their VOW or their other website(s) the listing or property address of consenting sellers.

**Section 1.2.11:** If non-principal brokers or sales licensees are authorized by the Board or Association to operate VOWs with their Participant's consent, such VOWs remain subject to the Participant's control, and both the Participant and the non-principal broker or sales licensee shall be accountable under these rules.

**Section 1.2.12:** MLS<sup>®</sup> information available on any VOW must be refreshed at least once every seven (7) days and must indicate the date of the last update.

**Section 1.2.13:** No portion of the MLS<sup>®</sup> database shall be distributed, provided to or made accessible to any person for the purpose of operating a VOW except as provided for in these rules.

**Section 1.2.14:** VOWs must display the Participant's privacy policy informing Registrants how information they provide may be used, in accordance with applicable privacy legislation.

**Section 1.2.15:** Listings from the Board or Association may only be excluded from display on Participants' VOWs based on objective criteria, e.g. type of property, listed price, and geographical location.

**Section 1.2.16:** Participants may not provide the identity of Registrants to any other entity for compensation except where

- (1) the Participant's residential real estate brokerage activities principally consist of listing or selling properties;
- (2) Registrants are seeking property in a price range or in a location for which the Participant ordinarily does not provide real estate brokerage services;

- (3) the number of Registrant identities provided, or the corresponding revenue generated, is an insubstantial portion of the Participant's real estate brokerage activities.

For purposes of this rule, "selling" does not include making referrals of prospective purchasers to other real estate brokers and "listing" does not include making referrals of prospective sellers to other real estate brokers.

**Section 1.2.17:** Participants must notify the Board or Association of their intention to establish a VOW, and must make their VOW directly accessible to the Board or Association and other MLS® participants or their duly authorized representatives for purposes of monitoring/ensuring compliance with applicable rules and policies.

**Section 1.2.18:** A Participant's VOW may not make available for search by or display to Registrants the following data intended exclusively for other Participants and their affiliated licensees:

- 1) Expired, cancelled, withdrawn, pending or sold listings.
- 2) The compensation offered.
- 3) The seller(s) and occupant(s) name(s), phone number(s) and email address(es) where available.
- 4) Instructions or remarks intended for cooperating brokers only, such as these regarding showings or security of listed property.

**Section 1.2.19:** No advertising may be visible on a page displaying any portion of the listings of other Participants, except that the name, address, phone number and company logo of the Participant operating the VOW and/or the name, address and phone number of the non-principal broker or sales licensee operating the VOW, and any information required by provincial law or regulation is not prohibited.

**Section 1.2.20:** MLS® data fields authorized for display may not be changed. MLS® data may be augmented with additional data not otherwise prohibited from display provided the source of any additional data is clearly identified. This rule does not restrict the format of MLS® data display or display of fewer than all of the listings or fewer authorized data fields.

**Section 1.2.21:** Display of MLS® data must include a notice indicating that the data is deemed reliable but is not guaranteed accurate by the Board/Association.

**Section 1.2.22:** Participants' VOWs may include other appropriate disclaimers necessary to protect the Participant and/or the Board or Association from liability.

**Section 1.2.23:** All listings displayed on VOWs shall identify the name and telephone number of the listing firm in typeface not smaller than the median used in the display of listing data.

**Section 1.2.24:** Registrants may view, retrieve or download not more than current active listings in response to any inquiry. (Note: The number of listings that may be viewed, retrieved or downloaded should be reasonable and should be specified by the MLS® in the context of this rule. 50 such listings would appear to be reasonable.)

**Section 1.2.25:** Participants displaying other brokers' listings obtained from sources other than their local Board or Association (e.g. from other Board/Association, from non-Participant brokers, etc.) shall display the source from which each such listing was obtained.

**Section 1.2.26:** Registrants' passwords may be valid no longer than 30 days, after which such passwords must be reconfirmed or changed. (Note: The number of days passwords may remain valid before being changed or reconfirmed should be specified by the MLS in the context of this rule.)

**Section 1.2.27:** Non-principal brokers and sales licensees affiliated with Participants may operate VOWs subject to their Participant's consent and control. Both the Participant and the non-principal broker or sales licensee operating the VOW shall be accountable under these rules with respect to the operation of any such VOW.

## VOW Frequently Asked Questions

(The following have been provided to CREA by the National Association of REALTORS for our adaptation. They have been modified to coincide with the differences in Canadian Guidelines where applicable.)

### General Issues

**Q: What is a Virtual Office Website ("VOW")?**

A: Virtual Office Websites ("VOWs") are Internet sites operated by Participants through which they conduct online brokerage, enabling them to establish relationships and work with clients and customers in cyberspace in ways similar to how real estate professionals interact with clients and customers in a "brick and mortar" environment. Consumers accessing VOWs can search and view MLS® listing data after registering and providing their name, telephone number and email address. A VOW can be a website or a page on a website.

**Q: How long will already-existing VOWs have to comply with local Board/Association VOW rules and policies?**

A: VOWs have 180 days after their Board/Association has adopted and implemented the VOW policy to comply with the policy and VOW-related MLS® rules.

**Q: What's the difference between a VOW and an IDX site?**

A: VOWs are Internet websites satisfying all the various requirements adopted by a Board/Association in implementing the VOW policy. IDX sites are other Internet websites operated by participants that can be accessed by any member of the public (even if a password is required) where MLS® data can be accessed, searched and viewed. While there is some overlap between IDX sites and VOWs, there are also key differences.

First, the data fields that Boards/Associations permit to be shown can differ between IDX sites and VOWs. Generally, information available on a VOW will be "richer" or more comprehensive.

Consumers must register on a VOW, must disclose certain information about themselves, and must agree to Terms of Use. None of these are common on IDX sites.

**Q: What is a VOW "Registrant"?**

A: A registrant is a consumer who registers on a participant's VOW and agrees to Terms of Use.

**Q: Who can have a VOW?**

A: Participants with the capacity to offer real estate brokerage services are eligible to operate VOWs. Non-principal brokers and sales licensees may also operate VOWs at the discretion of each Board/Association and with the consent of their principal broker.

**Q: Are VOWs brokerage – or advertising?**

A: The VOW policy is based on the premise that real estate brokerage can be conducted online. Provincial regulation may supersede this position.

**Q: Won't consumers (or others) "carry off" the entire MLS® database?**

A: Experience with existing VOWs has shown that the procedural and technological safeguards including "anti-scraping" technology, firewalls, registration, Terms of Use agreements (and the restrictions they impose), audit trails and, at the discretion of each Board or Association, reasonable limits on the number of listings that can be viewed or downloaded by registrants in response to an inquiry, are generally sufficient to safeguard compilations of current listings.

**Getting started – downloading****Q: How do I get MLS® information onto my VOW?**

A: MLS® information is generally provided to participants' VOWs via a persistent or transient download from the Board or Association.

**Q: Must a Board or Association provide downloading capacity?**

A: No

**Q: Are there different types of downloads?**

A: Yes, the policy's downloading requirement may be satisfied, at the discretion of each Association or Board by providing either a persistent or transient download of MLS® data.

**Q: What's the difference between a "persistent" download and a "transient" download?**

A: Simply put, a persistent download is a transfer of MLS® information from the Board or Association server to a participant's server from which it is available to be searched by registrants. Where a transient download approach is used, MLS® information remains on the Board or Association server. Queries from registrants are received by a VOW and only information responsive to the query is extracted from the Board/Association server and transferred to the VOW where it is then formatted as desired by the VOW's software, and then transmitted to the inquiring registrant. The key difference is that in a persistent download MLS® information resides on the VOW's server; in a transient download, MLS® information resides on the Board or Association server.

**Q: Who determines whether the MLS® download will be "persistent" or "transient"?**

A: Each Board or Association determines the type of download it will provide to participants operating VOWs.

**Q: My Board offers an *m/s.ca* "framing" solution. Must they also make a download available to participants?**

A: No

**Q: Must the Board or Association download information directly to participants' vendors if requested to by participants?**

A: A Board or Association is not required to download information directly to participants' vendors to facilitate VOW solutions. However, many will download information to participants' vendors if requested by participants. The Board or Association may make downloads to vendors subject to vendors agreeing to use MLS® information only for purposes authorized by the Board or Association.

**Q: Certain MLS<sup>®</sup> fields are considered confidential and for participants' and subscribers' use only. Must the Board/Association eliminate these fields from the download it provides – or can they require VOW operators to "scrub" this type of information before making listings available to registrants via their VOWs?**

A: Whether the Board or Association will eliminate information they deem confidential and intended only for other participants from their VOW "data feed" – or whether participants will be required to eliminate such information before making listings available on their VOWs (generally where a separate VOW "data feed" isn't provided and VOWs are populated via the regular MLS<sup>®</sup> "data feed") – is a matter of local Board or Association determination.

**Q: Can our Board or Association charge a fee for downloading listing information?**

A: Yes. A Board or Association may charge a reasonable fee for providing downloads to enable participants to operate VOWs

**Q: Our Board/Association will need to add hardware and make software-programming changes to accommodate VOW operators. Can the cost of these enhancements be passed on to participants operating VOWs?**

A: The costs of adding or enhancing downloading capacity or other VOW-necessitated hardware or software enhancements to enable participants to operate VOWs may, as a matter of local discretion, be charged to those participants who download information to operate VOWs. Assessment of such costs should reasonably relate to the actual costs incurred by the Board or Association.

**Q: Can the Board/Association require that VOWs be "refreshed" more frequently than every seven (7) days?**

A: The Board/Association should require that participants refresh their listing data at least once every seven (7) days. Participants are free to refresh MLS<sup>®</sup> data more frequently than that if they choose.

**Q: Can the costs our Board/Association incurs for monitoring VOWs and in enforcing VOW-related MLS<sup>®</sup> rules be assessed exclusively to VOW operators?**

A: The VOW policy should not require Boards or Associations to charge to monitor participants' VOWs. The cost of enforcing MLS<sup>®</sup> rules is a part of the overall administrative cost of operating the MLS<sup>®</sup>. The Board/Association may establish reasonable fines for violations of MLS<sup>®</sup> rules.

### **Participating and "opting out"**

**Q: How do I make my listings available to other participants for their VOWs? Do I have to "opt in"?**

A: Normally participants will not need to "opt in" for their listings to be displayed by other participants on their VOWs because the consent of every participant is presumed unless a participant makes an independent decision to withhold their consent ("opts out"). Listings will be automatically available to be downloaded by other participants for use on their VOWs unless a participant "opts out".

**Q: If I don't want other participants making my listings accessible on their VOW, can I "opt out"?**

A: Yes. Display of participants' listings is subject to their consent, which can be withdrawn ("opting out") as a result of a participant's independent business decision.

The recommended policy adopted by CREA governing the display of listings from Multiple Listing Services® on Virtual Office Websites (VOWs) includes the ability of listing brokers to "opt out" of having their listings displayed on the VOWs of other brokers. CREA believes most brokers will want their listings available to consumers visiting other brokers' VOWs. The policy was written with that assumption in mind, allowing brokers who do not want their listings displayed to "opt out", rather than requiring those who want their listings available to "opt in". Nonetheless, it is possible that some brokers may not want their listings available to consumers visiting competing brokers' VOWs, and the right of those brokers to withhold their consent is expressly recognized in the VOW policy. Similarly, the policy recognizes the right of a seller to decline to have the seller's property information, or only the property's address, displayed on VOWs and the right of Boards and Associations to refrain from participating in VOWs.

**Q: Can I "opt out" of VOW display of my listings entirely?**

A: This would be considered a "blanket opt out" which can be accomplished in one of two ways :

1) notify the Board/Association which, in turn, will withhold the listings of the "blanket opt out" participant from their "VOW download" of listing information, or

2) If the Board or Association does not offer this functionality, a "blanket opt out" participant would notify the Board/Association of its desire to "opt out" of VOWs and the Board/Association would add the participant to its list of "blanket opt out" participants that is available to all participants operating VOWs. In this case, it becomes the responsibility of participants operating VOWs to refrain from displaying the listings of "blanket opt out" participants on their VOWs, or

3) the Board or Association would establish a field to signify that a specific listing is not to be displayed on VOWs, which a VOW operator would be required to recognize and comply with.

**Q: Can I "opt out" with respect to a particular participant?**

A: A Participant can not "selectively opt out" with respect to another participant's VOW.

**Q: Can I "opt out" with respect to a particular listing?**

A: Yes. A seller's decision to "opt out" precludes display of the listing information (either the entire listing or only the address of the property) on the VOW of any cooperating broker. The policy permits a seller to "opt out" of having her listing displayed on the VOWs of cooperating brokers while still permitting the display of her listing on a VOW (or other website) operated by the listing broker or on *mls.ca*

**Q: What should I consider before "opting out" of VOWs?**

A: Some relevant considerations for participants considering "opting out" of VOWs include the directions of their clients, how to best promote their clients' interests, and ensuring their decision is made independently.

**Q: Are there risks related to "opting out"?**

A: Listing brokers who choose to "opt out" of VOWs may want to disclose to their clients that they don't allow display of their listings on some or all other VOWs, depending on the impact the decision could have on the marketing of the seller's property. Also, any decision to opt out must be made independently and must not be the result of discussion or agreement between competitors.

**Q: If I "opt out" of VOWs, can the Board/Association refuse to publish my listings?**

A: No, "opting out" of VOWs does not affect the right of participants to submit their listings for inclusion in MLS<sup>®</sup> compilations of current listings.

**Q: If I "opt out" of VOWs, can the Board/Association refuse to transfer my listings to *m/s.ca* or to another aggregator of real property ads if I do not permit other participants to make them available on their VOWs?**

A: No. "Opting out" of VOWs does not affect the right of participants to have their listings transferred to *m/s.ca* or to other aggregators of real property ads by the Board or Association.

**Coming to "terms"****Q: What are "Terms of Use"?**

A: "Terms of Use" are the requirements to which registrants must agree in order to obtain the right to view and/or download MLS<sup>®</sup> information.

**Q: Why must VOW operators establish Terms of Use?**

A: VOW operators are required to establish Terms of Use agreements with registrants to ensure that registrants use MLS<sup>®</sup> information only as provided for in the VOW policy and under VOW-related MLS<sup>®</sup> rules and regulations.

**Q: What are the key elements to be addressed in VOW Terms of Use agreements?**

A: Terms of Use agreements must establish, at a minimum, that:

- That the Registrant acknowledges that these Terms of Use do not create an agency relationship with the Participant
- all data obtained from the VOW is for registrants' personal, non-commercial use;
- registrants have a bona fide interest in purchase, sale, or lease of real estate of the type offered through the VOW;
- registrants will not copy, redistribute or retransmit any data or information provided;
- registrants acknowledge the Board/Association ownership of, and the validity of the copyright in the MLS<sup>®</sup> database.

**Q: Do Terms of Use agreements establish representational relationships or financial obligations between VOW operators and consumers?**

A: No The VOW policy expressly prohibits either representational relationships or financial obligations being established in the context of Terms of Use agreements. Participants can enter into such relationships or agreements via their VOW through an agreement separate from the Terms of Use agreement. It should be noted, though, that agreements creating representational relationships or financial obligations cannot be accepted by registrants solely through a "mouse click".

**Q: Must "virtual" offices and "traditional" offices be treated identically in all respects under the VOW policy?**

A: No. The VOW policy allows the Board or Association to establish certain rules or requirements that apply only to VOWs. These are:

- Listings obtained from other sources (e.g., other Boards/Associations, non-participant brokers, or other sources) must display the source from which they were obtained.
- Passwords may be valid for a period as determined by the Board/Association, after which they must be changed or reconfirmed at the discretion of the VOW operator.
- Non-principal brokers and sales licensees may operate their own VOWs only if permitted by the Board/Association.

**Q: What types of information ordinarily available to participants and subscribers must be deleted before listings are made available to consumers via VOWs?**

A.: Any information determined by the Board or Association as being either confidential or intended exclusively for other participants.

**Q: Can there be "advertising" on VOWs?**

A: VOW operators are free to advertise on their VOWs except on pages displaying other participants' listings. No advertising can be visible on pages displaying other participants' listings (or any portion of their listings) except that the name, address, phone number and company logo of the participant operating the VOW; the name, address, and phone number of any non-principal broker or sales licensee operating the VOW (where permitted); and any information required by provincial regulation is not considered prohibited advertising.

**Q: Can MLS® data be changed or supplemented?**

A: A Board or Association may adopt, as a matter of local discretion, rules expressly prohibiting changes to MLS® data. The Board/Association may also adopt, as a matter of local discretion, rules permitting MLS® data to be supplemented with additional information, provided that the source of the supplemental information is identified

**Q: Should there be an "accuracy disclaimer" on VOWs?**

A: While MLS® information is generally considered reliable, Boards/Associations do not guarantee its accuracy. A Board or Association may adopt rules requiring VOW operators to include a notice indicating the Board or Association does not guarantee the accuracy of MLS® information.

**Q: Must the name of the listing firm be displayed when their listing(s) is made available on another participant's VOW?**

A: Yes

**Q: How many listings can a consumer retrieve, view or download in response to an inquiry?**

A: It is recommended to be limited to 50.

**Other issues**

**Q: Can listings from other sources (e.g., non-participant brokers, "FSBOs", etc.) be displayed in response to a single search on a VOW?**

A: VOW operators may display listings of other brokers obtained from sources other than the local Board or Association. Boards or Associations may, as a matter of local discretion, require VOWs to identify the source of such listings.

**Q: Our firm has several offices. Each office participates in a different MLS®. Can we have a single VOW that "co-mingled" listings from all of the MLS®s in response to a single search?**

A: No. If a firm has different Participants in different Boards or Associations, they cannot "share" MLS® data to populate a common VOW. VOW operators only have authority to display listings made available by the Board/Association (or Boards or Associations, if a participant belongs to more than one) in which they have participatory rights. A firm could have a "master" website with links to each VOW the firm's participants operate. In that case, though, each VOW would have to be searched separately by registrants.

**Q: Can sellers direct that their listings – or that just the address of their property – not be available on other participants' VOWs? If they do, how is this accomplished?**

A: If a seller directs the listing broker that the listing should not be displayed on the Internet (which includes, but is not limited to, publicly-accessible websites and VOWs) or, alternatively, that the property's address not be displayed on the Internet, the seller's direction must be respected. As noted in an earlier answer, a Board/Association may, but is not required to, have the ability to remove a particular listing from the "VOW download" (if a separate download is provided exclusively for purposes of providing content for participants' VOWs). The Board/Association may also, but is not required to, have the ability to remove the address from particular listings that are part of any "VOW download".

If the Board/Association does not offer these functionalities, it would be the listing participant's responsibility to make other participants operating VOWs aware that a particular listing could not be displayed on their VOWs, or that the address of a particular listing could not be displayed on their VOWs. This may be difficult, particularly in large Boards/Associations. Consideration could be given to using the Board/Association email function (if available) to communicate such information to other participants.

In instances where listing brokers are not confident that a Board/Association technical functionalities and other methods of communicating with other VOW operators are adequate to ensure sellers' directions can be complied with, listing brokers may want to discuss these issues with sellers when entering into listing agreements.

**Q: Can VOW operators limit the listings available on their VOW? What are appropriate limiting criteria a VOW operator might use?**

A: VOW operators are not required to make every listing in the MLS® available to registrants. VOW operators may select the listings they will make available to registrants using objective criteria including geographic area, listed price, or property type. If a VOW operator chooses to limit the properties that registrants can retrieve, view or download to something less than all listings in the MLS®, they will want to ensure that any representations they make about availability of properties meets the "true picture" requirement established in the Code of Ethics.

**Q: Must VOW operators have a "privacy policy"? Must it be made available to consumers? What must be disclosed?**

A: The VOW policy requires that VOWs display the operator's "privacy policy" to registrants. The privacy policy must, at a minimum, explain to registrants how information they share via the VOW may be used by the VOW operator.

**Q: Can I refer Registrants to other brokers? Are there any limits or conditions on how VOWs can be used to generate referrals?**

A: The VOW policy prohibits any sale of registrant-provided information (names, phone numbers, email addresses), except that it permits referrals to other real estate brokers made for compensation where

- (1) the VOW operator's residential real estate brokerage activities principally consist of listing or selling (or both) the types of properties required to be filed with the MLS® (under the MLS®'s rules);
- (2) a registrant is seeking property of a type, in a price range, or in a location for which the VOW operator does not ordinarily provide real estate brokerage services; and
- (3) the number of registrant identities provided, or the corresponding revenue generated from providing registrant identities, is an insubstantial portion of the VOW operator's real estate brokerage activities.

**Q: How long are Registrants' passwords good for? Can they be renewed or must a new password be assigned?**

A: Registrants' VOW passwords and access to VOWs must expire on a date certain. A Board or Association may, as a matter of local determination, establish a maximum period of time after which passwords must be changed or reconfirmed. Whether a password is reconfirmed – or a new password is issued – is determined by the VOW operator.

**Q: Can a Board/Association require VOWs to use data security protection, for example, "firewalls"?**

A: Participant's VOWs must protect MLS® data from misappropriation by making reasonable efforts to monitor and prevent "scraping" and other unauthorized accessing, reproduction or use of MLS information. A Board or Association that provides a "persistent" VOW download may also require VOWs to use appropriate security protection, such as firewalls, but may not impose security obligations greater than those measures used by the Board/Association itself.

**Q: Does the Board or Association have the right to enter my VOW?**

A: The VOW policy requires that VOWs be directly accessible to the Board or Association for monitoring to ensure compliance with applicable rules and policies. Also, VOW Participants must expressly authorize the Board/Association and other Participants' access to VOWs for the sole purpose of monitoring compliance with applicable MLS® rules and regulations.

## Chapter Two

# IDX/Broker Reciprocity

## MTC Internet Data Exchange (IDX) Policy

### Introduction

In September 2002, the MTC mandated a task force to research and develop guidelines and recommendations for a national policy on Internet Data Exchange (IDX). The Electronic Data Usage (EDU) task force has reviewed the relevant literature, industry trends and specifically the National Association of REALTORS® (NAR) IDX policy statement.

Property ID	Property Description	Property Size	Location
4123 SRII	Residential, 2 Storey Heating/AC: Energy Efficient, Central Air, Air Cleaner Fuel: Gas Parking: Dbl Garage, Attch, Double Drive, Auto Door Opener Bedrooms: 4, Bathrooms: 2 1/1 Age: 17	77.09X154.11X172.06X75.25	London, South, C
4129 SRII	Residential, 2 Storey Heating/AC: Forced Air, Central Air Fuel: Gas Parking: Dbl Garage, Attch Bedrooms: 4 1/1, Bathrooms: 3 1/1 Age: 18	82X150X151X75	London, South, C
4130 SRII	Residential, 2 Storey Heating/AC: Energy Efficient, Forced Air, Central Air Fuel: Electricity, Gas Parking: Dbl Garage, Attch, Double Drive	46.34X154.79X195.14X144.81	43 TRELIS CRT, LONDON London, South, C

**Note:** throughout this document the terms “broker” (corporate member) and “agent” (REALTOR / salesperson) is used to designate the two “member” categories of Boards, Associations and CREA. These terms have been adopted respecting that in some provinces “agent” is used to refer to the broker, not the salesperson. However, in the majority of jurisdictions, broker and agent are the commonly used terms.

### Definition and Terminology:

IDX (Internet Data Exchange) is an MLS® data sharing solution that allows participating brokers to display each others’ active MLS® listing information on their Website(s), provided that the data display conforms to the policies, rules and specifications of their Board or Association.

The EDU task force has adopted the term Internet Data Exchange (IDX), to be consistent with NAR’s terminology. IDX is also known as Broker Reciprocity, MLS® Reciprocity and Internet Data Display (IDD).

### Background

The concept of IDX gained momentum and attention in the late 1990s as real estate consumers began demanding “single source”, or web sites to search for real estate listings. In an attempt to attract consumers away from aggregators, brokers recognized the need to display more than their own listings on their Website and provide consumers with a listings rich environment. A trend towards voluntary broker co-operation in the display of each of listings began in the United States. It has culminated in the National Association of REALTORS® (NAR) adopting a policy that mandated boards and associations in the US to provide Internet Data Exchange by January 1, 2002. Participation by brokers, however, is strictly voluntary. According to the literature, not all boards and associations have complied (by design or lack of technology) and NAR has so far not enforced the requirement.

In late 2001, the Association Executive Council (AEC) of The Canadian Real Estate Association identified a need for a “Canadian perspective on the issue of broker reciprocity.” It produced the *Broker Reciprocity Task Force Report* in February 2002. The

AEC report recognized that IDX could have far-reaching implications for the real estate industry, particularly with regard to how brokers and Agents spend their money to promote their listings. As a result, the AEC recommended that CREA, through the MTC, begin discussions on developing an industry position and the role CREA and boards and associations should take in providing IDX.

#### **Policy**

There is no intention to mandate compliance by Boards and Associations are not required to provide IDX to their members. The MTC will offer boards and associations a set of IDX guidelines.

#### **Therefore, the MTC Policy respecting IDX/Broker Reciprocity is as follows:**

A Board or Association may, but is not required, to offer IDX through framing active listings. In addition, *mls.ca* may be used as the technical infrastructure to Boards, Associations, groups of brokers and franchisors where the technology is not readily available to provide IDX services. Also, an inexpensive alternative to IDX systems is also available to members through Framing and Deep Linking.

#### **Differences between the NAR and MTC IDX policies**

To present recommendations for the MTC's IDX policy, the EDU task force has adopted the same "framework" used to develop NAR's IDX policy. There are four major differences between the NAR and MTC IDX policy:

1. The NAR IDX policy is mandatory for all member boards and associations. The MTC proposal contains guidelines only. There is no intention to mandate compliance by boards and associations to provide IDX to their brokers. Instead, the focus is to offer boards and associations a set of IDX guidelines acceptable in their respective jurisdictions.
2. Another distinction between the NAR and MTC proposal is in delivery of IDX. In the NAR policy, NAR is not involved in the delivery of IDX. MLSs are expected to provide downloading and framing of active listings. In the MTC policy proposal, board and association are encouraged, not required, to offer IDX through framing and deep linking active listings. In addition, *mls.ca* can be used as the technical infrastructure to those boards, associations and possibly franchisors that do not have the technology to provide IDX services.
3. NAR's IDX policy permits both downloading and framing of active listing information. MTC's IDX policy provides for smart framing of active listings only with Participants having the ability to customize the look and feeling of the framed information, but no ability to manipulate content.
4. NAR's IDX policy allows Participants to opt in on a "blanket" (all listings) or "listing by listing" basis. In the MTC IDX policy Participants' only option is to display all listings. There is no "listing by listing" option at this time. However, provisions will be made to protect legitimate requests from sellers not to advertise their listings.

## **IDX Board/Association Guidelines**

In addition, the following guidelines are recommended but not required to conform to the MTC's IDX policy. Pursuant to these guidelines, a Board or Association may:

1. Prohibit display of confidential information fields intended for cooperating brokers rather than consumers.
2. Require that any listing displayed identify the listing firm.
3. Require that information displayed not be modified.
4. Require that any display of other Participants' listings indicate the source of the information being displayed and require Participants to refresh all downloads and refresh all data at least once every seven (7) days.
5. Require Participants to indicate on their websites that the information being provided is for consumers' personal, non-commercial use and may not be used for any purpose other than to identify prospective properties consumers may be interested in purchasing.
6. May establish reasonable limits on the amount of data and number of listings that consumers may retrieve or download in response to an inquiry.
7. Boards/Associations may, but are not required to limit the right to display listing information pursuant to IDX to Participants engaged in real estate brokerage. This requirement can be met by maintaining an office or Internet presence from which Participants are available to represent real estate sellers or buyers (or both).
8. Boards/Associations may, but are not required to allow non-principal brokers and sales licensees affiliated with Participants to use information available through IDX to populate their own websites.
9. Boards/Associations may as a matter of local option, limit information which can be framed and/or otherwise displayed under IDX to properties listed on an exclusive right to sell basis.
10. Boards/Associations cannot prohibit Participants from framing other brokers' listings obtained from other sources, e.g., other Boards/Associations, non-participating brokers, etc., but can as a matter of local option, require that listings obtained through IDX be searched separately from listings obtained from other sources including other Boards/Associations.
11. Boards/Associations may, as a matter of local option, charge the costs of adding or enhancing their "framing" capacity to Participants who will frame listing information. Assessment of such costs should reasonably relate to the actual costs incurred by the Board or Association.

## IDX Sample MLS® Rules and Regulations

These rules and regulations are provided as a sample template that Boards and Associations can use as a framework to integrate into their own rules and regulations.

### Guidelines

#### 6.1 General

- (a) Subject to Section 6.1(b), Advertising, in any form whatsoever, of a listed property by any member other than the listing agent shall only be done with the prior approval of the Listing Agent, unless otherwise indicated in the listing contract.
- (b) A Member may republish another Member's listings on the Internet in accordance with the MLS® Internet Data Exchange (IDX) program described in Section 6.2.
- (c) A co-operating agent, after publication by the Board/Association of the sale of that property, may advertise their involvement in the sale of that property

#### 6.2 Internet Data Exchange ("IDX") Program

- (a) In this section the following terms are defined as follows:

**IDX Data** means MLS® data, or the property data relating to the listings of IDX Broker, which is made available by the Board/Association to IDX Participants from time to time for display on IDX Internet websites.

**IDX Participant** means: (i) an IDX Broker that is a party to an executed "IDX – Broker Agreement" with the Board/Association which has not expired or been terminated, and (ii) an IDX Active Member who is a party to an executed "IDX – Agent Agreement" with the Board/Association which has not expired or been terminated.

**IDX Active Member** means an active member of the Board/Association whose license is issued and maintained in an office of an IDX Broker.

**IDX Broker** means a broker of the Board/Association that has not advised the Board/Association in writing that it does not wish to take part in the IDX Program.

**IDX Program** means a program which enables IDX Participants to display on their IDX Internet websites the listings of IDX Brokers in accordance with Section 4.

**IDX Internet Website** means a website controlled and operated by an IDX Participant.

**IDX Logo** means a logo designed and approved by the Board/Association for use in association with the IDX Program.

**IDX Thumbnail Icon** means an icon designed and approved by the Board/Association identifying the IDX Program in a Thumbnail Display.

**Detail Display** means enlarged photo and additional text display of individual properties selected from a Thumbnail Display.

**Thumbnail Display** means a summary of a search displaying multiple property listings per page that may include a small photograph and limited text data.

**Scraping** means use of a software program or other method to extract photographs and text from an IDX Internet website for use on an Internet website other than an IDX Internet Website or for use in any manner except as permitted by Section 4.

- (b) In addition to the obligations set out in the “IDX – Broker Agreement” and the “IDX – Agent Agreement”, IDX Participants must adhere to the following rules and all other MLS<sup>®</sup> Rules and regulations, guidelines and policies that may be adopted by the Board/Association from time to time:
- (i) IDX Participants must not alter, modify, manipulate or obscure the IDX Data (or any disclaimers or notices therein) in any way without the prior written approval of the Board/Association.
  - (ii) Where a search of the IDX Data generates a Thumbnail Display on an IDX Internet website of any listing, the Thumbnail Display shall bear the IDX Logo or the IDX Thumbnail Icon to identify the listing as an MLS<sup>®</sup> listing. The IDX Logo shall be at least 95 pixels by 35 pixels. The IDX Thumbnail Icon shall be at least 35 pixels by 35 pixels.
  - (iii) A Thumbnail Display on an IDX Internet website of another IDX Corporate Member’s listing must not include any contact information or branding of any person or corporation other than the listing agent.
  - (iv) A Thumbnail Display may only include the following:
    - 1. Text data about the listing property;
    - 2. A photo of the listing property; and
    - 3. The logo of the listing agent (if the listing agent is the owner of the IDX Internet website displaying the Thumbnail Display) or the 10 IDX Logo (if the listing agent is not the owner of the IDX Internet website).
  - (v) Where a search of the IDX Data generates a Detail Display on an IDX Internet website of another IDX Broker’s listing, the Detail Display shall bear that IDX Broker’s name, the IDX Logo and the MLS<sup>®</sup> copyright notice immediately following the property information all of which shall be at least as large as the largest type size used to display the listing data.

- (vi) A Detail Display on an IDX Internet website of another IDX Corporate Member's listing may not include any contact information or branding of any person or corporation other than the listing agent within the "body" of the listing data. (The "body" shall be the rectangular space whose borders are delimited by the utmost extent in each direction of the listing text and photo data.)
- (vii) Any Thumbnail Display or Detail Display on an IDX Internet website of another IDX Broker's listing must include any disclaimer which accompanied the information in its original form, or the following notice:  
*Note: This representation is based in whole or in part on data generated by the (name of Board/Association) which assumes no responsibility for its accuracy.*
- (viii) The IDX Data or any portion thereof may not be displayed on any internet website except an IDX Internet website.
- (ix) IDX Participants shall take all reasonable precautions to prevent Scraping of the IDX Data from their IDX Internet websites, and to prevent the IDX Data from being displayed on any internet website other than an IDX Internet website. Reasonable efforts shall include but not be limited to:
1. Monitoring its IDX Internet website for indications that a third party is scraping data;
  2. Prominently posting a notice on its IDX Internet website explaining that the website must only be used by consumers for the purpose of locating and purchasing real estate.
- (x) The IDX Participant shall immediately advise the Board/Association whenever the IDX Participant suspects or has evidence that Scraping has occurred.
- (xi) Within fourteen days after being requested by the Board/Association to do so, an IDX Participant must make such changes to its IDX Internet website as required by the Board/Association to resolve any violation of the IDX and regulations, guidelines and policies.
- (xii) IDX Participants must not permit any portion of the IDX Data to be used or provided to any person or corporation for any purpose other than those expressly provided for in the MLS<sup>®</sup> rules and regulations, guidelines and policies.
- (xiii) IDX Participants must not permit any portion of the IDX Data to be co-mingled with any non-MLS<sup>®</sup> listings on any IDX Internet website.

## IDX Frequently Asked Questions and Answers

**Q: What is Internet Data Exchange?**

**A:** Internet Data Exchange ("IDX"), also referred to as "Broker Reciprocity," is the next stage in the evolution of MLS<sup>®</sup> as the primary means of enhancing cooperation between agents to facilitate the purchase and sale of real property. IDX gives MLS<sup>®</sup> Participants the tool they need to display each others' listings on their Internet websites. Under IDX brokers exchange consent to display each others listings on the Internet.

**Q: How is Internet Data Exchange accomplished?**

**A:** Other brokers' listings can be displayed by smart framing MLS<sup>®</sup> data provided by Boards and Associations or through MTC infrastructure which facilitates boards and associations providing IDX to their members and publishing it on your website or by framing the Board/Association's publicly accessible Website (if such a site exists).

**Q: Do I have to allow other Participants to display my listings on their websites?**

**A:** No, Participants are free to withhold authority for such display. However, that means you cannot display other participants' listings on your site.

**Q: Can I choose to allow only some of my listings to be displayed without having to display all of them?**

**A:** No, if you opt to participate, it is on an "all or nothing basis." The only exception is a provision in effect that protects legitimate requests from sellers not to advertise their listings.

**Q: What happens if I won't allow other Participants to display my listings on their websites?**

**A:** If you prohibit the display of your listings by other Participants, you may not display their listings on your website pursuant to the IDX program. Other Participants may give you permission to display their listings but that permission would have to be sought and obtained separately from each Participant.

**Q: If a Participant has blanketly prohibited display of their listings, can we require them to certify that they have explained the benefits of display by other Participants and the seller had nonetheless refused to allow such display?**

**A:** No. If a Participant elects not to take advantage of IDX display, then they cannot be required to explain it's advantages to their clients. Such a rule would apply only to Participants who have opted into the program for those listings for which display is not authorized.

**Q: If I don't participate in IDX but give another Participant permission to display my listings on their website, can the MLS<sup>®</sup> (with my permission) transfer my listings to that Participant?**

**A:** Yes. Board/Association's may, but are not required to, transmit your listing information to any destination you authorize. The decisions as to whether a Board/Association will provide this service and whether to charge for such a service, are matters of local determination.

**Q: If I want to authorize other Participants to display my listings under IDX, how do I do it?**

**A:** Once your Board/Association implements the IDX program you don't need to do anything. The way the IDX program is structured, the consent of each Participant to permit display of their listings is assumed. If you choose not to permit display of your listings by other Participants, you simply notify the Board/Association that your consent is being withheld. It should be stated that some Board/Association's have chosen to use an "opt-in" approach to IDX under which Participants must affirmatively signify their intent to participate in IDX. Determining whether to use an "opt-in" or "opt-out" approach is a matter of local option.

**Q: Can the Board/Association refuse to accept my listings if I do not permit other Participants to display them on their websites?**

**A:** No. Participants cannot be required to consent to display of their listings on other Participants' websites as a condition of participation in MLS®.

**Q: Can the Board/Association refuse to transfer my listings to *mls.ca* or to another aggregator of real property ads if I do not permit other Participants to display them on their websites?**

**A:** No. Subject to local rules and regulations, the Board/Association would forward the listings to whatever site directed by the Broker

**Q: Does IDX conflict with license law or the Code of Ethics?**

**A:** Implementation of IDX must be consistent with provincial legislation or Board / Association bylaws, rules and regulations. MTC's IDX policy statement is consistent with the Code of Ethics since no display of other Participants' listings can occur without their consent. Consent, though, can be assumed unless affirmatively withheld by the listing Participant.

**Q: Our Board/Association doesn't have a publicly-accessible website displaying Participants' listings. Does MTC's IDX policy mean we have to establish one so that Participants can frame each others' listings?**

**A:** Not necessarily. If your Board or Association does not have a publicly-accessible website, it may be able to deliver IDX to you by using *mls.ca* infrastructure. Your Board or Association would still provide the IDX service to you.

**Q: Our MLS® system is computerized but is not Internet-based. Do we have to establish an Internet-based system to comply with CREA/MTC IDX policy?**

**A:** No, if you wish to provide or access IDX, check with CREA as *mls.ca* could be used to deliver the framed MLS® information.

**Q: Can I authorize some, but not all, Participants to display my listings on the Internet?**

**A:** If you consent to the display of your listings by other Participants under the IDX program, then any other Participant in the Board/Association may display your listings. If you prefer to authorize some, but not all, Participants to display your listings, this can be accomplished - though not under the IDX program. Separate consents would have to be granted to each Participant authorized to display your listings. As noted in an earlier question, Boards or Association's may, but are not required, to transmit your listings to any destination you authorize. The decisions as to whether a Board/Association will provide such a service, and the related charges (if any) are matters to be determined locally.

**Q: Can Board/Association's charge a fee for providing framed listing information to Participants?**

**A:** Yes, MTC's IDX policy does not affect the right of Board/Association's to assess fees and charges for services provided to Participants. This remains a matter of local determination, subject to the parameters of existing policy.

**Q: Does IDX mean that confidential information will now be available to the public?**

**A:** No. IDX permits Board/Association's to prohibit display of information intended exclusively for other real estate professionals and not for consumers.

**Q: Must the listing firm be identified when I display other Participants' listings on my website?**

**A:** This is a matter left to the discretion of local Boards/Associations. Participants will want to keep the requirement of license law and the Code of Ethics in mind when engaging in such displays.

**Q: Can listing information be modified when it is displayed on other Participants' websites?**

**A:** Only the look and feel of the framed listing information can be modified. The actual content of the listing information cannot be altered. Again, check with your local Board or Association to determine if any other restrictions apply.

**Q: Won't buyers (or individuals posing as buyers) be able to extract the entire MLS® database and do whatever they want with it?**

**A:** Board/Association's can, as a matter of local determination, establish reasonable limits on the amount of data and/or the number of listings consumers can retrieve in a particular query of Participants' websites.

**Q: Won't IDX enable national and regional firms to aggregate listing information from many Board/Association's and create "super-MLS®s"?**

**A:** The ability to aggregate listing information from several Boards/Associations remains subject to local MLS® rules. Under IDX, Boards/Associations may strictly limit the right to display other Participants' listings to those offices holding participatory rights in that Board/Association.

**Q: Why should we let our listings be displayed on our competitor's website?**

**A:** Letting other Participants display listings on the Internet is a business decision each Participant must make, taking into account their duty to promote the best interests of their clients; to cooperate with other Agents; and the opportunity to use the Internet to better serve their clients and customers.

Chapter Three**Framing and Deep Linking**Description/Overview

Perhaps the simplest of all EDU options is to simply adjust the MTC rules for Framing and Deep Linking to allow Brokers and Agents to display *mls.ca* search engine pages and search results within the Broker's or Agent's frame on a website.

Currently Boards and Associations are permitted to set up their pages to display the *mls.ca* search engine at the point of entry applicable to their region.

The various search engine pages are those generated by *mls.ca* and the results are also those generated by *mls.ca*.

Allowing Brokers and Agents to likewise frame the *mls.ca* data is a simple matter of adjusting that framing policy.

Opting Out Provisions

Boards and Brokers may restrict their members or employees from making use of the Framing and Deep Linking options through *mls.ca* by specifying conditions MLS® rules or regulations.

**MTC/CREA Policy for Framing and Deep Linking**

A members framing facility must comply with certain restrictions:

- The Frame displaying other members' listings must not contain a logo of the Framing Member's firm or franchise.
- Information required by Provincial Licensing regulations respecting company name and other information must be adhered to.

LINKING TO *mls.ca* and FRAMING *mls.ca* PAGES

This Policy applies to all websites that wish to hypertext link to *mls.ca* and that may wish to cause the web pages of *mls.ca*, created in response to that hypertext link, to appear on the visitor's browser screen inside a frame created by the linking website. The objective of the policy is to help ensure that Trademark legislation and other Best Practices Guidelines are respected.

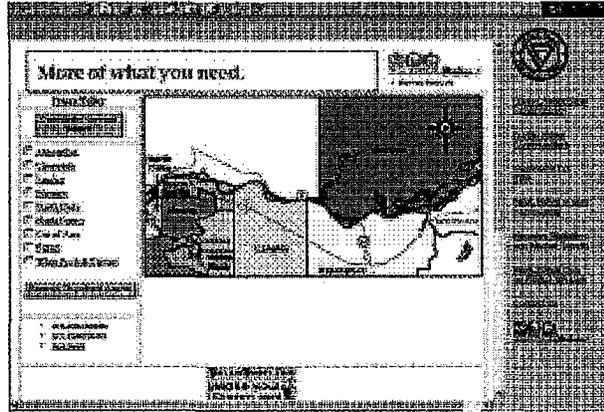
**Effective Date:**

This policy takes effect as of November 1, 2003. It is applicable to both existing and new websites.

**Policy:**

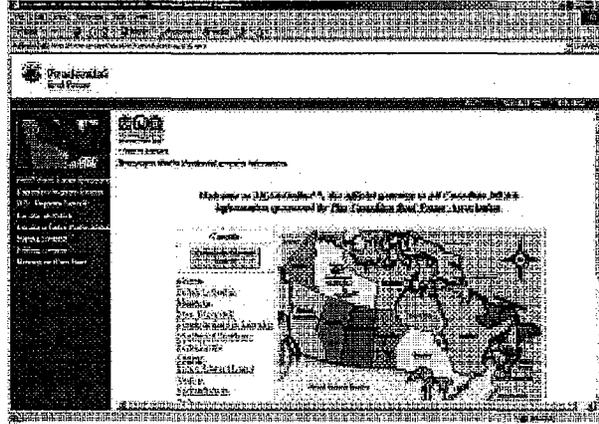
- Boards and Associations of CREA:  
The websites of Boards and Associations of CREA are permitted to cause any of the pages of *mls.ca* to appear within frames of their own design.  
Diagram 1 shows how web pages created by *mls.ca* are presented on a visitor's browser inside a frame created by the website of the Fraser Valley Real Estate Board.

**Example / Board Framing to *mls.ca***

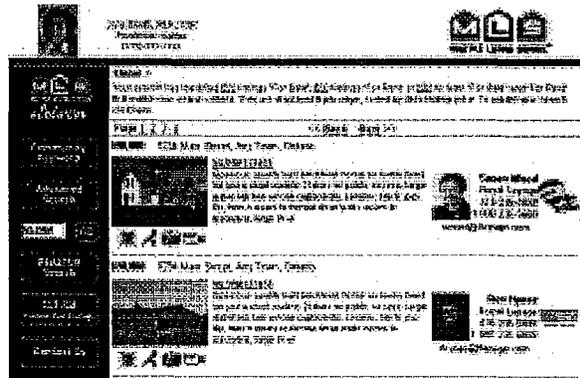


- REALTORS or Offices using a frame with a corporate or personal logo are permitted to cause any of the pages of *mls.ca* to appear within frames of their own design provided the property information displayed by *mls.ca* in the frame is for the properties listed by those REALTORS or Offices only or for the properties for which the REALTOR has written permission to frame. For clarity, this section refers to the websites of individual REALTORS, groups of REALTORS, Broker Offices and Corporate Franchisors.

**Example / Franchisor Framing *mls.ca***



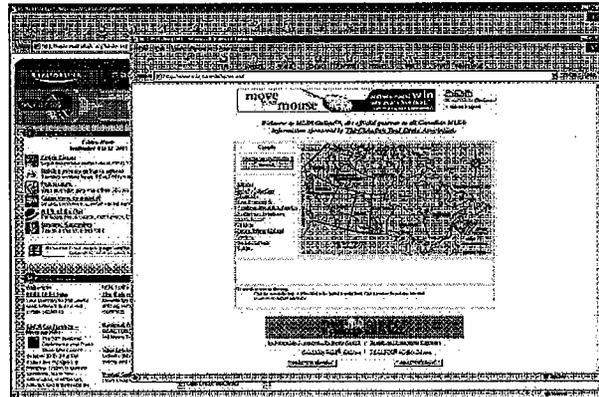
- REALTORS or Offices using a frame without a corporate or personal logo:
  - A REALTOR is permitted to cause any of the pages of *mls.ca* to appear within frames of their own design provided the REALTOR frame does not contain any corporate or other business or personal logos, trademarks, design marks, tag lines or any other distinctive marks or terms. The REALTOR can display contact information such as required by the provincial regulatory body. REALTORS are encouraged to utilize the graphic link as indicated on the next page or the link must include an explanation that the browser will be linked to *mls.ca*. eg. "View Canadian listings". Under no circumstances can trademarks be used as links.



- (b) CREA has the absolute discretion to determine whether a site breaches these rules and REALTORS and Offices will immediately remove or amend frames upon notification by CREA.

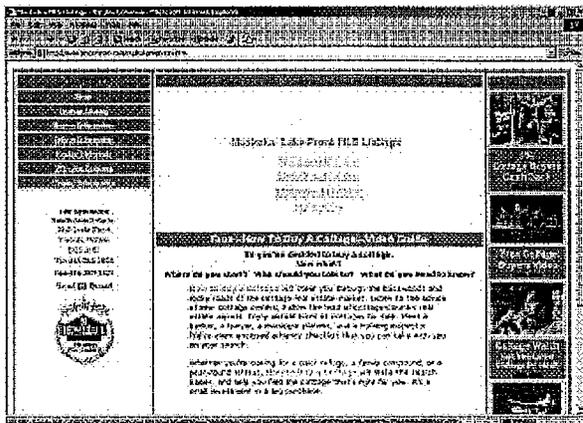
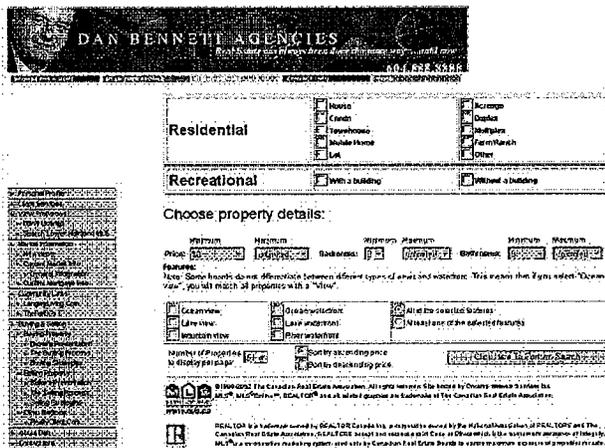
Example / Linking to *mls.ca*

All Others:  
 All other hypertext linking to *mls.ca* must result in a new, fully functional, full screen browser window occupied by the pages created by *mls.ca*. This diagram shows how a new fully functional window for the *mls.ca* pages has been specified by the REALTOR Link™ website. The policy further states that this new window must in fact occupy the entire screen of the visitor's computer.



- 4. Deep Linking to the *mls.ca* results sets: REALTORS or offices may create their own search page provided the criteria for searching are consistent with *mls.ca*. The search criteria data can be re-formatted within their frame in order to create their own user experience, however the thumbnail (results set) or feature sheet, however, may not be altered in any way. The Links and Framing Policy apply to the result sets and feature sheets.

Example: REALTOR Made Search Criteria



Example / REALTOR Linking to *mls.ca* Results Set

**5. Notes and guidelines:**

To reinforce the perception that the *mls.ca* pages are in fact being produced by a website other than the one the visitor is browsing, it is recommended that the button illustrated here be used on the website.

It is also recommended that the text introducing the button clearly state that the visitor is being transferred to another website, that is *mls.ca*.

Graphic files of the button are available on REALTOR Link™ at: (MTC)MLS® & Technology>*mls.ca*>promotional material



**Chapter Four****Third Party Access to *m/s.ca* Data – Existing Policy****BACKGROUND**

The EDU Task Force recognizes that Third Party Suppliers are constantly requesting access to *m/s.ca* data in order to provide a product or service that may be of benefit and/or of value to members. For CREA/MLS® and Technology Council (MTC) to provide the best possible service to the membership and in order not to overlook a potential opportunity the Task Force recommends that the MTC and/or CREA Staff investigate and review requests for access to data by Third Parties for merit, feasibility and costing provided that due consideration is given to the following guidelines. (Please note these guidelines are specific to the *m/s.ca* (CREA) data and the Member Boards would be free to act in their own best interests).

**The following guidelines are factors CREA may consider in assessing an application, but are not exhaustive:**

**1. General**

- a. For the purpose of this policy any member(s) creating technology products for commercial use that incorporate CREA technology and data will be considered Third Parties.
- b. "Access" means deep linking only - no downloading, scraping and storing or altering permitted unless agreed to by MTC/CREA.
- c. In reviewing the nature of the request, access to the data will cause no undue strain on existing system resources and the requested access facility will not degrade the existing system performance.
- d. There will be no exclusive access agreements with Third Parties.
- e. The requested access will not aid in providing a product or service that would be in direct competition to a product or service being offered by any Stakeholder.
- f. Stakeholders can develop future products which may be competitive with those offered by Third Parties with access.
- g. The Third Party will ensure compatibility to CREA systems.
- h. All applications will be assessed by the MTC or delegated CREA staff person. Any approvals, however, must be ratified by CREA's board of directors to be effective.
- i. CREA has the right, in its sole and absolute discretion, to approve or decline any particular application and under no circumstances will the approval of one

application serve to commit CREA to the approval of any other application.

- j. Any consent granted by CREA can be withdrawn at any time without cost to CREA. All suppliers must acknowledge and agree to this condition prior to receiving approval.
- k. CREA may, at its option, require a written contract or letter of agreement.
- l. CREA may, as a condition of approval, impose any condition it deems necessary, including the requirement that the supplier not use CREA's trademarks, that any marketing or educational material be approved by CREA or that payment be made to CREA as licensing or other fee.

## **2. Confidentiality and Security**

- a. Confidentiality and limitations will be maintained with respect to use and redistribution of the membership (member) databases.
- b. Caution, care and control will be exercised by all parties in the release of and in providing access to all data.
- c. The Third Party will maintain strict confidentiality with respect to any and all system and/or data information.
- d. The Third Party may not re-distribute data or create any derivatives of the data in any format what so ever.
- e. The Third Party will maintain strict security mechanisms with respect to computer systems and/or personnel that have access to CREA systems.
- f. The MTC/CREA will have the right to monitor and control access and use of data.
- g. Access will be controlled through authentication facilities. The Third Party must keep authentication facilities confidential and must specify URL and IP addresses of requesting website(s).

## **3) Third Party Fiscal and Administrative Responsibilities**

- a. All costs, hard and soft, in the development and for the ongoing maintenance of the access facility, are the responsibility of and are to be bourn entirely by the requesting Third Party.
- b. Use of system resources shall be logged and billed to the Third Party (i.e. bandwidth).
- c. The Third Party will be responsible for all billing processes and administration of such to the Member directly.
- d. All help desk and support services specific to the services and/or products provided are the responsibility of the Third Party.

- e. The Third Party will provide all education requirements specific to the product or service to the members directly unless otherwise agreed to by CREA.

#### **4) Trademark**

- a. The Third Party agrees to display the “*mls.ca inside*” logo prominently in any display of CREA data.
- b. The supplier may not use any trademark or CREA identifier without express consent and authority from CREA.

#### **5) Ownership**

- a. All CREA Intellectual Property will remain the Property of CREA.
- b. Upon termination or conclusion of any agreement all software and/or data shall be returned to CREA.
- c. **All suppliers agree to abide by all MTC policies and MLS® rules when delivering a product and/or service to or on behalf of a member.**

**Reference Materials**

Virtual Office Website (VOW)

Architecture and Costs (NAR document – June 2003 [REALTOR Link™])

VOW Policy Proposal

Data Transmission and Security Issues (NAR document – June 2003 [REALTOR Link™])

IDX Implementation Case Studies

November 2001 (NAR document – [REALTOR Link™]Center for REALTOR®

Technology

IDX Downloading Discussion (NAR document – February 2002 [REALTOR Link™])

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Electronic Data Usage (EDU) Task Force Members

MLS® and Technology Council (MTC)

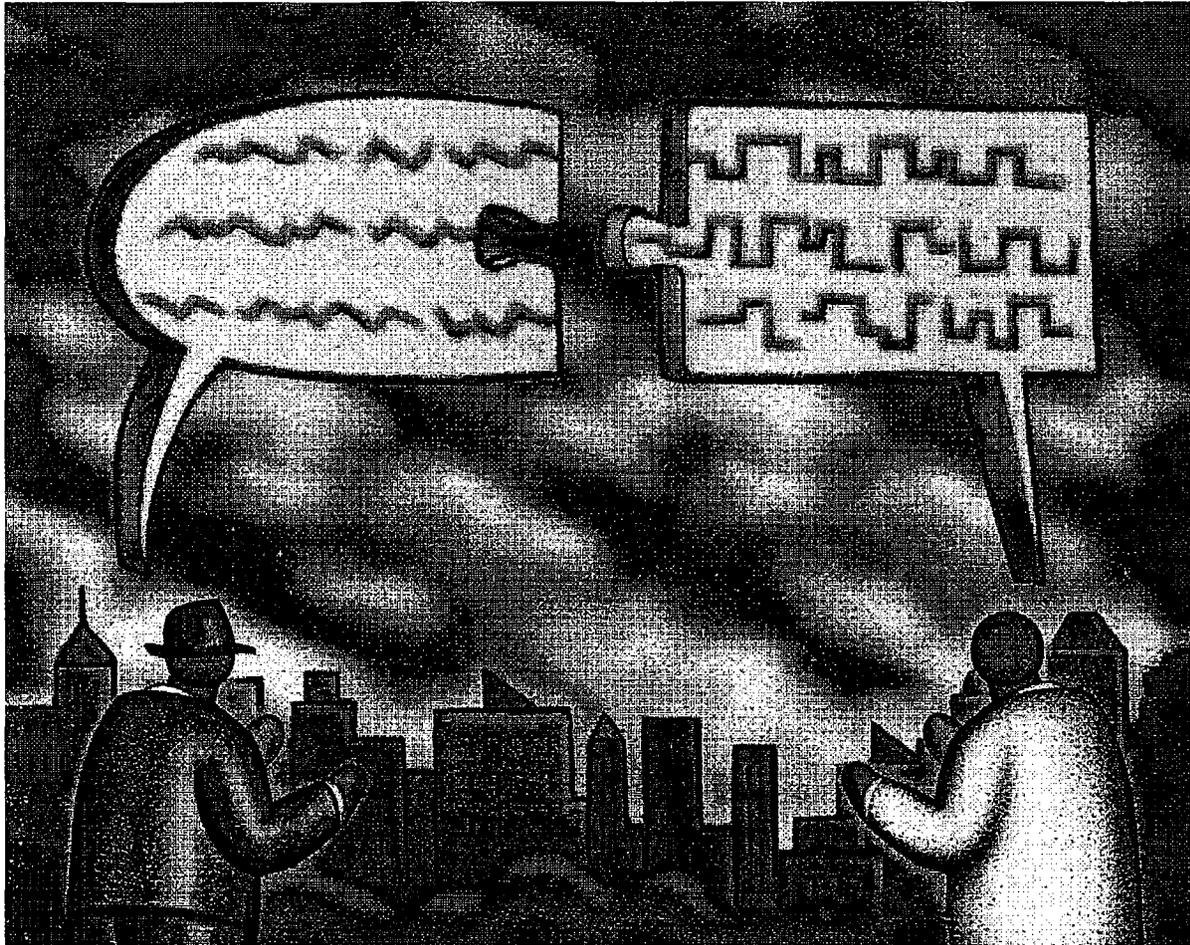




# EXHIBIT 19

# PERMISSION

VERSION 2



**Rules and guidelines for the sharing  
of real estate information**

## DEFINITIONS

In discussing Permission based technology, you should be familiar with the following definitions:

### CREA Deep Link Framing (DLF)

Only CREA provides this technology option. It is designed to provide REALTORS with a very inexpensive Internet marketing tool using the current technology of **mls.ca** and ICX.CA for both display and searching. An approved CREA DLF includes all **mls.ca** or ICX.CA properties on framed pages. This is available to Boards, Associations, Brokers and REALTORS.

### Franchisor Framer

A website that includes a particular Franchisor's Brokers' properties on framed and customized **mls.ca** pages (for example RE/MAX Ontario & Atlantic). This **mls.ca** feature continues to be available to Franchisors on a cost recovery basis, on request through [helpdesk@crea.ca](mailto:helpdesk@crea.ca)

### IDX (Broker Reciprocity)

A reciprocal agreement among Brokers to allow the advertising of each other's listings on their web sites. They are known as IDX, or Internet Data Exchange.

### CREA IDX

A CREA IDX is an alternative way for a group of Brokers to display their properties using framed pages from **mls.ca** or ICX.CA. Unless a Broker has made arrangements with one or more other Brokers, their properties are not included.

### Linkback Framer

A website that includes a Broker's or REALTOR's own properties on framed **mls.ca** pages. This **mls.ca** feature is already available on request through [helpdesk@crea.ca](mailto:helpdesk@crea.ca)

### VOW (Virtual Office Website)

This is a more sophisticated system of web display where consumers can access MLS® data, but requires the consumer to register first. This gives the REALTOR the ability to "capture" information about the consumer for follow-up. This is an Internet version of the traditional broker office.

### CREA VOW

A CREA VOW is an alternative way for all of the property data from a particular Board to be displayed using framed pages from **mls.ca**, ICX.CA and IXN®. Unless a Board or Association opts out, all properties from all Brokers within that particular Board or Association are included in the CREA VOW. A CREA VOW can be set up with the property data of more than one Board if appropriate permissions have been set. Similar to the restrictions recommended for a Board supplied VOW service, some IXN® data will not be made available to the public. (e.g. REALTOR comments, commission information)



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Permission Based Technology includes web-based real estate services based on the digital display of information. This technology can include a Virtual Office Website (VOW), a Broker Reciprocity Agreement (IDX), or any technology that allows Boards, Associations and their members to choose what information will be permitted for display on websites other than their own.

This presentation deals with the technology options provided by The Canadian Real Estate Association for the implementation of three specific forms of Permission Based Technology - Deep Link Framing, VOWs and IDXs.

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## GETTING STARTED

Boards and Associations have a number of choices to make in deciding whether to implement Permission Based Technology.

### 1. Do we want to offer any of these services to our members?

As a concept, you should decide whether or not your Board or Association wants to make CREA Permission Based Technology available to members.

### 2. What options are there for providing these services?

Your Board and Association can decide to offer Permission Management Technology by using your own data and the services of a technology company, such as your MLS® provider. As of January 2004, for example, two Boards were offering an IDX solution to members by working with the Board's own technology provider. As an alternative, you can also decide to use the CREA option, which is based on the existing **mls.ca** and ICX.CA database. This means members would request a link to the **mls.ca** or ICX.CA database.

### 3. What options are there if I use CREA technology?

There are two options available in using CREA technology. Your Board or Association can administer it on your own, or CREA can do it for you on a cost recovery basis. As an example if a member wants to use the CREA DLF option, they would contact CREA, not the Board. Your Board or Association will be billed directly for this service.

### 4. Are there rules or guidelines to follow?

The MLS® and Technology Council, or MTC, has approved a policy of "no national rules or standards" for these type of services. Instead, the MTC has developed a series of suggested guidelines Boards or Associations may use in setting up their own IDX or VOW services (when provided directly by a Board or Association). These were published in the EDU Task Force Report in 2003, and have been prepared as reference material on the MTC page of [www.realtorlink.ca](http://www.realtorlink.ca).

There **ARE** rules and procedures to follow if you select the CREA options in providing Permission Management Technology because it involves the use of the **mls.ca** and ICX.CA database. These rules, which relate to such things such as trademarks and privacy, are included at the back of this booklet.

### 5. When do we have to decide what?

The CREA technology options for Permission Management Technology using **mls.ca** and ICX.CA will be available in the summer of 2004. By September 1st 2004, Boards and Associations will have to advise The Canadian Real Estate Association if they do NOT want members using the CREA services.

- Unless by September 1<sup>st</sup> your Board or Association specifically says no, or "opts out", you will be considered active and participating with CREA DLFs, VOWs and IDXs.
- If your Board or Association wants more time to discuss the issues, you can "opt out" by September 1<sup>st</sup>, but you can change that status at any time.
- If your Board or Association does nothing by September 1<sup>st</sup>, the "default" will apply – which means you are allowing members to use the CREA technology option. This is because Boards and Associations are considered as "Opt IN" as the default position for overall application of CREA Permission Management Technology.

To indicate your Board/Association option, use the CREA Permission Console that will be activated through [www.realtorlink.ca](http://www.realtorlink.ca).

## 6. What do these decisions mean?

Boards and Associations are considered as "IN" as the default position for overall application of CREA Permission Management Technology. This means unless you notify CREA to the contrary, your Board or Association is allowing the use of the CREA technology options for Deep Link Framing, VOWs and IDXs.

Your Board or Association can decide to participate in CREA Deep Link Framing (DLF) but "opt out" of the use of **mls.ca** and ICX.CA data for a virtual office website (VOW). However, the CREA system considers Boards and Associations as "IN" as the default position for this service. This means unless you "opt OUT" by using the Permissions Console, your Board or Association is allowing the use of the CREA technology options for VOWs.

Your Board or Association can decide to participate in CREA Deep Link Framing (DLF) but "opt out" of the use of **mls.ca** and ICX.CA data for broker reciprocity (IDX). The CREA system considers Boards and Associations as "IN" as the default position for this service. This means if you do not want members to have access to **mls.ca** or ICX.CA pages for an IDX, your Board or Association will have to "opt OUT" using the Permissions Console.

Even though the Board or Association has opted "IN" for IDX, an individual Broker can decide not to participate. An individual Broker is considered as "opting OUT" of this service unless they notify the Board or CREA they are participating in an IDX with other Brokers.

In all cases the Board or Broker's choice can be changed at any time through the CREA Permissions Console on [www.realtorlink.ca](http://www.realtorlink.ca).

## 7. How do members use the CREA Permission Management Technology?

To activate Deep Link Framing, a REALTOR or Broker would have to contact the Board to request activation. With the Board activation, the member will automatically link to the national map page. If the member wants to link to another page (regional or local map for example) they would then have to contact CREA for the designated URL, or web page address.

The Board can do the activation using staff and the Permissions Console, or they can direct the member to CREA for processing on a cost recovery basis. This same procedure applies for CREA VOW and CREA IDX options. Once the request has been activated, the Board receives a confirmation email that access has been approved.

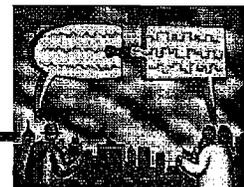
**IMPORTANT:** By opting out of the Deep Link Framing option, your Board or Association is automatically opting out of CREA VOW or CREA IDX services, which means your members will also not have access to **mls.ca** or ICX.CA pages for these services.

## 8. What resources are available to help us decide?

The complete EDU Task Force Report is available on the MTC page of [www.realtorlink.ca](http://www.realtorlink.ca). It details the development of Permission Based Technology, and also compares the Canadian policies adopted by The Canadian Real Estate Association with those proposed in The United States.

If you are considering the use of the CREA technology options to deliver IDX, VOW or Deep Linking services to your members, CREA Marketing Director, Marc Lafrance, can answer any questions. Contact him at [mlafrance@crea.ca](mailto:mlafrance@crea.ca).

If you have any competition law questions regarding the decision your Board or Association is taking in offering Permission Management Technology services, please contact CREA Legal Counsel, Steve Szentesi, at [sszentesi@crea.ca](mailto:sszentesi@crea.ca).



## 9. Who does the enforcement?

The responsibility for enforcement is with the real estate Board or Association. If you are using the services of a technology company to provide IDX or VOW services, participants must follow the regulations as determined by the Board or Association. Boards and Associations using CREA Permission Management Technology are also responsible for enforcement of the rules and regulations as provided in this booklet.

## USING THE CREA SOLUTION

The Canadian Real Estate Association can provide a cost-effective alternative for your Board and Association to offer Permission Management Technology to your members – whether it is for Deep Link Framing (DLF), CREA VOW or CREA IDX. You can choose any one, any combination, or all of these options.

There are specific rules governing the use of the **mls.ca** and ICX.CA database for the purpose of display as a DLF, or in a CREA VOW or CREA IDX. These are included in this booklet, starting on Page 9.

CREA can offer this option by maximizing the use of the existing **mls.ca** and ICX.CA database. There is no additional technology cost involved for participating Boards or Associations.

You will be responsible for management of the service, and the management system will be provided to you through [www.realtorlink.ca](http://www.realtorlink.ca). The Board or Association will be able to manage the “permissions” through this console on REALTOR Link™.

### If you use the CREA option, we provide:

- **A user guide for the Permission Management Technology console.** This explains how Board and Association staff can manage the implementation of Deep Linking, VOW, and IDX options.
- **Material for members.** These are web pages you can link to your Board site, or print and distribute, that explain what’s involved in using the Deep Link Framing option, or implementing a CREA VOW or IDX option.
- **Help Desk support.** If any member or your staff have questions or problems with the display from the **mls.ca** or ICX.CA database, they can contact the CREA Help Desk from 8:00am - 8:00pm Eastern, Monday-Friday, for support.

*Remember the CREA solution includes administration of the options.*

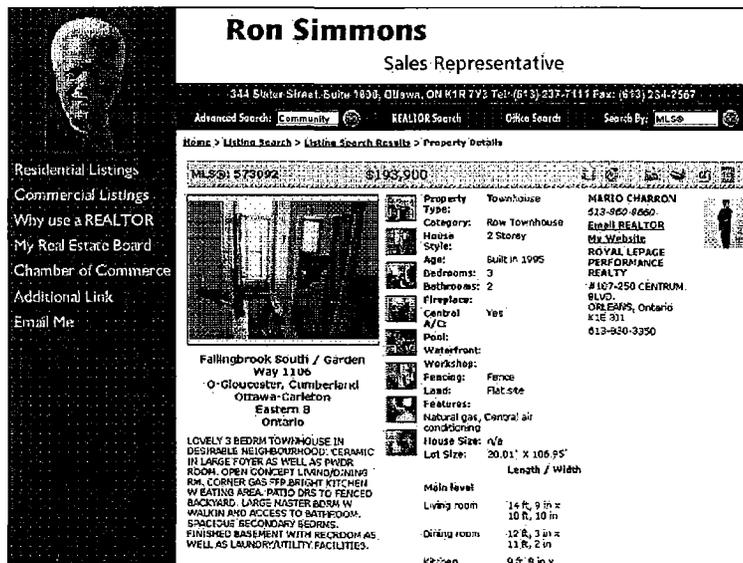
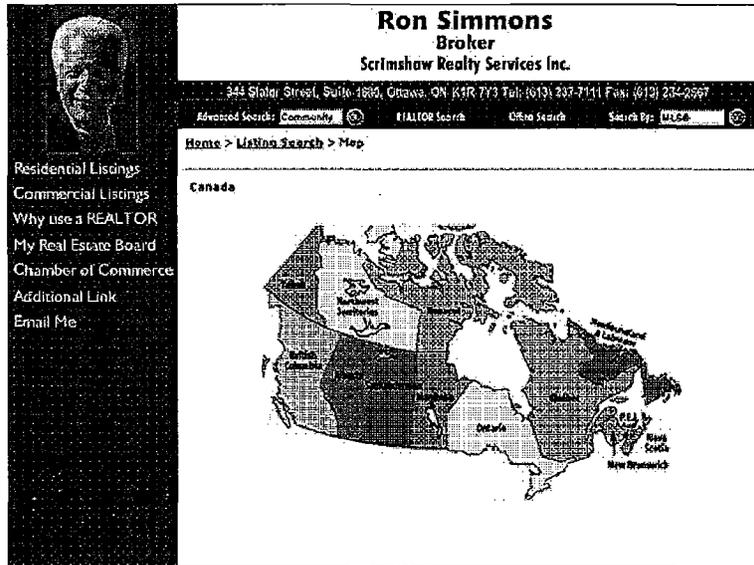
Should your Board or Association not want to handle the individual requests for implementation or changes to CREA Deep Link Framing, VOW or IDX services, CREA will process them on a cost recovery basis. This means your members would contact CREA, rather than the Board or Association, to set up or change any of the Permission technology options.

### WHAT THE CREA SOLUTION LOOKS LIKE

The rules governing the use of the **mls.ca** and ICX.CA database also govern what the page created for the member looks like. The presentation must adhere to any applicable provincial regulatory requirements.

In fact, there is not much difference in appearance between what a CREA generated Deep Link Frame, VOW, or IDX looks like. The major difference will be the frame design used by the participating member.

For example, here's a sample of a frame that would be allowed for a member participating in CREA's Deep Link Framing, VOW or IDX options using a page generated from the **mls.ca** or ICX.CA database.



The member can choose to have a national, provincial, regional or local map appear in the frame as an "entry" to their website. Using the same frame, here's what the display of a listing would look like.



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## WHAT A BOARD OR ASSOCIATION HAS TO DO

Once your Board or Association has decided on participation (opt in and opt out) individual members (brokers and REALTORS) can request use of the web pages from **mls.ca** and ICX.CA.

### Setting up

To allow members to use the Deep Link Framing option, a Board or Association does not have to do anything. You will automatically be "activated" when CREA launches the service. If your Board or Association does NOT want to make this technology option available to your members at this time, you must use the Permissions Console on [www.realtorlink.ca](http://www.realtorlink.ca) once it is active to change the permission options associated to you. This is an easy and convenient thing to do.

When this CREA service goes "live", the operating status of your Board or Association becomes your responsibility. To do that, you can use the "Board Permission" option on the Permission Console.

Should your Board or Association prefer that CREA maintain your operating status for any or all CREA Permissions technology, this service is available on a cost recovery basis. For further details, please contact Marc Lafrance at [mlafrance@crea.ca](mailto:mlafrance@crea.ca).

*IMPORTANT: By opting out of the Deep Link Framing option, your Board or Association is automatically opting out of CREA VOW or CREA IDX services, which means your members will also not have access to **mls.ca** or ICX.CA pages for these services.*

### Letting members know

Communication material from CREA will be available to explain the services and technology options to your members. This material can be printed out, or will be available as a web page you can link to the "Members" side of your Board or Association website. This includes an explanation of the CREA Rules for the use of pages from **mls.ca** and ICX.CA.

### Staff requirements

Board or Association staff will use the CREA Permission Based Technology Console available on [www.realtorlink.ca](http://www.realtorlink.ca) to update the status, or to activate approved CREA DLF, CREA VOW or CREA IDX applications. The console is designed to make administration of permissions or authorization as easy and convenient as possible.

### Using the PMT Console

Once your designated staff have signed onto [www.realtorlink.ca](http://www.realtorlink.ca), the updated CREA membership roster will be incorporated into the console. In other words, your staff will not have to go looking for broker office names or REALTOR contact information. As long as the membership information you provide in your upload is correct, then the reference information in the console will be as well.

CREA can also provide this ongoing service on behalf of your Board or Association on a cost recovery basis, which means members would contact CREA to make any changes, or to launch a new service.

A detailed User Guide for the CREA Permission Console will be distributed to all participating Boards and Associations prior to the launch of the service.

### Of note to Boards already using a Deep Link to **mls.ca** or ICX.CA

Any Board or Association currently using the Deep Link Framing option to the **mls.ca** and ICX.CA websites will have to get a new URL from CREA. These old links will become inactive, so it is important that if you want to continue Deep Link Framing your Board or Association get a "refresher".

### WHAT A REALTOR HAS TO DO

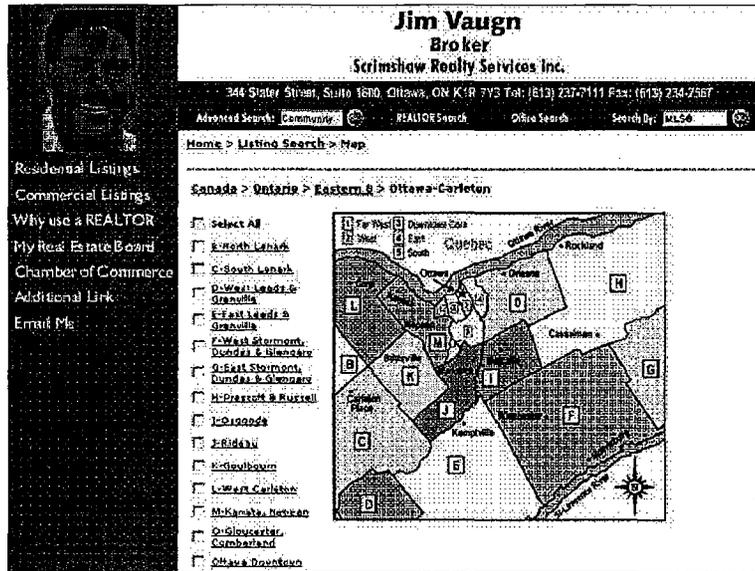
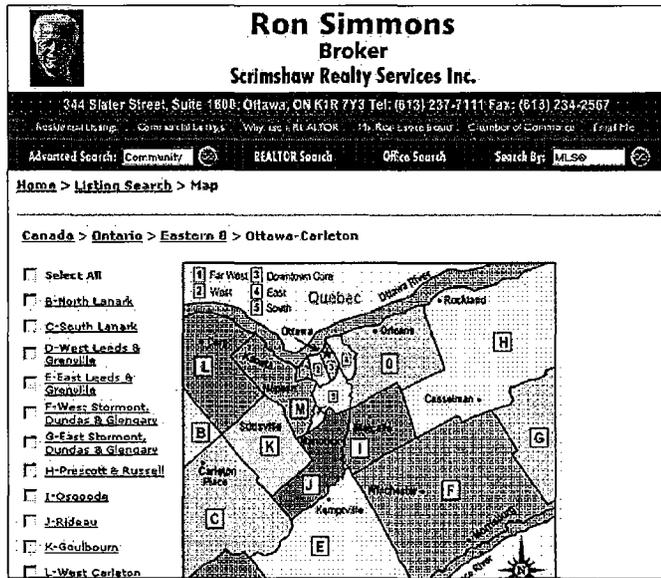
Once your Board or Association has decided on participation (opt in and opt out) individual members (brokers and REALTORS) can request use of the web pages from **mls.ca** and ICX.CA.

The REALTOR or Broker requesting use of the CREA DLF/VOW/IDX technology options must have a website and a valid email address.

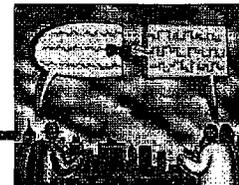
### Design the frame

The participating REALTOR or Broker is responsible for hosting the site, and for designing and implementing the frame that is to be used for the display of pages from **mls.ca** and ICX.CA. These must be designed and displayed in accordance to the CREA rules and regulations published in this booklet that all participating Boards and Associations must adopt. These rules will also be posted on [www.realtorlink.ca](http://www.realtorlink.ca) for member reference.

Here's an example of a CREA Permission display with a horizontal frame



Here's an example of a CREA Permission display with a half screen frame



**Requesting implementation for CREA DLF or CREA VOW**

Once the Broker or REALTOR has met these requirements, they would contact either the Board/ Association, or CREA, to request a link to the **mls.ca** or ICX.CA pages. This request would be processed through the Permission console. If all conditions have been met, an email confirmation with the URL required for the framing will be sent to the Board or Association. It will be up to the Board or Association to forward that email to the Broker or REALTOR. If CREA is providing this service to a Board, the email will be sent to the Board or Association and to the member making the request.

**Requesting implementation for CREA IDX**

Please note the request for participation in a CREA IDX can ONLY come from a licenced Broker. Once the Broker has met the technical requirements, they would contact either the Board/Association, or CREA, to request a link to the **mls.ca** or ICX.CA pages. This request would be processed through the Permission console. If all conditions have been met, an email confirmation with the URL required for the framing will be sent to the Board or Association and to the Brokers involved in the reciprocity program. If CREA is providing this service to a Board, the email will also be sent to the Board or Association and the Brokers involved.

Please also note a Broker can be an active participant in more than one reciprocity program.

**Existing Deep Linkers**

Some members have been using deep link framing technology to display pages from **mls.ca** and ICX.CA. They will have to contact CREA for a proper URL to make the framing work. Their existing link will become inactive once the CREA Permission Technology options have been launched. This does NOT affect members who may have a link to display their own listings on their personal website.

## PERMISSIONS MANAGEMENT RULES

Boards and Associations using the Permissions Management facility must adopt and enforce the standard Rules respecting the use of *mls.ca* and *ICX.CA* pages and database for CREA VOW, CREA IDX and CREA Deep Link Framing. The Rules, as may be amended from time to time, are as follows:

### Section 1: Definitions

**Broker** means the REALTOR designated as the representative of the brokerage, either for the purposes of the applicable provincial real estate licensing legislation or with regard to the relationship between the brokerage and the local real estate board/association.

**CREA Deep Link Framing** means a program which enables DLF Participants to frame on their Internet websites ("DLFs") public listing data of their own and of other DLF Participants as supplied by the *mls.ca* and *ICX.CA* database in accordance with these Rules.

**CREA IDX Program** means a program which enables IDX Participants to frame on their CREA IDX Internet websites ("IDXs") public listing data of their own and of other IDX Participants as supplied by the *mls.ca* and *ICX.CA* database in accordance with these Rules.

**CREA VOW Program** means a program which enables VOW Participants to frame on their CREA VOW Internet websites ("VOWs") public and IXN® data of other VOW Participants as supplied by *mls.ca* and *ICX.CA* database in accordance with these rules and through which consumers receive real estate brokerage services, including the opportunity to search for MLS® and ICX data available through *mls.ca* and *ICX.CA* subject to the Broker Participant's overview, supervision and responsibility.

**DLF Participant** means a broker member of the Board/Association that has not advised the Board/Association in writing that they do not wish to take part in the CREA DLF Program or a non-principal broker or salesperson licensed with a participating broker who has been authorized by that broker to establish a DLF.

**IDX Data** means MLS® or ICX data, which is made available by CREA through the *mls.ca* and *ICX.CA* pages and database to IDX Participants from time to time for display on IDXs.

**IDX Participant** means a Broker member of the Board/Association for whom the Broker/Owner of the website has advised the Board/Association or CREA in writing that they do wish to participate in a specific IDX.

**VOW Data** means MLS® or ICX data, including the IXN® data fields, which is made available by CREA through the *mls.ca* and *ICX.CA* database to VOW Participants for display on VOWs.

**VOW Participant** means a broker member of the Board/Association that has not advised the Board/Association in writing that they do not wish to take part in the CREA VOW Program or a non-principal broker or salesperson licensed with a participating broker who has been authorized by that broker to establish a VOW.

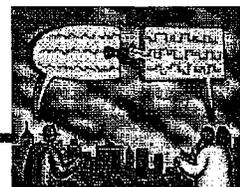
### Section 2: Permissions Management - General

All VOW, IDX and DLF Participants must adhere to the following Rules, all other MLS® rules and regulations, guidelines and policies that may be adopted by the Board/Association or CREA from time to time, and to all applicable provincial or federal legislation or regulation.

#### **2.1 General Permissions Management Rules**

##### **2.1.1 Ownership.**

- a) The Canadian Real Estate Association (CREA) is the owner of the *mls.ca* and *ICX.CA* database;



- b) All data and other content on the database is owned by CREA, the respective Board/Association and/or the listing brokerage; and
- c) No copyright ownership of the **mls.ca** and ICX.CA database or of any data or other content on the database flows to the Participant.

### **2.1.2 Alteration of Database.**

Participants shall not alter, modify, manipulate, scrape, store or obscure in any way, the **mls.ca** and ICX.CA database or web pages, any data or other content on the database, or any disclaimers or notices.

### **2.1.3 Remedy For Failure To Comply.**

If a Participant is in violation of any rule, regulation, or policy of the Board/Association or CREA relating to the operation of any of the Permissions Management facilities, the Board may, in addition to all other remedies available, require the Participant to immediately cease and close the operation of the Participant's DLF, VOW or IDX, as the case may be.

### **2.1.4 Authorization.**

Participants' use of listings of other Participants on any of the Permission Management facilities is subject to the consent of such other Participants.

- (a) VOW and DLF Consents-Participants' consent for display of their listings by other Participants on VOWs and DLFs pursuant to these rules is presumed unless a VOW or DLF Participant independently and affirmatively withholds that consent ("opts out"). Brokers may independently "opt out" of the VOWs or DLFs of all Participants on a blanket basis ("blanket opt out").. "Blanket opting out" of a VOW or DLF can be accomplished by a Broker so notifying either the Board/Association or, at the option of the Board/Association, CREA. CREA or the Board/Association shall cause the listings of the opting out broker not to be displayed on the **mls.ca** and ICX.CA pages produced for the VOW or DLF of other Participants.
- (b) IDX Consents -Brokers are presumed not to consent to their listings being displayed on the IDXs of IDX Participants unless they have affirmatively opted in through the owner of the IDX by advising the Board/Association or CREA in writing that they wish to participate in a specific IDX.
- (c) If any Broker opts out of a VOW or DLF, or fails to opt in to an IDX, neither the broker nor any salespeople licensed with that brokerage are permitted to participate in the VOW, DLF or IDX, as the case may be.
- (d) Any Broker who opts out of DLF is not permitted to participate in an IDX or a VOW.

### **2.1.5 Content of Frames**

Frames created by a DLF, VOW, or IDX Participant:

- (a) must not display any franchise, Broker or corporate trademarks or logos when the **mls.ca** and ICX.CA result set is displayed, and
- (b) must display all contact information which is required to be shown in advertising by provincial law/regulation or the REALTOR Code of Ethics.
- (c) The use of frames for **mls.ca** and ICX.CA pages is subject to the Rules and Regulations, guidelines and policies of the Board/Association and CREA as amended from time to time.

### **2.1.6 Display of **mls.ca** and ICX.CA Pages**

Pages created for use on a Permissions Management facility (i.e. DLF, IDX or VOW) must only be displayed on the particular Permissions Management facility for which they were created and cannot be used for any other Permissions Management facility.

### Section 3: Rules

#### **For Deep Linking And Framing *mls.ca* and ICX.CA Pages For Websites Other Than IDX and VOWs**

**3.1** DLF Participants may cause to appear on their Internet websites within frames of their own design:

- The *mls.ca* and ICX.CA pages containing the listings from this Board/Association;
- The *mls.ca* and ICX.CA pages containing the listings of other Boards/Associations that permit this type of deep linking and framing of *mls.ca* /ICX.CA.

**3.2** Operation of the Deep Linking and Framing facility is subject to these rules, and in particular, Section 2 above.

### Section 4: CREA VOW Program Rules

**4.1** VOW Participants may provide brokerage services via a VOW that include making VOW data available from *mls.ca* and ICX.CA , but only to consumers (hereinafter "Registrants") with whom the VOW Participants have first established relationships, including completion of all actions and/or forms respecting agency disclosure required by provincial law or regulation in connection with providing real estate brokerage services to clients and customers.

**4.2** VOW Participants must obtain the name and valid e-mail address of each Registrant.

**4.3** VOW Participants must send an e-mail to any Registrant confirming that the Registrant has agreed to the VOW's Terms of Use.

**4.4** VOW Participants can provide access to their VOW only after a Registrant's email address is verified as valid and the Registrant's agreement to the VOW's Terms of Use is confirmed.

**4.5** VOW Participant's Terms of Use shall include the following terms.

- a) The Registrant acknowledges that these Terms of Use do not create an agency relationship with the VOW Participant;
- b) That the VOW data obtained from the VOW is only for the Registrant's personal, non-commercial use;
- c) 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;
- d) That the Registrant will not copy, redistribute or retransmit any of the VOW data or information provided; and
- e) That the Registrant acknowledges CREA's ownership of and the validity of the copyright in the *mls.ca* and ICX.CA database.

The VOW Participant's Terms of Use may also include other provisions determined by the VOW Participant.

**4.6** VOW Participants' Terms of Use shall not impose a financial obligation on a Registrant. Financial obligations, if any, must be established separately from the VOW Participants' Terms of Use, must be prominently labeled, and may not be accepted solely by a "mouse click".



**4.7** VOW Participants' Terms of Use shall not create any representation agreement between a Registrant and the VOW Participant. Representation agreements, if any, must be established separately from the VOW Participants' Terms of Use, must be prominently labeled, and may not be accepted solely by a "mouse click".

**4.8** The Registrant must supply a user name and a password, the combination of which must be different from those of all other Registrants of the VOW, before being permitted to search and view VOW data via the VOW. The user name and password may be established by the Registrant or may be supplied by the Participant, at the option of the VOW Participant.

**4.9** Participants' VOWs must protect VOW data from misappropriation by employing reasonable efforts to monitor for and prevent "scraping" and other unauthorized accessing, reproduction or use of the **mls.ca/ICX.CA** database or the VOW data.

**4.10** Listings or property addresses of sellers who have directed their listing brokers to withhold their listing or their property address from display on the Internet (including, but not limited to, publicly-accessible websites or VOW's) shall not be accessible to Registrants. This does not preclude listing brokers from displaying on their VOW or their other website(s) the listing or property address of consenting sellers.

**4.11** VOW Participants must not alter, modify, manipulate, scrape, store or obscure the VOW data (or any disclaimers or notices therein) in any way.

**4.12** No portion of the **mls.ca** and ICX.CA database shall be distributed, provided to or made accessible to any person for the purpose of operating a VOW except as provided in these rules.

**4.13** VOWs must display the VOW Participant's privacy policy informing Registrants how information they provide may be collected, used and disclosed, in accordance with applicable privacy legislation.

**4.14** Listings from the Board or Association shall only be excluded from display on Participant's VOW's based on objective criteria, e.g. type of property, listed price, and geographical location.

**4.15** VOW Participants shall not provide the identity of Registrants to any other entity for compensation except where:

- a) The VOW Participant's residential real estate brokerage activities principally consist of listing or selling properties;
- b) Registrants are seeking property in a price range or in a location for which the VOW Participant ordinarily does not provide real estate brokerage services; and
- c) The number of Registrant identities provided is insubstantial, or the corresponding revenue generated, is an insubstantial portion of the VOW Participant's real estate brokerage activities.
- d) For purposes of this rule, "selling" does not include making referrals of prospective purchasers to other real estate brokers and "listing" does not include making referrals of prospective sellers to other real estate brokers.

**4.16** VOW Participants must notify the Board/Association of their intention to create a VOW, and must make their VOW directly accessible to the Board/Association, CREA and other members or their duly authorized representatives for purposes of monitoring/ensuring compliance with applicable rules and policies.

**4.17** Participants' VOWs may include other appropriate disclaimers necessary or advisable to protect the VOW Participant and/or the Board/ Association and CREA from liability.

**4.18** Registrants' passwords shall be valid no longer than 30 days, after which such passwords must be reconfirmed or changed.

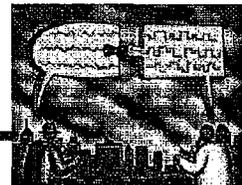
**4.19** Non-principal brokers and sales licensees affiliated with VOW Participants may operate VOWs subject to their VOW Participant's consent and control. Both the VOW Participant and the non-principal broker or sales licensee operating the VOW shall be accountable under these rules with respect to the operation of any such VOW.

**Section 5: CREA IDX Program Rules**

**5.1** The IDX Data or any portion thereof may not be displayed on any Internet website except an IDX.

**5.2** Within fourteen days after being requested by the Board/Association or CREA to do so, an IDX Participant must make such changes to its IDX as required by the Board/Association to resolve any violation of the IDX Rules or any other regulations, guidelines and policies.

**5.3** IDX Participants must not permit any portion of the IDX Data to be used or provided to any person or corporation for any purpose other than those expressly provided for in the MLS® rules and regulations, guidelines and policies of the Board/Association or CREA.



**Any questions or comments  
about the services or  
products CREA provides?  
You can contact us on-line at  
[info@crea.ca](mailto:info@crea.ca).**



# EXHIBIT 20



## DATA DISTRIBUTION POLICY AND RULES

### DATA DISTRIBUTION FACILITY (DDF) POLICY

#### Data Distribution Facility Overview

CREA has created a Data Distribution Facility (DDF) to enable CREA's members to easily disseminate MLS® listing content to multiple websites, and to ensure that MLS® listing content that is displayed on these websites is accurate, up to date, and uses CREA's trademarks correctly.

The DDF is permission based and consists of three modules: a National Shared Pool Module; a Member Feed Module; and a Third Party Module. Participating brokerages and salespeople can access a dashboard on REALTOR Link® to indicate where they want to send their listing information and how much information they want to send.

#### Structure of the Data Distribution Facility

1. National Shared Pool Module - Participants can contribute their listings to a national data pool and receive a feed from that pool to display all other participants' listings on their websites. Participants can filter the data feed they receive based on objective criteria. Participants can also choose to contribute their listings to a data feed made available for display on participating franchisors' websites.
2. Member Feed Module—Participants can use this module to receive a data feed of their listings to display on their own website in order to track the success of their website as a marketing tool.
3. Third Party Module – Participants can choose to send listing content to a number of third party websites.

#### Participation

1. Board Participation
  - a) Participation in the National Shared Pool Module is mandatory for all Boards/Associations. Boards/Associations must:
    - i) Provide or authorize a feed of the listings of their members who are participating in the DDF to CREA; and
    - ii) Adopt and enforce the DDF rules established by CREA.
  - b) Boards must participate in the Member Feed Module and the Third Party Module unless they provide a facility to their members that CREA determines to be comparable.

- i) In general, a comparable facility for the Member Feed Module is one that enables members to retrieve their listings.
- ii) In general, a comparable facility for the Third Party Module is one that enables members to have their listing content distributed to third party websites.

## 2. Brokerage Participation

- a) Brokerages have the option to participate or not to participate in the DDF.
- b) In the National Shared Pool Module:
  - i) Brokerages have the option to participate or not to participate in the national data pool.
  - ii) Brokerages may also opt to contribute to the franchisor pool if they have opted to participate in the national data pool.
- c) Brokerages have the option to participate or not to participate in either or both of the Member Feed Module and the Third Party Module.

## 3. Salesperson Participation

- a) Salespeople have the option to participate in the CREA DDF independent of their brokerages if:
  - i) The salesperson's brokerage is participating in the CREA DDF and has given the salesperson permission to participate in the CREA DDF; or
  - ii) The salesperson's brokerage is not itself participating in the CREA DDF but has opted in for the purpose of giving its salesperson(s) permission to participate in the CREA DDF.

## Enforcement

1. Boards and Associations that operate MLS® Systems must adopt and enforce the DDF Rules established by CREA.
2. A Board/Association or CREA may suspend or terminate a participant's access to the CREA DDF or disable DDF functions and features for that participant if it is determined that there is a violation of any rule, regulation, or policy of the Board/Association or CREA.

**DATA DISTRIBUTION FACILITY (DDF) RULES**

All Boards and Associations will be required to adopt and enforce the following rules. Any changes to the rules must be approved by CREA.

**1. Definitions**

- a. CREA DDF – a permission based data distribution facility provided by CREA to facilitate the distribution of its participating members' listing information to National Pool Websites, Member Feed Websites, Franchisor Websites, and Third Party Websites.
- b. Franchisor – a company that owns the overall rights and trademarks of the company and enters into franchise agreements with another entity (a franchisee) to allow them to use these rights and trademarks to do business.
- c. Franchisor Website – a Website operated by a Franchisor who has entered into a contract with CREA to receive a data feed provided by the CREA DDF.
- d. Listing Content – the MLS® listing information, including photographs and images, which a Participant chooses to send to National Pool Websites, Franchisor Websites, Member Feed Websites, and Third Party Websites based on data templates that contain a number of fields set by CREA.
- e. Listing Marketing and Permissions Management– an application provided by CREA used to opt-in to the CREA DDF and define which destinations are to receive the Participant's listings.
- f. National Pool Website – a Website owned and operated by a Participant that displays the listings of other Participants, populated using a data feed provided by the National Shared Pool Module, which can be filtered based on defined and objective criteria.
- g. Participants – all Participating Brokerages and Participating Salespersons.
- h. Participating Brokerage – a member brokerage that is actively engaged in providing real estate brokerage services to buyers or sellers in real estate transactions and who consents to display of its listings on Websites through the CREA DDF.
- i. Participating Salesperson – a REALTOR® that is registered with a Participating Brokerage who also chooses to participate in the CREA DDF with the consent of his or her brokerage.
- j. Member Feed Websites – a Website owned and operated by a Participant that displays just the Participant's own listings, populated using a data feed provided by the Member Feed Module.
- k. Recognized Search Engines – a search engine that is on the CREA maintained list of Recognized Search Engines.
- l. Scraping – use of a software program or other method to extract Listing Content, such as photographs and/or text, from a Website.

**April 30, 2012**

- m. Technology Provider – a company that has entered into a data access agreement developed by CREA to operate a National Pool Website or a Member Feed Website on behalf of a Participating Brokerage or Participating Salesperson.
- n. Third Party Websites – Websites other than National Pool Websites, Member Feed Websites, or Franchisor Websites that are provided a data feed of Participants' listing information from the Third Party Module.
- o. Website – any electronic display of or access to content in any manner including mobile applications.

## 2. General Application of Rules

All Participants must adhere to the following rules, all other MLS® rules and regulations, guidelines and policies that may be adopted by the Board/Association or CREA in relation to the DDF from time to time, and to all applicable provincial or federal legislation and regulation.

## 3. Alteration and Addition of Data

- a) Participants shall not modify or manipulate information relating to other Participants' listings.
- b) Participants may augment their own Listing Content on their National Pool Website or Member Feed Website with additional data not otherwise prohibited from display, but they shall not add data to other Participants' Listing Content.
- c) Participants may co-mingle exclusive listings with the Listing Content they receive through the CREA DDF on National Pool Websites and Member Feed Websites.

## 4. Authorization

- a) Participating Brokerage Consents
  - i) Participating Brokerages' consent for display of their Listing Content on National Pool Websites, Member Feed Websites, and/or Third Party Websites is provided by opting-in to these modules through the Listing Marketing and Permissions Management application.
  - ii) A Participating Brokerage that has opted-in to the National Shared Pool Module may also consent to having its Listing Content sent to the Franchisor Websites by opting into this portion of the CREA DDF through the Listing Marketing and Permissions Management application.
  - iii) A Participating Brokerage that has opted-in to any or all of the National Shared Pool Module, Member Feed Module, and Third Party Module may give permission to its salespeople to also participate in any or all of these modules through the Listing Marketing and Permissions Management application.
  - iv) If a brokerage chooses not to opt-in to the CREA DDF (even for the limited purpose of permitting its salespeople to participate), its salespeople cannot participate in the CREA DDF.

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- v) Participating Brokerages that opt-in to any of the CREA DDF modules hereby grant CREA a royalty-free, perpetual license to use, reproduce, transmit, distribute, and exhibit the Listing Content for the purposes of the CREA DDF.
- b) Participating Salespersons' Consents
    - i) Participating Salespeople that have the permission of their Participating Brokerage may choose to participate in the National Shared Pool Module and/or the Member Feed Module, which will enable them to receive a feed of data for display on their websites.
    - ii) Participating Salespeople that have the permission of their Participating Brokerage may consent to participate in the Third Party Module, which will enable them to send Listing Content to Third Party Websites.
    - iii) Participating Salesperson consent is provided by opting-in through the Listing Marketing and Permissions Management application.
  - c) Consent to Display Listings
    - i) Participants must consent to contribute all their MLS® listings to the National Shared Pool Module unless they have been instructed by a seller not to include a particular listing in the DDF.
    - ii) Where a property is listed by more than one brokerage or salesperson and any one of those brokerages or salespersons is participating in any data feeds of the CREA DDF that property will be included in the applicable data feed(s).
5. Use of CREA DDF Data Feed
- a. Participants operating National Pool Websites and Member Feed Websites must refresh their Websites at least once every 24 hours but no more frequently than once an hour.
  - b. Participants may not use the Listing Content they receive through the CREA DDF for any purpose other than:
    - i) display on their National Pool Websites and Member Feed Websites;
    - ii) to create a mobile app, the sole purpose of which would be to advertise the listing content they receive through the CREA DDF in accordance with these rules; and
    - iii) to create marketing materials for their own listing content only.
- This does not require participants to prevent indexing of the Listing Content by Recognized Search Engines.
- c. Participants may not operate more than five Websites using the Listing Content they receive through the CREA DDF.
  - d. Participants shall not use the Listing Content they receive through the CREA DDF in the operation of a Website through which a member provides online brokerage services to consumers.

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- e. Participants shall not allow consumers to write comments or reviews about a particular listing or displays a link to such comments or reviews about a particular listing on their National Pool Websites.
- f. The Listing Content that Participants receive, or any portion thereof, may not be displayed on any Website except a National Pool Website or a Member Feed Website.
- g. Participants must not permit any portion of the Listing Content they receive to be used or provided to any person or corporation for any purpose other than those expressly provided for in these rules.
- h. Participants may provide the Listing Content to a Technology Provider who is operating a National Shared Pool Website or a Member Feed Website on their behalf, but Participants are responsible for the conduct of any Technology Provider they use.
- i. Participants may provide their Listing Content to a marketing company who they have entered into a contract with to receive marketing materials, but Participants are responsible for the conduct of any marketing company they use.
- j. Participants shall take reasonable precautions to prevent Scraping of their National Pool Websites and Member Feed Websites, and to prevent the Listing Content from being displayed on any internet Website other than National Pool Website or a Member Feed Website. Reasonable precautions shall include but not be limited to:
  - i) regularly monitoring their Website for signs of Scraping; and
  - ii) taking necessary steps against scrapers, such as blocking access.
- k. Participants shall immediately advise their Board/Association whenever they suspect that Scraping has occurred.
- l. Nothing in this policy prohibits Participants from providing to third parties or displaying on other Websites information concerning their own listings created by them or received independently of the CREA DDF.

#### 6. Display Requirements

- a. All Listing Content displayed on a National Pool Website or a Member Feed Website must:
  - i) Display the MLS® and REALTOR® logos;
  - ii) Display the listing brokerage name and any additional information that is required by provincial law/regulation, which must be prominently displayed in text large enough for a consumer to easily read, and appear with the Listing Content (not requiring consumers to click on any hyperlinks, etc.); and
  - iii) Display the watermarks provided by CREA on photographs.
- b. Listing Content must not display:
  - i) Any advertising or co-branding on a National Pool Website;
  - ii) Any confidential information including past sales prices, the cooperating commission or fee, etc. on a National Pool Website or a Member Feed Website.

April 30, 2012

- c. Every page of all National Pool Websites and Member Feed Websites must display the following text: “MLS®, REALTOR®, and the associated logos are trademarks of The Canadian Real Estate Association”.
- d. All National Pool Websites must require consumers to agree to terms of use before accessing the Listing Content through a click-wrap agreement that contains, at a minimum:
  - i) Text that states CREA is the owner of the REALTOR® and MLS® trademarks: “REALTOR®, REALTORS®, and the REALTOR® logo are certification marks that are owned by REALTOR® Canada Inc. and licensed exclusively to The Canadian Real Estate Association (CREA). These certification marks identify real estate professionals who are members of CREA and who must abide by CREA’s By-Laws, Rules, and the REALTOR® Code. The MLS® trademark and the MLS® logo are owned by CREA and identify the quality of services provided by real estate professionals who are members of CREA.”;
  - ii) Text that disclaims liability of CREA as a result of providing the data feed: “The information contained on this site is based in whole or in part on information that is provided by members of The Canadian Real Estate Association, who are responsible for its accuracy. CREA reproduces and distributes this information as a service for its members and assumes no responsibility for its accuracy”;
  - iii) Text that states the website is operated by a brokerage or salesperson who is a member of The Canadian Real Estate Association; and
  - iv) Copyright ownership text: “The listing content on this website is protected by copyright and other laws, and is intended solely for the private, non-commercial use by individuals. Any other reproduction, distribution or use of the content, in whole or in part, is specifically forbidden. The prohibited uses include commercial use, “screen scraping”, “database scraping”, and any other activity intended to collect, store, reorganize or manipulate data on the pages produced by or displayed on this website.”

## 7. Filtering

- a. Participants may filter the listings they choose to display on their National Pool Websites based only on objective criteria.
- b. Subject to applicable laws and regulation, the only allowed filter criteria are:
  - i) Geography or location;
  - ii) List price;
  - iii) Rentals;
  - iv) Property type (e.g., condominiums, cooperatives, single-family, multi-family).
  - v) Property features (e.g., water front).
- c. Filtering of listings displayed on any National Pool Websites must be independently made by each Participant.

## 8. Enforcement

- a. Participants must make their National Pool Websites and Member Feed Websites directly accessible to Boards, Associations and CREA for the purpose of monitoring/ensuring compliance with the applicable rules and policies.
- b. Within three business days after being requested by the Board/Association or CREA to do so, a Participant must make changes to its National Pool Website or a Member Feed Website as required by the Board/Association or CREA to resolve any violation of the rules, regulations, or policies, during which time the Board/Association or CREA may suspend the Participant's access to the CREA DDF.
- c. Notwithstanding subsection b, if a Participant is in violation of any rule, regulation, or policy of the Board/Association or CREA relating to the operation of any of a National Pool Website or a Member Feed Website, the Board/Association or CREA may, in addition to all other remedies available, immediately terminate or suspend the Participant's access to the CREA DDF or disable DDF functions and features for that Participant, or direct CREA to immediately terminate or suspend the Participant's access to the CREA DDF or disable DDF functions and features for that Participant.
- d. If a Participant ceases to participate in the CREA DDF or has their access terminated or suspended by their Board, Association, or CREA, they will not be able to contribute their listings to the DDF nor receive a feed of listings for display on their website(s). They shall not display any Listing Content from the CREA DDF and must destroy any local copies of the Listing Content.

# EXHIBIT 21

**THE CANADIAN REAL ESTATE ASSOCIATION**

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[www.REALTOR.ca](http://www.REALTOR.ca)

[www.icx.ca](http://www.icx.ca)

## CREA Data Distribution Facility FAQs

### General Concept

**Q: Will all three modules of the DDF be launched at the same time?**

A: No. The three modules will not be implemented at the same time. The National Shared Pool Module will be implemented first with the other two modules to follow.

**Q: How will the DDF affect REALTOR.ca?**

A: Members participating in the DDF will be able to choose from data templates when they decide where to send their listing content in the Third Party Module. One of the templates will be a 'shallow listing', which will consist of only a few fields and a link to additional information. That link could be a link to the brokerage website, REALTOR® website, or to REALTOR.ca. Linking to REALTOR.ca from the various sites that receive a data feed through the Third Party Module could actually increase traffic on REALTOR.ca. Alternatively, the DDF might increase traffic to member sites and decrease users on REALTOR.ca.

**Q: Will creating this facility lead to another investigation from the Competition Bureau?**

A: CREA feels that the concept of the facility in general, which could result in greater dissemination of MLS® listing content to a variety of websites, would likely be considered pro-competitive. That said, there is always risk that the Competition Bureau may have concerns over the details of the implementation of the DDF. We have briefed the Competition Bureau on the DDF structure and know that they will have continued interest in its evolution. We have been consulting with outside competition counsel on the proposed structure and implementation of the DDF to minimize the potential for competition concerns. We know from our briefings to the Bureau that they would likely have concerns if brokers are not able to make independent business decisions about participation in data distribution, which is the reason for not allowing Boards to opt out of the National Shared Pool Module.

**Q: Advertising real estate listings is covered by the licensing legislation in each province. Has CREA checked with Regulators to see if the proposed DDF complies with provincial and territorial legislation?**

A: CREA has written to all the provincial and territorial regulators asking for feedback in response to the proposed DDF. So far, we have received responses from three regulators. We are waiting to hear back from the rest of the regulators and will address any concerns that are raised.

**Q: Why does CREA want to give our data away?**

A: The CREA DDF will not be used to give away members' data. The proposed DDF would be a member service that would enable brokers and REALTORS® to more easily disseminate MLS® listing content, which they are already doing today. Only the listing content that members instruct CREA to send out will be distributed through the DDF.

**Q: What's the rush?**

A: Data distribution is happening today. This is not a new issue. The Internet is inundated with inaccurate and out of date information, and CREA's members are spending a great deal of time and money to distribute this information. The DDF facility is a service that many brokers and REALTORS® have expressed support for, as well as national franchisors. Creation of the CREA DDF would serve to reduce duplicate efforts and costs of providing this type of service. The proposed facility will take at least six months to implement the National Shared Pool Module; the goal is to implement this module in fall 2011. Implementation of the other two modules will extend into 2012.

At the April AGM Boards and Associations will vote on a Rule amendment. The Rule amendment simply states that all Boards and Associations will comply with CREA's Data Distribution Policy. That Policy, and related rules that Boards and Associations will be required to enforce, would be finalized following input and consultation with Boards and Associations, recognizing that there are regulatory and local issues which will need to be addressed. The agenda package includes a draft policy and Board/Association Rules for information purposes only. A final policy and set of rules will be subject to approval by the MTC and CREA Board of Directors.

## Participation

### **Q: Why is Board and Association participation in the National Share Pool Module mandatory?**

A: We have structured the facility in a way that we feel is pro-competitive. Brokerages should have the choice whether or not they want to contribute their listings to the National Shared Pool. Making Board participation in the first module mandatory gives brokerages this choice.

### **Q: Why should a broker have to participate in the National Shared Pool in order to provide a feed to the franchisor pool?**

A: CREA structured the facility this way so that independent brokerage members (with no franchise affiliation) of CREA would have the potential to receive the same amount of listing content, if not more, than the franchisors. If a broker of a franchise does not want to participate in the National Shared Pool, they can still provide their own listings to their franchisor in the same way that they do today, which is not through the DDF.

### **Q: Is CREA going to automatically send out all our data when the DDF is implemented?**

A: No. Brokerages will be opted out of all three modules as a default position. They will have to go into a dashboard on REALTOR Link® (or the Board/Association MLS® System) and choose which modules they want to participate in, which data templates they want to use, and what third parties are to receive their listing content if they are participating in the Third Party Module. CREA will not send a member's listing content to any website through the DDF until this has been done.

### **Q: Do we have to use this facility to send listing content to third parties?**

A: No. Brokerages and REALTORS® can choose not to participate in the Third Party Module. Members may choose not to send their listing content to any third party website or to continue distributing listing content through facilities they are already using instead of using the CREA DDF. This will not change. All the DDF will do is provide members with the option that CREA can handle the dissemination of listing content for them.

## **Board Rules**

### **Q: Will Boards have to have two sets of IDX rules?**

A: Possibly. Boards and Associations will be required to adopt the DDF rules established by CREA. These rules have been drafted to govern broker and REALTOR® participation in all three modules of the DDF. However, Boards and Associations are able to opt-out of the Private DDF Module and the Third Party Module if they provide a comparable facility to their members. If a Board chooses to opt-out of the Private DDF Module and/or Third Party Module they will still have to adopt the CREA DDF rules for their members' participation in the National Shared Pool Module. Further, they would likely have rules for their own facility that enabled them to opt-out of the part of the CREA DDF. In these cases, those Boards would have to maintain and enforce two sets of IDX rules.

### **Q: What would happen to permissions management and what would Boards have to do with the existing permission management rules?**

A: Right now, CREA does not have any plans to discontinue the framing that it offers through Permissions Management. If a Board has incorporated CREA's Permission Management rules into their Board rules, whether or not they have to keep those rules will depend on they continue using CREA's Permission Management solutions. Theoretically, a Board may choose to use the DDF instead of the Permission Management IDX solution. If this is the case, that Board would have to adopt the DDF rules but could then remove the Permission Management IDX rules from their Board rules. The business case for continuing to offer these services will be reassessed in time.

## **Third Party Module**

### **Q: How will CREA determine what third party websites will be available through the Third Party Module?**

A: CREA is developing a number of criteria that all third parties will have to comply with in order to participate in the Third Party Module. For example, the third party's website will have to be an advertising vehicle (e.g., Yahoo Real Estate or kijiji) and the third party may not itself use the data feed to offer its own real estate services. Third parties will also be prohibited from further disseminating the listing content they receive, and from using the data feed to generate referral fees from CREA's members, they will be required to refresh the data feed at least every 24 hours, and they will be required to use CREA's trademarks properly. All third parties will have to agree to these terms in order to participate in the Third Party Module. Members continue to have the choice to provide their listings directly to third party websites without using the DDF.

CREA is also creating a list of third parties that will be included in the Third Party Module from the onset of the DDF. Any eligible third party that is not already included in the DDF may be

added if a Board or Association makes a request to CREA. If CREA receives a request from a Board to add a third party and the third party is willing to comply with the applicable third party criteria, it will be allowed to participate in the Third Party Module of the DDF.

**Q: Will CREA send listing content to FSBO websites through the Third Party Module?**

A: No. FSBO websites that focus on providing real estate services would not meet all the criteria required to participate in the Third Party Module.

**Q: Will the information sent to third parties involve sold information?**

A: No. Participants in the CREA DDF will be able to choose how much information they want to send to third parties using data templates. One data template will likely consist of all the fields that are currently displayed on REALTOR.ca. Another data template will be a 'shallow listing', which will consist of only a few fields and a link to additional information. That link could be a link to the brokerage website, REALTOR® website, or to REALTOR.ca. Sold information will not be a field included in any of the data templates.

## **Branding**

**Q: Will the listing content disseminated through the CREA DDF be branded in some way?**

A: Yes. Participants in the National Shared Pool Module and the Private DDF Module will be required to display the MLS® and REALTOR® marks on the listing content and to display text that states CREA is the owner of these trademarks on their websites. The REALTOR® and MLS® trademarks will also be included in the listing content sent to third parties through the Third Party Module and third parties will be contractually obligated to properly display CREA's trademarks.

**Q: Will the pictures in the listing content be watermarked?**

A: Yes.

**Q: Will co-mingling MLS® listings with other listings on third party sites affect the trademarks?**

A: CREA's trademarks are detrimentally affected in advertising when they are associated with inaccurate information or when they are being used, or appear to be used, by non-members. The CREA DDF will serve to protect the marks from both of these dangers. It will help ensure that listing content on third party sites is more accurate and up to date and, in that respect,

could potentially strengthen the MLS® marks. Further, contracts and rules will be put in place requiring that the trademarks be only displayed within a listing, in a particular form, and in clear association with the member listing broker. The fact that the page may also contain a FSBO listing will not serve to weaken the marks, provided that they are used properly. It is expected that these rules will substantially reduce the number of trademark infringements that currently exist on third party sites.

## **Enforcement**

**Q: What will CREA do to stop third parties from storing the data and creating a database of the listing content?**

A: This will be built into the contracts that third parties enter into in order to participate in the Third Party Module. They will be prohibited from creating a database of information and from using the information for any purpose other than display on their websites.

**Q: How will the listing content on member websites be protected from scraping?**

A: Participants in the National Shared Pool and the Private DDF Module will be required to take reasonable measures to prevent scraping.

**Q: Who is going to enforce all of this?**

A: Enforcement will be a collaborative effort between CREA, Boards and Associations, and REALTORS®. Boards and Associations will be responsible for enforcing the DDF rules they adopt. CREA will be responsible for enforcing the contracts they enter into with third parties for the Third Party Module. CREA and Boards and Associations will rely on REALTORS® to report problems they see to them.

## **Costs**

**Q: Will members have to pay for the service?**

A: No. Based on requests for information from two outside suppliers, who could provide the infrastructure and software for the three Modules, there would be one-time costs around \$150,000 with annual operating costs in \$250,000 range. Integration with CREA's technology infrastructure would be handled by staff at an estimated staff time cost of \$50,000 to \$75,000. This would deliver a basic data distribution facility, including basic marketing reports or analytics for any participating members. Additional internal costs would include training of boards, associations and members on the facility, as well as related legal costs for such things as third party contracts. Any broker, and salesperson with access to the facility, would not be charged for this service. It would be part of the technology services available to any member.

Future enhancements or access to premium type services at reduced rates (e.g. enhanced or comprehensive reports, seller reports, having a supplier host and manage member websites) could be made available if demand warranted.

**Q: Will CREA be charging fees for third parties to access the data feed and, if yes, will CREA share the proceeds with Boards and Associations?**

A: The pricing structure proposed is one where fees charged to third parties wanting to receive data from members would offset the costs of operating the facility. Third parties will be required to pay a set-up fee and a monthly fee for receiving this data. As an example 30 third parties paying a monthly access fee of \$1000 the gross income would be \$360,000. The intent would be to ensure that the combination of one time set up fees and ongoing monthly access fees offsets the set up and operational costs of the Data Distribution facility. At present CREA receives over \$60,000 in revenue from a number of national franchises for framing and web services.

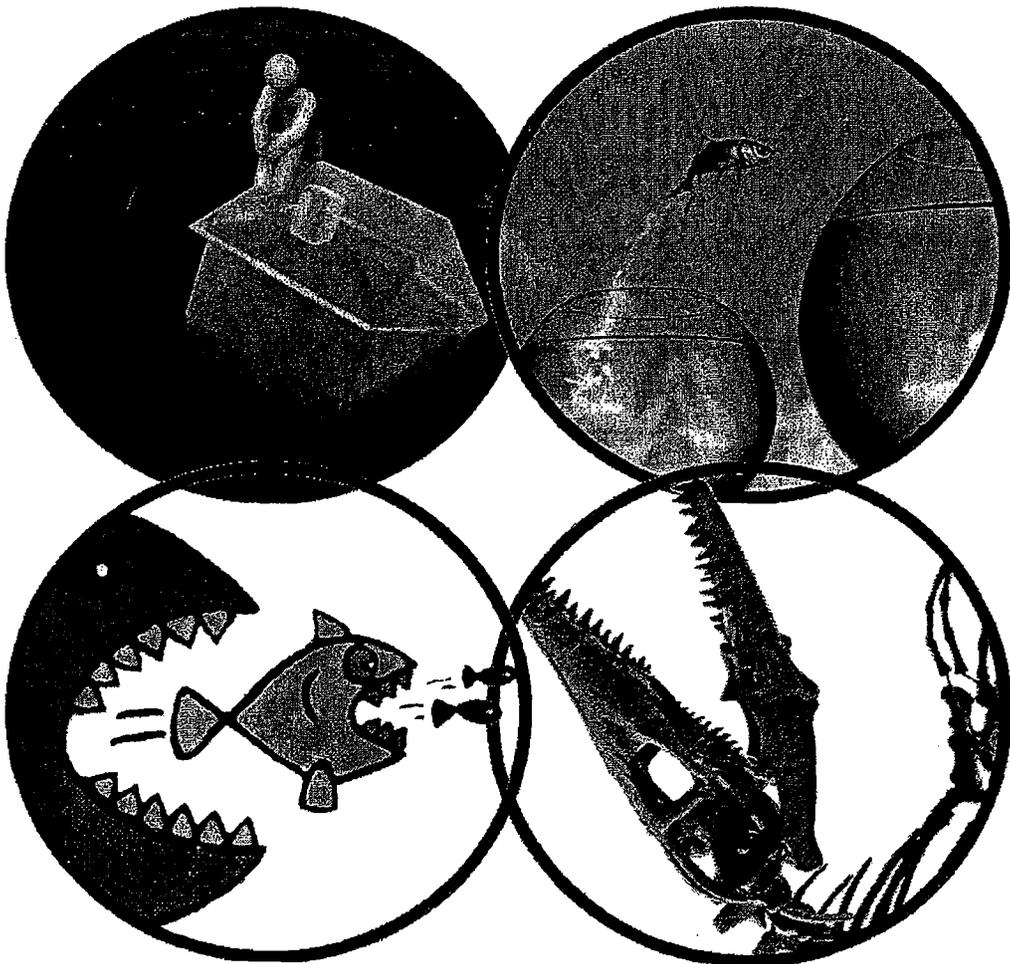
**Q: Boards are able to opt-out of the Private DDF Module and the Third Party Module if they provide a comparable facility to their members, but won't this end up with Boards paying for such a facility twice?**

A: The DDF offers unique components and additional services not presently available. For example there is no existing facility that provides a national pool, including the ability to participate in the franchisor pool. In addition, the DDF facility includes an analytic component to enable members to assess the effectiveness of their online marketing.

# EXHIBIT 22

**FUTURES PLANNING:**  
*FROM SCENARIO TO STRATEGY*

**Exploring Possible Futures for  
Organized Real Estate in Canada:  
Insights from Cross-Canada Dialogues**



**FUTURES PLANNING:**  
FROM SCENARIO TO STRATEGY

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## **FUTURES PLANNING:** *FROM SCENARIO TO STRATEGY*

### **Executive Summary**

#### **Futures Planning and Cross-Canada Dialogues**

CREA launched its Futures Planning initiative at Leadership Day 2011 – embarking on a collaborative journey to identify what the consumer wants in the next five to ten years, and how that will impact REALTORS® and organized real estate (ORE) in Canada. Over 400 leaders from ORE participated in this innovative scenario planning exercise with the aim to shape the future of real estate in the face of rapid change. This past summer and early fall, CREA shared this scenario planning experience with Boards and Associations across the country through local and regional sessions, hoping to hear from as many voices as possible and maintain the momentum of this important initiative.

The goals of these local and regional sessions were to have participants engage in strategic conversations about the future of ORE in a rapidly changing environment, explore plausible future scenarios, and consider what needs to be done to create the future that members want to achieve.

By the time the Futures cross-Canada road show came to an end in early October, input had been captured from over 900 participants. Every single piece of data from the completed worksheets from all sessions has been reviewed and the dataset as a whole has been analyzed to identify patterns, themes, and outliers. The following report is an exploration and synthesis of the insights shared by participants from Leadership Day through all subsequent local and regional sessions.

#### **Findings**

To start, the elements of a collective vision of an ideal future, which emerged from participants' commentary, are presented. According to this collective vision, ORE is flourishing in the year 2021. REALTORS® are perceived as valuable resources, trusted professionals, and the heart of real estate transactions. ORE's membership is committed, stable, diverse, and well versed on their value proposition. They have the most up-to-date and innovative technology with which to serve consumers. The governance structure of ORE has been streamlined and important decisions can be made quickly and efficiently. Throughout ORE, there is more communication, collaboration, cooperation, transparency, and trust.

From this discussion of the characteristics of an ideal future, we move to defining the current reality for ORE, as perceived by participants. To sum it up, ORE is behind the curve. REALTORS® are dealing with an increasingly competitive landscape. ORE is under the microscope of the Competition Bureau and the public. There is also a lot of conflict within the industry. There are concerns with excessive bureaucracy, too many filters, and inefficient and costly duplication of products and services. The

## **FUTURES PLANNING:** *FROM SCENARIO TO STRATEGY*

good news is that there is now recognition that things need to change. ORE is at a crossroads and it is time to make some important decisions about its future.

The evidence provided by participants across the country was, for the most part, very consistent and, for the purposes of this report, are broken down into external and internal drivers of (and impediments to) change. The external drivers of change include the changing consumer, their changing needs and expectations, and their adoption of a do-it-yourself (DIY) approach; the changing marketplace and technology, including the volatile global economy, competitive landscape and new business models, the rise of social media, mobile communications, and consumer technology, and the open data and self-service movements; and finally the impact of regulatory bodies, including the Competition Bureau.

The internal drivers and impediments to change are divided into three categories – REALTOR® issues, governance issues, and other industry-wise issues. REALTOR® issues include their value proposition, professionalism, and education. Governance issues include leadership, CREA's Futures Scenario Planning initiative, ORE's governance structure, and its rules and regulations. Finally, other industry-wide issues include bureaucratic turf protection, communication, Broker viability, and resistance to change. The evidence of these drivers of (and impediments to) change provided by participants is presented for each theme, followed by a description of the effects of these drivers on ORE where applicable, and the recommended actions that ORE should take in the face of these forces, with the ultimate goal of achieving an ideal future. A summary of suggestions for collective action can be found in Section 5 of this report.

### **Insights and Questions**

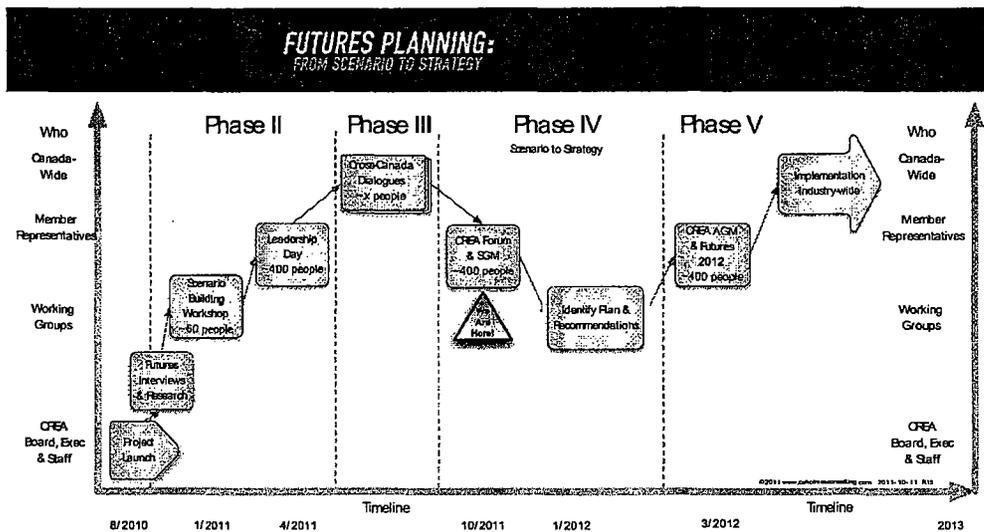
To conclude, an analysis of insights and questions is provided, which explores the implications of the findings. This section focuses on five key themes, including innovation and diversity, assumptions and blind spots, two views of REALTOR® value, the imperative for action, and tools for change agents.

# FUTURES PLANNING: FROM SCENARIO TO STRATEGY

## 1. Context

Before the *Creating Our Future* event at Leadership Day 2011 had even come to a close, requests were coming in fast and furious for ways to include more leaders and members in this powerful experience. *Exploring Possible Futures for Organized Real Estate (ORE) in Canada*, a fast-paced four-hour workshop and dialogue, was created in response. This program was made available in both official languages and offered at the local and regional level. From June through October 2011<sup>1</sup>, 14 sessions were held across the nation, engaging more than 500 leaders and members. The goal of these sessions was to have participants explore four possible scenarios for the future of ORE in Canada, discuss strategic implications for the industry, and provide valuable input with which to build upon the strategic visioning work launched by the CREA Board of Directors in August 2010.

Figure A: The Journey So Far



### 1. a. How We Prepared This Report

Input from Leadership Day and all subsequent local and regional Futures sessions across the country was captured from a grand total over 900 participants. Some participants shared their insights aloud and all participants completed a series of worksheets – one personal reflections form completed individually and two other worksheets completed in small groups. Facilitators and analysts reviewed the responses for patterns, themes, and outliers (responses that, while mentioned rarely, stood out as possibly important to consider). The report was written and reviewed by the team.

<sup>1</sup> See Appendix A for a list of these sessions, their dates and locations, and the number of participants.

# FUTURES PLANNING: FROM SCENARIO TO STRATEGY

## 1. b. Guide to Reading This Report

This report is descriptive and not prescriptive. It is a synthesis of the viewpoints of over 900 participants, all of whom showed up because they care deeply about the future of ORE in Canada. As you read, discovering things you *disagree* with is as important as discovering if the report is consistent with *your* current picture of the industry. Whether you agree or disagree, *stay curious*. Strive to see your industry from many *differing* points of view.

*"The future is already here – it's just not evenly distributed."*  
- William Gibson

In addition, please try to keep the following in mind while reading the report

### 1. b. i. The Focal Question

From the start, and at every point of discussion, we have returned to the original focal question for the Futures initiative. Based on initial research and interviews, the working team created this focal question as a touch point around which we could organize our exploration, keeping it grounded and relevant.

As you reflect on this document, refer back to the following focal question:

Leadership Day 2011  
CREATING OUR FUTURE:  
LEADERSHIP THROUGH COLLABORATION

**Focal Question:**  
**Given future consumer expectations...**

What is the role of the REALTOR® in 5 to 10 years?

What will the Implications be for organized Real Estate?

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## **FUTURES PLANNING:** *FROM SCENARIO TO STRATEGY*

The reasoning is:

- The consumer is the market REALTORS® serve.
- The REALTOR® is the primary contact with the customer / market. If consumer expectations change, so must the role of the REALTOR®.
- ORE serves the REALTOR®. If the role of the REALTOR® changes, so must ORE.
- Five to ten years is enough time to see significant change, but not so long as to be irrelevant to the stakeholders.

### 1. b. ii. Get to Know the Scenarios

The rich input gathered for this document comes from group conversation and personal reflections stimulated by four scenarios or possible futures for ORE in Canada. If you haven't done so, make a point of reading the full scenarios report<sup>2</sup> so you will maximize the value of *this* report.

Bear in mind that scenarios are a tool for making better strategic decisions today. They are not predictions. The test of a good set of scenarios is not whether we agree with everything in them. As fellow CREA members were crafting these scenarios, they were guided by specific criteria. The scenarios had to be:

- Plausible but not “probable.” Remember, reality is stranger than fiction!
- Relevant to key strategic issues.
- Divergent – they must be different from each other.
- Challenging to conventional wisdom.
- Compelling and memorable stories, so that they can travel widely.

---

<sup>2</sup> The full scenarios report is available for download on the *Creating Our Future* website (<http://futuresavenir.realtorlink.ca>). A brief summary of the four scenarios can also be found in Appendix C.



## **FUTURES PLANNING:** *FROM SCENARIO TO STRATEGY*

consultants than salespeople or marketers. As a group, they are considered to have high standards in ethics, education, and professionalism. There has been a change in the way REALTORS® are compensated.

There is a committed and stable membership base with representation from across generations, including Generations X and Y. The bar has been raised when it comes to becoming a licenced real estate agent in Canada. All REALTORS® are well versed on their value proposition. They benefit from the availability of high-quality continuing education and mentoring opportunities. Regulators have made improvements to the licencing process. ORE's rules and regulations have been simplified, making it easier for REALTORS® to do their jobs effectively.

REALTORS® have access to the most up-to-date and innovative technology with which to serve consumers. ORE has adopted a leadership role in the development of new technological tools, which are being developed and implemented proactively in partnership with external technology experts. REALTOR.ca is *the* go-to website for real estate in Canada. It is consumer-oriented, user-friendly, and highly interactive, with convenient add-on information, such as mapped points of interest (e.g. schools, transportation, and shopping). ORE is sharing its data and allowing open source development of new applications and tools. CREA's data distribution facility (DDF) is up and running. There are fewer MLS® Systems across the country.

The governance structure of ORE has been streamlined. The leadership at all levels is skilled, dynamic, and reflective of ORE's diverse membership. They have the ability to make decisions and implement them in a timely manner. There is far less bureaucracy and red tape. There have been amalgamations of Boards to reduce the duplication of services and costs to the membership. The remaining Boards boast highly qualified Executive Officers (EOs). There is an openness and consistency between Boards.

Throughout ORE, there is more collaboration, cooperation, transparency, trust, and a sharing of resources and services. Boards and Associations no longer suffer from bureaucratic turf protection. There is improved communication – less filtering of information by local Boards and direct communication between CREA and its membership.

This mosaic of an ideal future was contributed to by the participants of the Futures sessions from Nanaimo to Stanhope and all other stops in between. The next step in pursuing these aspirations is to locate the current reality and challenges facing ORE today – the starting point for the journey ahead.

## **FUTURES PLANNING:** *FROM SCENARIO TO STRATEGY*

### **3. Current Reality for ORE**

The following is a description of ORE's current reality, a compilation of accounts made by participants of Leadership Day and all other Futures sessions across the country.

ORE is five years behind the curve, struggling to adapt to the changes taking place and slowly playing catch-up to the new technology and business models employed by its competitors. ORE continues to be reactive rather than proactive, operating in a wait-and-see mode, with no short-term or long-term plans and no clear direction for the future. The good news is that there is now recognition that things need to change and discussions are taking place at Futures sessions and beyond. Those within ORE are beginning to realize that the typical consumer is not satisfied by ORE's services today and they are demanding new tools and ways of doing business. It is becoming clear that ORE has not taken enough advantage of recent technological advances and other competitors are creating the innovative products that consumers want.

ORE is in a defensive position and REALTORS® are dealing with an increasingly competitive landscape. ORE is under the microscope of the Competition Bureau and the public. REALTORS® are losing ground to new competitors. ORE as a group is perceived as a "gatekeeper" of information, protective of data and territorial at all levels, with a resistance to sharing even between Boards. The membership feels that the industry is over-regulated, there is an inconsistency of rules and regulations, and they are being held back.

There is a lot of conflict within the industry today. Some are questioning the current system perceived as being mired in bureaucracy. There are too many filters, too many territorial Boards, and some argue there are too many Boards period due to inefficient duplication of products and services. There is a troubling lack of confidence in ORE's leaders as well as a troubling amount of complacency and apathy within the membership. There is also widespread uncertainty, confusion, resistance to change, and fear of change and the unknown.

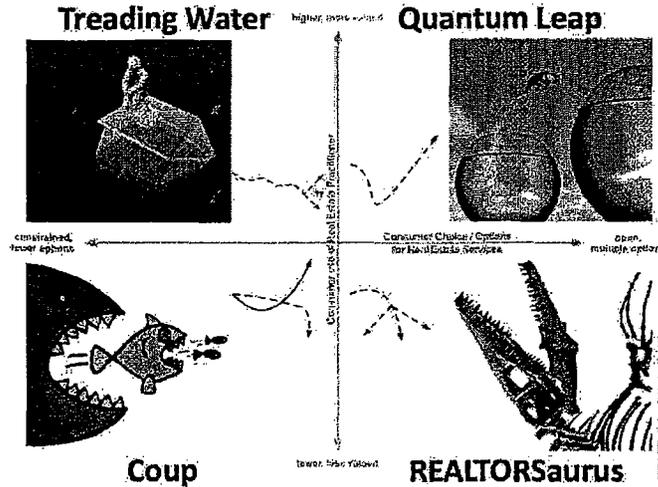
ORE is at a crossroads. Some members and leaders are standing still, some are in panic mode, some are trying to evolve, and some are running with change. There is a strong desire for ORE to unite, move forward together, and make decisions.

#### **3. a. Which Scenario?**

At each local and regional Futures session across Canada, delegates were asked to indicate where they believe ORE is located now on a large poster version of the scenario matrix, pictured below.

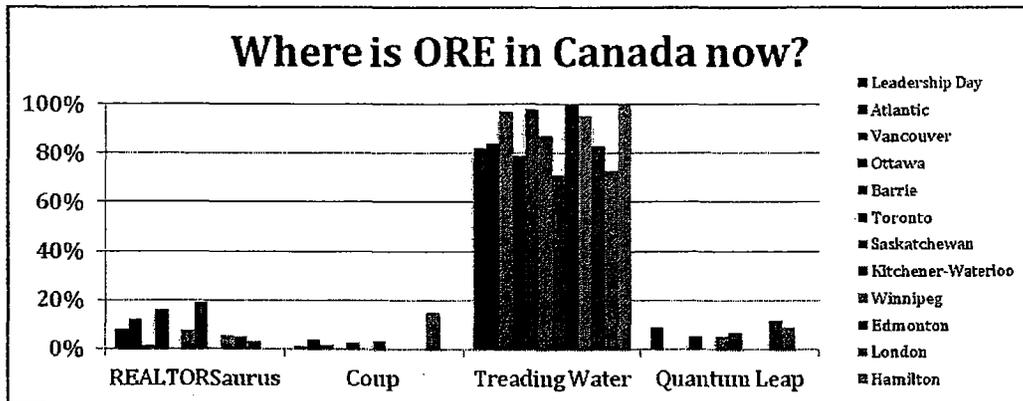
# FUTURES PLANNING: FROM SCENARIO TO STRATEGY

Figure C: Futures Scenario Matrix



The bar chart below illustrates that although the voting results varied across the sessions, a strong majority of participants expressed belief that **ORE is now in the Treading Water scenario**, reflective of constrained consumer choice with few options and higher more valued consumer use of real estate practitioners.

Figure D: Results of "Where Is ORE in Canada Now?" Straw Poll



These Futures scenarios – REALTORSaurus, Coup, Treading Water, and Quantum Leap – are not predictions. They are simply four of an infinite number of different plausible (but not probable) futures for ORE, based on differing drivers and factors. Although all four are divergent from each other and challenging to conventional wisdom, participants were able to identify a wealth of evidence that each scenario is in fact a possible outcome for ORE.

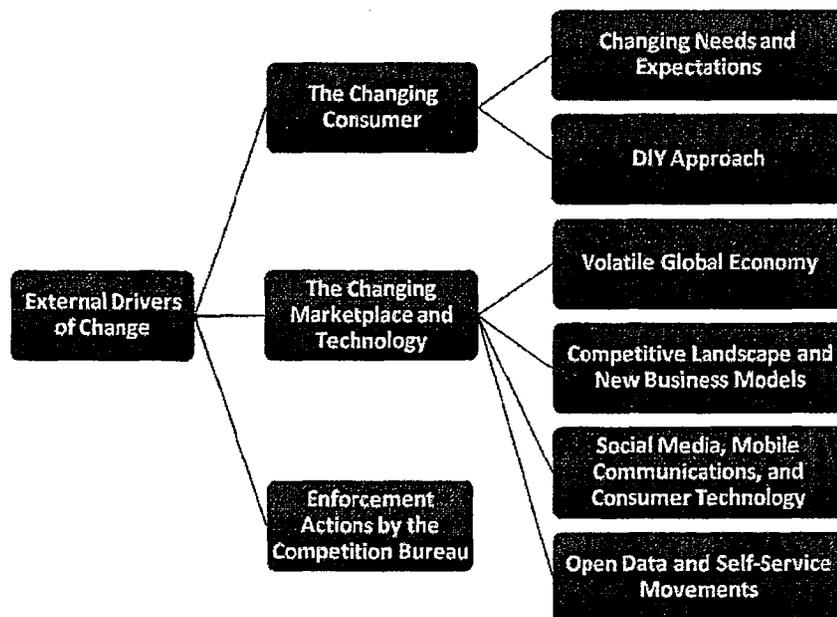
# FUTURES PLANNING: FROM SCENARIO TO STRATEGY

## 4. Drivers of and Impediments to Change

The evidence provided by participants across the country was, for the most part, very consistent and, for the purposes of this report, can be broken down into external and internal drivers of and impediments to change.

The external drivers of change, as shown below, include the changing consumer, their changing needs and expectations, and their adoption of a DIY approach; the changing marketplace and technology, including the volatile global economy, competitive landscape and new business models, the rise of social media, mobile communications, and consumer technology, and the open data and self-service movements; and the enforcement actions of the Competition Bureau.

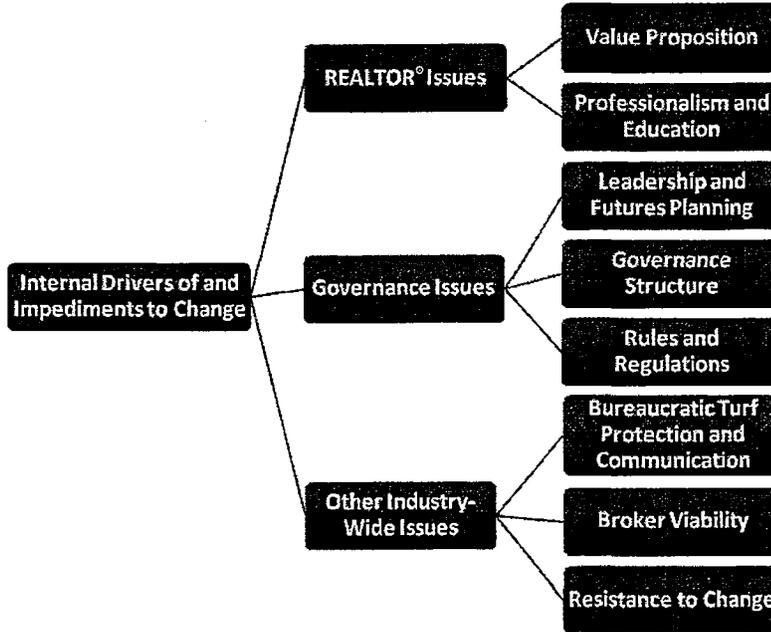
Figure E: External Drivers of Change



The internal drivers and impediments to change can be divided into three categories – REALTOR® issues, governance issues, and other industry-wise issues. REALTOR® issues include their value proposition, professionalism, and education. Governance issues include leadership, CREA’s Futures Scenario Planning initiative, ORE’s governance structure, and its rules and regulations. Finally, other industry-wide issues include bureaucratic turf protection, communication, Broker viability, and resistance to change.

# FUTURES PLANNING: FROM SCENARIO TO STRATEGY

Figure F: Internal Drivers of and Impediments to Change



## 4. a. Evidence of External Drivers of Change

Key drivers of change located outside of ORE, which emerged from participants' completed Futures worksheets, include the changing consumer, the changing marketplace, changing technology, and challenges made to ORE by the Competition Bureau.

### 4. a. i. The Changing Consumer

The consumer represents the market that REALTORS® serve. The following is a description of "today's consumer," a compilation of accounts made by participants of Leadership Day and all subsequent Futures sessions across Canada.

Consumers have changed and continue to change at a rapid pace. They are pursuing and driving change in the real estate industry. They are demanding more of ORE – new ways of doing business, more choices, more flexibility, transparency, communication, and more information quicker than ever before. They want

*"The dynamic of change is set in motion by the consumer. Step with it or get out of the way."*  
- Rod Barron, Century 21 Today Realty Ltd., Hamilton Session

## **FUTURES PLANNING:** *FROM SCENARIO TO STRATEGY*

it all and they want it now. They want easy access to information and want to feel in control over the process.

Participants describe today's consumer as more informed, more demanding, sophisticated, advanced, feeling empowered, but also restless and hungry for more real estate knowledge. They are concerned with their lifestyles. They do not fear debt and have student loans to pay off. They switch jobs numerous times throughout their careers. They work to live rather than live to work. That said, there were a few voices that cautioned that consumers are not all alike and that there are different types with different needs and expectations. The younger generation in particular was said to be more tech-savvy and some participants pointed out that they want a different type of relationship with REALTORS® than older generations – more specifically, less talk. A few participants also mentioned that the increasing multiculturalism of real estate's consumer base should be acknowledged and catered to.

Participants perceive that consumer loyalty to and trust of REALTORS® has decreased. Consumers in general are questioning REALTORS®' and ORE's value – they do not appreciate that their value goes beyond the data and can be found in REALTORS®' skills and expertise, such as negotiation skills and interpretation of the data. Some participants are confident that seasoned consumers, who have been through a number of real estate transactions, are in fact loyal to REALTORS® and that it is the younger generations now entering the market that are the concern. There is widespread apprehension that consumers will leave ORE behind and find alternative sources, as they have in the travel business. Consumers are exploring do-it-yourself (DIY) options, alternative business models, and low-cost marketing sites. Several participants argued that some consumers are confident in their abilities to buy and sell on their own and do not see the need for REALTORS®. It was also noted that there is a lack of awareness of ORE amongst consumers.

Participants noted that commission has become a touchy subject for consumers. They are not convinced that they are getting value for their money. They are putting pressure on REALTORS® to lower their professional fees and commission, in part because they are able to collect information on their own and want to pick and choose from a menu of services from REALTORS®. They want the best deal. They want to save money, get more for less and the most bang for their buck, so to speak.

When they work with REALTORS®, consumers expect them to be highly knowledgeable and skilled professionals. They want REALTORS® to be adaptable and to act as their consultants or facilitators. They want a simplified process for buying and selling a home. They also want accurate, immediate, and open access to information, tailored to their specifications. They want to know the property features, history, and neighbourhood information, with no exaggeration. They encounter a "glacier of information" and many

# FUTURES PLANNING: FROM SCENARIO TO STRATEGY

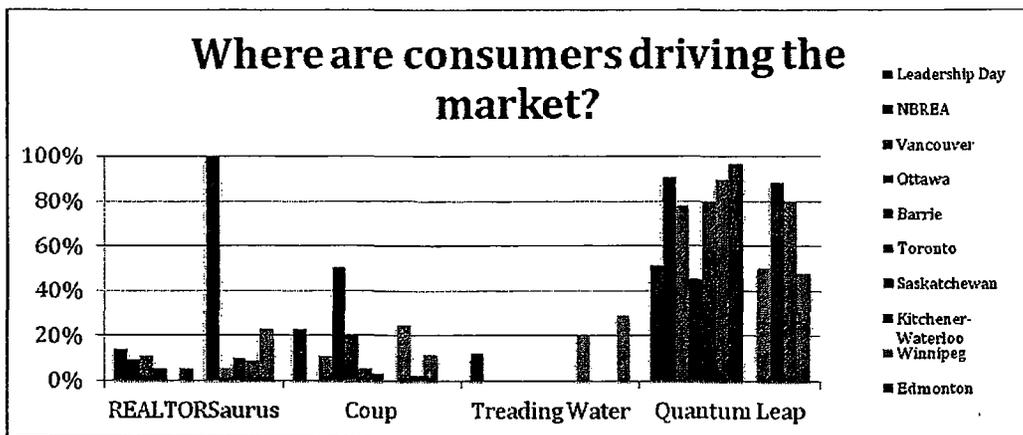
are still looking for guidance and interpretation of that information from ORE. They also want to be entertained and to have an enjoyable home buying or selling experience.

As mentioned above, the consumer is more informed about real estate today and this is thanks primarily to their use of technology. Consumers as a group are becoming more tech-savvy, more mobile, engaged in social media, and using the Internet as their first point of contact for real estate. They already know about the market before they call a REALTOR® and may even have more data than the agent. Consumers are frustrated with perceived shortcomings of REALTOR.ca, want their listings advertised on multiple sites, and are heading to a variety of websites to get the data and services they desire. They want innovative technology products, slick websites, and are driving the development of new technologies by third parties who want to satisfy their desires.

### *The Effects of the Changing Consumer on ORE*

At each Futures session, delegates were asked to indicate whether they believe consumers are driving the market toward the REALTORSaurus, Coup, Treading Water, or Quantum Leap scenario. The bar chart below illustrates that an overwhelming number of participants expressed belief that **consumers are driving the market to the Quantum Leap scenario**, reflective of open consumer choice with multiple options and higher more valued consumer use of real estate practitioners. That said, the REALTORSaurus and Coup scenarios also received a significant number of votes across the sessions and a few participants selected Treading Water as well. It is interesting to note as well that there was consensus among all 38 participants at the Kitchener-Waterloo session that ORE is located in the Treading Water scenario and that consumers are driving the market toward the REALTORSaurus scenario.

Figure G: Results of "Where Are Consumers Driving the Market?" Straw Poll



## **FUTURES PLANNING:** *FROM SCENARIO TO STRATEGY*

Futures participants expressed the need for REALTORS® and ORE as a whole to listen to the consumer, learn about their changing needs, wants, attitudes, and expectations, and respond accordingly. Participants referred to the need to adapt to the changing needs and demands of the consumer, with many making statements like, “if changes aren’t made, the public will find other ways to purchase real estate without a REALTOR®.” It was also suggested that ORE needs to find new ways to interact with the public and be clear about the services that ORE and REALTORS® provide. A number of participants recommended changing the role of REALTORS®, promoting themselves more as trusted advisors, facilitators, and consultants than salespeople or marketers.

Participants raised concern that ORE needs to prove the value REALTORS® bring to real estate transactions while ensuring that the information and services provided *are* in fact valuable to consumers. It is interesting to note that while most participants seemed to be saying that consumers (and REALTORS®) need to be educated about the value of a REALTOR®, a minority questioned whether or not the services of REALTORS® are truly worth the commission or fees they charge consumers.

Another key recommendation made by many Futures participants was for ORE and REALTORS® to serve consumers with the technological tools they are demanding, which will be discussed further in the following section.

#### **4. a. ii. The Changing Marketplace and Technology**

##### *Volatile Global Economy*

The marketplace is the realm in which real estate transactions take place. A key factor that influences the real estate market is the health of the economy. There is widespread concern over the current volatility of the global economy and a few Futures participants acknowledged that this has had an effect on Canadian real estate. As one participant wrote, the “economy is frightening to everyone.” Another cautioned that the “financial crisis is a threat” to the industry. Others identified that China has the second highest gross domestic product and has a growing presence as homebuyers with “deep pockets” in the Canadian real estate market. Another participant noted that American investors are also seeking a “safe haven for their investments.”

##### *Competitive Landscape and New Business Models*

It is clear that ORE is faced today with an increasingly competitive landscape. As one participant put it, ORE is no longer “the only game in town.” New entrants to the market are introducing new ideas and new ways of doing business – responding to consumer dissatisfaction and demand for change. A number of participants noted that many of the new and emerging business models are originating from the United States, with some

## **FUTURES PLANNING:** *FROM SCENARIO TO STRATEGY*

*"The marketplace is changing and if we don't adapt, it's possible we could be pushed out by a major player."*

- Jeff Bright, Coldwell Banker Tri-Tel Realty,  
Vancouver Session

*"We're losing ground to other providers who are giving consumers what they want."*

- Anonymous, Hamilton Session

suggesting that most successful American trends "come to Canada eventually" and therefore it is important to keep an eye on developments south of the border. An example given of such a model is USAMLS.com, a privately owned company boasting "a free national open access multiple listing service," which one participant noted is

welcoming members from the National Association of REALTORS®. Many participants noted that such private companies are not held back by membership votes and the "red tape" found in ORE.

### *Social Media, Mobile Communications, and Consumer Technology*

Changing technology, as a driver of change, is closely tied to both the changing consumer and the changing marketplace. The majority of participants identified that technology is changing at an amazing rate, with advances occurring daily. The consumer's needs and expectations are changing due in part to these advances in technology. New tools are emerging at a rapid pace – for use by consumers, ORE, as well as competitors in the marketplace. Due to the large size of the consumer market, technology companies tend to invest more heavily in innovation to service this market than they do to serve businesses and organizations. As one participant wrote, there is "too much money to be made if you [develop] the next working system."

The rise of social media, mobile communications, and the increasing sophistication of digital consumer technology have had a great effect on the real estate industry in recent years. The majority of participants pointed to the emergence of social media sites, such as Facebook, Twitter, LinkedIn, YouTube, and various blog publishing sites, and the opportunities they provide as personal broadcast platforms for consumers. These tools enable consumers to engage in both interpersonal and mass communication. Three groups of participants commented that social media has raised the importance of individuals' profiles and made personal branding become a priority. As the lines between individuals' personal and professional lives become increasingly blurred, one of the results has been "a return on investment on establishing relationships," as one group pointed out.

## **FUTURES PLANNING:** *FROM SCENARIO TO STRATEGY*

### *Open Data and Self-Service Movements*

The open data movement reflects the idea that some data should be accessible and usable by everyone without restriction. Participants noted that there is open data out there relevant to the real estate industry, including information on neighbourhoods, transportation, schools, shopping, trails, churches, crime rates, etc., which can be layered to create sophisticated and interactive maps.

Another current trend related to technology is self-service. Many participants acknowledged that the consumer today is empowered by the convenience of the Internet and greater access to information, goods, and services online. Consumers are helping themselves and others with contributions to review sites – websites on which consumers post reviews of businesses, products, and services (two popular examples being TripAdvisor.com and Yelp.com). Both positive and negative feedback is spread by virtual word of mouth using these sites in addition to social media, for reference and consideration by other consumers when making decisions about how to spend their money and time.

Mobile technology has advanced greatly with the introduction of GPS-enabled smart phones (e.g. iPhone, Android, BlackBerry, etc.) and tablets (e.g. iPad, Playbook, etc.). These two tools are essentially portable computers, which provide mobile access to the Internet and an endless array of applications (apps) available for download – many of which use location-based data.

### *The Effects of the Changing Marketplace and Technology on ORE*

These new technologies have enabled the emergence of new cost-effective (and, in some cases, free) advertising and marketing tools. Communities for posting local online classified advertisements have emerged, exemplified by Craigslist and Kijiji, both of which are being used by some (both within and external to ORE) to advertise homes for sale and rent. David Eaves pointed out on Leadership Day that Craigslist, a company with approximately 30 employees, has made traditional newspaper classifieds sections obsolete. This example is reflective of an overall trend – as a result of new cutting-edge promotional tools on the market, “old marketing methods [are] dying,” as one participant wrote.

The emergence of new real estate data sites, in addition to for sale by owner (FSBO) real estate marketing sites here in Canada are a major development in the industry. The majority of participants acknowledged the rise of these new competitors and argued that they are employing technology better than ORE and REALTOR.ca. Examples of their offerings include more intuitive layering information, using available open data, and neighbourhood search features. Some pointed out that they have an advantage over

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ORE in that they are not constrained by ORE's rules, regulations, and membership votes. Examples of these new competitors named by participants included ComFree, DuProprio.com, HomeFinder.ca, Point2, PropertyGuys.com, Trulia, Zillow, ZipRealty, and Zoocasa. Participants pointed out that some of these companies are requesting to use ORE's data while others have scraped ORE's data and presented it on their sites. A number of participants voiced concern about other potential entrants to the market – established businesses with deep pockets, such as Google, Yahoo!, Apple, Costco, Bell, and big banks including CIBC and Royal Bank, rumoured to be considering an expansion into real estate.

Participants noted that ORE is always a step behind when it comes to technology. Participants expressed a desire for ORE to become leaders in technology instead of continuing to play catch-up, partnering with IT experts (a significant number recommending Google in particular) for the development of new innovative tools, and providing more technological education for REALTORS®. Outsourcing was a frequent recommendation – many participants argued ORE should stick to doing what they do best instead of trying to reinvent the wheel when there are technology experts available for hire outside of the industry.

Although CREA's development of the REALTOR.ca app for smart phones was acknowledged by one group of participants as evidence of moving toward a "Quantum Leap" scenario, numerous participants noted that REALTORS® want ORE to develop more mobile apps to help them do their jobs and serve consumers. Many participants also expressed a desire for ORE to build an online rating service, where consumers can post reviews about their REALTORS®, pointing to the Houston Association of REALTORS®' Client Experience Rating Program as an example of an existing service.

Participants noted that there is a divide between those individuals in the industry who are adapting to technological advances and those who are not. Some estimated that only 20% of REALTORS® are taking advantage of new technologies. Examples of the embrace of technology by some include the increasing number of partnerships between seasoned agents and less experienced but tech-savvy agents; the use of a variety of social media sites; some larger Boards sharing technological tools with smaller Boards; and the creation of virtual office websites (VOWs) such as ViewPoint.ca. In addition, some innovative REALTORS® and participants are pushing for more paperless work environments.

*"Our technology is becoming outdated and consumers know it."*

- Nicole Bowman,  
Woodstock-Ingersoll  
Real Estate Board,  
London Session

*"There is an immediate need to open our information and partner with a leading-edge technology provider."*

- Kim Connell, Exit Realty  
Town & Country,  
Atlantic Region Session

## **FUTURES PLANNING:** *FROM SCENARIO TO STRATEGY*

An important recurring suggestion was to make vast improvements to REALTOR.ca, making it the best online portal for real estate and a one-stop shop for consumers and REALTORS®. Participants see a need for REALTOR.ca to offer more information and some want to see all available FSBOs included on the site. Participants also expressed concern that there are rumours that franchisors in Canada are having discussions about banding together and creating their own portal – an alternative to REALTOR.ca.

Participants as a group seemed to be optimistic about the implementation of CREA's DDF, regardless of the fact that there was resistance expressed by some at the 2011 Annual General Meeting. The majority of participants argued that DDF is a step in the right direction for ORE. Participants also noted that clients want their properties advertised on multiple sites, other players in the marketplace want ORE's data and will pay for it, and third parties such as lawyers, mortgage brokers, and web companies want to frame ORE's listings with their branding. Some pointed out that there is an opportunity for ORE to profit from its data in this regard. (It should be noted that there were a number of participants that suggested that ORE re-examine its not-for-profit model, consider running Boards as businesses and making REALTOR.ca a revenue-generating vehicle.)

Finally, participants noted that there is a negative perception held by many that ORE acts as a "gatekeeper" to data. The majority of participants see this as holding the industry back and expressed a desire for ORE to let go of this mentality. Many commented that the value for consumers is not found in the data, but rather in REALTORS®' abilities to interpret the data, to build relationships with clients, and provide guidance throughout real estate transactions. While some participants expressed a desire for ORE to provide an open platform for data sharing, there was still a minority that expressed concern with "giving our data away."

#### **4. a. iii. Enforcement Actions by the Competition Bureau**

Many participants referred to the challenges to ORE made by the Competition Bureau. One group of participants commented that the result of the agreement reached between the Bureau and CREA was the creation of a "different listing environment" due to increased awareness of the variety of business models. Another consequence of these challenges noted by participants was the increased and negative media attention on ORE, and MLS® Systems in particular.

*"I don't mind various business models, but I do mind the Competition Bureau... bringing our profession to its knees."*

- Anonymous Participant, Kitchener-Waterloo Session

## **FUTURES PLANNING:** *FROM SCENARIO TO STRATEGY*

### **4. b. Evidence of Internal Drivers of and Impediments to Change**

Futures participants across Canada identified both key drivers of and impediments to change within ORE. These themes included REALTOR® issues, governance issues, and other industry-wide issues.

#### **4. b. i. REALTOR® Issues**

##### *Value Proposition*

The word “value” emerged as a significant keyword in the worksheets completed at all Futures sessions and has already popped up in this report a number of times. To recap, participants are concerned that consumers are questioning REALTORS®’ value proposition and are focused on the data as opposed to other valuable skills offered such as negotiation, interpretation of the data, guidance for consumers throughout real estate transactions, contributions to the community, and advocacy with the government. Consumers and even some participants themselves are not convinced that consumers are getting value for their money and question REALTORS®’ commission or fees. Many participants expressed belief that consumers and REALTORS® alike need to be educated on REALTORS®’ and ORE’s value proposition. One participant described the value that REALTORS® provide in real estate transactions today as “eroding.”

*“We need to clearly elucidate our value proposition to the public. It isn’t data. It isn’t filling in forms correctly or finding houses. Our value is much greater.”*

- Rob Angus, Address Realty Limited,  
Nanaimo Session

*“If we wish to remain relevant, we need to alter our real estate worldview, establish a new value proposition, or just fade away.”*

- Cynthia Black, Keller Williams Realty,  
Atlantic Region Session

*“We have to improve our professionalism.”*

- Rich Steinmann, RE/MAX Twin  
City Realty Inc., Kitchener-  
Waterloo Session

*“Drum the message to establish high professionalism within ORE – the membership must get the message to survive.”*

- Stuart Braund, IPRO Realty Ltd.,  
Central Ontario Session

##### *Professionalism and Education*

Participants expressed concern that consumers generally do not respect real estate agents as professionals. Interestingly, a few participants themselves expressed disdain for some of their contemporaries, who they seemed to perceive as being less committed to the industry. A significant number of participants proposed that the standards for the industry should be raised, which further insinuates that they believe some of their fellow agents do not have sufficient skill

## **FUTURES PLANNING:** *FROM SCENARIO TO STRATEGY*

levels, knowledge bases, or commitment levels. The majority of participants seemed to agree that the industry's levels of professionalism and professional courtesy need to be elevated.

Many recommendations for elevating professionalism related to education, including higher educational standards, with multiple recommendations of university and/or college-level programs, and more continuing education and professional development opportunities, potentially online and specifically relating to technology and social media use. Some participants think that continuing education should be mandatory and involve testing while others suggest providing it to those who are willing to take part. Participants also mentioned that any continuing education should be cost-effective and accessible for all members.

Mentorship was another recurring recommendation made to advance professionalism. Suggestions included formal two-year apprenticeship programs as well as partnerships between agents of different generations. Interestingly, participants pointed out that this latter phenomenon has already taken place in the industry as such partnerships are beneficial for both parties – the young entrants learn from the experience of the more established agents and young entrants can teach experienced agents how to incorporate the use of new technologies into their business.

It is clear that many participants also see an opportunity to improve the licencing process for real estate agents although there was no consensus on the right approach to take. Recommendations included the implementation of a single licence, similar to Quebec's model; graduated or step licencing; a national portable licence; a national standard with provincial components on a national qualifying exam; and separate licences for residential and commercial real estate. One group noted that there would be consequences to the implementation of single-level licencing, specifying that this approach would "kill Brokerages."

When asked what actions they would take after the conclusion of the Futures session, many participants committed to self-improvement, including furthering their knowledge of technology and adopting new technological tools, becoming more informed and better able to articulate their value to clients, pursuing opportunities to position themselves "ahead of the curve," re-evaluating their business models, focusing on professional development, embracing change, and taking risks. Participants expressed intent to communicate and collaborate, support CREA in restructuring, and work with fellow local Boards to share and amalgamate. Numerous participants expressed the desire to share what they learned at the Futures sessions with their colleagues and others at the local level of ORE, to encourage dialogue, get feedback, and then share that feedback with CREA.

## **FUTURES PLANNING:** *FROM SCENARIO TO STRATEGY*

### 4. b. ii. Governance Issues

#### *Leadership and Futures Planning*

Many participants had something to say on the topic of leadership. It seemed that most participants agreed that it is time for the membership to trust and empower its leadership and for the leadership to lead, make tough and timely decisions, and enact change in ORE. Some were critical of the existing leadership in ORE, describing them as weak, inadequate, and spokespeople not decision-makers. One participant criticized the leadership for being self-indulgent and extravagant. This segment of participants expressed desire for the leadership to become progressive, open, skilled, fearless, transparent, and visionary. Some recommended that ORE engage leaders from outside the membership or even the industry.

*"We can't ignore the recommendations that come out of Futures, change is necessary."*

- Beth Crosbie, The Canadian Real Estate Association, Atlantic Region Session

*"Make sure we're not sitting here next year discussing the same issue."*

- Dorothy Woodd, Exit Realty On the Rock, Atlantic Region Session

*"Between the Futures session in April and today, the messages are the same – that means we need to act."*

- Lynette Keyowski, Association of Regina REALTORS®, Saskatchewan Session

*"Can things change when far too many "leaders" are protecting their empires?"*

- Anonymous Participant, Edmonton Session

*"Leadership at CREA is finally aware that the course it has been on has to change and be more nimble."*

- Tamer Fahmi, Hearth & Home Realty Inc., Hamilton Session

On the other hand, some participants were supportive of the existing leadership team(s), arguing that they are more approachable and less arrogant about the need to move forward. This segment of participants argued that these elected leaders need to be given more decision-making power and trusted to make the right decisions.

The overwhelming majority of participants seemed to feel that, with its Futures Planning initiative, CREA's leadership is steering ORE in the right direction, presenting the sessions as evidence that a "Quantum Leap" is a possible future for ORE. Some participants, mostly from the first few sessions, encouraged having even more Futures planning sessions and sharing it with as much of the membership as possible across the country. As the summer went on, however, there were a number of participants that expressed frustration with all "the talk" and the length of the Futures process, with the most such comments from the Nanaimo session in particular. The majority of participants expressed an appreciation for the fact that everyone at the

## **FUTURES PLANNING:** FROM SCENARIO TO STRATEGY

Futures sessions seemed to be on the same page about the need for change in ORE, but cautioned that the resulting recommendations cannot be ignored.

It should also be noted that there was a minority of participants that expressed frustration with the demographics of the delegates at these Futures sessions – suggesting that younger people and more salespeople should have been involved. There were also two participants – one from the Winnipeg session and a second from the Hamilton session – that expressed scepticism that the session’s conversations were leading to “predetermined” outcomes and conclusions. One of these participants also expressed frustration that industry-specific insight was not provided, arguing, “we are not the Yellow Pages.”

### *Governance Structure*

Many participants indicated they would like to see a national governance review take place, covering all levels of ORE. Words used by participants to describe ORE’s governance structure included poor, unwieldy, cumbersome, slow moving, inefficient, top-heavy, bulky, expensive, reactive rather than proactive, excessively bureaucratic, difficult to change, with too many levels and layers, too many fees, too many Boards, and too many committees. Many participants noted that ORE is slow moving because its governance structure makes it hard to respond quickly and that members are unhappy with this slow response to change.

*“Our current governance model does not allow for quick decisions or implementation.”*

- Anonymous, London Session

*“Too many layers of bureaucracy are freezing us in a state of inaction and, in the ensuing battle with the competition, we are losing the war.”*

- Marguerite Lai, Sutton Group Seafair Realty, Vancouver Session

Many participants noted that there is duplication of products and services provided by Boards and Associations and it follows that an overwhelming number recommended amalgamating Boards to increase efficiency. Numerous participants pointed to Nova Scotia’s integration of local Boards as an example of what can be done “to overhaul and modernize.” Some recommended making a choice between Boards and Brokerages, some recommended merging smaller Boards, while others recommended creating province-wide Boards.

### *Rules and Regulations*

Another governance issue that participants brought up was the need to change ORE’s rules and regulations. Participants described ORE’s rules and regulations as antiquated,

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out-dated, red tape, and holding ORE back. Participants recommended taking down “the wall” of rules and regulations. In its place, they want standardization and simplification. A number of participants want to move to one set of rules regarding MLS® Systems and fewer MLS® Systems across the country altogether. A few participants also recommended changing the decision-making process, arguing that waiting to have votes made by over 400 people in one room is not working.

### 4. b. iii. Other Industry-wide Issues

*“The time for protectionism is over. We need to start restructuring now!”*

- Wendy Webb, Royal LePage Lakes of Muskoka Realty, Barrie Session

*“Be aware of turf protection and accept it isn't productive to achieve a better future.”*

- Ian Mason, Victoria Real Estate Board, Nanaimo Session

#### *Bureaucratic Turf Protection and Communication*

Many participants pointed out that ORE suffers from bureaucratic turf protection, infighting, and barriers between Boards and Associations. Participants suggested breaking down the barriers between Boards, pointing to the success of Project Connect in Ontario. A strong majority of participants wrote that they want to see more collaboration throughout ORE and the elimination of

bureaucratic turf protection at all levels.

Communication (or lack thereof) within ORE was also a recurring theme. Participants see a need to improve communication at all levels of ORE – a move toward two-way, open, and timely communication. As one participant put it, there’s a need for “faster communication from the top to the bottom and back.” Some argued that CREA’s communications protocol should be revised to allow for direct communication between CREA and its members and less filtering by local Boards.

#### *Broker Viability*

Concern about Brokerages was raised numerous times throughout the Futures sessions – sentiments included that there is a lack of loyalty to Brokerages, they are suffering, they aren’t viable, and they may become obsolete. As mentioned above, some do not see a need for both Boards and Brokerages. Some noted that mergers are taking place and resulting in larger Brokerages and situations where salespeople are harder to manage. One group argued that “many REALTORS® [are] unhappy with their Brokers” and

*“Lots of discount Brokerages are professional, ethical members of ORE yet they all seem to be lumped together as not worthy.”*

- Angela Asadoorian, Royal LePage Crown Realty Services, Hamilton Session

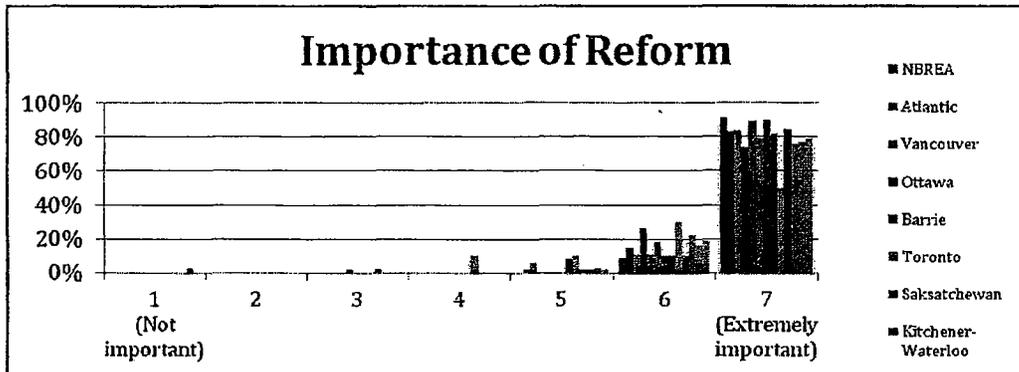
# FUTURES PLANNING: FROM SCENARIO TO STRATEGY

question what they get in return for the high fees they pay. Participants also voiced concern with Brokers themselves – some arguably do not have the necessary knowledge to provide the required assistance to their salespeople – and suggested that there is less need for them at the office level. This is reflected by the rise in the number of home office plans. Many participants recommend that Brokerages should provide a greater scope of services and consider serving niche markets.

### Resistance to Change

Although an overwhelming majority of Futures participants from all sessions across the country indicated they believe that it is “extremely important” that we change the way we do things in ORE in Canada, as illustrated in the bar chart below, participants noted that resistance to change is inherent in the structure of ORE and prevalent within the membership.

Figure H: Results from Question 2 of the Personal Reflections Worksheet



Participants argued that ORE in general is reactive rather than proactive and is resistant to change. ORE is described by participants as living in the past, resistant to bold moves, and self-limiting. Participants noted that real estate companies are having trouble surviving due to unresponsiveness to the change taking place around them. One group of participants blamed lack of change in ORE on financial reasons, with another group arguing that ORE is too reliant on the size of its membership.

*“If we resist change, our future is bleak.”*  
- Lorne Weiss, Century 21 Bachman & Assoc.,  
Winnipeg Session

*“We need to be leaders, not always behind the eight ball.”*  
- Deborah Murchie, Regal Realty Inc., NBREA  
Session

As mentioned above, upon conclusion of their Futures sessions, many participants committed to self-improvement and intent to support and promote change at the local level. It is interesting to note that the

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facilitator of the Vancouver session noted that that particular group was quick to find reasons that they couldn't do anything at their level and feel powerless, pointing to others who would have to be responsible for initiating change.

When it comes to resistance within the membership, some participants pointed to the aging population of those in the industry as the source of the problem. One group of participants noted that the largest age demographic (which was perceived to be over the age of 50) wants to maintain the status quo. Some participants noted that there are "REALTORSaurus" all around them, complacent once they reach a certain level of success, a reluctance to work with clients' schedules in a timely fashion, resistant to change in the industry, with a questionable ability to adapt.

When it comes to change, it is worth noting that there were a few participants that expressed extreme opinions on both ends of the spectrum – some suggested that ORE "blow up the system," "scrap it all and start again" while others cautioned not to "change just for the sake of change" and that ORE should "embrace change [but] not throw the baby out with the bath water."

## **FUTURES PLANNING:** *FROM SCENARIO TO STRATEGY*

### **5. Summary of Suggestions for Collective Action**

From Leadership Day through the local and regional Futures sessions, participants were asked the following question, in groups: *What are two significant actions, to shape the future of ORE, that we can only do together and cannot do alone?* They were also asked for ideas around a Collaborative Innovation Lab project, which is designed to help groups across a “system” tackle issues too big or too entrenched for any single organization to improve. In total, there were more than 750 responses ranging from phrases like: “outsource REALTOR.ca” to more detailed recommendations. The top categories and themes are listed below, with the number of responses in that category (in parentheses).

#### **(182) Technology / MLS® / REALTOR.ca**

- Technology – open data, partner with external experts.
- MLS® themes included creating one system, opening the data to others and using outside expertise to develop. A counterpoint was ownership of the data, internally, at the provincial level.
- REALTOR.ca – the comments trended to “overhaul,” “update,” and “outsource.”

#### **(110) Governance**

- Restructure / streamline.
- Decision-making process – speed it up.

#### **(67) Leadership**

- Take action.
- Authority / support to make tough decisions.
- Involve young REALTORS®.

#### **(55) Boards / Associations**

- Restructure.
- Reduce the number of Boards.
- Eliminate duplication.

#### **(55) Education**

- Create / increase requirements / standards for entry into industry.
- Educate consumers and REALTORS® on REALTOR® value.
- Share resources.

#### **(44) Communication**

- Involve membership.
- Open to all members.

#### **(29) REALTOR® Value**

- This “slices” across a number of categories including the value proposition for REALTOR®, education about value to consumer and REALTOR®, and using REALTOR.ca to leverage and increase our professionalism to prove / justify / increase our perceived value.

#### **(23) Professionalism**

- Raise the level of professionalism.

#### **(27) Change messages**

- Messages to leaders to take wise action despite industry inertia

#### **(19) Resources**

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- Outsource vs. make.
- Use of industry experts.

### (13) Consumer / Public

- Research, find out what they want.

## 6. Insights and Questions

*Analysis by Gary Ralston, CE Holmes Consulting Inc.*

In this section, we'll step back from the findings, themselves, to explore the implications of the findings. We will focus on five key themes:

- Innovation and Diversity;
- Assumptions and Blind Spots;
- Two Views of REALTOR® Value;
- The Imperative for Action; and
- Tools for Change Agents.

### 6. a. Innovation and Diversity

The good news: We're all on the same page! *(Now the bad news: We're all on the same page...)*

Innovation is fuelled by diversity. Some participants called for people with greater diversity in age, culture, and industry background to be focused as a group on reinventing the business of real estate. This is great, because diversity – of thought, gender, culture, age, orientation, belief, industry experience – is a key success factor for groups solving tough problems and inventing new ways to do business. Even better is to involve all your stakeholders – your customers, former customers, suppliers, competitors, regulators, etc. – in reinventing your offering. *This is called: Getting the whole system in the room.*

**Key Question:** If you see things pretty much as everyone else in the meeting, are all the people who will help you reinvent your business *at the same meeting?*

**Challenge:** How will you bring enough diversity into the room, and into the conversation, to actually change the system you are in, to repeatedly and reliably innovate a new future?

### 6. b. Assumptions Create Blind Spots

*Mental maps* are belief systems and a concept with which we can understand how our minds make sense of the world. We don't want to figure *everything* out all the time, so when we figure something out, we build an *assumption* as a kind of mental shortcut. It also helps us feel comfortable, as we gain a sense of comfort in knowing how it goes.

## FUTURES PLANNING: FROM SCENARIO TO STRATEGY

It's all great until things change very fast, then it leaves you with an inability to see the change bearing down on you. The mistaken assumption creates a *blind spot*, making it extremely hard to adapt, and to think strategically. If, in addition, your competitor sees reality and you don't, you are at a *real* disadvantage.

See if you recognize these assumptions, drawn from the sessions and the data, in those around you. (*Bonus points if you can see your own blind spot!*)

- The REALTOR® is essential to a successful real estate transaction.
- Things don't change *that* quickly – we'll see it coming and have time to adapt.
- REALTOR® value is a given. It's a matter of educating the customer (and the REALTOR®!)
- The Canadian economy / real estate market is protected from the global economy.
- Increasing standards and professionalism will improve perception of REALTORS®, and therefore, use.
- We know better than the customer what they need.
- The market may change, and it may affect others, but I can preserve my piece of the pie.

**Here's the test:** When you notice an assumption or belief you hold, ask yourself: "Is that so?" and "How do I KNOW that?" (Plan on feeling a bit disoriented when you uncover a biggie...)

**Challenge:** In a time of rapid change and many new entrants to your marketplace, will you spot and shed outdated assumptions, so you can see the change around you and remain competitive?

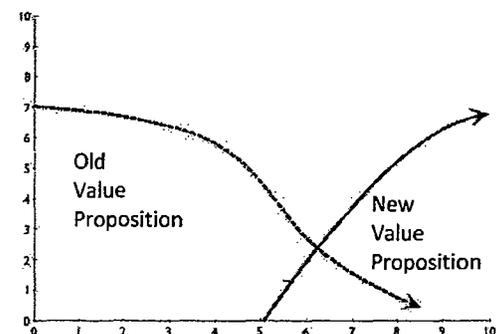
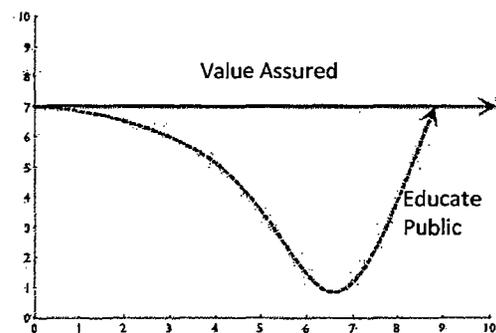
### 6. c. Two Views of REALTOR® Value

As we saw earlier in the report, REALTOR® value is a hot topic. Two schools of thought are represented in the data:

**Our "true" value is assured.  
We just need to communicate it.**

- Strategy: Protect and fortify.
- Example: Educate both consumer and REALTOR®.

**The true market value of our offering  
can change – rapidly.**



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- Strategy: Explore and innovate.
- Example: Listen to the consumer, and create a new offering.

Here's how this might play out, in each view:

Protect and fortify	Explore and innovate
Start with assumption that REALTOR® is essential	Understand the job the customer is trying to accomplish (e.g. buying a house for status vs. shelter).
Make assumptions about customer needs.	Ask: What are the ways the customer could do that job?
Don't test.	Ask: Where could a REALTOR® make a significant positive difference?
Educate the customer how it's going to go and why full commission is in order.	Prototype and test for market price.
Expect loyalty.	Anticipate word-of-mouth advertising.

**Challenge:** If you already explore and innovate, how will you keep innovating? If you are protecting and fortifying, how do you plan on competing when the game changes?

**6. d. The Imperative for Action**

**6. d. i. Urgency to Resolve Conflict**

It's only natural that people want to resolve conflict. We don't like the unknown, or the risk of loss, or the possibility of a fight. When large-scale change is afoot, all these buttons get pushed. We bring this up because there has been mounting tension as the cross-Canada dialogues have advanced. There is a tension between observing fair process in service of the membership and *getting to action*. We'll look at three aspects of this dynamic:

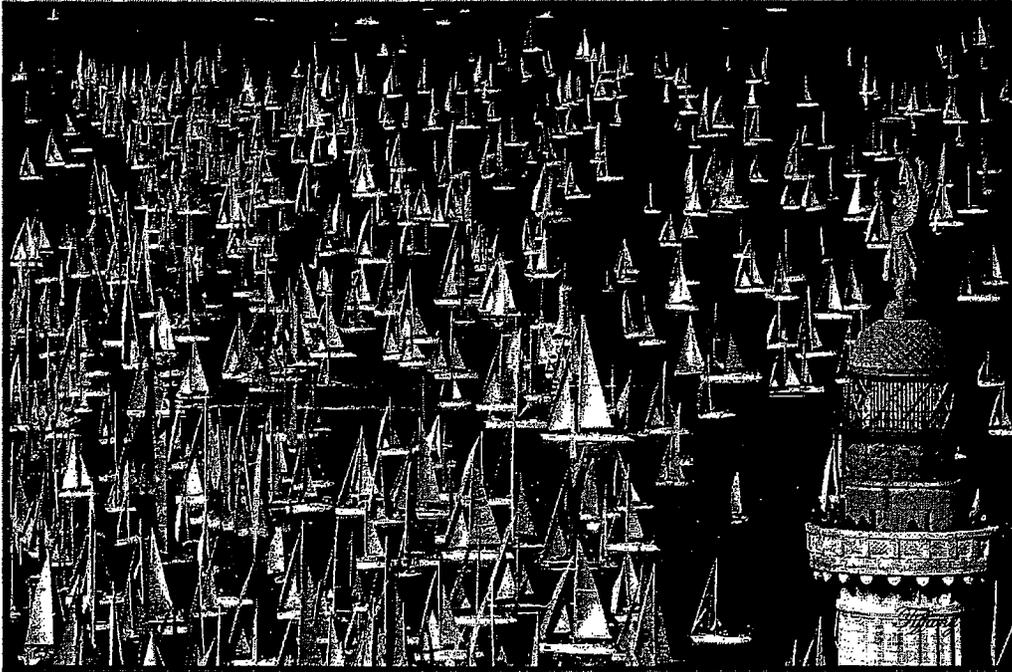
**6. d. ii. ORE Needs to Change**

We've heard this quite a lot in the input and in the sessions. Sometimes people use the royal "we" need to change, but implied is that ORE, CREA, or some other organization must change before "I" can.

## FUTURES PLANNING: FROM SCENARIO TO STRATEGY

Consider this photo of a regatta:

Figure 1: Regatta (Source: <http://static.panoramio.com/photos/original/43033887.jpg>)



- ORE is not a crewmember.
- ORE is not a captain.
- ORE is not a team.
- ORE is the whole regatta!
- ORE is not an entity; it is a system.

**Challenge:** Want ORE to change? Set yourself a new course...

### 6. d. iii. Change *from* vs. Change *to*

Another interesting pattern around urgency to act is the demand: "It's time to CHANGE!"

A couple of questions:

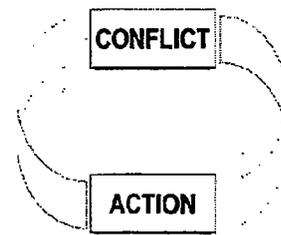
- What is a better predictor of success? *What* is being changed, or *WHY* it is being changed?
- If we eliminate everything we don't want, do we automatically end up with what we do want?

## FUTURES PLANNING: FROM SCENARIO TO STRATEGY

### *Change from: The Conflict Cycle*

Conflict sets up tendency for action. The action is designed to do one thing – remove or reduce the intensity of the conflict (get the heat off).

- The action leads to reduced conflict;
- Which leads to reduced action;
- Which leads to conflict again;
- Which leads to more action ... (and so on).



### *Change to: The Generative Approach*

In a generative approach, we:

- Have a clear idea of the desired outcome;
- Have a clear awareness of the current reality;
- We take action;
- We evaluate the result, learn, and adjust.

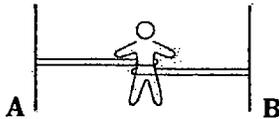
Compared to the conflict cycle, where more action leads to less action, with a generative approach:

- Tension does not resolve until you reach the goal;
- Greater chance of follow-through.

So “Why” is a better predictor of success. If changing *from* a problem, action will start and stop in an oscillation. If changing *to* a goal, action is more likely to sustain until we reach our goal

### *A Pattern with Technology*

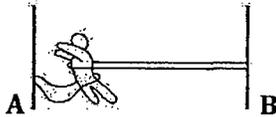
Why is it so hard for ORE to be ahead of the curve? Imagine you are a decision-maker between two competing goals, with rubber bands connecting you to each goal:<sup>3</sup>



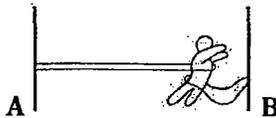
<sup>3</sup> See: *Path of Least Resistance for Managers*, by Robert Fritz (<http://www.amazon.com/Path-Least-Resistance-Managers-ebook/dp/B0054RBLGQ/>).

## FUTURES PLANNING: FROM SCENARIO TO STRATEGY

Now imagine taking action toward one of the goals:



The closer you get to A, the tighter the rubber band to B. What is the path of least resistance?



Exactly! Back to B!

So the more you try to accomplish A, the more the *structure* you are in wants you to turn away from A and go back toward B. And the more you try to accomplish B, the more the *structure* you are in wants you to turn away from B and go back toward A.

You're in a nasty oscillation! We call this a *structural conflict*, and it helps you understand oscillation in both nature and in organizations.

Here is how a structural conflict around a common business issue might work:

High workload is threatening to burn out the firm's high-performers. Owner hires more staff in response. But payroll and overhead are driven up faster than sales, and cashflow gets tight, so the manager lays off staff to cut payroll. But then, workload climbs, threatening burnout...

Here is how an online rating service, where consumers can post reviews about their REALTORS®, might play out:

## **FUTURES PLANNING:** *FROM SCENARIO TO STRATEGY*

To end the oscillation, leaders must choose one end result (Row A or B) as senior in importance, then manage the other end result to best performance without compromising the first one. This is called *creating hierarchy*.

**Challenge:** What structural conflicts are built into the system of ORE today? In redesigning ORE, how would we design them out?

### **6. e. Tools for Change Agents**

#### **6. e. i. The Four Rooms of Change<sup>4</sup>**

**Summary:** This is a model for understanding and acting upon the notion that you and others meet change in psychological and behavioral *stages*. Understanding this allows you to act with greater power and precision in enabling effective, lasting change. Ultimately the quality of engagement among those involved in a change will help catapult the use of this model to its greatest effect.

Understanding how you or those around you engage change can make a big difference in how you face the change process, how productive you are during it, and the quality of the end result. This article describes the stages of change as a "four room apartment" and offers advice for what you might do (or help others do) to move effectively through the stages of change.

#### **How Do People Engage Change?**

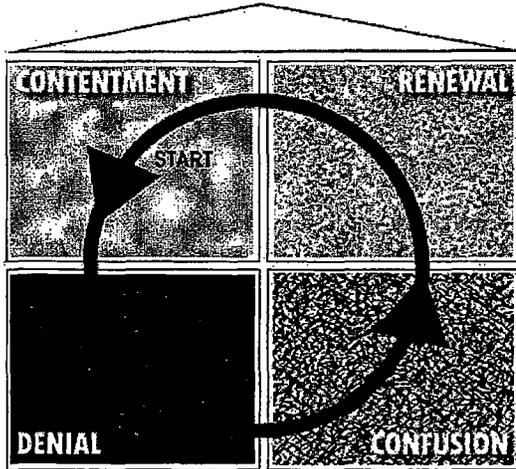
In her description of the stages of dying, Elisabeth Kubler-Ross brings to light an understanding of psychological stages of adjustment to change. Many other models of change have built upon this to describe a wide variety of other human changes. In his book *Productive Workplaces*, Marvin Weisbord describes the Four Room Apartment Model that was created by Claes Janssen. This model is elegant in its simplicity as it describes the stages of change and what to do when you or others are in each of these stages. To this description of Janssen's work we add practical applications from OED's work with our clients.

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<sup>4</sup> See [http://web.mit.edu/hr/oed/learn/change/art\\_four\\_room.html](http://web.mit.edu/hr/oed/learn/change/art_four_room.html).

## **FUTURES PLANNING:** FROM SCENARIO TO STRATEGY

### **Janssen's Four Room Apartment Model of Change**



The model proposes that in terms of our perceptions, emotions, knowledge, aspirations, and actions in any change situation, we begin in the Contentment Room and move counter-clockwise through the others as we and the change engage. Eventually, once the change is incorporated, we end up back in the Contentment Room.

Read full article at [http://web.mit.edu/hr/oed/learn/change/art\\_four\\_room.html](http://web.mit.edu/hr/oed/learn/change/art_four_room.html).

## **FUTURES PLANNING:** *FROM SCENARIO TO STRATEGY*

### 6. e. ii. Acquiring a Taste for Reality

#### *Creators Can't Create Without Seeing Reality*

*In Praise of Reality* by Robert Fritz:

Everything that is real happens in reality: relationships, the creative process, music, art, sports, career, fun, pain, cooking, eating, spending time together, love, spending time alone, LIFE. So why do people have such trouble with reality?

Find the article at

[http://www.robertfritz.com/index.php?content=writingnr&news\\_id=179](http://www.robertfritz.com/index.php?content=writingnr&news_id=179).

#### *Surrendering Wilful and Wishful Thinking*

When organizations are faced with significant and possibly disruptive change, they can delay the moment of seeing reality, and thus, the moment of effective response.

Jim Collins, Author of *Built to Last*, *Good to Great*, and *How the Mighty Fall*.

*The Way You Confront the Brutal Facts Can Mean the Difference Between Good and Great | 02:07 | Download MP3 at*  
[http://www.jimcollins.com/media\\_topics/brutal-facts.html#audio=64](http://www.jimcollins.com/media_topics/brutal-facts.html#audio=64)

**Key Question:** Which do you value more – truth or comfort?

#### *Tolerating Ambiguity and the Unknown*

Do you skip to the last page of the book to find out whodunnit? Do you peek at holiday presents to you before it's time? You might have trouble tolerating the unknown (and don't get me started about email!)

While these are harmless examples, the stakes for leaders are much higher. When we talk about "vision" in organizations, we refer to a mental picture of something that may not completely exist for months or years, if ever. On top of that, there are no guarantees an organization can achieve what it wants to in the future.

In leading change, get to know your relationship with the unknown and ambiguity, and build up your stamina for this key success factor.

# FUTURES PLANNING: FROM SCENARIO TO STRATEGY

## Really Getting the Price of Change – What Can Be Preserved and What Cannot

If you've only ever read the scenarios at-a-glance (Appendix C), you might want to look up the full report (available for download on the *Creating Our Future* website – <http://futuresavenir.realtorlink.ca>). When we were drafting the scenarios, one thing that struck us was there seemed no smooth, uninterrupted road to a better future for ORE in Canada. This is not to say it isn't possible; only that the forces that we saw at the time suggested a pattern of crisis and renewal in even the best cases.

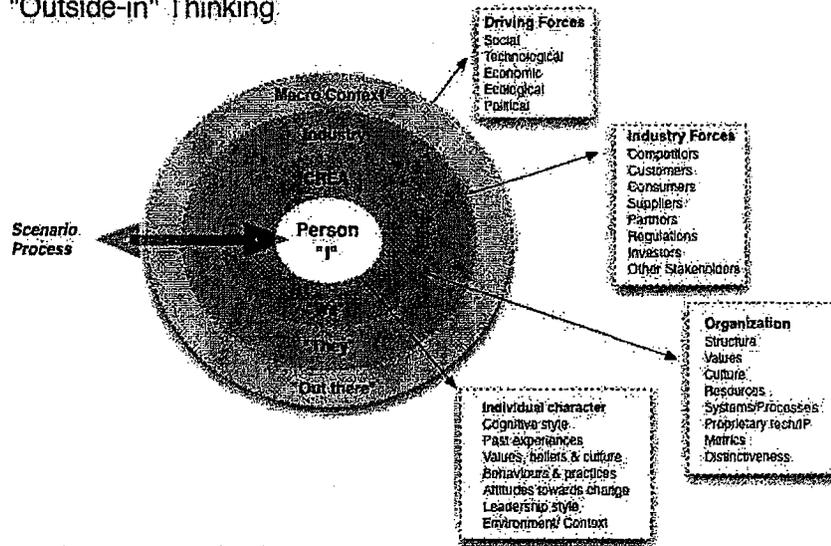
### 6. e. iii. The New Tools of Change

#### Thinking from the Outside-in – Aligning Learning at All Levels of Change

It is all too common to see a planning exercise focus narrowly on the organization and its people. While this, indeed, is where we must end up, it is *not* the place to start. This graphic illustrates the importance of approaching scenario thinking from the outside-in – from the driving forces we have little or no control over yet must be aware of, to the personal growth and development only the individual can undertake.

Figure J: "Outside-in" Thinking Diagram

#### Strategic Foresight Skill "Outside-in" Thinking



**CREA** THE CANADIAN REAL ESTATE ASSOCIATION

Nicole Boyer  
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**FUTURES PLANNING:**  
*FROM SCENARIO TO STRATEGY***6. f. At the CREA Forum, October 24, 2011, Toronto, ON**

The last three tools for change agents will be explored in-person with participants at this day-long event:

**6. f. i. Really Strategic Planning**

- What is strategy often confused with?
- What is a “Qualifier”?
- What are three types of strategic moves?

**6. f. ii. Collaboration as a Force Multiplier**

- Who is best at collaboration?
- Who is worst at it?
- What global firm struggled at first, but is now exemplar?
- What influences the success of collaboration

**6. f. iii. Innovation – *The Value Engine***

- What is the value of a concept sketch?
- How does one review a sketch?
- What comes next?

## **FUTURES PLANNING:** *FROM SCENARIO TO STRATEGY*

### **Appendix A: List of Local and Regional Futures Sessions across Canada**

<b>Date</b>	<b>Location</b>	<b># of Participants*</b>
April 3, 2011	Leadership Day, Ottawa, ON	400+
June 2011	Fredericton, NB	11
July 5, 2011	Stanhope, PEI	48
August 29-30, 2011	Whistler, BC	56
September 1, 2011	Ottawa, ON	19
September 8, 2011	Barrie, ON	45
September 9, 2011	Toronto, ON	39
September 14, 2011	Waskesiu Lake, SK	30
September 16, 2011	Kitchener-Waterloo, ON	38
September 19, 2011	Winnipeg, MB	20
September 20, 2011	Edmonton, AB	39
September 22-23, 2011	Burlington, ON (Commercial Session)	68
September 26, 2011	Nanaimo, BC	41
September 28, 2011	London, ON	32
October 4, 2011	Hamilton, ON	43

\* Number of participants is based on the number of completed personal reflections sheets, except for Leadership Day and the commercial session in Burlington.

# FUTURES PLANNING: FROM SCENARIO TO STRATEGY

## Appendix B: Where Can I Learn More or Submit an Idea or Suggestion?

### Creating Our Future Site

<http://futuresavenir.realtorlink.ca>

Here you will find:

- CREA Scenarios Report – Creating Our Future – ORE Scenarios 2021 (PDF)
- CREA Futures Project – Expert Interviews – Drivers of Change (PDF)
- How to Build Scenarios, by Lawrence Wilkinson
- Conference board – All the Options
- CREA Leadership Day 2011 Highlights (video)
- The Future of Real Estate-Mobile Social Local (video)
- Did You Know / Shift Happens (video)

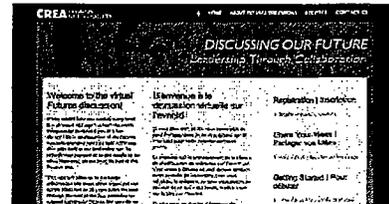


Enter with your realtorlink.ca username and password.

### Discussing Our Future Site

<http://futuresdiscussions.realtorlink.ca>

Register for a username and password to contribute to the online discussion.

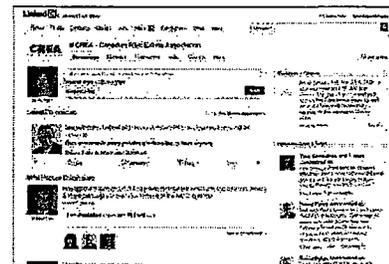


### LinkedIn.com

Join the discussion at the following LinkedIn Group: CREA - Canadian Real Estate Association

If I have a follow-up idea or suggestion, please contact:

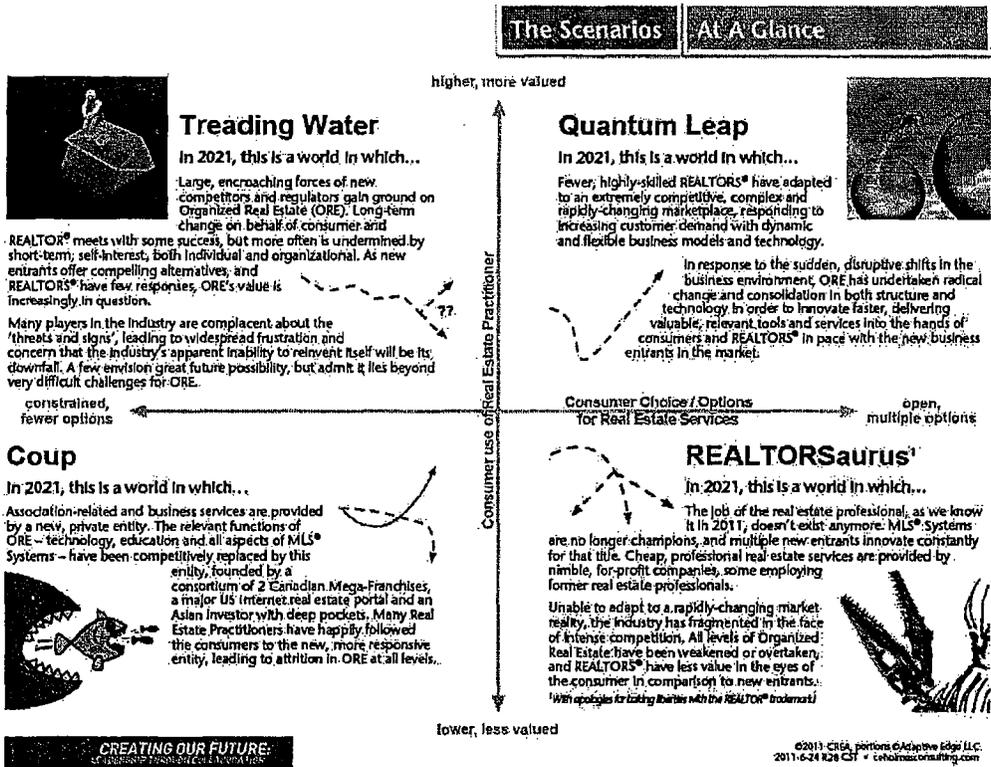
Linda Kristal  
 Director of Communications / Directrice des communications  
 CREA / ACI  
 Tel / Tél: (613) 237-7111  
 lkristal@crea.ca



## Appendix C: Scenarios at a Glance

Designer: Scenarios at a glance is a 2-page landscape PDF, already created and translated. It may be downloaded from <http://db.tt/1D5hwM0>

Lo-res graphics for reference only.



The Scenarios Driving Forces Overview

Treading Water: Forces Driving Change

• Story Synopsi: Large, encroaching forces of new competitors and regulators gain ground on Organized Real Estate (ORE). The industry tries to come together in response, but existing industry structure leads to fragmentation, local interests win out, and competitors threaten to outpace ORE. Outcome uncertain, but return to status quo is impossible.

- Global Forces: Stagnant improvement, then sustained uncertainty challenges Canadian market. Housing prices adjust down, but interest rates and energy costs continue to climb.
- Environment: 'Green' is popular for the energy savings. Concern about water legislation end of decade.
- Demographic: Immigration is steady, with Boomers cashing out of their houses. Migration to urban centers or retirement locales. Renting is preferred by Gen YZ, but overall, home ownership favoured.
- Consumer/Social: Very strong eco-consciousness and anti-consumption in Gen YZ, they are seeking community. Co-housing on upswing. Building resentment over REALTOR® commissions.
- Regulation: Increasing pressure from regulators to open MLS® Systems to non members of ORE. Increased opportunity for new entrants.
- Technology: Connectivity still uneven. Social networking is prevalent, but security concerns slow deep interconnection. Rapid innovation in mobile and online offerings. Development and opening costs fall.
- ORE 2021: Members increasingly question value of services given for the fees paid. ORE technology enhanced periodically, but other service providers are able to make greater decisions from ORE. Many options explored, but little action; Consolidation is seriously considered, and a couple of regions proceed on a limited basis.
- MLS® Systems 2021: Initiatives to strengthen and consolidate MLS® Systems proceed slowly. Data opens in fits and starts; pressure for interoperability and standardization weakens case for current, fragmented structure. Future uncertain.

Coup: Forces Driving Change

• Story Synopsi: A consortium of two Canadian Megabrands, a major US internet portal and an Asian investment group creates a well-funded private entity that quickly dominates the industry and marketplace, effectively replacing ORE.

- Global Forces: Global economic recovery leads to booming Canadian economy and record low unemployment. Fuel prices remain moderate.
- Environment: Environment takes a back seat to economy until well into the recovery.
- Demographic: Immigration solid; Boomers retiring sooner as their investments recover. An employee's market with very mobile Gen YZ much preferring rental. Strong migration to urban settings.
- Consumer/Social: Everyone is busy resulting from the recession. Entrepreneurialism and constraint have taken a back seat to creating and expressing success. Both larger and smaller homes less in demand.
- Regulation: Regulatory leave the market pretty much to itself over the next decade.
- Technology: A booming economy and unprecedented sales of mobile devices leads back-out of wireless bandwidth, ensuring everything anywhere, even in-flight. Social networking supports e-mail as the primary mode of communication.
- ORE 2021: Future in question for national association. Extreme consolidation of regional and local boards.
- MLS® Systems 2021: A series of fragmented MLS® Systems struggling to coordinate in any way, very slow to open data, increasingly underfunded as member fees dwindle.

higher, more valued

Consumer use of Real Estate Practitioner

Quantum Leap: Forces Driving Change

• Story Synopsi: ORE goes through implosion, then reinvention in response to rapid change, increasing complexity of sale, and many new entrants.

- Global Forces: Highly strong, stable economy gives New Entrants opportunity by stimulating domestic economy, while challenging REALTOR®. Subsequent high fuel prices and global instability make it a challenging market for buyer and seller.
- Environment: Climate change shifts water patterns; U.S. water shortages put further pressure on Canada. Heightened water regulation increases complexity of sale commercially and residentially.
- Demographic: Immigration at peak levels, straining infrastructure; Migration to urban (fuel costs / social trend) and retirement communities (Boomers retiring).
- Consumer/Social: Rising eco-consciousness; resistance to overconsumption; seeking community.
- Regulation: Opening of MLS® Systems to non-licensed users; increasing environmental regulation.
- Technology: Reliable connectivity almost everywhere. Social networking connected to everything. Extreme automation of Real Estate transactions, increasing capacity of each REALTOR®. Transparency is expected.
- ORE 2021: ORE completely re-imagines and reinvents structure to include a branding and lobbying group, and a new, separate organization controlling technology development and process integration, all owned by a federation of local shareholder boards, with the goal of innovating as fast as, or faster than, the new entrants.
- MLS® Systems 2021: The rules, standards and supporting technologies of MLS® Systems are consolidated. Savings from the duplication are invested in rapid innovation. Data is shared with new entrants for a fee, but many alternatives to MLS® data exist, reducing its value and prominence.

Consumer Choice / Options for Real Estate Services

open, multiple options

REALTORSaurus: Forces Driving Change

• Story Synopsi: Failing to adapt to rapid outside changes, a new market reality and many new entrants, ORE fragments in the face of intense competition and enters a downward spiral.

- Global Forces: After a rough start, the global economy rebounds, fuel prices remain elevated, and Canada's manufacturing and resource sectors thrive.
- Environment: With high fuel prices, sustainability is more driven by cost-savings.
- Demographic: Canadian immigration moderately high; Migration to urban and retirement communities.
- Consumer/Social: Increasing confidence in DIY approaches among Gen XYZ. Increasing demand for transparency and accountability. Increasing frustration with agents who don't listen and who are indebted.
- Regulation: Enough pressure to open up MLS® Systems. Standard residential contracts mandated to contract fraud.
- Technology: Very healthy ecosystem of connectivity and apps enabling anyone to pull up integrated, hyper-local knowledge where they stand. Social networking is the #1 way to make services. Many new entrants automate the real estate process better than ORE.
- ORE 2021: Membership drops significantly. Regional boards demoted and of odds, but hang on to their MLS® Systems. Many local boards close, others focused on survival. National association not financially viable.
- MLS® Systems 2021: Fragmented. Regional Focus. Owned by regional boards, weak national coordinator, uneven opening of data, nationwide. Door open for new entrants to offer a national solution.

lower, less valued

CREATING OUR FUTURE:  
A PUBLIC CONSULTATION REPORT

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FUTURES PLANNING:  
FROM SCENARIO TO STRATEGY

# EXHIBIT 23

# RULES OF COOPERATION

*of the*

CHILLIWACK & DISTRICT REAL ESTATE BOARD

FRASER VALLEY REAL ESTATE BOARD

REAL ESTATE BOARD OF GREATER VANCOUVER

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Effective July 1, 2010



**RULES of COOPERATION**  
**OF THE**  
**CHILLIWACK & DISTRICT REAL ESTATE BOARD,**  
**FRASER VALLEY REAL ESTATE BOARD**  
**AND REAL ESTATE BOARD OF GREATER VANCOUVER**

**SECTION 1 – DEFINITIONS**

In these Rules of Cooperation:

“Assessment” means assessments, listing or sale charges or other fees payable to the Board, as established from time to time by the Board;

“Board” means the Chilliwack & District Real Estate Board, Fraser Valley Real Estate Board or Real Estate Board of Greater Vancouver, as the context requires;

“Cooperating Brokerage” means an individual, firm or corporation that is licensed as a brokerage under the *Real Estate Services Act* acting for a prospective buyer or, with a written consent of the seller, acting as a sub-agent of the Listing Brokerage;

“Internet Remarks” means the free form description of the property submitted by the Listing Brokerage, with the intended audience being the public on the Internet. Where separate Internet Remarks are not submitted by the Listing Brokerage, the Public Remarks automatically appear in the Internet description;

“Listing Brokerage” means an individual, firm or corporation that is licensed as a brokerage under the *Real Estate Services Act* authorized by the seller to list a property;

“Member” means a member of the Board;

“MLS®” means the Multiple Listing Service® of the Board;

“MLS® Link Boards” means the Chilliwack & District Real Estate Board, Fraser Valley Real Estate Board and Real Estate Board of Greater Vancouver;

“MLS® Reciprocity” means the facility for MLS® Reciprocity Participants to show active MLS® Reciprocity Data on their MLS® Reciprocity Internet Website.

“Public Remarks” means the free form description of the property submitted by the Listing Brokerage, with the intended audience being Members and the public;

“REALTOR® Remarks” means comments submitted by the Listing Brokerage with an intended audience of Members only;

## RULES of COOPERATION of the CADREB, FVREB and REBGV

“Virtual Office Website” or “VOW” means an Internet website controlled and operated by an MLS® VOW Participant or a feature of such Internet website through which the MLS® VOW Participant provides real estate services to consumers with whom the MLS® VOW Participant has established a brokerage/ consumer or REALTOR®/consumer relationship where the consumer has an opportunity to search for MLS® Data, either from the MLS® Database or from REALTOR.ca, subject to the rules of the Board and the oversight, supervision and accountability of the MLS® VOW Participant.

## RULES of COOPERATION of the CADREB, FVREB and REBGV

**SECTION 2 – COMPLIANCE**

The By-laws of the Board, including the Code of Ethics and Standards of Business Practice, apply to all transactions and activities. The Rules of Cooperation are enforceable under the By-laws of the Board.

Failure to comply with any of the Rules of Cooperation renders the offending Member liable to discipline under the Board's By-laws and may result in the suspension of MLS® privileges.

Should any Member have any complaint or criticism about another Member concerning any transactions or activities connected with the MLS®, such complaint or criticism must be made to the management of the office of that other Member, and where the matter of the complaint or criticism is not settled to the satisfaction of all concerned, then such complaint or criticism shall be made in writing addressed to the Executive Officer of the Board of that other Member.

All listings submitted to the MLS® are subject to current policies and procedures of the MLS®, as published and circulated from time to time by the Board. Members are obligated to keep currently informed of these policies and procedures.

In order to be placed on the Board's MLS® System, a listing must comply with CREA's Rules and Regulations, including the Three Pillars of the MLS® Mark and the Interpretations as approved by the CREA General Assembly. The Three Pillars of the MLS® Mark are as follows:

**Membership:** Only licensed Members (REALTORS®) may place a listing on a Board/Association's MLS® system;

**Agency:** A listing Member must act as agent for the seller in order to post, amend or remove a property listing in a Board's MLS® System. The nature of any additional services to be provided by the listing Member is determined by agreement between the listing Member and the seller, subject to applicable regulatory requirements and the Rules of CREA and Boards/Associations;

**Compensation:** The listing Member agrees to pay to the cooperating Member compensation for the cooperative selling of the property. An offer of compensation of zero is not acceptable.

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**SECTION 3 – LISTINGS****3.01 Jurisdiction of MLS®**

MLS® Listings when taken come under the jurisdiction of the MLS® as of the effective date of the listing. The responsibility for the information therein and the servicing thereof remains with the Listing Brokerage.

**3.02 Assessments**

Assessments may be established by the Board from time to time. Such Assessments, if applicable, shall be charged to the Listing Brokerage unless payment is received in advance.

**3.03 Standard MLS® Listing Contract**

All listings shall be contracted for on the appropriate standard MLS® Listing Contract of the Board which may not be altered or amended except as provided herein, and **SHALL BE COMPLETE IN EVERY DETAIL.**

An MLS® listing where the standard form MLS® Listing Contract has been altered will not be accepted by the MLS® except where the seller has crossed out and initialed specific provisions as follows:

- (a) MLS® Listing Contract
  - restriction of advertising of the property to the Listing Brokerage only
  - placement of “For Sale” and “Sold” signs upon the property
- (b) Authority to Lease Contract
  - placement of “For Lease” and “Leased” signs upon the property
  - commission payable upon exercise of option for renewal, where the landlord has indicated no renewal option.

**3.04 Co-Listings**

An MLS® Listing Contract must be signed by ONE Listing Brokerage only, and instructions or changes to the listing will be accepted by the MLS® only from that Listing Brokerage.

**3.05 Contact Information in Remarks**

Contact information including but not limited to names, phone numbers, email addresses and web addresses may not appear in the Public or Internet Remarks of a listing. The REALTOR® Remarks may include the name, address, telephone and/or facsimile number and/or email address of the Listing Brokerage and Members or other individuals, including the seller where the seller has directed the Listing Brokerage in writing to do so, to be contacted for more information concerning the property.

The Listing Brokerage or Member may include a direction in the Public or Internet Remarks of a listing to visit the Listing Brokerage’s or Member’s website to obtain additional information about the listing, but the nature of such additional information

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shall not be specified. The promotion of REALTORS® or properties not currently on MLS® is not otherwise permitted in free form fields.

**3.06 Accuracy of Listing Information**

It is the responsibility of every Member to provide to other Members clear, accurate and factual information concerning any listing by such Member.

IT SHALL BE THE RESPONSIBILITY OF THE LISTING BROKERAGE TO CHECK ALL LISTINGS AND AMENDMENTS OF LISTINGS AFTER THEY HAVE BEEN PUBLISHED BY THE MLS® AND TO ENSURE THEIR COMPLETE ACCURACY, INCLUDING COMMISSION PAYABLE TO A CO-OPERATING BROKERAGE.

**3.07 Property Disclosure Statement**

In the case of a residential listing contract, the Listing Brokerage must state that the seller has either completed and signed the appropriate Property Disclosure Statement, or does not wish to or is unable to do so.

**3.08 Signing Authority**

It is the responsibility of the Listing Brokerage to ensure that appropriate signatures are obtained on all documentation processed by the MLS®.

In general, only listings signed by the registered owners will be accepted by the MLS®. Certain listings from other than registered owners may be processed by the MLS®, however, full disclosure of all pertinent details is required together with all supporting documentation. Such listings may include: entered Court Orders, registered Options, registered Rights to Purchase, or registered Agreements for Sale.

All listing contracts and any other MLS® forms involving the alteration of any material terms of the contract must contain:

- (a) the names and signatures of all registered owners. A legal Power of Attorney is acceptable in lieu of a signature, but a copy of the Power of Attorney must be filed with the MLS®;
- (b) in the case of a corporate owner, the signature of a duly authorized signatory, specifying the capacity in which each such person signed;
- (c) in the case of an estate, the signature of an executor or administrator, together with a copy of Letters Probate, or Letters of Administration confirming the authority;
- (d) in the case of properties under the jurisdiction of a Receiver-Manager or Public Trustee, a properly authorized signature together with confirmation of appointment as may be required by the MLS®;
- (e) in the case of a court ordered sale, the signature of a person authorized under Section 3.26 of these Rules of Cooperation.

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**3.09 Minimum Listing Period**

MLS® Listing Contracts shall be for a period of NOT less than 60 days and shall bear a definite effective and final termination date. The Listing Brokerage, however, shall have the right to extend the final termination date of the contract.

**3.10 Deadline for Submission of Listings**

Listings for data entry by the MLS® must be delivered to the Board within three (3) calendar days (excluding statutory holidays) after the effective date of the listing, otherwise the listing shall be deemed late. "Listings" include documentation as required by the Board.

Listing Brokerage loaded listings must be entered within three (3) calendar days (excluding statutory holidays) after the effective date of the listing, otherwise the listing shall be deemed late. Documentation as required by the Board must be delivered to the Board office in accordance with Rule 3.11.

**3.11 Listing Documentation**

Documentation required by the Board for listings for data entry by the MLS® shall include the standard form MLS® Listing Contract, including Schedule "A" describing the real estate services to be provided, and data input form.

In general, for all Listing Brokerage loaded listings, documentation including but not limited to the listing contract and data input forms must be submitted to the Board by the Listing Brokerage within five (5) calendar days after entry or the listing will be deleted from the MLS® system.

For the Real Estate Board of Greater Vancouver, documentation will not be required for Listing Brokerage loaded listings; however, listings selected at random will be required to provide documentation.

The brochure entitled Working With A REALTOR® shall be provided to every seller and a signed receipt retained on file in the office of the Listing Brokerage, as evidence of the Listing Brokerage's efforts to comply with the *Real Estate Services Act* and the *Personal Information Protection Act*. Where the seller refuses to sign, a notation to that effect, including the date the brochure was provided to the seller and by whom, shall be retained on file in the office of the Listing Brokerage. The Listing Brokerage shall produce any such documentation upon request by the Board.

**3.12 Manager Approval of Listing Brokerage Loaded Listings**

Listing Brokerage loaded listings must, prior to circulation, be approved by the manager of the Listing Brokerage's office where the listing originated. Listing Brokerage loaded listings which are not approved within three (3) days of entry will be deleted from the MLS® system.

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**3.13 Review of Listing Brokerage Loaded Listings**

All Listing Brokerage loaded listings will be subject to review by the MLS® to ensure complete and accurate listing information, to preserve the integrity of the system. The Board reserves the right to request documentation from the Listing Brokerage, and the Listing Brokerage shall produce requested documentation on demand.

**3.14 Changes to Listing Information**

Any change in the MLS® listing information on the listing contract must be on the appropriate form of the MLS® and delivered to the Board or where permitted, Listing Brokerage loaded within two (2) calendar days after the Listing Brokerage has received the change in writing, signed by the seller(s).

Any changes to MLS® listing information must be communicated by the Listing Brokerage to any Cooperating Brokerage or potential buyer that shows interest in the property, from the time the change was made and until such change has been published on the MLS® and such period of time thereafter as is reasonable in the circumstances.

An extension of the MLS® Listing Contract must be on the appropriate form, signed by the seller(s) prior to the expiry date of the listing and delivered to the Board not later than two (2) calendar days after the expiry date shown on the listing.

Changes to the information on the data input form may be communicated to the MLS® by telephone, email or fax, at the discretion of the MLS®.

**3.15 Corrections to Listing Brokerage Loaded Listings**

If a Listing Brokerage loaded MLS® listing is found to be in contravention of the Rules of Cooperation, a correction must be made within one (1) day after notification. In addition to other consequences that might apply, failure to correct the listing may result in the listing being removed from the MLS® system.

**3.16 Change of Listing Brokerage**

In order for the MLS® to process a change in Listing Brokerage, the Transfer of Listing form must be completed and signed by the Member-Link of the original Listing Brokerage and of the new Listing Brokerage and by the seller(s).

**3.17 Cancellation of Listing**

The cancellation of an MLS® listing will be processed by the MLS® upon the written request of the Listing Brokerage, in a form acceptable to MLS®, under the terms agreed to by all the contracting parties.

The cancellation of an MLS® listing may not be Listing Brokerage loaded.

Where an MLS® listing has been cancelled by the submission to the MLS® of a Cancellation Form, the MLS® will accept a new listing for the property with another Listing Brokerage during the cancellation period set out on the Cancellation Form ("Cancellation Period") provided that the MLS® receives a letter signed by the seller(s) and the manager or managing broker of the new Listing Brokerage stating that the seller(s) understands, acknowledges and accepts that by signing the new listing contract

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within the Cancellation Period, the seller(s) agrees to pay commission under both the original listing contract and the new listing contract if an offer for sale is accepted or the property is sold during the Cancellation Period.

**3.18 Change of Property Type**

A change of property type (i.e. from “Residential” to “Land Only”) will be accepted by the MLS® when the new data input form is submitted. The seller’s signature is not required. The original listing will be cancelled and the listing re-entered based on the new data input form.

**3.19 Contingent Listings**

Contingent listings will be processed by the MLS® when such contingency is stated in the listing contract and noted in the REALTOR® Remarks. The responsibility for submitting details of a contingency or unusual condition on any listing shall be the responsibility of the Listing Brokerage.

**3.20 Seller’s Rights Reserved**

Where the seller has reserved the right to sell the property themselves that fact shall be noted in the REALTOR® Remarks.

**3.21 Member Access to Listed Properties**

Access to listings accepted and processed by the MLS® shall be made available to all Members subject to these Rules of Cooperation.

- (a) A new listing that cannot be shown for a defined period of up to seven (7) calendar days from the effective date of the listing will be accepted as a contingent listing, and such contingency, including the specific date on which showings and/or offers will be accommodated, must be stated on Schedule “A” and noted in the REALTOR® Remarks. A new listing that cannot be shown for an undefined period or a period that exceeds seven (7) calendar days from the effective date of the listing will not be accepted by the MLS®, and the Listing Brokerage will be advised accordingly.
- (b) If an existing listing cannot be shown for a defined period of up to seven (7) calendar days, the listing will be considered a contingent listing and the details of the contingency will be added to the REALTOR® Remarks by the MLS®. An existing listing that cannot be shown for an undefined period or a period that exceeds seven (7) calendar days cannot be active on the MLS® system, and a Hold Action not exceeding fourteen (14) calendar days or cancellation instruction must be submitted in the appropriate form. Failure by the Listing Brokerage to submit the appropriate documentation will result in the listing being removed from “Active” status and placed in “Cancelled” status, and cancel protected until the expiry date of the listing.
- (c) In the event the Listing Brokerage receives a written offer during a “no show” period, the Listing Brokerage shall, prior to presenting the offer, inform all

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Cooperating Brokerages that have requested a viewing appointment that an offer is scheduled for presentation.

**3.22 Business Listings**

All business listings submitted to the MLS® must show a current place of business, the address and business name of which will be suppressed by the MLS® upon the written request of the Listing Brokerage.

**3.23 Unauthorized Accommodation**

Listings of property containing “unauthorized suites” will be accepted by the MLS® when noted in the REALTOR® Remarks that “PROPERTY CONTAINS ACCOMMODATION WHICH IS NOT AUTHORIZED.”

**3.24 Photographs, Pictures and Sketches**

Images that are provided to the Board in respect of an MLS® listing shall become the property of the Board and may be used by the Board at its discretion. Only MLS®-approved watermarks may appear on images. The display of a child’s image on an MLS® listing is prohibited. The Board reserves the right to remove images which in the opinion of the Board are inappropriate.

Other than the front exterior photo, additional listing photos shall not be used in future listings without the consent of the originating Brokerage.

Images that contain information that is considered to be promotion of a Member will not be permitted.

Images are to relate only to the real property for sale. No comments or additional information will be permitted to be placed on the image.

**3.25 Title Searches**

One basic title search will be conducted on all listings of property for sale submitted to the MLS® except business-without-land listings, manufactured home listings and except where title to land consists of shares of a co-operative or time share.

One basic title search only will be conducted on properties listed in bulk as a project. When requested by the Listing Brokerage, additional searches for specific units within the project will be provided at the discretion of the MLS®.

A Manufactured Home Registry search will be provided upon request of the Listing Brokerage on listings of Manufactured Homes. The cost of the search will be charged to the Listing Brokerage at the current rate.

On listings containing multiple titles (the exception being duplexes, triplexes, fourplexes and Manufactured Home Registry searches) the Board will provide one basic title search free of charge. Any additional titles searched will attract charges at the current rate. The Listing Brokerage will be notified before the Board orders the additional searches.

The title search is provided to the Listing Brokerage.

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**3.26 Assignment of Contract of Purchase and Sale**

An Assignment of Contract of Purchase and Sale will be accepted for listing by the MLS® where the following conditions are met:

- (a) the name of the buyer of the property must show as the seller's name at the top of the MLS® Listing Contract;
- (b) REALTOR® Remarks must include "Assignment of Contract"; and
- (c) listing documentation must include a letter or other documentation from the original seller giving the buyer permission to list the property for sale prior to completion of the original transaction.

**3.27 Court Ordered Sales**

A listing of property under Court Ordered Sale will be processed by the MLS® under the following conditions:

- (a) if currently listed with the MLS®, the Court Order giving the exclusive right to list the property will take precedence;
- (b) the listing contract is accompanied by a photocopy or certified copy of the entered Order Nisi of Foreclosure or other Order (the "Order"), giving a particular named party the exclusive right to list the property for sale, setting out the legal description of the property and authorizing the payment of commission; or if the Listing Brokerage obtains from the lawyer who obtained the Order, a letter which states the following:
  - (i) the date the lawyer obtained the Court Order;
  - (ii) that a copy of the Court Order giving the exclusive right to list the property has been submitted to the Registry for signature and entry;
  - (iii) confirmation that the Order has been drafted in the terms approved by the Judge; and
  - (iv) that upon entry of the Order, a copy of the entered Order will be sent to the Listing Brokerage who must then send a copy of the entered Order to the Board.
- (c) the listing contract makes specific reference to any sale being "subject to the approval of The Supreme Court of British Columbia";
- (d) the party named in the Order or someone, other than the Listing Brokerage, acting on behalf of that party (e.g. an officer or solicitor) has signed the listing contract as "seller";
- (e) the Listing Brokerage may be required to provide the MLS® with a letter stating that the person or persons signing the listing contract has or have authority to do

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so and, where applicable, specifying the capacity in which each such person signed (e.g. President, Secretary); and

- (f) the Order makes provision for showing the property to prospective buyers or otherwise makes satisfactory provision for the listing of the property with the MLS® and for its sale subject to the approval of the Court.

**3.28 Listings Taken in Trade**

“Trade listings” shall be processed by the MLS® on the following basis:

- (a) a copy of the Contract of Purchase and Sale must be provided, showing that it is a trade situation or a guaranteed purchase; or
- (b) a copy of the State of Title Certificate, or Form A Freehold Transfer with details of acceptance for registration, must be provided showing that the property has been transferred into the name of the Member; and
- (c) the property must be re-listed with the MLS® for a minimum period of sixty (60) days following the date of registration or acceptance for registration; and
- (d) where a property, which is currently listed with the MLS®, is accepted “in trade” on the purchase of another property, no sales charges will be levied provided that the Listing Brokerage does not receive a commission and the property is re-listed with the MLS® for a minimum period of sixty (60) days.

**3.29 Relocation Services and Corporate Guarantees**

Listings or sales involving “corporate guarantees”, or on behalf of relocation services or other special “authorities to sell”, will be processed by the MLS® on the following basis:

- (a) on receipt of a new listing contract or sales report with an acceptable explanation in writing from the Listing Brokerage, together with all supporting documentation; and
- (b) the property must be re-listed with the MLS® for a minimum period of sixty (60) days following the date of the change.

**3.30 Right of First Refusal**

The MLS® will process listings of properties where a party has been granted a “right of first refusal” to purchase the property, to be exercised within a specified time period, on the same terms and conditions as are acceptable to the seller, when such an offer is received from a prospective buyer. Such listings must meet the following conditions:

- (a) a copy of the right of first refusal must be filed with the MLS®;
- (b) the listing contract must specify the existence of the right of first refusal;
- (c) the seller must have agreed to pay the agreed upon commission on a sale, whether the right of first refusal is exercised or not; and

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- (d) if an offer is presented to and accepted by the seller, which offer is subject to a right of first refusal but is otherwise unconditional, and the party holding the “right” exercises the “right” accordingly, it is understood that the Listing Brokerage shall share the commission earned with the Cooperating Brokerage securing the offer, in the manner indicated on the listing contract.

**3.31 Manufactured Homes**

Listing contracts covering manufactured homes shall be accepted by the MLS® on the following basis:

- (a) where the manufactured home is registered in the Manufactured Home Registry for British Columbia and where the manufactured home is situated in a recognized manufactured home park, affixed to a designated “pad” and the right to use that “pad” is transferable to a buyer upon entering into a satisfactory rental agreement with the operator of the manufactured home park; (NOTE: Such listing contracts must state the amount of pad rental and the Manufactured Home Registry number) or
- (b) where the manufactured home is affixed to land which is owned by the seller, other than land in a manufactured home park, and is duly registered in the Land Title Office and where both the land and the manufactured home thereon are included for sale in the listing; or
- (c) where the manufactured home is affixed to land which is leased by the seller, other than land in a manufactured home park, and is registered in the Manufactured Home Registry for British Columbia and affords the right to a buyer to continue to reside at that location upon assuming the balance of the current lease and/or options or entering into a satisfactory lease agreement with the owner of the property (NOTE: Such listing contracts must include the Manufactured Home Registry number); and
- (d) listings will not be accepted on manufactured homes without both the MHR number and a CSA or B.C. Electrical Inspection Label number.

**3.32 Non-Registered Strata Properties**

Listing contracts covering strata lots where the Strata Plan has not yet been registered at the Land Title Office will be processed by the MLS® if the strata lot can be satisfactorily identified by reference to a plan or sketch prepared by a named surveyor or architect and, if required, a Disclosure Statement has been filed with the Superintendent of Real Estate, on the understanding that as soon as available the MLS® will be supplied with the registration number of the Strata Plan and of the Strata Lot(s) comprising the listed strata properties.

In the case of a listing contract on less than five (5) strata lots on a Plan yet to be registered at the Land Title Office, where a Disclosure Statement is not presently required under the *Real Estate Development and Marketing Act*, the listing will be processed by the MLS® if the strata lots can be satisfactorily identified by reference to a plan or sketch

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prepared by a named surveyor or architect, on the understanding that as soon as available the MLS® will be supplied with the number of the Strata Plan and of the Strata Lot(s) created by it as registered at the Land Title Office.

Listings of these properties must state in the REALTOR® Remarks “Non-registered Strata Property – contact L.R.”

A notation must be included in the listing contract requiring that the Cooperating Brokerage be made aware that the sale cannot be completed until the Strata Plan has been registered; and the completion date must be scheduled accordingly.

**3.33 Building Lots**

Where a builder has entered into an agreement with a seller to purchase one or more lots and wishes to list or re-list such lot or lots, including a building contract, such listings will be processed under the following conditions:

- (a) where the original listing is a Multiple Listing, a sales report is filed with the MLS® and the sale published;
- (b) a copy of the Contract of Purchase and Sale (or other sale agreement) is attached and the contract includes, as a condition of the purchase (or by separate witnessed document), authorization by the seller to allow the builder to offer the lot or lots with a building contract for sale prior to the completion of the particular purchase; and
- (c) the Member agrees to remit to the MLS®, when due, the MLS® sales charges (where applicable) on the original sale to the builder.

(NOTE: If for some reason the original transaction fails to complete, the MLS® must be notified immediately and the appropriate documentation filed.)

**3.34 Building Contracts**

Listings of lots that are to be sold together with a building contract will be processed by the MLS® under the following conditions:

- (a) the vacant property submitted to the MLS® must be a properly registered, subdivided lot with a complete legal description and where available a street address;
- (b) the list price of the said lot must be clearly indicated on the listing form if the lot may be sold separately;
- (c) a copy of the building plans and list of specifications must be available to the Cooperating Brokerage upon request;
- (d) complete details must be submitted in respect to zoning and services available to the subject lot;

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- (e) the MLS® assessments (where applicable) are payable on the completion of conveyance;
- (a) where a builder holds an interest by way of a Contract of Purchase and Sale (or other sale agreement), the builder may sign the listing contract as “seller” and a copy of that Contract of Purchase and Sale (or other sale agreement) must accompany the listing, which must specifically disclose the nature of the interest held; and
- (b) listing documentation must include a letter or other documentation from the original seller giving the buyer permission to list the property for sale prior to completion of the original transaction.

**3.35 Non-Registered Lots**

Listing contracts covering lots for which no subdivision plan has yet been registered in the Land Title Office, will be processed by the MLS® where:

- (a) a subdivision plan creating the proposed lots has been prepared by a named surveyor and has been approved in principle by the appropriate Approving Officer;
- (b) the lots can be satisfactorily identified by reference to the civic address or plan referred to in (a);
- (c) a Disclosure Statement has been filed with the Superintendent of Real Estate, where required under the *Real Estate Development and Marketing Act* or, where a Disclosure Statement is not required, a copy of the Preliminary Letter of Approval issued by the appropriate governing body has been submitted to the MLS®;
- (d) the MLS® will be supplied with the registration numbers of the subdivision plan and the legal descriptions of the lots as soon as they are available; and
- (e) listings of these properties must state in the REALTOR® Remarks: “non-registered subdivision lot – contact L.R.”.

**3.36 Floating Homes**

Listing contracts covering a floating home shall be accepted by the MLS® on the following basis:

- (a) where the floating home is situated in a strata title marina and where both the strata lot and the floating home are included for sale in the listing (NOTE: legal description must include the legal description of the marina including the strata lot number); or
- (b) where the floating home is moored in a licensed marina pursuant to a lease and the rights under the lease are transferable to a buyer upon entering into a satisfactory agreement with the marina (NOTE: legal description must include reference to the lease interest and the legal description of the marina); and

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- (c) where the floating home has a motor and can be navigated, the Vessel License Number or Official Registration Number shall be included in the legal description.

A floating home that is not moored in accordance with (a) or (b) may not be listed on the MLS®.

**3.37 Interboard Listings**

- (a) The Board will accept MLS® listings of properties within the Board's geographical jurisdiction from REALTOR® members of any reciprocating real estate board in the province for an Assessment which may be established from time to time.
- (b) In the case of any conflict with another board/association's Rules and Regulations, the Rules of the board in whose jurisdiction the property is located shall apply.
- (c) In the case of a co-listing, any Assessment will be payable to the board in whose jurisdiction the property is located.
- (d) For Members of MLS® Link Boards, all MLS® listings for properties located outside the geographical jurisdiction of the MLS® Link Boards must be listed on the system of the board in whose jurisdiction the property is located before being listed on the system of the Listing Brokerage's "home" Board.
- (e) For members of reciprocating non-MLS® Link Boards, the Board may accept MLS® listings of properties outside the geographical jurisdiction of the Board only after the property has been listed on the system of the board in whose jurisdiction the property is located. An Assessment for such listings may be established from time to time.

**3.38 Auction Listings**

In order for auction listings to be placed on the MLS®, in addition to complying with these Rules of Cooperation:

- (a) the list price must be the minimum reserve bid agreed to by the seller, and
- (b) the Public and Internet Remarks must contain a statement indicating whether the seller is willing to accept offers prior to the auction date.

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**SECTION 4 – OFFERS****4.01 Confidentiality of Offers**

A Cooperating Brokerage who has an offer to purchase shall not be required to disclose any details of that offer prior to the presentation to the seller. All offers and counter-offers under consideration shall be held in strict confidence, unless otherwise instructed by the seller in writing.

**4.02 Presentation of Offers**

Unless otherwise instructed by the seller in writing:

- (a) offers must be presented to the seller, without delay, through the Listing Brokerage;
- (b) a Cooperating Brokerage submitting an offer shall have the right to be present during the presentation; and
- (c) the Listing Brokerage shall without delay make the seller's decision on the offer known to Cooperating Brokerages which had submitted offers. If requested by the Cooperating Brokerage such decision on the offer shall be provided in writing.

A copy of the seller's written instruction obtained under this Section shall be provided to the Cooperating Brokerage upon request.

**4.03 Presentation of Counter-offers**

All counter-offers must be presented to the buyer through the Cooperating Brokerage unless otherwise instructed by the buyer in writing, and to the seller through the Listing Brokerage unless otherwise instructed by the seller in writing. With the consent of the buyer or seller receiving the counter-offer the Listing Brokerage or Cooperating Brokerage submitting the counter-offer shall have the right to be present during the presentation.

**4.04 Multiple Offers**

In the event that the Listing Brokerage has more than one written offer to be presented, the following procedures shall be adhered to:

- (a) unless otherwise instructed by the seller in writing, the Listing Brokerage shall, prior to any offer being presented, inform the other Cooperating Brokerages involved of the existence of the other offers or counter-offers, without disclosing their specific terms and conditions, provided, however, that should all but one offer or counter-offer be withdrawn prior to presentation resulting in there no longer being more than one written offer to be presented, the Listing Brokerage must so advise the remaining Cooperating Brokerage prior to presentation of their offer;
- (b) the Listing Brokerage should present each competing offer and counter-offer to the seller in the order in which they were received;

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- (c) the Cooperating Brokerage submitting the offer or counter-offer may be present, unless otherwise instructed by the seller in writing, only during the presentation of their particular offer or counter-offer and then shall withdraw from the premises but hold themselves available while the other offers and counter-offers are being presented in a like manner;
- (d) the Listing Brokerage shall ensure that all offers and counter-offers are presented up until the time an offer has actually been accepted (NOTE: Listing Brokerages are required to notify the seller of all offers up to the time of completion.); and
- (e) after all offers and counter-offers have been presented, the Listing Brokerage shall consult in private with the seller.  
(NOTE: Subject to any limitations to which the seller has agreed, the Listing Brokerage has a responsibility to give the seller their proper recommendations without prejudice to any particular offer and always in the best interest of the seller.)

A copy of the seller's written instruction obtained under this Section shall be provided to the Cooperating Brokerage upon request.

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**SECTION 5 – SALES****5.01 Reporting Sales**

The Listing Brokerage is responsible and accountable for the accuracy of sales information submitted to the Board for inclusion in the Board's MLS® System. IT SHALL BE THE RESPONSIBILITY OF THE LISTING BROKERAGE TO CHECK ALL SALES AFTER THEY HAVE BEEN PUBLISHED BY THE MLS® AND TO ENSURE THEIR COMPLETE ACCURACY.

In general, sales shall be reported to the MLS® by the Listing Brokerage, on the Sales Report Form together with a legible copy of the Contract of Purchase and Sale within five (5) calendar days of the contract becoming unconditional.

For the Real Estate Board of Greater Vancouver and Chilliwack and District Real Estate Board, only the Sales Report Form signed by the Manager or designate of the Listing Brokerage is required for the reporting of sales; however, upon request by the Board, the Member shall provide a legible copy of the contract of Purchase and Sale form and any Addendums or Amendments.

Sales may not be Listing Brokerage Loaded.

The brochure entitled Working With a REALTOR® shall be provided to every buyer and a signed receipt retained on file in the office of the Cooperating Brokerage, as evidence of the Cooperating Brokerage's efforts to comply with the *Real Estate Services Act* and the *Personal Information Protection Act*. Where the buyer refuses to sign, a notation to that effect, including the date the brochure was provided to the buyer and by whom, shall be retained on file in the office of the Cooperating Brokerage. The Cooperating Brokerage shall produce any such documentation upon request by the Listing Brokerage or the Board.

**5.02 Collapsed Sales**

The Listing Brokerage must notify the MLS® immediately of the collapse of any sale, using the form approved by the MLS®. Where the Cooperating Brokerage has first knowledge of the collapse of a sale, they shall immediately notify the Listing Brokerage.

**5.03 Board Assessment on Completed Sales**

The Listing Brokerage shall forward the Assessment due to the Board immediately upon receipt of funds or upon registration of the transfer of the property in question, whichever first occurs.

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**SECTION 6 – PROFESSIONAL CONDUCT****6.01 Cooperating Brokerages**

Unless specifically authorized by the seller in writing:

- (a) a Cooperating Brokerage is not a sub-agent to the Listing Brokerage and is presumed to be the agent of the buyer; and
- (b) communication between Cooperating Brokerages and the seller must be limited to arranging appointments as designated in the published listing and showing the listed property with appropriate assistance, during the term of the listing.

**6.02 Appointments**

Appointments by Cooperating Brokerages to inspect or show property may not be made directly with the seller unless otherwise specified on the data input form and published listing information.

**6.03 Title Searches**

A Listing Brokerage shall, upon request from a Cooperating Brokerage, provide a copy of the basic search received from the MLS® to the Cooperating Brokerage for its use. An online title search library provided by the Board and accessible to the Cooperating Brokerage would satisfy the Listing Brokerage's obligation under this Rule.

**6.04 Strata Properties**

- (a) Unless otherwise instructed by the seller in writing, for each strata MLS® listing, the Listing Brokerage shall at the time of taking the listing obtain current relevant strata corporation documents including but not limited to two (2) years of strata council minutes and strata corporation minutes, registered strata corporation by-laws, financial statements, registered strata plans, and information concerning special assessments, either proposed or levied.
- (b) Unless otherwise instructed by the seller in writing, the Listing Brokerage shall, upon request by a Cooperating Brokerage after the seller and buyer have an accepted Contract of Purchase and Sale, provide to the Cooperating Brokerage current relevant strata corporation documents including but not limited to those documents referred to in (a) above and a current Information Certificate (Form "B").
- (c) In the event that the Listing Brokerage has received written instructions from the seller not to provide all or some of the documents described in (a) and (b) above to buyers and Cooperating Brokerages, a notation to that effect must be included in the REALTOR® Remarks, and, where the seller is not providing such information directly to buyers and Cooperating Brokerages, the Listing Brokerage shall provide written authority from the seller to the Cooperating Brokerage to obtain the Form "B" and other pertinent information directly from the strata corporation. The responsibility for the cost of these documents should be detailed in the appropriate condition clause in the Contract of Purchase and Sale.

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**6.05 No Solicitation Prior to Expiry**

Listings and other agency contracts expire automatically at 11:59 p.m. on the expiry date shown on the contract. Before this time any Member other than the Brokerage under contract is EXPRESSLY FORBIDDEN TO SOLICIT SUCH CONTRACT or encourage any alteration in the existing contract.

**6.06 Privacy-Protected Listings**

No Member shall use MLS® listing information for the purpose of communicating with a seller of an MLS® listing to determine whether the seller requires additional real estate services when that seller has expressly opted-out of their personal information being used for this purpose.

**6.07 Solicitation Guidelines**

A Member shall not solicit a listing that is currently listed exclusively (hereinafter “exclusively listed” or “exclusive agreement” refers to an Exclusive listing and MLS® exclusive listing) with another brokerage. However, if the Listing Brokerage, when asked by a Member, refuses to disclose the expiration date and the nature of such listing (i.e. an exclusive right to sell, an exclusive relationship, an open listing or other form of contractual agreement between the Listing Brokerage and the client), the Member may contact the owner to secure such information and may discuss the terms upon which the Member might take a future listing.

A Member shall not solicit buyer/tenant representation agreements from buyers/ tenants who are subject to exclusive buyer/tenant representation agreements. However, if a buyer/tenant agent, when asked by a Member, refuses to disclose the expiration date of the exclusive buyer/tenant representation agreement, the Member may contact the buyer/tenant to secure such information and may discuss the terms upon which the Member might enter into a future buyer/tenant representation agreement.

The fact that an agreement has been entered into with a Member shall not preclude or inhibit any other Member from entering into a similar agreement after expiration of the prior agreement.

When Members are contacted by the client of another Member regarding the creation of a relationship to provide the same type of service, and Members have not directly or indirectly initiated such discussions, they may discuss the terms upon which they might enter into a future agreement.

The above-mentioned rules do not preclude Members from making general announcements, messages or advertisements (hereinafter referred to as “general announcements” or “announcement”) to prospective clients describing their services and the terms of their availability even though some recipients may have entered into representation agreements with another Member, provided such general announcements include a clear, prominent and emphasized statement that the announcement is not intended to cause or induce breach of an existing agency agreement. A general canvass, general mailing or distribution addressed to all prospective clients in a given geographical area or in a given profession, business, club or organization, or other classification or

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group, is deemed “general” for the purposes of this rule if it is a mass-produced announcement in identical form to the general public, or an identifiable group of the public, whether communicated by radio, television, newspaper, flyers, form letters (even though personally addressed) or computerized telephone messages.

This rule recognizes as prohibited practices two basic types of solicitation: (a) telephone and/or personal solicitations of property owners who have been identified by a real estate sign or information on a real estate data base service operated under the MLS® or associated trademarks, or other information, as having exclusively listed their property with another Member; and, (b) mail or other forms of written solicitations of prospective clients whose properties are exclusively listed with another Member (whether listed under an “Exclusive” or “MLS®” agreement) when such solicitations are not part of a general mailing but are directed specifically to property owners identified through compilations of current listings under MLS® or identified by “for sale” or “for rent” signs or other sources of information.

Members, prior to entering into a representation agreement, have an affirmative obligation to make reasonable efforts to determine whether the client is subject to a current, valid exclusive agreement to provide the same type of real estate service.

This rule does not preclude Members from contacting the client of another brokerage for the purpose of offering to provide, or entering into a listing arrangement where the original and current Listing Brokerage has negotiated a cancellation clause with the seller, and the seller has not otherwise indicated he/she does not wish to be solicited during the term of that contract.

This rule does not preclude Members from contacting the client of another brokerage for the purpose of offering to provide, or entering into a contract to provide, a different type of real estate service unrelated to the type of service currently being provided (e.g. property management as opposed to brokerage). However, real estate database information received through MLS® may not be used to target clients of other Members to whom such offers to provide services may be made.

**6.08 Professional Conduct**

- (a) A Member shall not conduct himself nor permit his employees to conduct themselves in such a manner as to prejudice his reputation or the reputation of the Board.
- (b) A Member shall not injure falsely or maliciously, directly or indirectly, the reputation, prospects or business of another Member.

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**SECTION 7 – COMMISSION****7.01 Commission Stated in Listing Contract**

All contracts must show the amount of commission payable as negotiated by the Listing Brokerage and the seller. That portion of the Listing Brokerage's commission available to Cooperating Brokerages must be shown on the listing contract.

**7.02 Reference to Commission in Remarks**

References to commission or bonuses are restricted to the REALTOR® Remarks and may not be included in the Public Remarks.

**7.03 Disclosure of Reduced Commission**

Where the Listing Brokerage is presenting its own offer in competition with one or more Cooperating Brokerages, and the Listing Brokerage is reducing the commission from that stated in the MLS® Listing Contract, the Listing Brokerage shall disclose any such reduction to all Cooperating Brokerages with competing offers, in order that such competing agents shall not be at a disadvantage and the seller shall receive the full benefit of competition from such Cooperating Brokerages.

**7.04 Commission Payable to Cooperating Brokerage upon Completion**

Where a particular transaction completes, that portion of the Listing Brokerage's commission available to Cooperating Brokerages is payable to the Cooperating Brokerage upon completion unless the Listing Brokerage and Cooperating Brokerage mutually agree, in writing, to alter said commission.

**7.05 Commission Payable to Cooperating Brokerage where Sale does not Complete**

Where a particular transaction does not complete, and the Listing Brokerage is successful in receiving payment of, or compensation in lieu of, some or all of the commission, the Cooperating Brokerage shall, at the Cooperating Brokerage's option, after the Listing Brokerage has deducted its reasonable costs incurred to recover the commission, receive its proportionate share. The receipt of such payment or compensation by the Listing Brokerage shall be deemed to be a completed transaction for the purposes of the Board's By-laws.

**7.06 Assignment to Cooperating Brokerage**

When the owner of a property listed with a Member does not complete as agreed and the Listing Brokerage does not take steps to enforce payment of commission which may be due, the Listing Brokerage shall, upon receipt of the written demand of the Cooperating Brokerage, assign to the Cooperating Brokerage all of the rights of the Listing Brokerage to enforce the listing contract.

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**7.07 “Two Cheque System” of Commission Disbursement**

- (a) A real estate company holding a trust deposit in a finalized transaction deducts an amount equal to its portion of the commission owing on completion to that company from the deposit held and forwards the balance of any excess deposit under trust to the named conveyancer; or
- (b) the company holding the trust deposit will send a request to the conveyancer for any balance owing if the deposit being held in trust is less than the amount equal to that company’s portion of the commission owing; and
- (c) upon completion, the conveyancer forwards the commission owing to any companies from the proceeds of the sale.

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**SECTION 8 – ADVERTISING****8.01 Advertising - General**

Members shall not advertise in any manner that is false or misleading, prohibited by law or restricted by the seller.

**8.02 Price and Terms Authorized by Seller in Writing**

No Member may offer or advertise a property at a price or terms other than the price and terms as authorized in writing by the seller.

**8.03 Advertising Another Member's Listings**

Subject to Sections 8.4 and 8.5, advertising, in any form whatsoever, of a listed property by any Member other than the Listing Brokerage shall only be done with the prior approval of the Listing Brokerage, unless otherwise indicated in the listing contract.

**8.04 Advertising Another Member's Listings on the Internet**

Where Reciprocity or VOW have been adopted by a Board, a Member may republish another Member's listings on the Internet in accordance with MLS® Reciprocity described in Section 8.12 and VOW in 8.13.

**8.05 Advertising by Cooperating Brokerage**

A Cooperating Brokerage, after publication by the MLS® of the sale of that property, may advertise their involvement in the sale of that property and may include in such advertisement only MLS® Reciprocity Data as described in these Rules of Cooperation. Any advertising by a Cooperating Brokerage of a sold property must include the name of the Listing Brokerage.

**8.06 Advertising of Sale Price**

A sale price shall not be advertised prior to that information being publicly available through a government registry, unless prior approval is provided by both buyer and seller in writing.

**8.07 "SOLD" Signs**

The privilege of placing "SOLD" signs on a property within the jurisdictional area of the Board shall be at the discretion of the seller. The Cooperating Brokerage may, through the Listing Brokerage, request permission from the seller to place a sold sign on a property subject to any local municipal sign regulations.

**8.08 Public Representations**

Any advertisement, publication or other form of public representation made by or on behalf of any Member must be factual and clearly demonstrate the criteria upon which such representations are based including, without limitation, the period of time over which such representations are based.

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**8.09 Reproduction of Board Information**

Any representation which includes the reproduction of information generated by the Board must include the disclaimer which accompanied the information in its original form or the following notice:

“NOTE: this representation is based in whole or in part on data generated by the Chilliwack & District Real Estate Board, Fraser Valley Real Estate Board or Real Estate Board of Greater Vancouver which assume no responsibility for its accuracy.”

**8.10 Other Advertising Requirements**

In addition to the Rules of Cooperation, Members should make themselves aware of any advertising guidelines/policies contained in the Board’s Code of Ethics and Standards of Business Practice and in the Real Estate Council of B.C.’s “Licensee Practice Manual”.

**8.11 Medallion/President’s Club Advertising**

Members should refer to the Medallion/President’s Club Policies for advertising policies specific to the Medallion/President’s Club. Medallion/President’s Club Policies are enforceable under these Rules of Cooperation.

**8.12 MLS® Reciprocity**

Where Reciprocity has been adopted:

- (a) In this section the following terms have the following meanings:

“Detail Display” means enlarged photo, the MLS® number and additional text display of individual properties selected from a Thumbnail Display;

“MLS® Reciprocity” means a program which enables MLS® Reciprocity Participants to display on their MLS® Reciprocity Internet Websites the listings of MLS® Reciprocity Corporate Members in accordance with this Section 8;

“MLS® Reciprocity Active Member” means an active Member of the Board whose license is issued and maintained in an office of an MLS® Reciprocity Corporate Member;

“MLS® Reciprocity Corporate Member” means a corporate Member of the Board that has not advised the Board in writing that it does not wish to take part in MLS® Reciprocity;

“MLS® Reciprocity Data” means the MLS® property data as prescribed by the Board from time to time relating to the listings of MLS® Reciprocity Corporate Members, which is made available by the Board to MLS® Reciprocity Participants from time to time for display on MLS® Reciprocity Internet Websites;

“MLS® Reciprocity Internet Website” means an Internet website controlled and operated by an MLS® Reciprocity Participant or a feature of such Internet website

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where the MLS® Reciprocity Participant displays the listings of MLS® Reciprocity Corporate Members subject to the rules of the Board and the oversight, supervision and accountability of the MLS® Reciprocity Participant;

“MLS® Reciprocity Logo” means a logo designed and approved by the Board for use in association with MLS® Reciprocity;

“MLS® Reciprocity Participant” means: (i) an MLS® Reciprocity Corporate Member that is a party to an executed “MLS® Reciprocity – Corporate Member Agreement” with the Board which has not expired or been terminated, and (ii) an MLS® Reciprocity Active Member who is a party to an executed “MLS® Reciprocity – Salesperson Agreement” with the Board which has not expired or been terminated;

“MLS® Reciprocity Thumbnail Icon” means an icon designed and approved by the Board identifying MLS® Reciprocity in a Thumbnail Display. The MLS® Reciprocity Thumbnail Icon shall be at least 35 pixels by 35 pixels;

“Scraping” means use of a software program or other method to extract photographs and text from an MLS® Reciprocity Internet Website for use on an internet website other than an MLS® Reciprocity Internet Website or for use in any manner except as permitted by this Section 8;

“Thumbnail Display” means a summary display of one or more-property listings per page that must include the name of the Listing Brokerage and may include a small photograph and such limited text data as may be permitted by the Board from time to time. The MLS® Reciprocity Logo must be displayed at the top of the summary page and shall be at least 95 pixels by 35 pixels;

- (b) In addition to the obligations set out in the “MLS® Reciprocity – Corporate Member Agreement” and the “MLS® Reciprocity – Salesperson Agreement”, MLS® Reciprocity Participants must adhere to the following rules and all other Rules of Cooperation that may be adopted by the Board from time to time:
- (i) MLS® Reciprocity Participants must not alter, modify, manipulate or obscure the MLS® Reciprocity Data (or any disclaimers or notices therein) in any way without the Board’s prior written approval.
  - (ii) A Thumbnail Display on an MLS® Reciprocity Internet Website of another MLS® Reciprocity Corporate Member’s listing must not include any contact information or branding of any person or corporation other than the Listing Brokerage.

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- (iii) A Thumbnail Display must include the name of the Listing Brokerage and may only include the following:
  - 1. text data about the listing property; and
  - 2. a photo of the listing property.
- (iv) Where a search of the MLS® Data generates a Detail Display on an MLS® Reciprocity Internet Website of another MLS® Reciprocity Corporate Member's listing, the Detail Display shall bear that MLS® Reciprocity Corporate Member's name, the MLS® Reciprocity Logo and the MLS® copyright notice immediately following the property information all of which shall be of the same colour and at least as large as the largest type size used to display the listing data.
- (v) A Detail Display on an MLS® Reciprocity Internet Website of another MLS® Reciprocity Corporate Member's listing may not include any contact information or branding of any person or corporation other than the Listing Brokerage within the "body" of the listing data. (The "body" shall be the rectangular space whose borders are delimited by the utmost extent in each direction of the listing text and photo data.)
- (vi) Any Thumbnail Display or Detail Display on an MLS® Reciprocity Internet Website of another MLS® Reciprocity Corporate Member's listing must include any disclaimer which accompanied the information in its original form, or the following notice:

"NOTE: This representation is based in whole or in part on data generated by the Chilliwack & District Real Estate Board, Fraser Valley Real Estate Board or Real Estate Board of Greater Vancouver which assumes no responsibility for its accuracy."
- (vii) The MLS® Reciprocity Data or any portion thereof may not be displayed on any internet website except an MLS® Reciprocity Internet Website.
- (viii) MLS® Reciprocity Participants shall take all reasonable precautions to prevent Scraping of the MLS® Reciprocity Data from their MLS® Reciprocity Internet Websites, and to prevent the MLS® Reciprocity Data from being displayed on any internet website other than an MLS® Reciprocity Internet Website. Reasonable precautions shall include but not be limited to:
  - 1. monitoring its MLS® Reciprocity Internet Website for signs that a third party is Scraping data; and

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2. prominently posting a notice on its MLS® Reciprocity Internet Website explaining that the website must only be used by consumers for the purpose of locating and purchasing real estate.
- (ix) The MLS® Reciprocity Participant shall immediately advise the Board whenever the MLS® Reciprocity Participant suspects or has evidence that Scraping has occurred.
  - (x) Within fourteen days after being requested by the Board to do so, an MLS® Reciprocity Participant must make such changes to its MLS® Reciprocity Internet Website as required by the Board to cure any violation of the Rules of Cooperation, Board regulations, guidelines and policies.
  - (xi) MLS® Reciprocity Participants must not permit any portion of the MLS® Reciprocity Data to be used or provided to any person or corporation for any purpose other than those expressly provided for in the Rules of Cooperation, Board regulations, guidelines and policies.
  - (xii) MLS® Reciprocity Participants must not permit any portion of the MLS® Reciprocity Data to be co-mingled with any non-MLS® listings on any MLS® Reciprocity Internet Website.
  - (xiii) an MLS® Reciprocity Participant will cease displaying on their MLS® Reciprocity Internet Website the listings of MLS® Reciprocity Corporate Participants and is not entitled to access the MLS® Reciprocity Data if:
    1. the MLS® Reciprocity Participant or the MLS® Reciprocity Corporate Member in whose office the license of an MLS® Reciprocity Participant is issued and maintained notifies the Board in writing, in a form satisfactory to the Board, that it is ceasing to participate in MLS® Reciprocity;
    2. the MLS® Reciprocity Participant or the MLS® Reciprocity Corporate Member in whose office the license of an MLS® Reciprocity Participant is issued and maintained ceases to be a member of the Board or is terminated or suspended from membership in the Board;
    3. the right of the MLS® Reciprocity Participant or the MLS® Reciprocity Corporate Member in whose office the license of an MLS® Reciprocity Participant is issued and maintained to take part in MLS® Reciprocity or to have access to MLS® Reciprocity Data has been suspended or terminated pursuant to an order under Appendix B of the Board's Bylaws;

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4. the MLS® Reciprocity Participant is in breach of its obligations under this Section 8.12 and fails to remedy the default within fourteen (14) calendar days after receiving a written demand to do so from the Board; or
  5. the MLS® Reciprocity Participant has been in breach of its obligations under this Section 8.12 more than three (3) times in any twelve (12) month period, regardless of whether those breaches have been remedied.
- (xiv) In addition to Section 8.12(b)(xiii) the Board may immediately suspend an MLS® Reciprocity Participant's access to the MLS® Reciprocity Data if, in the sole discretion of the Board,
1. the Board knows or suspects an event described in Section 8.12(b)(xiii) has occurred or is about to occur; or
  2. the Board concludes that the MLS® Reciprocity Participant has defaulted in its obligations under this Section 8.12 and such default is or may be detrimental to MLS® Reciprocity.

**8.13 Virtual Office Website (VOW)**

- (a) In this section 8.13 the following terms have the following meanings:

“Authorized Individual Participant” means a Member providing services under the supervision of an MLS® VOW Corporate Participant who has been authorized by that MLS® VOW Corporate Participant to operate an MLS® VOW subject to the overview, supervision and responsibility of that MLS® VOW Corporate Participant.

“Detail Display” means enlarged photo and additional text display of individual properties selected from a Thumbnail Display.

“MLS® Data” means MLS® property data maintained in the MLS® Database regarding the listings of corporate Members of the Board and corporate members of other real estate boards and associations.

“MLS® Database” means a single proprietary database of text, images and related information pertaining to properties listed for sale compiled by the Board.

“MLS® VOW” means a virtual office website controlled and operated by an MLS® VOW Participant through which the MLS® VOW Participant provides real estate services to consumers with whom the MLS® VOW Participant has established a relationship.

“MLS® VOW Corporate Participant” means a corporate Member of the Board that has not advised the Board in writing that it does not wish to take part in the MLS® VOW Program.

## RULES of COOPERATION of the CADREB, FVREB and REBGV

“MLS® VOW Data” means MLS® Data prescribed by the Board from time to time and relating to the listings of MLS® VOW Corporate Participants, which is made available by the Board to MLS® VOW Participants from time to time for display on an MLS® VOW.

“MLS® VOW Participant” means

- (i) an MLS® VOW Corporate Participant that is a party to an executed MLS® VOW Corporate Participant Agreement with the Board which has not expired or been terminated; and
- (ii) an Authorized Individual Participant who is a party to an executed MLS® VOW Authorized Individual Agreement with the Board which has not expired or been terminated.

“MLS® VOW Program” means a program which enables MLS® VOW Participants to display on their MLS® VOW the listings of MLS® VOW Corporate Participants in accordance with this Section 8.13.

“Registrant” means a consumer who has entered into a relationship with a MLS® VOW Participant through an MLS® VOW in accordance with this Section 8.13.

“Scraping” means use of a software program or other method to extract photographs and text from an MLS® VOW for use on an internet website other than an MLS® VOW or for use in any manner except as permitted by this Section 8.13.

“Terms of Use” means a written series of statements displayed on an MLS® VOW to which a Registrant can agree.

“Thumbnail Display” means a summary of a search displaying multiple property listings per page that must include the name of the Listing Brokerage and may include a small photograph and such limited text data as may be permitted by the Board from time to time.

- (b) MLS® VOW Corporate Participants may authorize Authorized Individual Participants to operate an MLS® VOW subject to the MLS® VOW Corporate Participant’s overview, supervision and responsibility of the Authorized Individual Participant and their MLS® VOW. Any breach of this Section 8.13 by an Authorized Individual Participant shall be deemed to be a breach by the MLS® VOW Corporate Participant that authorized the Authorized Individual Participant to operate the MLS® VOW.
- (c) In addition to the obligations set out in the MLS® VOW Corporate Participant Agreement and the MLS® VOW Authorized Individual Agreement, MLS® VOW Participants must adhere to the following rules and all other Rules of Cooperation that may be adopted by the Board from time to time:

## RULES of COOPERATION of the CADREB, FVREB and REBGV

- (i) MLS® VOW Participants must make the MLS® VOW directly accessible to the Board for purposes of monitoring and ensuring compliance with the Board's Bylaws including the Code of Ethics and Standards of Business Practices, the Board's regulations, guidelines and policies including all Rules of Cooperation.
- (ii) only MLS® VOW Participants may establish an MLS® VOW.
- (iii) An MLS® VOW Participant must not provide a Registrant with access to MLS® VOW Data through the MLS® VOW Participant's MLS® VOW unless and until:
  - 1. the Registrant has provided the MLS® VOW Participant, through the MLS® VOW, with the Registrant's name, telephone number and valid e-mail address and, at the option of the MLS® VOW Participant, other information;
  - 2. the MLS® VOW Participant has displayed the Terms of Use to the Registrant on the MLS® VOW;
  - 3. the Registrant has opened the Terms of Use and agreed to them by "mouse-clicking" an acknowledgement of agreement displayed on the MLS® VOW;
  - 4. the Registrant has supplied the MLS® VOW Participant with a user name and a password, both of which must be unique to the Registrant, (the user name and password may be established by the Registrant or may be supplied by the MLS® VOW Participant at the option of the MLS® VOW Participant). The Registrant's password and access to MLS® VOW Data must expire on a date not later than 30 days after being issued. Passwords may not be automatically renewed upon expiration;
  - 5. the MLS® VOW Participant has sent an e-mail to the Registrant at the e-mail address described in 1 above confirming the user name and password and the Registrant has acknowledged receipt of the e-mail by mouse-clicking an acknowledgment of receipt displayed in the e-mail; and
  - 6. upon expiration of their password the Registrant must provide the MLS® VOW Participant with a new password to regain access to the MLS® VOW Data. The MLS® VOW Participant shall not permit the Registrant to regain access to the MLS® VOW Data until the MLS® VOW Participant has sent an e-mail to the Registrant at the e-mail address described in 1 above confirming the new password and the Registrant has acknowledged receipt of the e-mail by mouse-clicking an acknowledgement of receipt displayed in the e-mail.

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- (iv) The Terms of Use must include an acknowledgement by the Registrant:
1. that the Registrant has received, read and understand the brochure published by the British Columbia Real Estate Association entitled "Working With a REALTOR®" (this document may be linked);
  2. that the Terms of Use do not create an agency relationship with the Registrant;
  3. that all data obtained from the MLS® VOW is intended only for the Registrant's personal, non-commercial use;
  4. that the Registrant has a bona fide interest in the purchase, sale or lease of real estate of the type being offered through the MLS® VOW;
  5. that the Registrant will not copy, redistribute or retransmit any of the MLS® VOW Data or information provided; and
  6. that the Registrant acknowledges the Board's copyright in the MLS® VOW Data.
- (v) A Terms of Use Agreement may not impose a financial obligation on a Registrant or create an agency agreement with the Registrant. Any financial obligation or agency agreement entered into by a Registrant through an MLS® VOW must be set forth separately from the Terms of Use, must be prominently labelled and may not be accepted solely by mouse click. The Registrant must also receive a subsequent confirmation of the terms of any such financial obligation or agency agreement and the financial obligation or agency agreement may not become effective until the Registrant acknowledges acceptance of those terms by mouse click. Prior to entering into an agency agreement with a Registrant the MLS® VOW Participant must ask the Registrant whether the Registrant is a party to any other agency agreements.
- (vi) An MLS® VOW may not make available for search by or display to Registrants the following data:
1. expired, cancelled, withdrawn, pending or sold listings;
  2. the compensation offered;
  3. the seller and occupant's name, phone number and e-mail address where available;
  4. instructions or remarks intended for Cooperating Brokerages only, such as those regarding showing or security of the listing property;

## RULES of COOPERATION of the CADREB, FVREB and REBGV

5. listings other than current listings, listings of corporate Members that are not MLS® VOW Corporate Participants and such other listings, data or information as determined by the Board from time to time (all information provided on an MLS® VOW must be refreshed at least once every seven (7) days and the MLS® VOW must indicate the date of the last update);
  6. more than 500 listings per search and more than 20 listings per page; and
  7. MLS® Data other than MLS® VOW Data.
- (vii) An MLS® VOW may display information set out on the MLS® VOW Data display field except where prohibited by this Section 8.13;
  - (viii) The MLS® VOW Participant must maintain a record of the name, telephone number, e-mail address and, if required by the MLS® VOW Participant the street address supplied by the Registrant, and the user name and current password of each Registrant during the currency of the Registrant's password and for not less than one hundred and eighty (180) days after the expiration of the validity of the Registrant's password.
  - (ix) An MLS® VOW must display a privacy policy that informs Registrants of the ways in which information obtained from them will be used.
  - (x) An MLS® VOW must visibly and clearly display, at the top of every page of the MLS® VOW, the MLS® VOW Corporate Participant's name in type larger than any other type on the page.
  - (xi) An MLS® VOW Participant may not offer or provide the identity of a Registrant to any other person, including another MLS® VOW Participant, except as permitted in this Section 8.13(c)(xi). Despite the foregoing an MLS® VOW Participant may provide the identity of a Registrant to a corporate Member of the Board, a corporate member of another real estate board or association or a licensee whose license is maintained in the office of a corporate Member of the Board or a corporate member of another real estate board or association if:
    1. the MLS® VOW Participant's real estate trading service activities principally consist of listing or selling the type of properties listed on the MLS® (for the purposes of this paragraph selling does not include making referrals of prospective purchasers and listing does not include making referrals of prospective sellers);
    2. the Registrant is seeking property of a type, in a price range or in a location for which the MLS® VOW Participant does not ordinarily provide real estate trading services;

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3. the number of Registrant identities provided is an insubstantial portion of the MLS® VOW Participant's real estate trading service activities; and
  4. permission to offer or provide that information has been granted by the Registrant by mouse-clicking an acknowledgement of agreement, displayed on the MLS® VOW, that is separate and apart from the acknowledgement described in Section 8.13(c)(iii)(3).
- (xii) MLS® VOW Participants must not alter, modify, manipulate or obscure the MLS® VOW Data (or any disclaimers or notices therein) in any way without the Board's prior written approval.
- (xiii) A Thumbnail Display on an MLS® VOW of an MLS® VOW Corporate Participant's listing must not include any contact information or branding of any person or corporation other than the Listing Brokerage.
- (xiv) A Thumbnail Display may only include the following:
1. Text data about the listing property;
  2. A photo of the listing property; and
  3. The logo of the Listing Brokerage if the Listing Brokerage is the owner of the MLS® VOW displaying the Thumbnail Display.
- (xv) Where a search of the MLS® VOW Data generates a Detail Display on an MLS® VOW of an MLS® VOW Corporate Participant's listing, the Detail Display shall bear that MLS® VOW Corporate Participant's name and the MLS® copyright notice immediately following the property information all of which shall be at least as large as the largest type size used to display the listing data.
- (xvi) A Detail Display on an MLS® VOW of another MLS® VOW Corporate Participant's listing may not include any contact information or branding of any person or corporation other than the Listing Brokerage within the "body" of the listing data. (The "body" shall be the rectangular space whose borders are delimited by the utmost extent in each direction of the listing text and photo data.)
- (xvii) Any Thumbnail Display or Detail Display on an MLS® VOW of another MLS® VOW Corporate Participant's listing must include any disclaimer which accompanied the information in its original form, or the following notice:

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"NOTE: This representation is based in whole or in part on data generated by the Chilliwack & District Real Estate Board, Fraser Valley Real Estate Board or Real Estate Board of Greater Vancouver which assume no responsibility for its accuracy."

- (xviii) The MLS® VOW Data or any portion thereof may not be displayed on any internet website except an MLS® VOW.
- (xix) MLS® VOW Participants shall take all reasonable precautions to prevent Scraping of the MLS® VOW Data from their MLS® VOW, and to prevent the MLS® VOW Data from being displayed on any internet website other than an MLS® VOW or being used other than in accordance with this Section 8.13 and the Rules of Cooperation and Board regulations, guidelines and policies.

Reasonable precautions shall include but not be limited to:

1. Monitoring the MLS® VOW for signs that a third party is Scraping data; and
  2. Prominently posting a notice on the MLS® VOW explaining that the website must only be used by consumers for the purpose of locating and purchasing real estate.
- (xx) The MLS® VOW Participant shall immediately advise the Board whenever the MLS® VOW Participant suspects or has evidence that Scraping has occurred.
  - (xxi) If the Board has reason to believe that an MLS® VOW Participant's MLS® VOW has caused or permitted a breach in the security of the MLS® VOW Data or a violation of the Rules of Cooperation or any Board regulations, guidelines and policies related to its use the MLS® VOW Participant shall, upon request, provide to the Board a copy of the record of the name, e-mail address, user name and current password of each Registrant, or those Registrants identified by the Board to be suspected of involvement in the violation.
  - (xxii) Within fourteen (14) days after being requested by the Board to do so, an MLS® VOW Participant must make such changes to its MLS® VOW as required by the Board to cure any violation of the Rules of Cooperation and Board regulations, guidelines and policies.
  - (xxiii) MLS® VOW Participants must not permit any portion of the MLS® VOW Data to be used or provided to any person or corporation for any purpose other than those expressly provided for in the Rules of Cooperation and Board regulations, guidelines and policies.

## RULES of COOPERATION of the CADREB, FVREB and REBGV

- (xxiv) MLS® VOW Participants must not permit any portion of the MLS® VOW Data to be co-mingled with any non-MLS® listings on any MLS® VOW.
- (xxv) Where an MLS® VOW Corporate Participant provides the Board with written evidence, in a form satisfactory to the Board, that a seller represented by that MLS® VOW Corporate Participant does not wish their listing to be displayed on any and all MLS® VOWs the Board will thereafter identify that listing and that listing shall not be made available to Registrants.
- (xxvi) An MLS® VOW Participant may only exclude MLS® Data from display on its MLS® VOW in accordance with Section 8.13(c)(vi) and (xxv) or based on some objective criteria such as type of property, listed price or geographical location.
- (xxvii) An MLS® VOW Corporate Participant will cease operating an MLS® VOW, will not display MLS® VOW Data on that MLS® VOW and is not entitled to access the MLS® VOW Data if:
1. the MLS® VOW Corporate Participant notifies the Board in writing, in a form satisfactory to the Board, that it is ceasing to participate in the MLS® VOW Program;
  2. the MLS® VOW Corporate Participant ceases to be a corporate Member of the Board or is terminated or suspended from corporate membership in the Board;
  3. the MLS® VOW Corporate Participant's right to take part in the MLS® VOW Program or to have access to MLS® VOW Data has been suspended or terminated pursuant to an order under Appendix B of the Board's Bylaws;
  4. the MLS® VOW Corporate Participant is in breach of its obligations under this Section 8.13 and fails to remedy the default within fourteen (14) calendar days after receiving a written demand to do so from the Board; or
  5. the MLS® VOW Corporate Participant has been in breach of its obligations under this Section 8.13 more than three (3) times in any twelve (12) month period, regardless of whether those breaches have been remedied.
- (xxviii) An Authorized Individual Participant will cease operating an MLS® VOW, will not display MLS® VOW Data on that MLS® VOW and is not entitled to access the MLS® VOW Data if:

## RULES of COOPERATION of the CADREB, FVREB and REBGV

1. the MLS® VOW Corporate Participant that authorized the Authorized Individual Participant to operate the MLS® VOW ceases to be a Member of the Board or is terminated or suspended from membership in the Board;
  2. the Authorized Individual Participant notifies the Board in writing, in a form satisfactory to the Board, that they are ceasing to participate in the MLS® VOW Program;
  3. the Authorized Individual Participant ceases to be a Member of the Board or is terminated or suspended from membership in the Board;
  4. the right of the Authorized Individual Participant to take part in the MLS® VOW Program or to have access to the MLS® VOW Data has been suspended or terminated pursuant to an order under Appendix B of the Board's Bylaws;
  5. the Authorized Individual Participant is in breach of its obligations under this Section 8.13 and fails to remedy the default within fourteen (14) calendar days after receiving a written demand to do so from the Board; or
  6. the Authorized Individual Participant has been in breach of its obligations under this Section 8.13 more than three (3) times in any twelve month period, regardless of whether those breaches have been remedied.
- (xxix) In addition to Sections 8.13(c)(xxvii) and (xxviii) the Board may immediately suspend an MLS® VOW Participant's access to the MLS® VOW Data if, in the sole discretion of the Board:
1. the Board knows or suspects an event described in Sections 8.13(c)(xxvii) or (xxviii) has occurred or is about to occur; or
  2. the Board concludes that the MLS® VOW Participant has defaulted in its obligations under this Section 8.13 and such default is or may be detrimental to the MLS® VOW Program.
- (xxx) Immediately upon termination of the MLS® VOW Participant's right to take part in the MLS® VOW Program the MLS® VOW Participant will return to the Board or destroy, or direct the return to the Board or the destruction of the MLS® VOW Data then in its possession or under its control. Within fifteen (15) days of termination of its right to participate in the MLS® VOW Program, the MLS® VOW Participant shall deliver to the Board a written statement signed and certified by a duly authorized officer of the MLS® VOW Corporate Participant indicating that the provisions of this Section 8.13(c)(xxx) have been fulfilled.

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**SECTION 9 – KEY BOXES AND ACCESS CARDS****9.01 Terms of Use**

The use of key boxes and access cards is a privilege extended to Members and contract subscribers of the Board only and shall be governed by the terms of any contract entered into by them with the Board as well as the Rules of Cooperation including the following:

- (a) access cards are issued and registered for the exclusive use by an individual Member and are NOT TO BE LOANED under any circumstances;
- (b) in the event that access cards are lost, misplaced or stolen, the Board must be immediately notified;
- (c) PIN codes are to be kept confidential and any written record of the code must not be attached to or kept with the access card;
- (d) an access card may be programmed for any licensee who is affiliated with any British Columbia board/association, provided there is an existing agreement between the member and their home board/association;
- (e) directions for the use of key boxes (if any) as published on the listing must be strictly adhered to;
- (f) keys removed from key boxes must be replaced immediately following use;
- (g) it is the responsibility of the user to ensure that all security precautions are taken prior to departing the property; and
- (h) in the event of termination of membership in the Board the access card and key boxes may be transferred to another Member with documentation presented to the Board.

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**SECTION 10 – USE OF MLS® DATA****10.01 British Columbia Assessment Information**

No Member, or their unlicensed assistants or administrators where permitted by the Board, shall use or permit or allow the use of British Columbia Assessment information to obtain addresses for solicitation or mailing purposes of any kind, and will use their best efforts to ensure that no information supplied pursuant to the agreement with British Columbia Assessment is used in the harassment of members of the public or contrary to the public interest, or in an otherwise improper manner.

**10.02 Misuse of MLS® Information**

Except as provided in the Rules of Cooperation, no Member, or their unlicensed assistants or administrators where permitted by the Board, except in the ordinary course of their business, shall make available to any unlicensed person, firm or corporation information distributed by the MLS®. The Member will be held responsible for any misuse by non-Members of MLS® information supplied by the Member.

**10.03 Access Codes**

Access codes to the MLS® computer systems are provided to Members, and to Members' unlicensed assistants and/or administrators where permitted by the Board, in order to maintain security of the computer system. Notwithstanding any other provision of the Rules of Cooperation no Member or employee of a corporate Member shall make available to any other individual, firm or corporation access codes to the MLS® computer system operated by the Board on behalf of its Members. For the purposes of this section "access codes" shall mean such identification, access codes and passwords that the Board determines, from time to time, are required for access to the MLS® computer system.

**10.04 Errors and Omissions in Database**

The Board shall not be liable to the Member for any interruption of services or for any error or omission contained in the database of the Board. The Board shall not be liable for any damages, whether direct or indirect, which may arise from such errors or omissions.

**10.05 License Agreement**

Members must comply with all of the terms and conditions of any license agreement entered into between the Member and the Board or a third party with respect to access to and use of the MLS® computer system and a breach of such license agreement shall constitute a breach of these Rules of Cooperation.

**10.6 Termination of Access**

Members may only access and use the MLS® computer system so long as they are Members in good standing of the Board. Upon termination or suspension of membership or suspension of all of the privileges of membership the Member's access to the MLS® computer system will be terminated.

RULES of COOPERATION of the CADREB, FVREB and REBGV

## **SECTION 11 – GENERAL**

### **11.1 Forms Software**

Any forms (paper or electronic) created with publishing software must be authorized by and contain the logo and copyright notice of BCREA and/or the Board. Only software programs that do not allow the body of the form to be modified will be eligible to receive the required authorization.

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# CREA Appendix "A" Rules and Regulations

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Revised March 2010

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## **RULE XVII OPERATION OF A BOARD'S MLS® SYSTEM**

Interpretations of Rule XVII:

1. The listing REALTOR® shall be available to provide professional advice and counsel to the seller on all offers and counter offers unless otherwise directed by the seller in writing.
2. The listing REALTOR® is responsible and accountable for the accuracy of information submitted to a Board/Association for inclusion in the Board's MLS® System, and the Board/Association is responsible for ensuring that the data submitted to it meets reasonable standards of quality.
3. Only REALTORS® are permitted to display the MLS® trademarks in signage, advertising, etc.
4. Where the seller directs the listing REALTOR® in writing to do so, the seller's contact information may appear in the REALTOR® only remarks (non-public) section of a listing on a Board/Association's MLS® System. The seller's contact information shall not appear on REALTOR.ca or in the general (public) remarks section of a listing on a Board/Association's MLS® system. The listing REALTOR® may include a direction in the General Description section on REALTOR.ca or on websites operated by CREA or a Board/Association to visit the REALTOR® website to obtain additional information about the listing (but the nature of such additional information shall not be specified).
5. Where the seller has reserved the right to sell the property himself/herself, that fact shall be specified in the Board/Association's MLS® System.

# EXHIBIT 24

<b>Saskatoon Region Association of REALTORS® Inc.</b>
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**IDX Policies****Guidelines****1.1 General**

- (a) Subject to Section 1.1(b), Advertising, in any form whatsoever, of a listed property by any member other than the listing agent shall only be done with the prior approval of the Listing Agent, unless otherwise indicated in the listing contract.
- (b) A Member may republish another Member's listings on the Internet in accordance with the MLS® Internet Data Exchange (IDX) program described in Section 1.2.

**1.2 Internet Data Exchange ("IDX") Program**

- (a) In this section the following terms are defined as follows:

**IDX Data** means MLS® data, or the property data relating to the listings of IDX Broker, which is made available by the Association to IDX Participants from time to time for display on IDX Internet websites.

**IDX Participant** means: (i) an IDX Broker  
and (ii) an IDX Active Member

**IDX Active Member** means an active member of the Association whose license is issued and maintained in an office of an IDX Broker.

**IDX Broker** means a broker of the Association that has not advised the Board/Association in writing that it does not wish to take part in the IDX Program.

**IDX Program** means a program which enables IDX Participants to display on their IDX Internet websites the listings of IDX Brokers.

**IDX Internet Website** means a website controlled and operated by an IDX Participant.

**IDX Thumbnail Icon** means an icon designed and approved by the Association identifying the IDX Program in a Thumbnail Display.

**Detail Display** means enlarged photo and additional text display of individual properties selected from a Thumbnail Display.

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**Thumbnail Display** means a summary of a search displaying multiple property listings per page that may include a small photograph and limited text data.

**Scraping** means use of a software program or other method to extract photographs and text from an IDX Internet website for use on an Internet website other than an IDX Internet Website or for use in any manner except as permitted by Section 4.

- (b) IDX Participants must adhere to the following rules and all other MLS® Rules and regulations, guidelines and policies that may be adopted by the Association from time to time:
- (i) IDX Participants must not alter, modify, manipulate or obscure the IDX Data (or any disclaimers or notices therein) in any way without the prior written approval of the Association.
  - (ii) A Thumbnail Display on an IDX Internet website of another IDX Corporate Member's listing must not include any contact information or branding of any person or corporation other than the listing agent.
  - (iii) A Thumbnail Display may only include the following:
    - 1. Text data about the listing property;
    - 2. A photo of the listing property.
  - (iv) Where a search of the IDX Data generates a Detail Display on an IDX Internet website of another IDX Broker's listing, the Detail Display shall bear that IDX Broker's name and the MLS® copyright notice immediately following the property information all of which shall be at least as large as the largest type size used to display the listing data. This notice may be worded as follows:

***The property data being displayed has been provided through the Internet Data Exchange of the Saskatoon Region Association of REALTORS® Inc. which owns the copyright to the listing data.***
  - (v) A Detail Display on an IDX Internet website of another IDX Corporate Member's listing may not include any contact information or branding of any person or corporation other than the listing agent within the "body" of the listing data. (The "body" shall be the rectangular space whose borders are delimited by the utmost extent in each direction of the listing text and photo data.)
  - (vi) Any Thumbnail Display or Detail Display on an IDX Internet website of another IDX Broker's listing must include any disclaimer which accompanied the information in its original form, or the following notice:

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*All information is believed to be accurate but is not guaranteed and should be independently verified. No warranties or representations are made of any kind.*

- (vii) The IDX Data or any portion thereof may not be displayed on any internet website except an IDX Internet website.
- (viii) IDX Participants shall take all reasonable precautions to prevent Scraping of the IDX Data from their IDX Internet websites, and to prevent the IDX Data from being displayed on any internet website other than an IDX Internet website. Reasonable efforts shall include but not be limited to:
  1. Monitoring its IDX Internet website for indications that a third part is scraping data;
  2. Prominently posting a notice on its IDX Internet website explaining that the website must only be used by consumers for the purpose of locating and purchasing real estate. The following notice may be used:  
*The Data provided must only be used by consumers for the purpose of listing and purchasing real estate and may not be used for any commercial purpose.*
- (ix) The IDX Participant shall immediately advise the Association whenever the IDX Participant suspects or has evidence that Scraping has occurred.
- (x) Within fourteen days after being requested by the Association to do so, an IDX Participant must make such changes to its IDX Internet website as required by the Association to resolve any violation of the IDX and regulations, guidelines and policies.
- (xi) IDX Participants must not permit any portion of the IDX Data to be used or provided to any person or corporation for any purpose other than those expressly provided for in the MLS® rules and regulations, guidelines and policies.
- (xii) IDX Participants must not permit any portion of the IDX Data to be co-mingled with any non-MLS® listings on any IDX Internet website.

# EXHIBIT 25

Saskatoon Region Association of REALTORS® Inc.

## Virtual Office Websites (VOWs) Policies

### Section 1:

**Section 1.1.1: VOW Defined:** VOW means a Participant's Internet website (and, where authorized, websites of non-principal brokers and sales licensees affiliated with MLS® Participants) through which consumers receive real estate brokerage services, including the opportunity to search for MLS® data subject to the Participant's overview, supervision and responsibility.

**Section 1.1.2: Copyright:** Participants acknowledge that the Association has copyright ownership of the MLS® content and acknowledge that no copyright ownership of MLS® content flows to the Participant.

**Section 1.1.3: Remedy for Failure to Comply:** Participants acknowledge that the Association may, in addition to all other remedies available for violation of its regulations and without limiting those remedies, require the Participant to immediately cease and close the operation of the Participant's VOW upon written demand for any violation of these Rules.

**Section 1.1.4: Authorization:** Participants' use of listings of other Participants on VOWs is subject to the consent of such other Participants. Participants' consent for display of their listings by other Participants on VOWs pursuant to these rules is presumed unless a Participant independently and affirmatively withholds that consent ("opts out").

Participants may independently "opt out" of the VOWs of other Participants on a blanket basis ("blanket opt out") of all other Participants' VOWs.

"Blanket opting out" can be accomplished by:

- Notifying the Association, which shall withhold the listings of any "blanket opt out" Participant from its VOW download of listing information.

### Section 1.2:

Participants operating VOWs shall comply with the following:

**Section 1.2.1:** Participants may provide brokerage services via a VOW that include making MLS® active listing data available, but only to consumers (hereinafter "Registrants") with whom the Participants have first established relationships through a Terms of Use Agreement.

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**Section 1.2.2:** Participants must obtain the name and valid email address of each Registrant.

**Section 1.2.3:** Participants must send an email to any Registrant confirming that the Registrant has agreed to the VOW's Terms of Use.

**Section 1.2.4:** Participants can provide access to their VOW only after a Registrant's email address is verified as valid and the Registrant's agreement to the VOW's Terms of Use is confirmed.

**Section 1.2.5:** Participant's Terms of Use shall include the following terms.

- (a) The Registrant acknowledges that these Terms of Use do not create an agency relationship with the Participant;
- (b) That all data obtained from the VOW is only for the Registrant's personal, non-commercial use;
- (c) 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;
- (d) That the Registrant will not copy, redistribute or retransmit any of the data or information provided; and
- (e) That the Registrant acknowledges the Association's ownership of and the validity of the copyright in the MLS® database.

The Participant's Terms of Use may also include other provisions determined by the Participant.

**Section 1.2.6:** Participants' Terms of Use may not impose a financial obligation on a Registrant. Financial obligations, if any, must be established separately from the Participants' Terms of Use, must be prominently labelled, and may not be accepted solely by a "mouse click."

**Section 1.2.7:** Participants' Terms of Use may not create any representation agreement between a Registrant and the Participant. Representation agreements, if any, must be established separately from the Participants' Terms of Use, must be prominently labelled, and may not be accepted solely by a "mouse click."

**Section 1.2.8:** The Registrant must supply a user name and a password, the combination of which must be different from those of all other Registrants of the VOW, before being permitted to search and view information from the MLS® database via the VOW. The user name and password may be established by the Registrant or may be supplied by the Participant, at the option of the Participant.

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**Section 1.2.9:** Participants' VOWs must protect MLS® data from misappropriation by employing reasonable efforts to monitor for and prevent "scraping" and other unauthorized accessing, reproduction or use of the MLS® database.

**Section 1.2.10:** Listings or property addresses of sellers who have directed their listing brokers to withhold their listing or their property address from display on the Internet (including, but not limited to, publicly-accessible websites or VOWs) shall not be accessible to Registrants. This does not preclude listing brokers from displaying on their VOW or their other website(s) the listing or property address of consenting sellers.

**Section 1.2.11:** Non-principal brokers or sales licensees are authorized by the Association to operate VOWs with their Participant's consent. Such VOWs remain subject to the Participant's control, and both the Participant and the non-principal broker or sales licensee shall be accountable under these rules.

**Section 1.2.12:** MLS® information available on any VOW must be refreshed at least once every seven (7) days and must indicate the date of the last update.

**Section 1.2.13:** No portion of the MLS® database shall be distributed, provided to or made accessible to any person for the purpose of operating a VOW except as provided for in these rules.

**Section 1.2.14:** VOWs must display the Participant's privacy policy informing Registrants how information they provide may be used, in accordance with applicable privacy legislation.

**Section 1.2.15:** Listings from the Association may only be excluded from display on Participants' VOWs based on objective criteria, e.g. type of property, listed price, and geographical location.

**Section 1.2.16:** Participants may not provide the identity of Registrants to any other entity for compensation except where

- (1) the Participant's residential real estate brokerage activities principally consist of listing or selling properties;
- (2) Registrants are seeking property in a price range or in a location for which the Participant ordinarily does not provide real estate brokerage services;
- (3) the number of Registrant identities provided, or the corresponding revenue generated, is an insubstantial portion of the Participant's real estate brokerage activities.

For purposes of this rule, "selling" does not include making referrals of prospective purchasers to other real estate brokers and "listing" does not include making referrals of prospective sellers to other real estate brokers.

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**Section 1.2.17:** Participants must notify the Association of their intention to establish a VOW, and must make their VOW directly accessible to the Board or Association and other MLS® participants or their duly authorized representatives for purposes of monitoring/ensuring compliance with applicable rules and policies.

**Section 1.2.18:** A Participant's VOW may not make available for search by or display to Registrants the following data intended exclusively for other Participants and their affiliated licensees:

- 1) Expired, cancelled, withdrawn, or sold listings.
- 2) The compensation offered.
- 3) The seller(s) and occupant(s) name(s), phone number(s) and email address(es) where available.
- 4) Instructions or remarks intended for cooperating brokers only, such as these regarding showings or security of listed property.

**Section 1.2.19:** No advertising may be visible on a page displaying any portion of the listings of other Participants, except that the name, address, phone number and company logo of the Participant operating the VOW and/or the name, address and phone number of the non-principal broker or sales licensee operating the VOW, and any information required by provincial law or regulation is not prohibited.

**Section 1.2.20:** MLS® data fields authorized for display may not be changed. MLS® data may be augmented with additional data not otherwise prohibited from display provided the source of any additional data is clearly identified. This rule does not restrict the format of MLS® data display or display of fewer than all of the listings or fewer authorized data fields.

**Section 1.2.21:** Display of MLS® data must include a notice indicating that the data is deemed reliable but is not guaranteed accurate by the Association.

**Section 1.2.22:** Participants' VOWs may include other appropriate disclaimers necessary to protect the Participant and/or the Association from liability.

**Section 1.2.23:** All listings displayed on VOWs shall identify the name and telephone number of the listing firm in typeface not smaller than the median used in the display of listing data.

**Section 1.2.24:** Registrants may view, retrieve or download not more than 50 current active listings in response to any inquiry.

**Section 1.2.25:** Participants displaying other brokers' listings obtained from sources other than the local Association (e.g. from other Board/Association, from non-Participant brokers, etc.) shall display the source from which each such listing was obtained.

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**Section 1.2.26:** Registrants' passwords may be valid no longer than 30 days, after which such passwords must be reconfirmed or changed

**Section 1.2.27:** Non-principal brokers and sales licensees affiliated with Participants may operate VOWs subject to their Participant's consent and control. Both the Participant and the non-principal broker or sales licensee operating the VOW shall be accountable under these rules with respect to the operation of any such VOW.

# EXHIBIT 26

**LSTAR Mission Statement:**

*The London and St. Thomas Association of REALTORS® is a professional organization committed to serving the real estate needs of the community and to providing its Members with the services and education required to promote excellence, knowledge and a high standards of ethics and business practices.*



## **MLS® RULES AND REGULATIONS**

(Supersedes and Replaces all Previous MLS® Rules and Regulations)

### **Rules and Regulations generally relating to the MLS® System Of the London and St. Thomas Association of REALTORS®**

(Based on OREA's Standard Board MLS® Rules & Regulations)  
FLOOR APPROVAL – September 2, 2010

Agency Pillar – Article 2. Listing Procedure Section 2a) 2.  
(repealed and replaced October 25, 2010)

Board of Directors – December 16, 2010

Board of Directors – February 16, 2011

Board of Directors – April 13, 2011

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**MLS® RULES AND REGULATIONS****ARTICLE 1 – Definitions and Interpretations**

1.01 In these RULES and REGULATIONS, unless the context otherwise requires:

- a) **“Act”** means the Real Estate and Business Brokers Act 2002 and its regulations, and any successor legislation.
- b) **“Agency Agreement”** means an agreement between a Firm Member and a Principal under which the Firm Member and Principal agree that the Firm Member will represent the Principal in respect of one or more aspects of a trade in real estate, and without limiting the generality of the foregoing, includes the Listing Agreement and the Buyer Agency Agreement.
- c) **“Association”** means the London and St. Thomas Association of REALTORS®.
- d) **“Boardload”** means the entering of listing information from the MLS® Data Input Sheet, Listing Agreement, if applicable, and any other data onto the Association’s MLS® System database by Association staff.
- e) **“Brokerage”** means a corporation, partnership, sole proprietor, association or other organization or entity that, on behalf of others and for compensation or reward or the expectation of such, trades in real estate or holds himself, herself or itself out as such.
- f) **“Brokerload”** means the entering of listing information from the MLS® Data Input Sheet, Listing Agreement, if applicable, and any other data onto the Association’s MLS® System database by the Listing Brokerage’s office.
- g) **“Buyer’s Agent”** means the Brokerage representing the buyer under a Buyer Agency Agreement.
- h) **“Buyer Agency Agreement”** means the agency agreement formed between a buyer as Principal and his or her agent in respect of one or more aspects of an acquisition of property.
- i) **“Co-operating Brokerage”** means a Firm Member or another Brokerage that is a member of CREA that effects the trade of the property as a Sub-agent, Buyer’s agent, or otherwise.
- j) **“CREA”** means The Canadian Real Estate Association or any successor organization.
- k) **“Designated Signing Representative”** means the person(s) designated by the Principal Broker of the Listing Brokerage as being permitted to sign the following documents on behalf of the Listing Brokerage: withdrawal (DNS) of Listing Agreement; cancellation of Listing Agreement; and an amendment of Listing Agreement described in section 2.13; and the Association shall be advised of such designation. *(see MLS® Policy 5.10)*
- l) **“Directors”** means the Board of Directors of the Association.
- m) **“Firm Member”** means a Brokerage which is a Member of the Association.
- n) **“Internet Data Exchange”** or **“IDX”** is a means by which each Participant subscribing to the program (the “Internet Data Exchange Subscriber”) or IDXS” permits the display of its active listings appearing in MLS® on the Association’s IDX website.
- o) **“Internet Data Exchange Database”** is the current aggregate compilation of all active exclusive right to sell listings of all Internet Data Exchange Subscribers.
- p) **“Listing Agreement”** means the agency agreement formed between a seller as Principal and a Brokerage as agent in respect of one or more aspects of a disposition of property, and when it is part of an MLS<sup>®</sup> Listing, includes the Association’s standard listing agreement form.
- q) **“Listing Brokerage”** means a Firm Member or another Brokerage that is a member of CREA that has listed the property for disposition through the Association’s MLS® System.
- r) **“MLS®”** and **“Multiple Listing Service®”** are two of the MLS® Marks owned by CREA and licensed by CREA, all as further described in paragraph (s) below.

- s) **"MLS® Compilation"** means any format in which property-listing data is collected and disseminated to the Members including, but not limited to, bound book, loose-leaf binder, computer database, card file, or any other format.
- t) **"MLS® Data Input Sheet"** means the data input sheet, as prescribed by the Association from time to time to be used to obtain and submit property information for MLS® Listings. The MLS® Data Input Sheet plus the Listing Agreement together makes up the MLS® Listing for a listing which is listed on the Association's MLS® System database.
- u) **"MLS® Listing"** means a listing which is listed on the Association's MLS® System database and includes the Listing Agreement portion and any subsequent amendment(s) thereto and the MLS® Data Input Sheet portion and any subsequent amendment(s) thereto, whether or not the Association requires the submission of both the Listing Agreement portion and the MLS® Data Input Sheet portion. (*see MLS® Policy 7.01 for definition of "Real Estate"*)
- v) **"MLS® Marks"** - made up of MLS®, Multiple Listing Service® and the MLS® logos permitted by CREA - are certification marks owned by CREA and licensed by CREA pursuant to the terms and conditions set out in CREA's By-laws, Rules and policies. The MLS® Marks identify professional services rendered by members in good standing of CREA to effect the purchase and sale of real estate as part of a "plural system arrangement", also known as a co-operative selling system (the "MLS® services"), in compliance with CREA's By-laws, Rules and policies, and the REALTOR® Code of Ethics as amended from time to time, and in compliance with all applicable federal and provincial laws and regulations. The MLS® Marks do not identify or describe a computer database of real estate listings.
- w) **"MLS® System"** of the Association is the co-operative selling system operated and promoted by this Association in association with the MLS® Marks. The MLS® System of this Association includes an inventory of listings of participating REALTORS®, and ensures a certain level of accuracy of information, professionalism and co-operation amongst REALTORS® to effect the purchase and sale of real estate.
- x) **"MLS® System data"** means any part of the MLS® System database.
- y) **"MLS® System database"** means the database of real estate listings operated by the Association for the benefit of its Members as part of the Association's MLS® System, and includes any and all text, images and information gathered, compiled, stored or published by the Association as part of the Association's MLS® System, in whatever format it is gathered, compiled, stored or published by the Association, and further includes any and all such text, images and information which is made available by the Association to Members, in whatever format it is disseminated to the Members.
- z) **"Member"** means Firm Member, Broker Member or Salesperson Member all as defined in the bylaw of the Association.
- aa) **"Person"** includes, where applicable, an individual, a partnership, a corporation, an organization, and a business.
- bb) **"Principal"** means the client of the Brokerage to whom is owed primary allegiance including good faith, full disclosure, competence, obedience and accounting.
- cc) **"Principal Broker"** means, at the choice of the Firm Member:
- (i) the person who is the broker of record of the Firm Member for the purposes of the Act, if the Firm Member's broker of record under the Act is a Member of the Association; or
  - (ii) a Broker Member of the Firm Member who has been designated as the Principal Broker for the purpose of the relationship between the Firm Member and the Association, if the Firm Member's broker of record under the Act is not a Member of the Association; or
  - (iii) a Broker Member of the Firm Member who has been designated as the Principal Broker for the purpose of the relationship between the Firm Member and the Association, *even if* the Firm Member's broker of record is a Member of the Association, and every Firm Member shall advise the Association of whom it has designated as its Principal Broker and shall also immediately advise the Association when that designation changes.

- dd) REALTOR® and REALTORS® are two of the REALTOR® Marks controlled by CREA and licensed by CREA, all as further described in paragraph (cc) below.
- ee) “REALTOR® Marks” - made up of REALTOR®, REALTORS® and the REALTOR® logos permitted by CREA – are certification marks controlled by CREA and licensed by CREA pursuant to the terms and conditions set out in CREA’s By-laws, Rules and policies. They identify members in good standing of CREA who provide real estate brokerage services (the “REALTOR® services”) in compliance with CREA’s By-laws, Rules and policies, and the REALTOR® Code of Ethics, as amended from time to time, and in compliance with all applicable federal and provincial laws and regulations.
- ff) “REBBA Code of Ethics” means the Code of Ethics for all registrants contained in the regulations to the Act, and any successor Code.
- gg) “Sub-agent” means a person empowered by an agent to act on his/her behalf for a Principal in an agency relationship.
- hh) “Trade” includes a disposition or acquisition of or transaction in real estate by sale, purchase, agreement for purchase and sale, exchange, option, lease, rental or otherwise and any offer or attempt to list real estate for the purpose of such a disposition, acquisition or transaction, and any act, advertisement, conduct or negotiation, directly or indirectly, in furtherance of any disposition, acquisition, transaction, offer or attempt, and the verb “trade” has a corresponding meaning.
- 1.02 WHEREAS the Association has adopted, as its official position, the principle that unless a Co-operating Brokerage discloses the nature of the Co-operating Brokerage’s agency relationship as that of a Sub-agent, such Co-operating Brokerage shall, for the purpose of these MLS® rules and regulations, be deemed to be acting as a Buyer’s agent. This official Association position does not relieve a Member from full compliance with CREA’s REALTOR® Code of Ethics, the Act and the REBBA Code of Ethics.
- 1.03 AND WHEREAS the Association has adopted these rules and regulations with the understanding that its Members will abide by them, as well as by their spirit and intent, for the betterment of the Members and the public.

## **ARTICLE 2 – Listing Procedures**

- 2.01 The Listing Brokerage must secure a satisfactory MLS® Listing signed by the owner/owners or any person lawfully entitled to list the property for sale or by his/her/their lawfully authorized representatives.
- 2.02 a) Only listings that comply with the following three pillars of the MLS® Marks as established by CREA can be listed on the Association’s MLS® System database:
1. Only Listing Brokerages may place an MLS® Listing on the Association’s MLS® System database.
  2. The Listing REALTOR®/Brokerage must act as agent for the seller in order to post, amend or remove an MLS® Listing on the Association’s MLS® System. The nature of any additional services to be provided by the Listing REALTOR®/Brokerage is determined by agreement between the Listing REALTOR®/Brokerage and the seller.
  3. The Listing Brokerage agrees to pay to the Co-operating Brokerage compensation for the co-operative selling of the property. An offer of compensation of zero is not acceptable.
- b) The following are the interpretations of the 3 pillars of the MLS® Marks, as set out in CREA’s by-law and rules:
1. The Listing Brokerage shall be available to provide professional advice and counsel to the seller on all offers and counter offers unless otherwise directed by the seller in writing.
  2. The Listing Brokerage is responsible and accountable for the accuracy of information submitted to the Association for inclusion in the Association’s MLS® System database (see section 2.07 below). The Association is responsible for ensuring that the data submitted to it meets reasonable standards of quality.
  3. Only REALTORS® are permitted to display the MLS® Marks in signage, advertising, etc.

4. Where the seller directs the Listing Brokerage in writing to do so, the seller's contact information may appear in the REALTOR<sup>®</sup> only remarks (non-public) section of an MLS<sup>®</sup> Listing on the Association's MLS<sup>®</sup> System database. The seller's contact information shall not appear on REALTOR.ca or in the general (public) remarks section of an MLS<sup>®</sup> Listing on the Association's MLS<sup>®</sup> System database. The Listing Brokerage may include a direction in the general description section on REALTOR.ca or on websites operated by CREA or the Association to visit the Listing Brokerage (and/or listing REALTOR<sup>®</sup>) website to obtain additional information about the listing (but the nature of such additional information shall not be specified).

5. Where the seller has reserved the right to sell the property himself/herself, that fact shall be specified in the Association's MLS<sup>®</sup> System database.

c) While all efforts have been made by the Association to ensure that none of the other MLS<sup>®</sup> rules and regulations in this document violate any of the principles in the 3 Pillars and the Interpretations of the 3 Pillars set out in paragraphs (a) and (b) above, if it is determined by the Association in consultation with CREA, that any of the other MLS<sup>®</sup> rules and regulations in this document violate any of the principles in the 3 Pillars and the Interpretations of the 3 Pillars set out in paragraphs (a) and (b) above or the Competition Act, they will be amended or deleted as may be required.

2.03 In addition to the provisions of 2.02 and without limiting the generality of the other provisions contained in these MLS<sup>®</sup> rules and regulations, a listing shall not be accepted by the Association as an MLS<sup>®</sup> Listing if:

a) it excludes any Members from showing the property;

b) it excludes any Members from acting as Co-operating Brokerages; or

c) it does not include a "real estate component" ("real estate component", for the purpose of this paragraph includes real property, a leasehold or other interest in real property less than a fee simple, and a time share agreement with regard to real property. It also includes a moveable dwelling that is designed for use as a permanent residence; and a business, including an interest or share of a business, with or without premises, and the fixtures, stock-in-trade, goods and chattels associated with the business, provided such items are sold in bulk as part of the business operation.)

2.04 If:

a) an MLS<sup>®</sup> Listing has unusual conditions; or,

b) an MLS<sup>®</sup> Listing includes any modification to the Association's form of listing agreement, which modification shall be considered to be a special agreement.

such conditions or special agreement must be included in the REALTOR<sup>®</sup> remarks or on the tick box in the field "special conditions" and it must be marked as "yes".

2.05 Only the Association's form of Listing Agreement, amendment or extension thereof, shall be used for MLS<sup>®</sup> Listings to be serviced through the Association's MLS<sup>®</sup> System. Such MLS<sup>®</sup> Listing must give all necessary data and as full and accurate a description of the property as possible, with any additional information on the property to be forwarded as soon as procurable. The date of the Listing Agreement and also the date of the expiry of the Listing Agreement are to be shown on the Listing Agreement.

*(Footnote: According to the Act, the date of signing, on both the Listing Agreements and Agreements of Purchase and Sale must be affixed by the parties signing, at the time of signing.)*

2.06 Only photographs of a property, without wording or other embellishments not related to the property (except for architectural drawings and floor plans, on which it is permissible to label such items as measurements), shall be accepted for an MLS<sup>®</sup> Listing to be serviced through the Association's MLS<sup>®</sup> System. (Footnote: Refer to MLS<sup>®</sup> Policy 16.04)

2.07 a) The Association acts solely as publisher of the MLS<sup>®</sup> System database and is not obligated to or responsible for reviewing the accuracy, the completion and/or propriety of any MLS<sup>®</sup> Data Input Sheet or Listing Agreement.

b) The Association acts solely as publisher of the MLS<sup>®</sup> System database and, whether the MLS<sup>®</sup> Listing is Boardloaded or Brokerloaded, the Association is not responsible for the accuracy and/or the completion of any MLS<sup>®</sup> Listing on the Association's MLS<sup>®</sup> System.

- c) It is the Listing Brokerage's responsibility to verify the accuracy of its MLS® Listing and all documents and other matters that make up the MLS® Listing and to correct any inaccuracy and/or incompleteness or notify the Association of any such inaccuracy and/or immediately as may be necessary in the circumstances. This applies regardless of any agreement between the Listing Brokerage and the seller that attempts to waive or shift the responsibility for the accuracy of the MLS® Listing and all matters that make up the MLS® Listing or any information submitted to the Association for inclusion in the Association's MLS® System database to the seller or any other person.
  - d) The Listing Brokerage, by placing an MLS® Listing on the Association's MLS® System shall indemnify and save the Association harmless from any loss to the Association arising out of any claim regarding the Listing Agreement, the MLS® Data Input Sheet and/or publication of the MLS® Listing on the Association's MLS® System. This applies regardless of any agreement between the Listing Brokerage and the seller that attempts to waive or shift the responsibility for the accuracy of the MLS® Listing and all matters that make up the MLS® Listing or any information submitted to the Association for inclusion in the Association's MLS® System database to the seller or any other person.
- 2.08 a) The Listing Brokerage must deliver or Brokerload the MLS® Listing, amendment or extension thereof direct to the Association, and in the process required by the Association, not more than forty-eight hours, Saturdays, Sundays, Holidays and Association closures excluded, following receipt of any signed Listing Agreement, amendment or extension thereof.
- b) The only exception to (a) is where the commencement date of the MLS® Listing is after the date that the Listing Agreement is signed, in which case, the Listing Brokerage must deliver or Brokerload the MLS® Listing direct to the Association, and in the process required by the Association, not more than forty-eight hours, Saturdays, Sundays, Holidays and Association closures excluded, following the commencement date of the MLS® Listing.
- 2.09 For Brokerloaded MLS® Listings, Listing Brokerages are not required to forward copies of the Listing Agreement and completed MLS® Data Input Sheet to the Association at the time of submission of such MLS® Listing to the Association. However, Brokerloaded MLS® Listings are subject to random audits by the Association, and the Listing Brokerage may, from time to time, be required to forward the Association a copy of the Listing Agreement and completed MLS® Data Input Sheet for an MLS® Listing. Failure to provide a Listing Agreement and completed MLS® Data Input Sheet when requested will result in the MLS® Listing being automatically removed from the Association's MLS® System database.
- 2.10 The information relating to an MLS® Listing which has yet to be processed or published by the Association shall be given by the Listing Brokerage to any registrant under the Act, upon request.
- 2.11 An MLS® Listing may be extended to a new expiry date provided that the Association has received within forty-eight hours of the expiration date, Saturdays, Sundays, Holidays and Association closures excluded, a copy of the extension on the form provided for the purpose by the Association, duly signed before the expiry date by the person who signed the MLS® Listing, or by his/her/ their lawfully authorized representatives.
- 2.12 The Listing Brokerage of an MLS® Listing must give notice to the Association not later than forty-eight hours, Saturdays, Sundays, Holidays and Association closures excluded, following receipt of information as to any change in price, terms or conditions of sale, such notice to be provided in the same manner as is required by the Association for the submission of the MLS® Listing to the Association.
- 2.13 If an amendment of an MLS® Listing results in the reduction of the term of the MLS® Listing and the amended expiry date being earlier than in the original MLS® Listing, the signature of the Principal Broker or owner or manager or Designated Signing Representative of the Listing Brokerage must be on the amendment in order for the amendment to be processed. The amendment will not be processed if that signature is not affixed. Should the reduction of the term of the MLS® Listing cause the MLS® Listing to be cancelled, a properly executed cancellation of listing agreement form will be required.
- 2.14 The seller of the property for sale may be provided with a copy of the MLS® Listing as produced by the Association provided that the Association is provided with sufficient information to identify the seller.

- 2.15 Except in the case of Vacant Land, all properties which are to be, or may be, sold separately must be listed individually.
- 2.16 When a Listing Brokerage requests an MLS® Listing be placed in more than one category, the Member shall provide the appropriate Data Input Sheet for the additional category(ies) – at a fee to be determined from time to time. – refer to MLS® policy 5.05
- 2.17 Only one MLS® Listing for any one trade function signed by any one seller may be placed on the Association's MLS® System database at any one time. Footnote: An exception to this rule is that the Association will accept MLS® Listings on the same property if there is a mortgagor and mortgagee situation. (see MLS Policy 7.06)
- 2.18 Although these rules and regulations contemplate that Buyer Agency Agreements may, at some time in the future be listed on the Association's Multiple Listing Service®, nothing in these rules and regulations requires the Association to do so, and the Association shall notify its Members, if and when, a decision has been made to list Buyer Agency Agreements on the Association's Multiple Listing Service®. Notwithstanding the preceding statement, all Listings (except Exclusive Listings where the context indicates otherwise) and all Buyer Agency Agreements, are subject to the rules and regulations of the Association.
- 2.19 Agency agreements submitted to the Multiple Listing Service® shall bear one and only one termination date as negotiated between the member and the Principal.
- 2.20 Listings shall be for a period of not less than 60 days (from commencement date).
- 2.21 a) If a property is not available for showings and/or offers until a specified date, the MLS® Listing *must* indicate "No showings until ... (a specified date)" or "No offers until ... (a specified date)" in the REALTOR® remarks section of the MLS® Listing and the Listing Member *must* maintain a record of all requests by Members for appointments and/or offer presentations.
- b) When a Seller permits a showing or Open House or is advised that there is a written offer ready to be presented on a property prior to the specified date, the listing member must notify all members who have requested showings or who have advised about offers, that showings are now permitted or that they have been advised there is a written offer ready to be presented on the property and they shall be given an equal opportunity to show the property and/or present an offer prior to any showing or offer presentation as the case may be so that all members and consumers are treated fairly, honestly and with integrity.

### **ARTICLE 3 – Withdrawals (DNS) and Cancellations**

- 3.01 An MLS® Listing may be withdrawn from the Association's MLS® System database before its expiration date provided that a copy of the withdrawal of the Listing Agreement is filed with the Association by the Listing Brokerage, which withdrawal of Listing Agreement is signed by the seller who signed the original Listing Agreement or by his/her/their lawfully authorized representatives and by the Principal Broker or owner or manager or Designated Signing Representative of the Listing Brokerage. Such withdrawal of the Listing Agreement shall not constitute a cancellation of the terms and conditions of the original Listing Agreement.
- 3.02 a) An MLS® Listing may be cancelled by a properly completed cancellation of Listing Agreement form signed by the seller who signed the original Listing Agreement or by his/her/their lawfully authorized representatives and by the Principal Broker or owner or manager or Designated Signing Representative of the Listing Brokerage and a copy of such cancellation of Listing Agreement shall be immediately forwarded to the Association.
- b) See Section 10.01 (a) regarding continued sale reporting obligations notwithstanding a cancellation.

### **ARTICLE 4 – Brokerage**

- 4.01 Listings being submitted through the Association's MLS® System shall contain an indication by the Listing Brokerage of the commission rate or fee or amount that it shall pay to the Co-operating Brokerage.

- 4.02 If it becomes necessary for any reason for the Listing Brokerage to alter either the amount to be paid to any Co-operating Brokerage or the listing price, the information must be circulated through the Association's MLS® System database by means of filing a replacement information sheet.
- 4.03 a) Where the commission to be paid to a Co-operating Brokerage is specified under the terms of sections 4.01 or 4.02 above, the Listing Brokerage shall be required to pay to the Co-operating Brokerage such commission unless such commission is modified by agreement in writing between the Co-operating Brokerage and the Listing Brokerage.
- b) A Co-operating Brokerage, whether acting as a Buyer's agent or a Sub-agent, shall not use the terms of an agreement of purchase and sale or an offer to lease to modify the Listing Brokerage's commission rate or fee, or amount that the Listing Brokerage shall pay to the Co-operating Brokerage, nor make the submission of an executed offer to purchase/lease contingent on the Listing Brokerage's agreement to modify the Listing Brokerage's commission rate or fee, or amount that the Listing Brokerage shall pay to the Co-operating Brokerage.
- 4.04 It shall be the responsibility of the Listing Brokerage to collect the commission owing on completed sales and pay the share to the Co-operating Brokerage within seven (7) days of receipt.
- 4.05 Where the full commission is not received by the Listing Brokerage, and where the Co-operating Brokerage's share of the commission has not been received by the Co-operating Brokerage from the buyer pursuant to a Buyer Agency Agreement, the Listing Brokerage shall disclose in writing to the Co-operating Brokerage all facts and circumstances relating to the non-payment of the full commission and provide a true copy of the Listing Agreement within 10 days after closing to the Co-operating Brokerage; and pay to the Co-operating Brokerage the proportionate amount of such commission (within 7 days of receipt of the commission as provided for in section 4.04 above). The proportionate amount shall be determined by the Listing Brokerage with reference to the ratio which the commission payable to the Co-operating Brokerage as indicated in the Listing information sheet was to the total commission as set out in the Listing Agreement between the Listing Brokerage and the seller.
- 4.06 Where the full commission is not received by the Listing Brokerage, any collection costs incurred by him are to be deducted from the total commission and the balance distributed as above provided. Losses and costs incurred in an endeavour to make such collection must be sustained on a pro-rata basis by the parties thereto unless otherwise agreed.
- 4.07 In the event that the Listing Brokerage decides not to take legal action against the seller to recover the commission, the Co-operating Brokerage may do so (if it would otherwise be entitled to a share of the commission to be paid by the seller) and the Listing Brokerage agrees to an assignment of its rights under the Listing Agreement to give effect to this provision. Unless the Listing Brokerage and Co-operating Brokerage otherwise agree, any monies so collected shall be dealt with in the same manner as if collected by the Listing Brokerage under Sections 4.05 and 4.06 hereof.
- 4.08 Where any commission is paid as a result of the holdover clause in the Listing Agreement, such commission shall be paid as set out above.

#### **ARTICLE 5 – Internet Data Exchange Database**

- 5.01 An IDXS may link to the Internet Data Exchange Database on the Internet in accordance with the following provisions and in keeping with any policies that LSTAR 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.
- a) The Internet Data Exchange Database shall contain only those fields of data designated by LSTAR for this purpose.
- b) In order to be an IDXS, a Participant must be engaged in providing real estate brokerage services to buyers or sellers in real estate transactions and be a Member of LSTAR and licensed with RECO.
- c) An IDXS may not modify or manipulate the data relating to another IDXS's listing.

- d) The LSTAR approved icon and an explanation that those properties marked with the icon are provided courtesy of LSTAR. IDX Database will appear on the first page where any listing data is displayed.
- e) A thumbnail display of another IDX's listing will not include any contact information or branding of the IDX who owns the website, any of its agents, or any third party.
- f) A thumbnail display will only include the following: text data about the listing property and a photo of the listing property.
- g) A search result producing a detailed display of another IDX's listing shall bear that IDX's name, the LSTAR approved icon, and LSTAR's copyright notice immediately following the property information.
- h) A detailed display of another IDX's listing will not include any contact information or branding of the Participant who owns the website, any of its agents, or any third party within the "body" of the listing data. 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 identifying another IDX's listing shall include the disclaimer "Information Deemed Reliable But Not Guaranteed."
- j) Any Internet website used for linking to the IDX Database or any portion thereof must be controlled by an IDX and advertised as that IDX's Internet website.
- k) An IDX must make changes to an Internet site necessary to cure a violation of LSTAR Rules within five business days of notice from LSTAR of the violation.
- l) No portion of the Internet Data Exchange Database shall be used or provided to a third party for any purpose other than those expressly provided for in Section 11 of these rules.
- m) Any website linking to the IDX website must be under the control of a single IDX. The only way sales reps/brokers can have an IDX website is that the employing Firm Member must be contributing its listings to the program.

## **ARTICLE 6 – Appointments**

- 6.01 If a Member is unable to keep an appointment, the other Member or seller or tenant must be advised, consistent with the arrangement between the Listing Brokerage and the seller.

## **ARTICLE 7 – Open Houses**

Intentionally deleted.

## **ARTICLE 8 – Trading Regulations**

### **Solicitation Regulations**

- a) A Member shall not solicit a Listing which is currently Listed with another Listing Brokerage. However, if the Listing Brokerage, when asked by a Member, refuses to disclose the expiration date and the nature of such Listing (i.e. an exclusive right to sell, an exclusive relationship, an open listing or other form of contractual agreement between the Listing Brokerage and the client), the Member may contact the Principal to secure such information and may discuss the terms upon which the Member might take a future Listing.
- b) A Member shall not solicit Buyer Agency Agreements from buyers/tenants who are subject to exclusive Buyer Agency Agreements. However, if a buyer's/tenant's agent when asked by a Member, refuses to discuss the expiration date of the exclusive Buyer Agency Agreement, the Member may contact the

buyer/tenant to secure such information and may discuss the terms upon which the Member might enter into a future Buyer Agency Agreement.

- c) The fact that an agency agreement has been entered into with a Member shall not preclude or inhibit any other Member from entering into a similar agreement after expiration of the prior agency agreement.
- d) When Members are contacted by the Principal of another Member regarding the creation of a relationship to provide the same type of service, and Members have not directly or indirectly initiated such discussions, they may discuss the terms upon which they might enter into a future agency agreement.
- e) The above-mentioned rules do not preclude Members from making general announcements, messages or advertisements (hereinafter referred to as "general announcements" or "announcement") to prospective clients describing their services and the terms of their availability even though some recipients may have entered into agency agreements with another Member, provided such general announcements include a clear, prominent and emphasized statement that the announcement is not intended to cause or induce a breach of an existing agency agreement. A general canvass, general mailing or distribution addressed to all prospective clients in a given geographical area or in a given profession, business, club or organization, or other classification or group, is deemed "general" for the purposes of this rule if it is a mass-produced announcement in identical form to the general public, or an identifiable group of the public whether communicated by radio, television, newspaper, flyers, form letters (even though personally addressed) or computerized telephone messages.
- f) This rule recognizes as prohibited practices two basic types of solicitations:
  - (i) a telephone and/or personal solicitation of property owners who have been identified by a real estate sign or information on the Association's MLS<sup>®</sup> System database, or other information, as having Listed their property with another Member; and
  - (ii) mail or other forms of written solicitations of prospective Principals whose properties are listed with another Member when such solicitations are not part of a general mailing but are directed specifically to property owners identified through compilations of current MLS<sup>®</sup> Listings or identified "for sale" or "for rent" signs or other sources of information.
- g) Members, prior to entering into an agency agreement, have an affirmative obligation to make reasonable efforts to determine whether the Principal is subject to a current, valid agency agreement to provide the same type of real estate service.
- h) This rule does not preclude Members from contacting the Principal of another broker for the purpose of offering to provide, or entering into an agency arrangement where the original and current Principal's agent has negotiated a cancellation clause with the Principal, and the Principal has not otherwise indicated he/she does not wish to be solicited during the term of that contract.
- i) This rule does not preclude Members from contacting the Principal of another broker for the purpose of offering to provide, or entering into a contract to provide, a different type of real estate service unrelated to the type of service currently being provided (e.g. property management as opposed to brokerage). However, information received through the Association's MLS<sup>®</sup> System database may not be used to target Principals of other Members to whom such offers to provide services may be made.

### **Other Trading Regulations**

- 8.02 No Member shall advertise any MLS<sup>®</sup> Listing at any price other than the price as Listed with the Association.
- 8.03 If signs are part of the arrangement between the Listing Brokerage and the seller, all signs placed on properties listed through the Association's MLS<sup>®</sup> System database may have attached thereon such MLS<sup>®</sup> Marks and REALTOR<sup>®</sup> Marks as may be authorized by CREA from time to time.
- 8.04 If signs are part of the arrangement between the Listing Brokerage and the seller all signs placed on properties that are listed on the Association's MLS<sup>®</sup> System database shall at all times reflect the current status of that MLS<sup>®</sup> Listing.

**The Procurement Rule**

- 8.05 (a) Where a property is shown by one Member to a prospective buyer and the same property is ultimately sold by another Member to the same prospective buyer, the Firm Member obtaining an acceptable offer to purchase shall be the Firm Member by whom the commission shall be deemed to be earned provided that no unethical act was performed in the process of procuring said acceptable offer to purchase (including, but not limited to those unethical practices described in paragraph (c) below).
- (b) Where a property is shown by one Member to a prospective buyer no other Member shall attempt to obtain an offer to purchase on the same property from the same prospective buyer by unethical means (including, but not limited to those unethical practices described in paragraph (c) below). This does not preclude a Member from entering into a Buyer Agency Agreement with such buyer provided the Member did not use any unethical means or engage in any unethical acts to obtain the agreement (including, but not limited to those unethical practices described in paragraph (c) below).
- (c) It shall be unethical for a Member to:
- (i) ignore the existence of an existing agency agreement or induce or attempt to induce a breach of such agency agreement with another Firm Member for the purpose of having a buyer deal with the Member regarding the same property or types of property for which the buyer is already committed under the existing agency agreement. Having no knowledge of the existence of an existing agency agreement will not be permitted as a defence to this unethical conduct if the Member did not take reasonable steps to determine whether the seller or buyer was subject to an existing agency agreement; or
  - (ii) suggest to a prospective buyer that he or she inspect properties with other Members, with the intention or instruction, or implied intention or instruction, to return to the first Member's office for submission of any offer to purchase on any one of such properties.
- (d) For the purposes of section 8.05, the word "show", in any of its forms, means the introduction of a prospective buyer to the property by the act of causing the prospective buyer, where buildings exist, to examine the property both internally and externally or, where buildings do not exist, to view the ground and surrounding area and in either case, in company with the Member who is attempting to sell the property or by causing such examination of the property by the prospective buyer under arrangement made with the Listing Brokerage so that it may be done in company with the seller or the seller's authorized representative.

However, the following shall not constitute a "showing" of the property:

- (i) the placing of a sign;
- (ii) a prospective buyer attending an open house where a Member is not in attendance and does not make personal contact with the prospective buyer;
- (iii) the advertising, by any means, of the property for sale; and
- (iv) a prospective buyer attending a property without a Member.

**Keys or Other Entry Systems**

- 8.06 Keys or other entry systems may only be used by Members for the purpose of inspecting properties or showing properties to prospective buyers. Unauthorized use of keys or other entry systems will constitute a breach of this rule. For the purpose of this Section: the making of duplicate keys from the one obtained; failing to return the key to the Listing Brokerage within a reasonable time; and/or the turning over of the key or information on the entry system to any person not authorized by the Listing Brokerage to receive it; shall be considered an unauthorized use.
- 8.07 In all relationships with fellow REALTORS® and with the buyers and sellers involved, whether as Principals or otherwise, CREA's REALTOR® Code of Ethics and the REBBA Code of Ethics must be observed. Where any of these rules conflict with any relevant laws or CREA's REALTOR® Code of Ethics or the REBBA Code of Ethics, the relevant laws and the REALTOR® Code of Ethics and Standards of Business Practice and the REBBA Code of Ethics shall be deemed to be paramount.

**ARTICLE 9 – Submission of Offers**

- 9.01 If it is part of the arrangement between the Co-operating Brokerage and the buyer, a representative of the Co-operating Brokerage who is registered under the Act shall have the right to be present when the offer is presented by the Listing Brokerage to the seller, unless the seller directs otherwise. If it part of the arrangement between the Listing Brokerage and the seller, a representative of the Listing Brokerage who is registered under the Act shall have the right to be present when any counter-offer is presented by the Co-operating Brokerage to the buyer, unless the buyer directs otherwise. However, this does not mean that the REALTOR® may be present during subsequent discussions between the other REALTOR® and his or her seller (or buyer, as applicable).
- 9.02 If it is part of the arrangement between the Listing Brokerage and the seller, appointments to show an MLS® Listed property shall be continued even after an offer is received until one has been accepted unconditionally and such acceptance conveyed to the buyer or until requested by the seller to discontinue appointments.

### **ARTICLE 10 – Reporting of Sales of MLS® Listings**

- 10.01 An important part of the inherent value of the Association's MLS® System is the transaction data accumulated for sales of MLS® Listings. Therefore, it is the responsibility of all Association Members, regardless of their business model, to ensure that notice of conditional or unconditional sales of MLS® Listings shall be provided in writing to the Association on the form(s) provided by the Association, within forty-eight (48) hours, Saturdays, Sundays, Holidays and Association closures excluded, after acceptance. Members are not permitted to avoid these notice obligations to the Association by, for example, cancelling an MLS® Listing between receipt (or anticipated receipt) and acceptance of an offer, or encouraging a seller to do so.
- 10.02 When a condition has been fulfilled or renewed or when any other change occurs on a conditional sale of an MLS® Listing, or when a conditional sale of an MLS® Listing has fallen through and the agreement of purchase and sale has been cancelled, or when an unconditional sale of an MLS® Listing has fallen through and the agreement of purchase and sale has been cancelled, notice shall immediately be provided in writing to the Association.
- Footnote: Where a sale falls through or is cancelled and the expiry date of the listing has not passed, the listing shall automatically be reinstated.*
- 10.03 The sale price of all unconditional sales of MLS® Listings must be disclosed in the notice that is provided to the Association, or Brokerloaded, and will be recorded on the Association's MLS® System database.
- 10.04 All such notices shall be provided by the Listing Brokerage, except if negotiations were carried on, with permission, by the Co-operating Brokerage, in which case the Co-operating Brokerage shall provide such notices and provide a copy thereof to the Listing Brokerage at the same time that notice is provided to the Association.

### **ARTICLE 11 - MLS® System Data, MLS® System Database and Other Association Publications**

#### **Ownership**

- 11.01 The Association is the owner of the copyright in its MLS® System and its MLS® System database. The MLS® System and the MLS® System database is a licensed product for the exclusive use of Members and other users authorized in writing by the Association and any use of this MLS® System data for any unauthorized purpose is prohibited. The right to use, reproduce or download the MLS® System data is subject to the authority of the Association to permit or prohibit specific uses and is limited to the specific uses permitted by the Association.
- 11.02 Members shall comply with, observe, and be bound by all restrictions, copyright notices or other limitations of access to the MLS® System and the MLS® System database and use thereof as may be adopted by the Directors from time to time.
- 11.03 The Member shall advise and obtain the Principal's authorization that:
- a) all information concerning the Agency Agreement, the properties affected thereby and the transactions thereunder shall be made available not only to all other Members and their Principals, but also any third party authorized users with whom the Association has a contract.

- b) the Association may, at its option, advertise in any medium, including the Internet, any properties listed on the MLS<sup>®</sup> System database;
- c) the Association may compile, retain and distribute the listing information indefinitely and may compile, retain and publish any statistical analyses including historical MLS<sup>®</sup> System data based on such information.

11.04 The Association shall not be responsible for any indirect, special or consequential damages or any other obligation or liability arising out of, or in any way connected with, the MLS<sup>®</sup> System or MLS<sup>®</sup> System database including but not limited to computer failure or interruption or negligence.

#### **Authorized and Unauthorized Use**

11.05 The information contained on the MLS<sup>®</sup> System database is confidential and shall not be distributed to unauthorized persons or used in any unauthorized manner.

- a) "authorized use" means:
  - (i) the extraction of MLS<sup>®</sup> System data from the MLS<sup>®</sup> System database by Broker Members or Salesperson Members of the Association in good standing necessary to assist them in representing their Principals or specific identified customers in the trade of real property; and
  - (ii) any specific use authorized in writing by the Association.

The right of any Member to develop a database of MLS<sup>®</sup> System information or to use or reproduce the data is subject to the authority of the Association and is limited to the purpose for which the data was originally made available to Members, except that a member may show other members' listings on the Internet in accordance with the Internet Data Exchange Program.

In order for any use described in paragraph a) to be "authorized use", such use of the MLS<sup>®</sup> System database must also:

- (i) reflect accurate and current information as contained in the MLS<sup>®</sup> System database;
- (ii) include the name of the Listing Brokerage;
- (iii) include the registered MLS<sup>®</sup> Mark.
- b) "unauthorized use" is any use not set out in paragraph a) hereof and includes, but is not limited to:
  - (i) the extraction of MLS<sup>®</sup> System data for the purposes of creating a book or for the population of another listing database;
  - (ii) reproduction of MLS<sup>®</sup> System data beyond that necessary to prepare presentations to a Principal or a specific identified customer;
  - (iii) the alteration, modification or reformatting of the MLS<sup>®</sup> System data on the MLS<sup>®</sup> System database in any form whatsoever, electronic or otherwise;
  - (iv) the sale or distribution of any portion of the MLS<sup>®</sup> System database to any third parties.
- c) No use is "unauthorized" if consented to in writing by the Association. Anyone requesting such consent is required to meet all eligibility requirements and agree to such undertakings, terms and conditions as established by the Association, and to execute any agreements in the form provided by the Association.

#### **Access**

- 11.06 a) Personal computer access codes, log-on account number and/or passwords issued to a Member in order to provide online access to the MLS<sup>®</sup> System database and/or other Association information and services (collectively, the "Access Codes") are for the Member's sole and exclusive use and their sale to, distribution or disclosure to, or use by any other person is prohibited.
- b) Any computer software and/or hardware provided by the Association to the member to access the MLS<sup>®</sup> System database and/or other Association information (regardless of whether such software or hardware is provided with or without a cost to the member) (collectively, the "access programs") are for the member's sole and exclusive use and their sale to, distribution or disclosure to, or use by any other person is prohibited.

- c) However, a Member may disclose his Access Codes and/or Access Programs to his/her unlicensed assistant(s) and a Member who is a Principal Broker may disclose his/her Access Codes and/or Access Programs to his/her administrative staff. The Member so disclosing shall be responsible for establishing and maintaining security procedures acceptable to the Association to prevent unauthorized use of the Access Codes and/or Access Programs by his/her assistant(s) and the Principal Broker shall be responsible for establishing and maintaining security procedures acceptable to the Association to prevent unauthorized use of the Access Codes and/or Access Programs by his/her administrative staff.
- d) The Principal Broker of each Firm Member shall ensure that any individual described in paragraph (c) who has been provided with Access Codes and/or Access Programs complies with the Association's by-laws and these MLS<sup>®</sup> rules and regulations while in their Employ (as defined in the Association's by-law).
- e) The Principal Broker of each Firm Member shall notify the Association within 48 hours when any individual described in paragraph (c) who has been provided with Access Codes and/or Access Programs ceases to be Employed (as defined in the Association's by-law) by the Firm Member.

### Remedies

- 11.07 a) Any theft, sabotage, unauthorized use of, or unauthorized access to the Association's MLS<sup>®</sup> System database or MLS<sup>®</sup> System data constitutes a breach of these MLS<sup>®</sup> rules and regulations and shall be dealt with in accordance with the provisions of the Association's by-law. Notwithstanding any sanctions and/or penalties imposed by the Association, the Association reserves the right to seek any and all redress and remedies available to it in a civil action against the unauthorized person (Member or non-Member) and/or any Member permitting the unauthorized use of the MLS<sup>®</sup> System database by an unauthorized person.
- b) In addition to the Association's rights and remedies set out in paragraph (a), the Association reserves the right to immediately terminate a Firm Member's or an individual Member's Access Codes and/or Access Programs, without notice, in the event of any unauthorized use of or granting unauthorized access to the Association's MLS<sup>®</sup> System database or any other breaches of the provisions of this Article 11.

### Association's Website

- 11.08 a) Members may "link" to the public portion of the Association's website from their own websites, provided the link is connected to the "home" page of the Association's website. (i.e. - link takes user from Member's website to Association's Website using an icon on the Member's website for this purpose).
  - b) The MLS<sup>®</sup> System database on [www.realtor.ca](http://www.realtor.ca) or any portion thereof, shall not be used as a "frame" on a Member's website. (i.e. - the MLS<sup>®</sup> System database on [www.realtor.ca](http://www.realtor.ca) must not appear to reside on the Member's website, making it look as if the MLS<sup>®</sup> System database is the Member's.) The only exception to this is that a Member's website is permitted to cause any of the pages of the public portion of the Association's website to appear within full feature frames of their own design provided the property information taken from the Association's website which is displayed on the Member's website is only for properties listed by that Member's Firm Member.
  - c) The Association is not responsible for the contents of any off-site pages or any other sites linked to their sites. (i.e. - maintenance of the Member's website is the responsibility of the Member).
  - d) All of the restrictions contained in this Article 11 that relate to the authorized and unauthorized use of and access to the MLS<sup>®</sup> System database, apply equally to any portion of the MLS<sup>®</sup> System database which can be obtained from the Association's Website ([www.lstar.ca](http://www.lstar.ca)) and ([www.realtor.ca](http://www.realtor.ca)).
- 11.09 The Association is a signatory to one or more agreements with other real estate boards in the province of Ontario. Pursuant to these agreements, this Association's Members may have the right, on an individual basis, to obtain MLS<sup>®</sup> System data from such other board(s) and/or to obtain other MLS<sup>®</sup> System services from such other board(s) (such as the right to place MLS<sup>®</sup> System Listings). The Association recognizes that in order for its Members to obtain such information or service from the other board(s), its Members will enter into contracts, on an individual basis, with the other board(s). Such contracts will provide rules for the use of the MLS<sup>®</sup> System data and the MLS<sup>®</sup> System services provided by such other board(s). If a Member of this Association breaches the

terms of his/her/its contract(s) with such other board(s), the breach will be deemed to be a breach of these rules and regulations and shall be dealt with in accordance with the provisions of Article 9 of the Association by-law.

### **ARTICLE 12 – Privacy Compliance Requirements**

- 12.01 a) In addition to all other requirements contained in these MLS<sup>®</sup> rules and regulations, when dealing with any property that is the subject of an MLS<sup>®</sup> Listing, all Listing Brokerages and Co-operating Brokerages must obtain the consent of their Principals and/or customers that is required by the national Privacy Code or is otherwise required by law in order for the Association to collect, use and disclose the listing, sale/lease and purchase information regarding the property and the transaction on the Association's MLS<sup>®</sup> System and within the Association's MLS<sup>®</sup> System database.
- b) Immediately upon request by the Association, a REALTOR<sup>®</sup> shall provide the Association with proof of the consent described in paragraph (a) from the Principal or customer in regard to any property that is the subject of an MLS<sup>®</sup> Listing for which the Principal or customer is the seller or buyer (or landlord or tenant, if the MLS<sup>®</sup> Listing is for the lease of the property).

### **ARTICLE 13 – Penalties**

- 13.01 Failure to comply with these rules and regulations shall be deemed to be a breach of the Association by-law and shall be dealt with in accordance with the provisions of Article 9 of the Association by-law as well as any other remedies available to the Association as set out in these rules.
- 13.02 Notwithstanding the fact that throughout these rules and regulations, there are certain obligations placed upon the Brokerages (either as Listing Brokerage or Co-operating Brokerage), if such a rule or regulation is not complied with, the Association may, by following the Association's professional standards and discipline procedures as set out in the Association by-law, prosecute and, if warranted, discipline the Firm Member, the Firm Member's Principal Broker and/or the Member(s) within the Firm Member who is responsible for such non-compliance.

### **ARTICLE 14 – Commission Trust**

#### **Definitions**

- 14.01 In this Article 14 and in the Commission Trust Agreement, the following words, unless otherwise specifically defined in these rules and regulations or in the Commission Trust Agreement, shall have the following meanings:
- a) **"Co-operating Brokerage"**, means a Firm Member that effects the trade of the property as a Sub-agent, Buyer's agent, or otherwise and, in addition, shall, for the purposes of this Article 14, include the Co-operating Brokerage who is entitled to the Commission Trust Amount pursuant to a Commission Trust Agreement.
- b) **"Commission Trust Agreement"** means the agreement in the form attached as Schedule "A" to these rules.
- c) **"Commission Trust"** has the meaning ascribed to it in Section 14.02 hereof.
- d) **"Commission Trust Account"** means a trust account maintained at a Canadian chartered bank or trust company and designated as a "Commission Trust Account". The Commission Trust Account shall be used only for the receipt and disbursement of Commission Trust funds, or any amounts the broker has otherwise agreed to receive in trust from a salesperson for remittance to a third party on behalf of a salesperson, and kept separate and apart from the statutory trust account that a broker is required to maintain for consumer funds.
- e) **"Commission Trust Amount"** in any transaction shall be the Commission Trust Amount indicated on the Commission Trust Agreement for that Transaction, provided that if no such amount is indicated on the Commission Trust Agreement, the Commission Trust Amount shall be calculated in accordance with the commission rate or fee or amount that the Listing Brokerage shall pay to the Co-operating Brokerage, as shown on the most recent information sheet filed with the MLS<sup>®</sup> in accordance with Sections 4.01 or 4.02, as

the case may be, of these Rules and Regulations, or as agreed to by the Listing Brokerage and Co-operating Brokerage, as provided for in Section 4.03 of these Rules and Regulations.

- f) "**Listing Brokerage**" means a Firm Member that has listed the property for disposition through the Association's Multiple Listing Service<sup>®</sup>.
- g) "**Transaction**" or "**Trade**" has the meaning ascribed to the word "trade" in section 1.01 hh).
- h) "**H.S.T.**" means the tax commonly known as the Harmonized Sales Tax imposed by the *Excise Tax Act (Canada)* as may be amended or replaced from time to time.
- i) "**Offer**" means any offer relating to a Transaction or Trade and "seller" shall include "lessor" or "optionor" and "buyer" shall include "lessee" or "optionee" as the nature of the Trade or Transaction may require.
- 14.02 All deposits and other monies received by or due to the Listing Brokerage directed to satisfy commission payable or damages or other compensation in lieu of commission, plus applicable H.S.T. on any of the foregoing, in connection with the Transaction shall be receivable by and held by the Listing Brokerage in trust and constitute a Commission Trust. The beneficiaries of the Commission Trust shall be the Co-operating Brokerage to the extent of the Commission Trust Amount, and the Listing Brokerage as to the balance after payment of the Commission Trust Amount.
- 14.03 Within 24 hours or sooner where possible after an offer for a Transaction procured by a Co-operating Brokerage is accepted, the Listing Brokerage shall execute and deliver to the Co-operating Brokerage a Commission Trust Agreement for the Transaction. For the purposes of this Section 14.03, Listing Brokerage and Co-operating Brokerage shall include a licensed salesperson or broker representing the Listing Brokerage or Co-operating Brokerage, as the case may be.
- 14.04 Following the completion of the Transaction no funds shall be transferred or paid from the Listing Brokerage's Commission Trust Account to or for the benefit of the Listing Brokerage or any third party until the Commission Trust Amount has been disbursed to the Co-operating Brokerage. All such disbursements shall be made directly from the Listing Brokerage's Commission Trust Account. Where the Listing Brokerage has more than one trust account, funds impressed with the Commission Trust may be transferred from one trust account maintained by the Listing Brokerage to the Commission Trust Account maintained by the Listing Brokerage, and such funds shall at all times, notwithstanding any such transfer, continue to be impressed with the Commission Trust. Provided, however, that where the full commission is not received by the Listing Brokerage, the provisions of Section 4.05 shall apply to the payment of Commission Trust funds to the Co-operating Brokerage, and where the Listing Brokerage incurs collection costs, the provisions of Section 4.06 shall apply to the payment of the Commission Trust funds to the Co-operating Brokerage.
- 14.05 The Listing Brokerage and Co-operating Brokerage shall each retain a copy of any Commission Trust Agreement for a period of six (6) months following the completion of the Transaction and shall provide the Association with a copy of any such Commission Trust Agreement within fifteen (15) days of a request therefore (provided the Association has received a written complaint necessitating the requisition of said Commission Trust Agreement).
- 14.06 Subject to the provisions of the Act, the Listing Brokerage shall maintain proper books and records with respect to all transactions concerning the Commission Trust Account. Commission or other compensation payable by sellers or other clients shall be known as a receivable due to the Commission Trust and not as a receivable due to the Listing Brokerage. Amounts due to a Co-operating Brokerage and the Listing Brokerage for a particular transaction shall be shown as payables of the Commission Trust.
- 14.07 The following terms are deemed to be included in all Commission Trust Agreements:
- All monies received by or due to the Listing Brokerage in connection with the Transaction including, without limitation, any deposit(s), damages or amounts in lieu of damages received or due from the seller/landlord or other person, or other compensation received or due from the seller/landlord or other person, shall be held by the Listing Brokerage in trust for the benefit of the Co-operating Brokerage and Listing Brokerage as herein provided for (the "Commission Trust") and all funds received on account of the Commission Trust shall be deposited directly to the Listing Brokerage's Commission Trust Account. The obligation of the Listing Brokerage as trustee under the Commission Trust shall be discharged by the Listing Brokerage paying, following the completion of or other termination of the Transaction, the following amounts in the following order:

- a) first to the Co-operating Brokerage the Commission Trust Amount;
- b) next to the Listing Brokerage the balance of the Commission Trust.

14.08 For clarity, Article 14 is subject to the terms and conditions of the listing agreement between the Listing Brokerage and the seller. For example, if pursuant to the listing agreement the Listing Brokerage will not be in receipt of any funds from the seller (except for any fee to list the property on the Association's MLS® System) or if the seller has agreed to pay commission directly to another Firm Member in connection with the sale of the property, the provisions of this Article 14 will not apply to such transaction.

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**MLS® Rules and Regulations of the London and St. Thomas Association of REALTORS®**  
 - Alternate Schedule "A"

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**COMMISSION TRUST AGREEMENT**

To: The Co-operating Brokerage shown on the foregoing Agreement of Purchase and Sale

In consideration of the Co-operating Brokerage procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all monies received or receivable by me in connection with the Transaction as contemplated in Section 14.02 of the MLS® Rules and Regulations the Real Estate Association (the "MLS® Rules") shall be receivable and held in trust under the terms set out in Section 14.07 of the MLS® Rules, which are incorporated herein by reference as if set out at length. This agreement shall constitute a Commission Trust Agreement as defined in the MLS® Rules and shall be subject to and governed by the MLS® Rules pertaining to Commission Trust. For the purposes of this Commission Trust Agreement, the Commission Trust Amount shall be \_\_\_\_\_.

(If the amount is left blank on the line above, the Commission Trust Amount shall be calculated as described in Section 14.01 e) of the MLS® Rules.)

DATED as of the date and time of the acceptance of the foregoing Agreement of Purchase and Sale.

Acknowledged by:

\_\_\_\_\_  
 Signature of Listing Brokerage or  
 authorized representative

\_\_\_\_\_  
 Signature of Co-operating Brokerage or  
 authorized representative

# EXHIBIT 27

# CANADIAN REAL ESTATE ASSOCIATION

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Data Distribution Facility (DDF) Study

**May 2011**



Report Compiled by

Insightrix Research Inc.

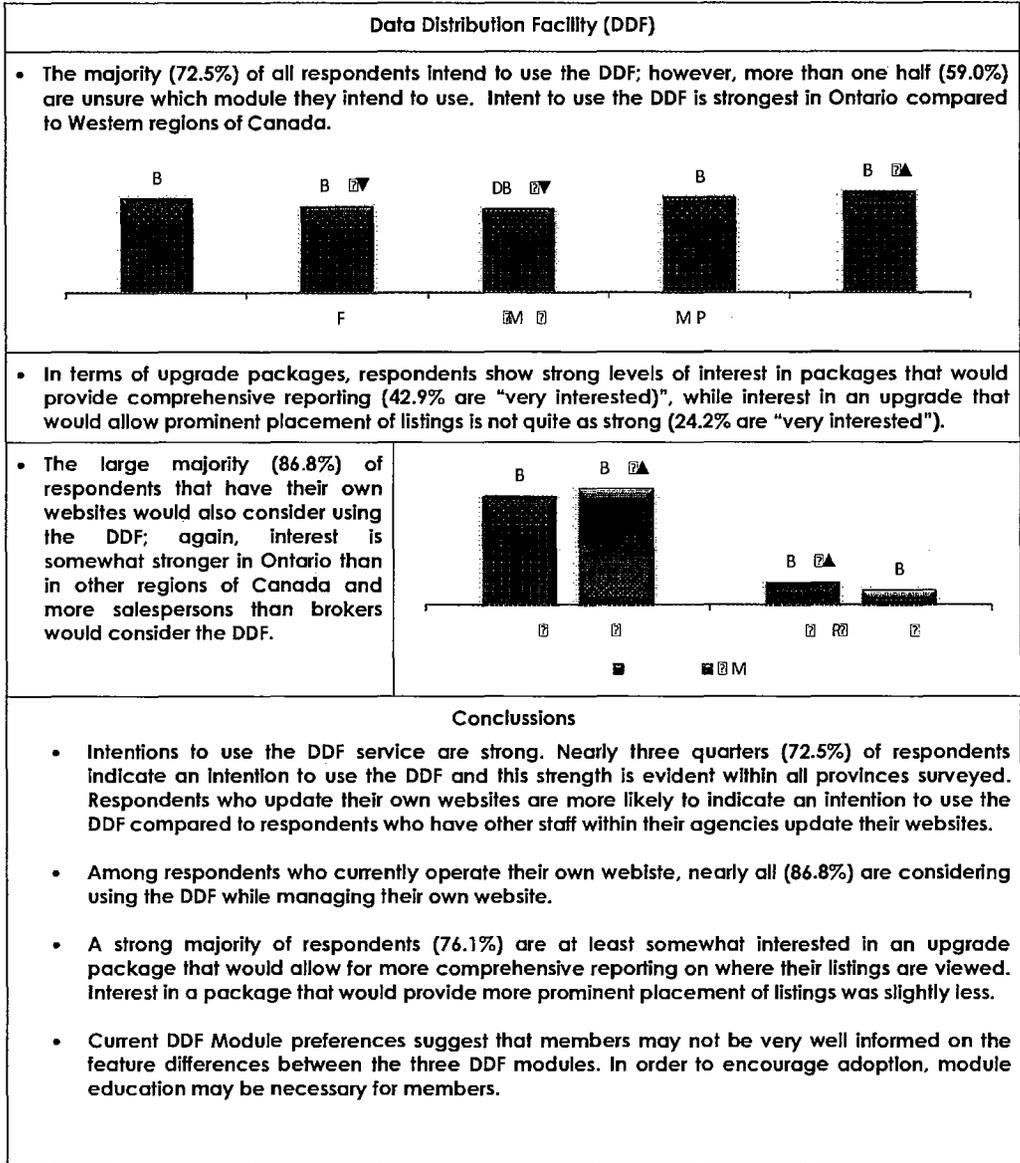
1 – 3223 Millar Avenue

Saskatoon, Saskatchewan

T: 1-866-888-5640 F: 1-306-384-5655

## Executive Summary

<p>Objectives</p>	<p>The objectives of the Canadian Real Estate Association (CREA) Data Distribution Facility (DDF) survey are to:</p> <ul style="list-style-type: none"> <li>• Determine members' frequency of website usage for managing listings</li> <li>• Measure the amount spent on members' own as well as third party websites for managing listings</li> <li>• Gauge member interest in DDF overall and specifically among website owners</li> <li>• Determine member interest in DDF modules</li> </ul>
<p>Methodology</p>	<p>A total of 2,021 CREA members from across Canada completed the survey between May 4<sup>th</sup> and June 1<sup>st</sup>, 2011. The margin of error for this study is equal to <math>\pm 2.2</math> percentage points at a 95% confidence level.</p>
<p>?</p>	
<p><b>Internet Usage</b></p> <ul style="list-style-type: none"> <li>• A large majority (80.5%) of respondents plan to allow their staff to manage their personal Internet advertising.</li> <li>• Close to one half (48.3%) of respondents spend between one and three hours managing their listings on sites other than the board MLS® System, and the majority do not spend any money these sites.</li> </ul>	
<p><b>Member Websites</b></p> <ul style="list-style-type: none"> <li>• Three quarters (76.0%) of respondents currently have their own websites; one half (49.6%) of these websites are reported to be dynamically generated while two in five (41.6%) are considered static.</li> <li>• Most (94.3%) respondents display their listings on their own websites, while one half (50.1%) of these respondents manually upload the listings to their sites.</li> <li>• Respondents vary in their website management patterns. While one half (49.7%) of respondents update their websites themselves, the remaining half either has someone else in their agencies update them (20.5%) or some other source (29.8%).</li> <li>• The largest proportion of respondents pays between \$20 and \$50 per month for their own websites.</li> </ul>	



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# Introduction and Methodology

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## STUDY BACKGROUND

CREA is in the process of designing a Data Distribution Facility (DDF), a permission based system that will allow Brokers and sales persons to post REALTOR.ca property listings on third party sites using a personalized dashboard on REALTOR Link®. Users can choose from three different modules:

*Modules 1 (National IDX Pool) & 2 (Private IDX) - Participating Brokers and REALTORS® agree to share their listings on a national platform and also have the ability to create private IDX web sites amongst themselves.*

*Module 3 (Third Parties) - Brokers and REALTORS® will also be able to distribute their listings to approved third parties, including social networking sites, where they want to advertise their properties.*

The Canadian Real Estate Association (CREA) contracted the services of Insigtrix Research Inc. to conduct a study examining the potential usage of this Data Distribution Facility (DDF). An online survey was conducted with a sample of CREA members from across Canada, representative by region.

## GOALS AND OBJECTIVES

The purpose of this research is to discover the potential usage of CREA's new Data Distribution Facility (DDF). Specifically, the research aims to:

- Determine members frequency of website usage for managing listings,
- Measure the amount spent on members' own as well as third party websites for managing listings,
- Gauge member interest in DDF overall and specifically among website owners, and
- Determine member interest in DDF modules.

## METHODOLOGY

To achieve the research objectives, CREA engaged Inshtrix Research Inc. to conduct an online survey of CREA members across Saskatchewan.

### Development of Survey Instrument

Inshtrix, in consultation with CREA, developed the survey instrument. Inshtrix worked closely with CREA throughout the instrument design phase to finalize the questionnaire by ensuring proper wording and flow of survey questions and suggesting survey improvements for data collection. The survey was programmed into an online CATI system.

### Quantitative Data Collection

CREA supplied a sample of 25,338 CREA members' contact information, including email addresses. Members were emailed a URL containing a unique identifier for each respondent, enabling Inshtrix to identify who had or had not completed the survey. Up to five email reminders for those respondents who had not yet completed the survey were sent over the course of the study.

Quotas were established by province and member type to ensure a representative sample of the CREA members. The following chart details the number of targeted completed surveys, and the number of achieved surveys within each quota group. Response rates in Ontario differ slightly from the target due to a slower response rate in this region. Due to project timelines, additional completes in other regions were accepted in order to meet project objectives.

Member Type:	Target		Achieved	
Broker, Manager of Record, Broker/Manager, Salesperson	1,750	87.5%	1,875	93%
Broker/Owner	250	12.5%	146	7%
Total	2,000	100%	2,021	100%

Region:	Target		Achieved	
BC	500	25%	527	26%
Alberta	400	20%	446	22%
Ontario	600	30%	500	25%
Manitoba & Saskatchewan	250	12.5%	280	14%
Maritimes	250	12.5%	268	13%
Total	2,000	100%	2,021	100%

In total, 2,021 surveys were completed between May 4<sup>th</sup> and June 1<sup>st</sup>, 2011. The margin of error for 2,021 completes is  $\pm 2.2$  percentage points at a 95% confidence level. This means that we can be sure the overall results are accurate within 2.2 percentage points 19 times out of 20. Margins of error for sub groupings of the data will be larger.

### Survey Analysis and Reporting

Results were analyzed by appropriate by variables including but not limited to region and member type. Statistically significant differences have been highlighted in this report. A standard alpha value of less than 0.05 is considered statistically significant. This means that there is less than a 5% chance that the results would have occurred by chance. Statistically significant differences between cross-tabulation comparisons are highlighted with the symbols ▲ and ▼, denoting figures that are statistically significant from one another.

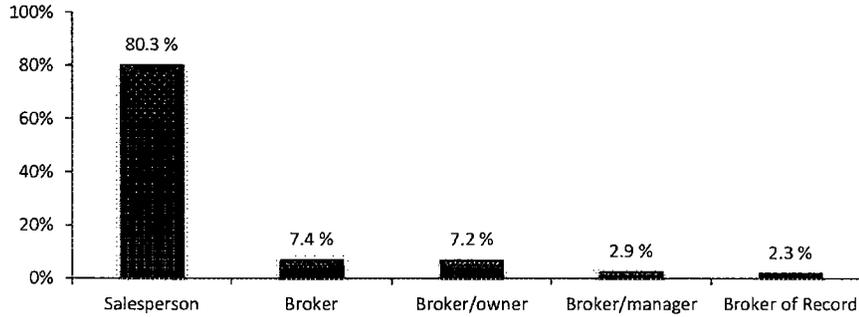
# Study Results

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## BROKER/MEMBER DESCRIPTION

### Respondent Type

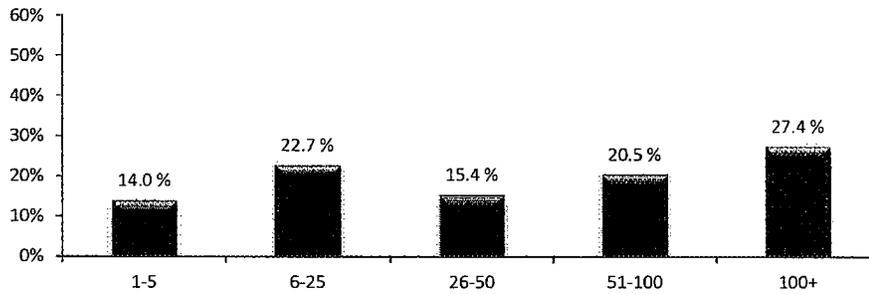
The large majority (80.3%) of respondents are salespersons. The remaining 19.7% include brokers (7.4%), broker/owners (7.2%), brokers/managers (2.9%) and brokers of record (2.3%).



1. Are you a... ? Base: All respondents, n=2,021.

### Number Employed in Brokerage

The largest proportion (27.4%) of respondents work with brokerages of 100 or more employees, while over one third (36.7%) are employed in a brokerage of 25 employees or less.

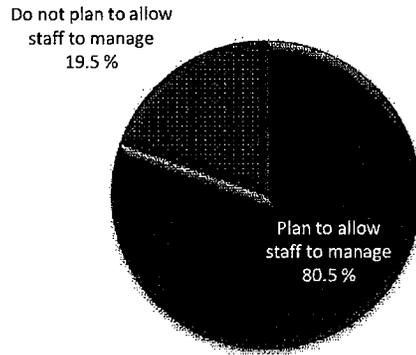


2. How many people are employed in the brokerage you work with? Base: All respondents, n=2,021.

## INTERNET USAGE

### Management of Internet Advertising

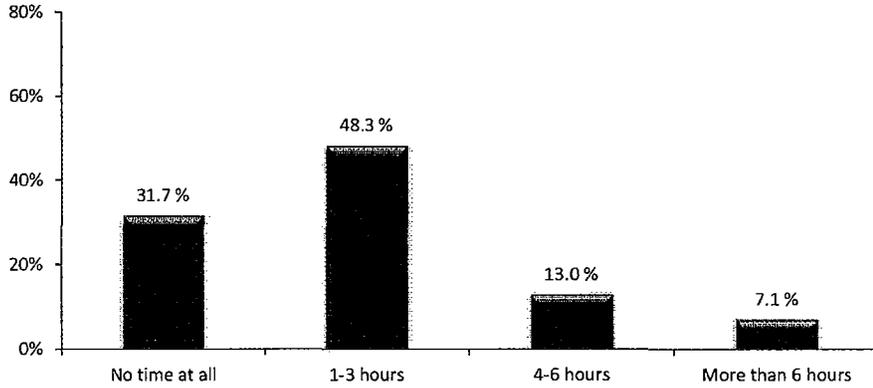
The prevalence of staff managing their own Internet advertising is nearly universal among non-salesperson respondents. In particular, four in five respondents (80.5%) plan on allowing their sales staff to manage their own Internet advertising.



3. Do you plan to allow your sales staff to manage their own Internet advertising? Base: Non-salesperson respondents, n = 339.

### Time Spent Managing Listings Not on Board MLS® System

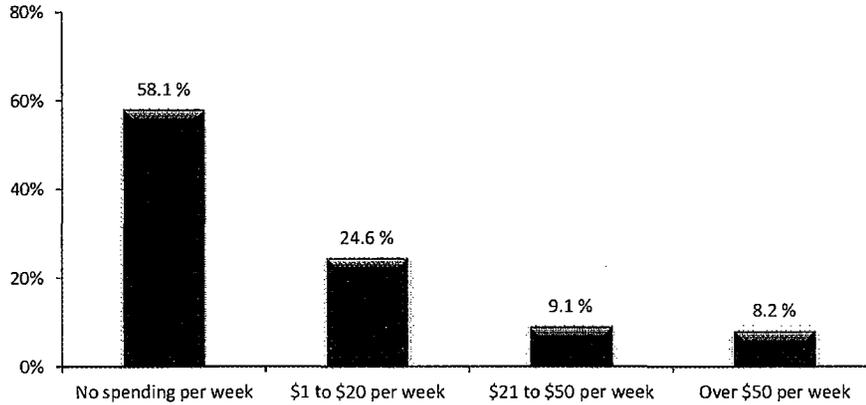
Most respondents do not spend much time managing listing on sites other than the Board MLS® System. In particular, when not using the Board MLS® system, close to one half (48.3%) of respondents spend one to three hours per week managing listings on other websites; three in ten (31.7%) spend no time at all and one in five (20.1%) spend four or more hours.



4. On average, how much time per week do you spend managing your listings on sites other than the Board MLS® System?  
Base: All respondents, n=2,021.

**Money Spent Managing Listings Not on Board MLS® System**

On average, a slight majority (58.1%) of respondents do not spend any money per week putting listings on sites other than the Board MLS® System. For those who do, the largest proportion (24.6%) spend \$20 or less per week.

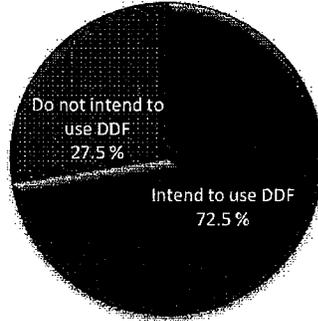


5. On average, how much money per week do you spend putting listings on sites other than the Board MLS® System? Base: All respondents, n=2,021.

## USE OF DATA DISTRIBUTION FACILITY (DDF)

### Intent to Use DDF

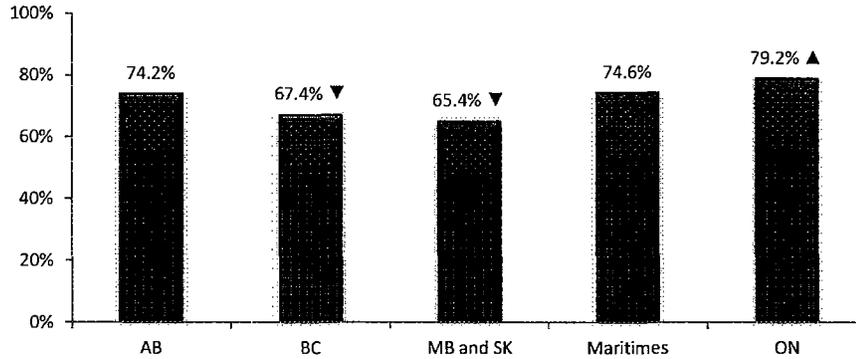
Intentions to utilize the planned Data Distribution Facility (DDF) are strong, with nearly three quarters (72.5%) of respondents indicating an intention to use the DDF.



6. Do you intend to use the planned Data Distribution Facility (DDF)? Base: All respondents, n=2,021.

### Intent to Use DDF by Region

Ontario is the most likely region to plan on using the DDF (79.2%), especially compared to respondents from British Columbia (67.4%) or Manitoba and Saskatchewan (65.4%).



Base: All respondents, AB: 446, BDL: n=527, MB and SK: n=280, Maritimes: n=268, ON: n=500.

**Intent to Use DDF by Member Type**

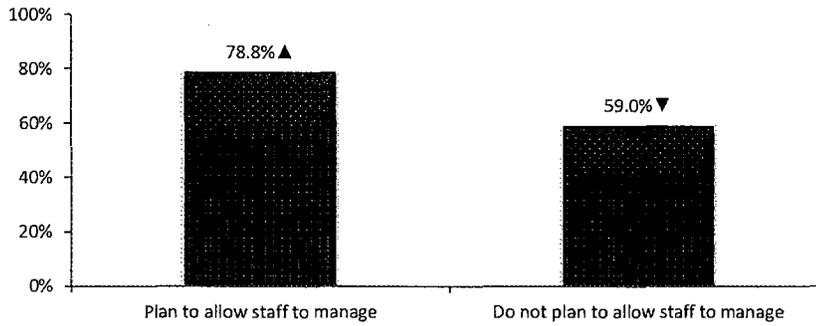
The intention to use the DDF is fairly consistent whether respondents are brokers or salespersons.



1. Are you a... ? Base: All respondents, Broker: n=299, Salesperson: n=1,622.

**Intent to Use DDF by Staff Management**

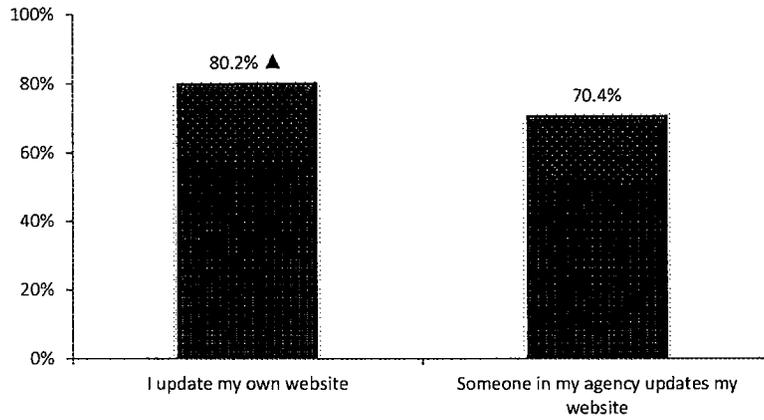
Non-salesperson respondents who plan on allowing their staff to manage their own internet advertising are much more likely than those who do not to intend to use the DDF.



3. Do you plan to allow your sales staff to manage their own Internet advertising? Base: Non-salesperson respondents, Plan to allow staff to manage: n=321, Do not plan to allow staff to manage: n=78.

***Intent to Use DDF by Website Updating***

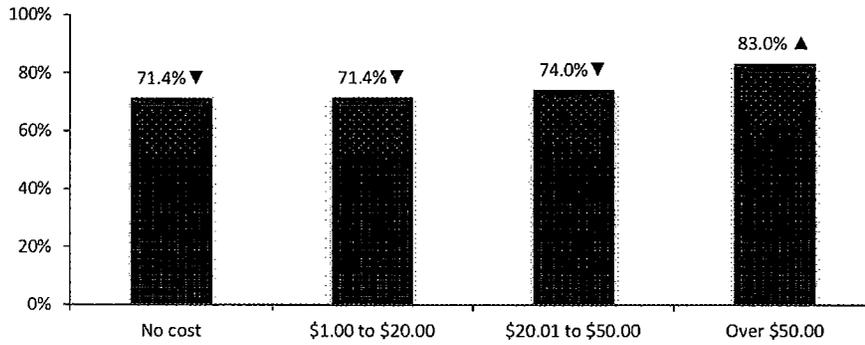
Respondents who update their own websites are more likely to indicate an intention to use the DDF compared to respondents who have other staff within their agencies update their websites.



14. Who commonly updates your website? Base: Those respondents with their own websites, I do: n=763, Someone in my agency: n=314.

***Intent to Use DDF by Cost of Website***

As cost of members' own websites increase, so do intentions to utilize the DDF. Respondents who spend over \$50 per week on their website are more likely than those who spend less to use the DDF.

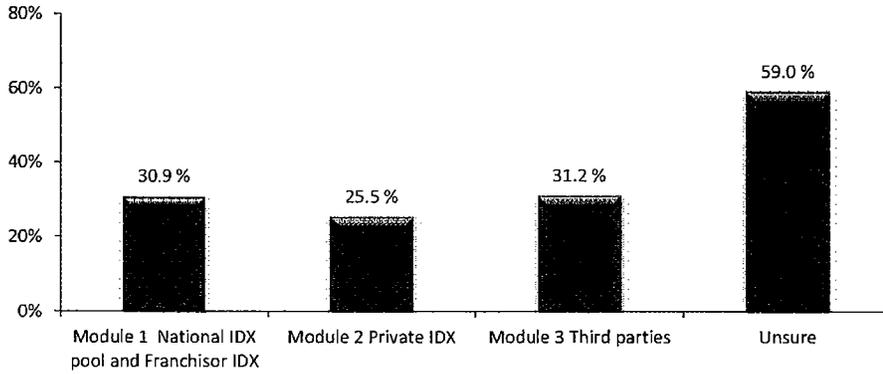


**Intends to Use DDF**

15. How much do you pay for your website per month? Base: Those respondents with their own websites, No cost: n=325, \$1.00 to \$20.00: n=280, \$20.01 to \$50.00: n=547, Over \$50.00: n=383.

### DDF Module Preference

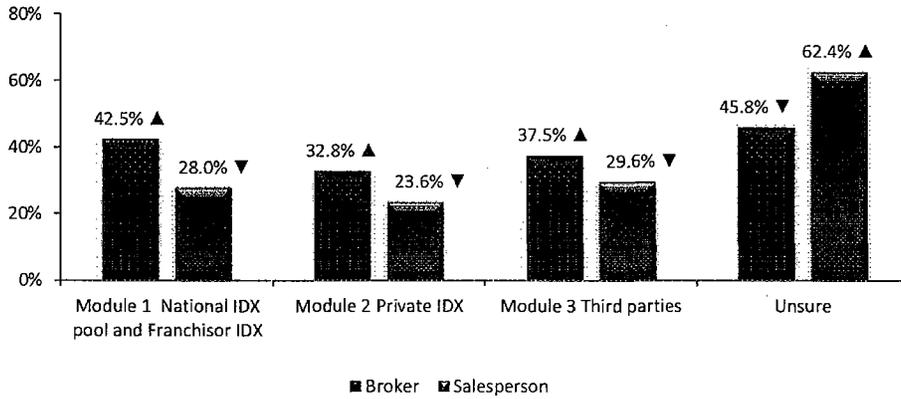
A slight majority (59.0%) of respondents are unsure which DDF module they intend to use. This suggests that education on the module options may be required before REALTORS and brokers adopt the DDF. The remaining respondents are split between Module 3 (31.2%), Module 1 (30.9%) and Module 2 (25.5%).



7. Which module(s) do you intend to use? Base: Those respondents who intend on using the DDF, n=1,465.

**Module Preference by Member Type**

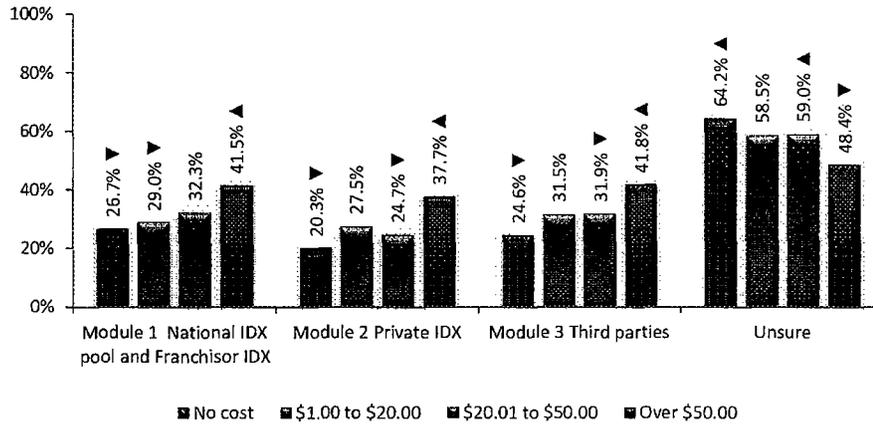
Brokers are more likely than salespersons to prefer Module 1, while salespersons are more likely than brokers to be unsure of which module they intend to use. This suggests that brokers may be more educated on the current module distinctions and how they could contribute to their business.



1. Are you a...? Base: Those respondents who intend on using the DDF, Broker: n=474, Salesperson: n=1,674.

**Module Preference by Money Spent on Own Website**

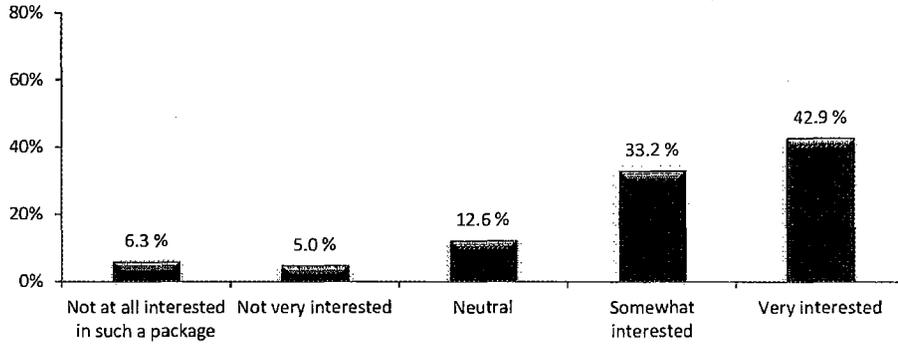
Preference for each module is more pronounced when respondents spend over \$50 per month on their own website. These respondents are more likely to prefer a module compared to respondents who spend less.



15. How much do you pay for your website per month? Base: Those respondents who intend on using the DDF, No cost: n=325, \$1.00 to \$20.00: n=280, \$20.01 to \$50.00: n=547, Over \$50.00: n=383.

### Interest in Upgrade Package for Comprehensive Reporting

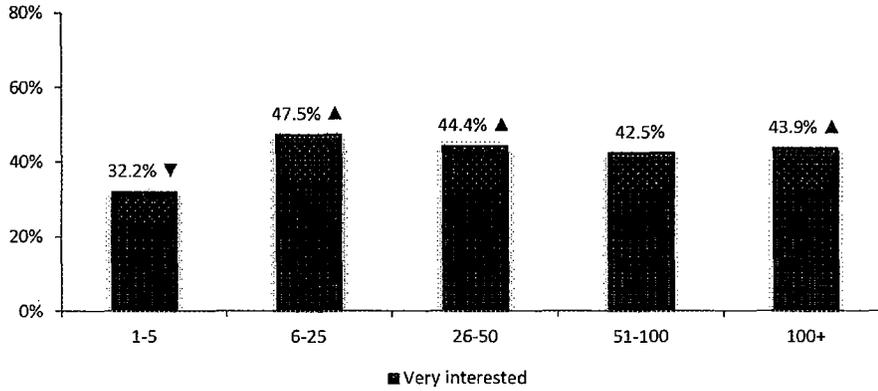
Interest in an update package that would include more comprehensive reporting is almost universal. Three quarters of respondents are at least somewhat interested in an upgrade package that would include more comprehensive reporting, while 42.9% in particular are "very interested".



8. How interested are you in an upgrade package that would include more comprehensive reporting such as where your listings are being displayed, who is viewing it, and how often it is being viewed? Base: All respondents, n=2,021.

**Interest in Comprehensive Reporting Upgrade by Number of Employees**

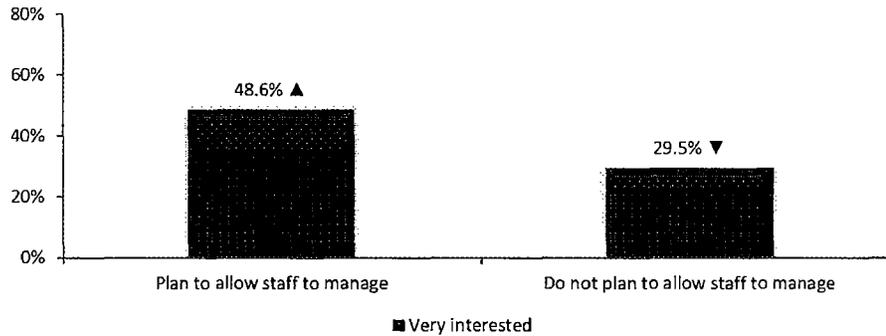
Respondents who work within brokerages with one to five employees are less likely than respondents of larger firms to be "very interested" in the comprehensive reporting upgrade package.



2. How many people are employed in the brokerage you work with? Base: All respondents, 1-5: 283, 6-25: n=459, 26-50: n=311, 51-100: n=414, 100+: n=554.

**Interest in Comprehensive Reporting Upgrade by Staff Management**

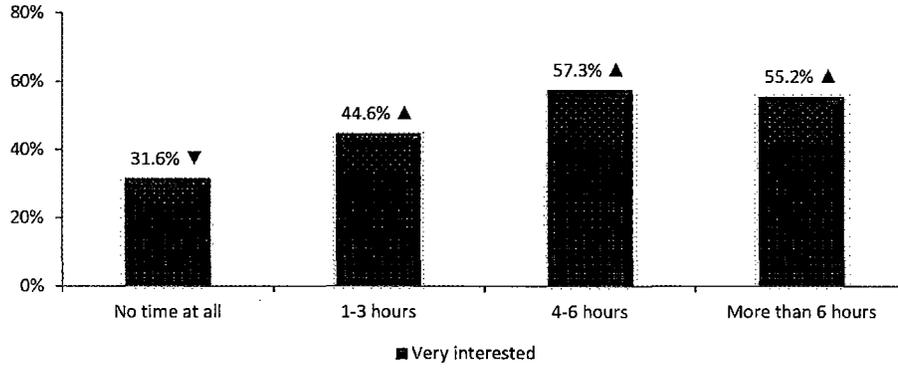
Respondents who plan to allow their staff to manage their own Internet advertising are more likely than those who do not to be "very interested" in the comprehensive reporting upgrade package.



3. Do you plan to allow your sales staff to manage their own Internet advertising? Base: Non-salesperson respondents, Plan to allow staff to manage: n=321, Do not plan to allow staff to manage: n=459, 26-50: n=78.

***Interest in Comprehensive Reporting Upgrade by Time Spent Managing Listings***

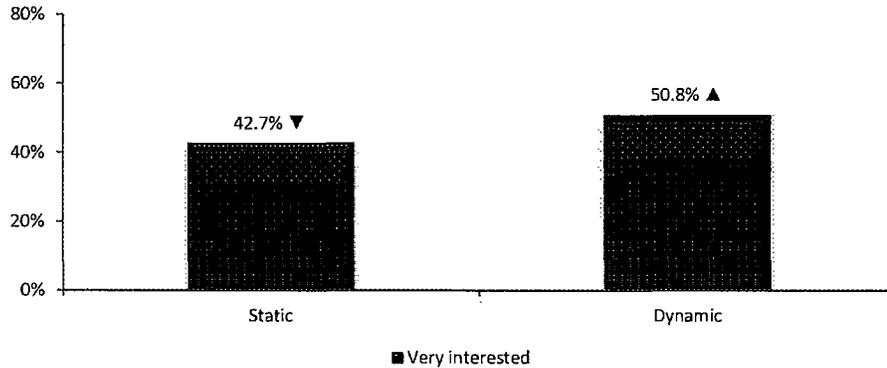
Time spent managing listing is also a factor in update package interest. Interest in a reporting update is lower for respondents who spend no time at all on other websites compared to those who spend one or more hours.



4. On average, how much time per week do you spend managing your listings on sites other than the Board MLS® System?  
Base: All respondents, No time: n=640, 1-3 hrs: n=976, 4-6 hrs: n=262, More than 6 hrs: n=143.

**Interest in Comprehensive Reporting Upgrade by Static vs. Dynamic Websites**

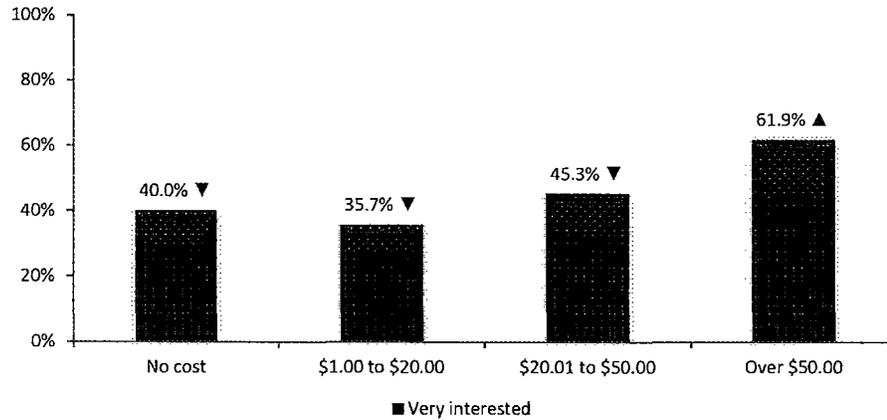
Respondents with "dynamic" websites - that is websites where content is populated and linked automatically - have generally higher level of interest in this upgrade package compared to "static" website users, where content is manually created and administered.



11. Is your website static or dynamic? Base: Those respondents with their own websites, Static: n=639, Dynamic: n=762.

**Interest in Comprehensive Reporting Upgrade by Money Spent on Own Websites**

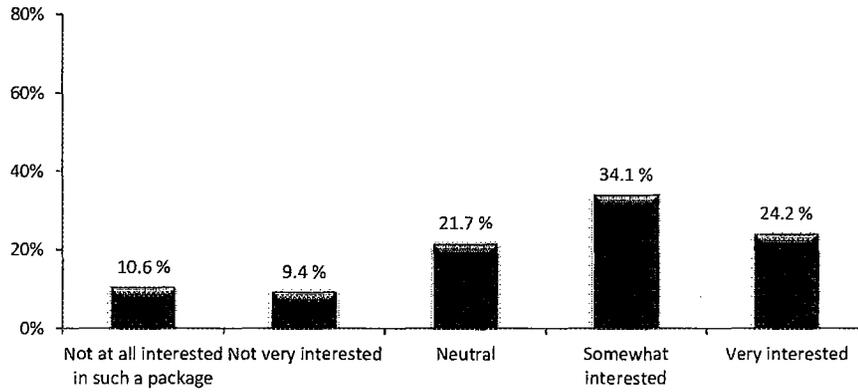
Cost of personal websites is a factor in their upgrade package interest as well. Respondents who pay over \$50 per month on their own websites are more likely to be "very interested" in the comprehensive upgrade package than those who pay \$50 or less.



15. How much do you pay for your website per month? Base: Those respondents with their own websites, No cost: n=325, \$1.00 to \$20.00: n=280, \$20.01 to \$50.00: n=547, Over \$50.00: n=383.

### Interest in Upgrade Package for Prominent Listing Placement

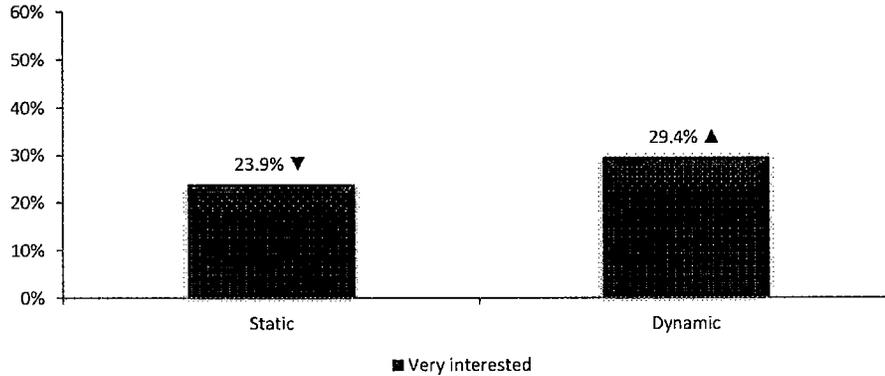
Interest is not quite as strong for an upgrade package from third party sites for more prominent placement of listings; a slight majority (58.3%) is at least somewhat interested in this option and one quarter (24.2%) are "very interested".



9. How interested are you in an upgrade package from third party sites for more prominent placement of listings? Base: All respondents, n=2,021.

**Interest in Prominent Listing Placement Upgrade by Static vs. Dynamic Websites**

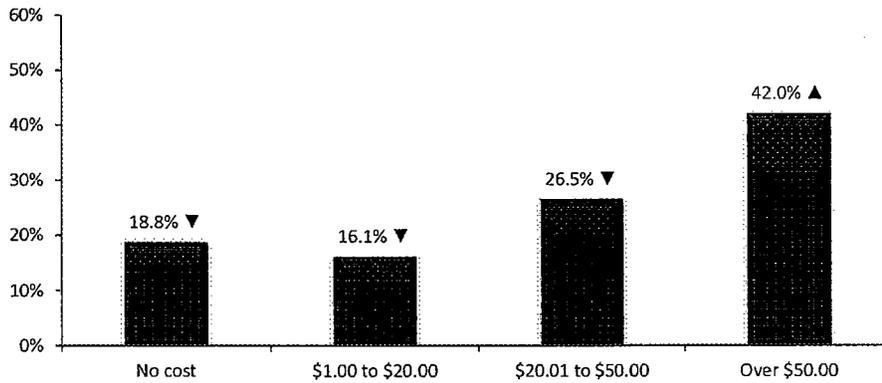
Respondents with dynamic websites are more likely than those whose websites are static to be "very interested" in an upgrade for prominent placement of listings.



11. Is your website static or dynamic? Base: Those respondents with their own websites, Static: n=639, Dynamic: n=762.

**Interest in Prominent Listing Placement Upgrade by Money Spent on Own Websites**

Respondents who spend over \$50 per month on their own website tend to be "very interested" in the prominent listing option more so than respondents who spend less.

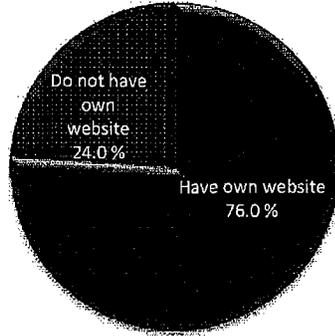


15. How much do you pay for your website per month? Base: Those respondents with their own websites, No cost: n=325, \$1.00 to \$20.00: n=280, \$20.01 to \$50.00: n=547, Over \$50.00: n=383.

## MEMBER WEBSITES

### Prevalence of Member Websites

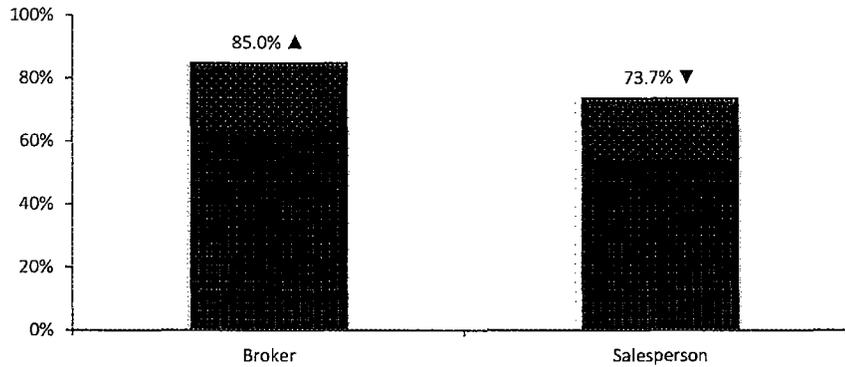
The prevalence of members having their own website is strong, with three quarters of respondents (76.0%) currently having their own websites.



10. Do you currently have your own website? Base: All respondents, n=2,021.

### Prevalence of Member Websites by Member Type

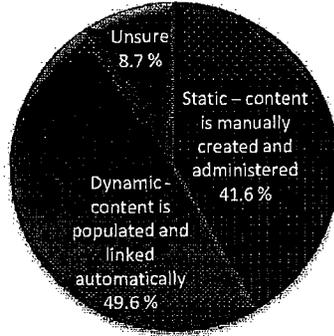
Brokers are significantly more likely than salespersons to currently have their own websites.



1. Are you a...? Base: All respondents, Broker: n=399, Salesperson: n=1,622.

**Static vs. Dynamic Websites**

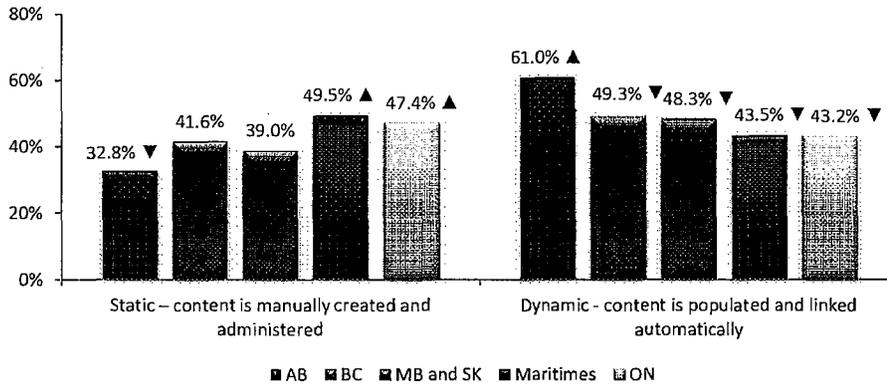
One half (49.6%) of respondents' websites are dynamic, while two in five (41.6%) reporting using static websites.



11. Is your website static or dynamic? Base: Those respondents with their own websites, n=1,535.

**Static vs. Dynamic Websites by Region**

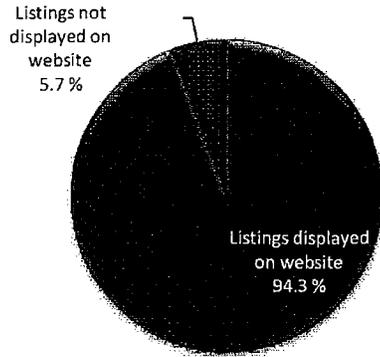
While respondents in Alberta are more likely to use dynamic websites than respondents in other regions, Maritimers and Ontario respondents are most likely to use static websites.



Base: Those respondents with their own websites, AB: n=651, BC: n=418, MB and SK: n=205, Maritimes: n=200, ON: n=361.

### Display of Listings on Website

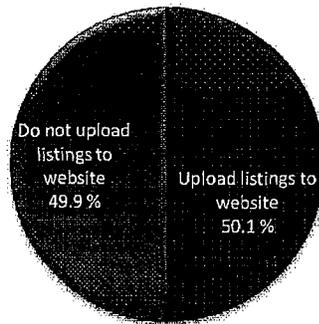
The vast majority (94.3%) of respondents who have their own websites display their listings on them.



12. Are your listings displayed on your website? Base: Those respondents with their own websites, n=1,535.

### Uploading of Listings to Website

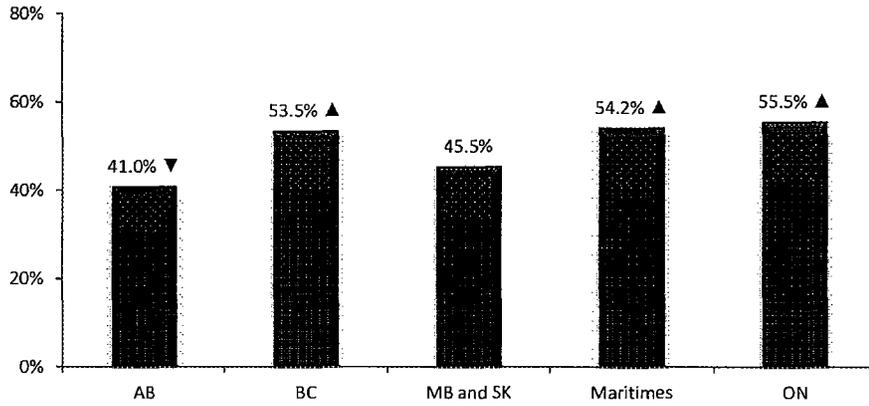
One half (50.1%) of respondents who display their listings on their websites also upload the listings onto them.



13. Do you upload the listings to your website? Base: Those respondents who display their listings on their own websites, n=1,447.

**Upload of Listings by Region**

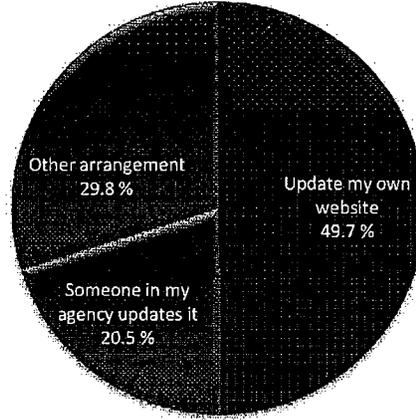
Alberta respondents who display listing on their website are the least likely compared to respondents from other regions to upload their listings on to their websites.



Base: Those respondents who display their listings on their own websites, AB: n=339, BC: n=396, MB and SK: n=187, Maritimes: n=190, ON: n=335.

### Updating of the Website

One half (49.7%) of respondents update their websites themselves; one in five (20.5%) have someone else in their agencies update them, while another three in ten (29.8%) respondents' websites are updated another way, such as through their website providers.



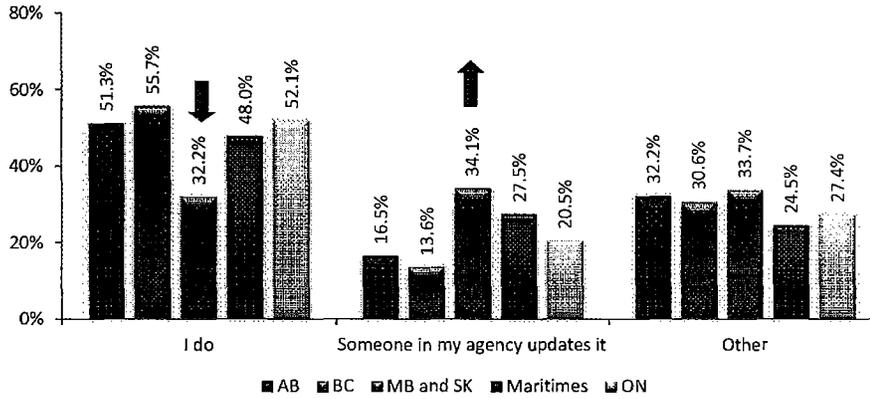
14. Who commonly updates your website? Base: Those respondents with their own websites, n=1,535.

Other arrangements indicated by respondents include the following. A full list of responses can be found in the appendix.

<i>MCS (4)</i>
<i>A company in Toronto "Success Websites"</i>
<i>A gentleman who has been looking after my personal website for 15 Years (works here in the city of Fredericton)</i>
<i>Auto feed from Winnipeg Board</i>
<i>My web provider</i>
<i>Service provider(7)</i>
<i>Your On Line Agents(3)</i>

**Updating Websites by Region**

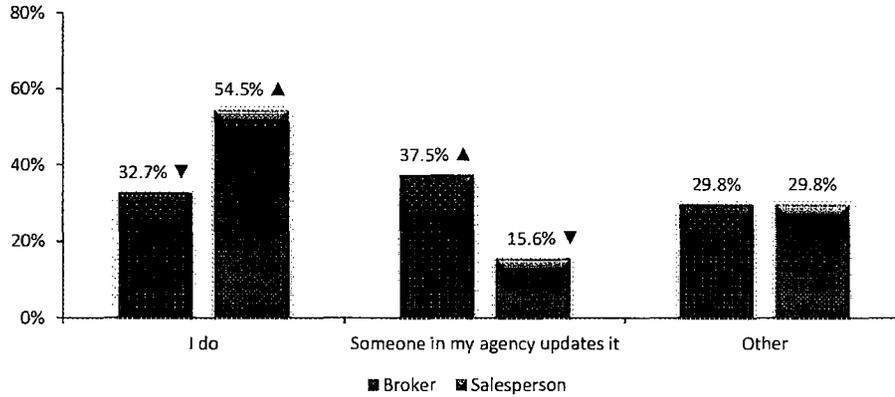
Respondents in Manitoba and Saskatchewan are more likely than those in other regions to update their websites themselves.



Base: Those respondents with their own websites, AB: n=351, BC: n=418, MB and SK: n=205, Maritimes: n=200, ON: n=361.

**Updating Websites by Member Type**

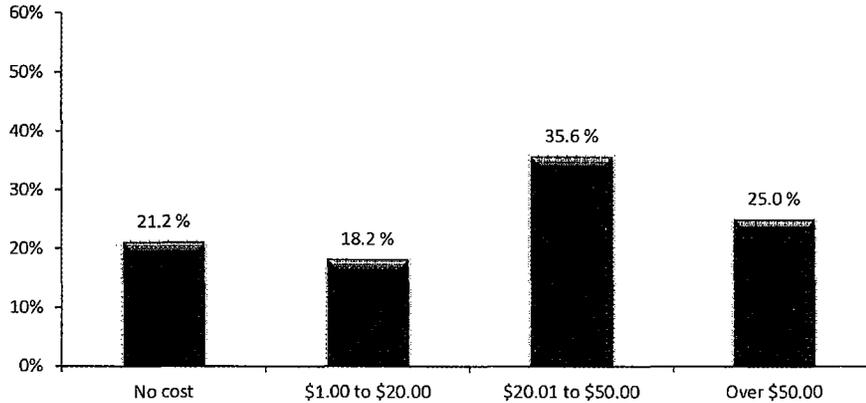
While salespersons are more likely than brokers to update their websites themselves, brokers are more likely than salespersons to have someone else in their agency update them.



1. Are you a...? Base: Those respondents with their own websites, Broker: n=339, Salesperson: n=1,196.

**Cost of Website**

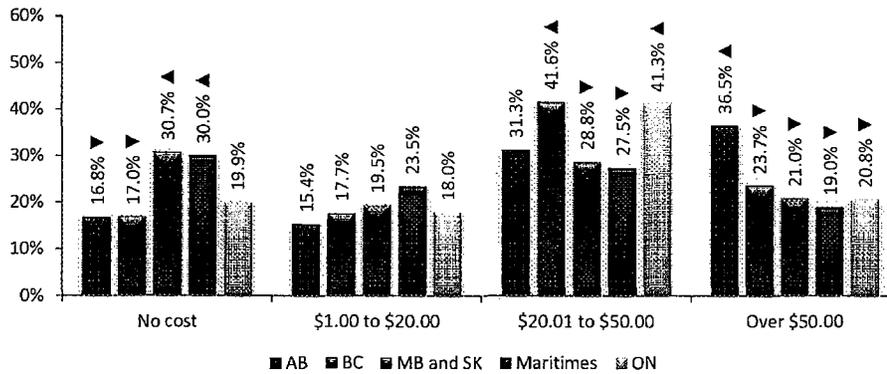
The largest proportion (35.6%) of respondents pays between \$20 and \$50 for their websites per month.



15. How much do you pay for your website per month? Base: Those respondents with their own websites, n=1,535.

**Cost of Website by Region**

While respondents in Alberta are more likely than those in other regions to pay more than \$50 per month for their websites, respondents in Manitoba and Saskatchewan as well as the Maritimes are most likely to pay nothing.

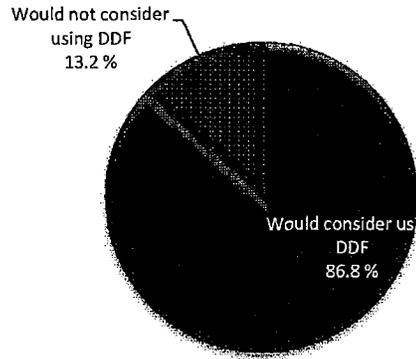


Base: Those respondents with their own websites, AB: n=351, BC: n=418, MB and SK: n=205, Maritimes: n=200, ON: n=361.

## DATA DISTRIBUTION FACILITY (DDF)

### Consideration of DDF

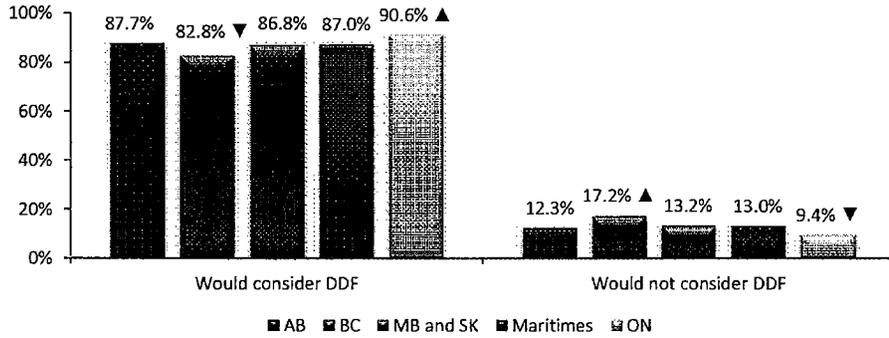
A strong majority of respondents (86.8%) who operate their own website would consider using the DDF while managing their own website.



16. While still managing your own website, would you consider using the Data Distribution Facility, which provides the ability to pull the listing content, in order to populate your web site at no cost? Base: Those respondents with their own websites, n=1,535.

**Consideration of DDF by Region**

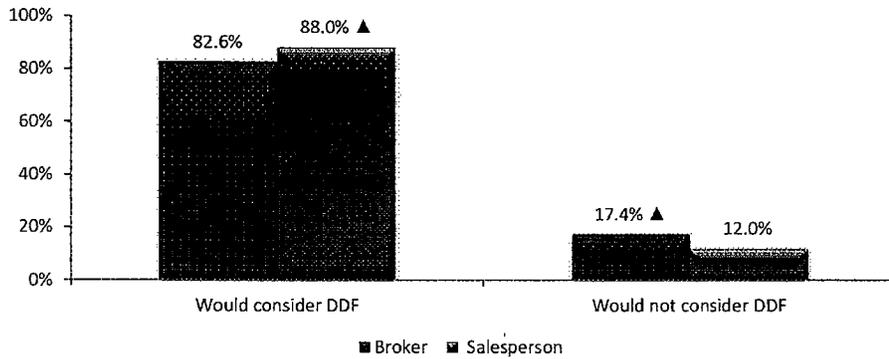
While a strong majority in all regions are interested in the DDF, respondents in Ontario are slightly more likely than those in other regions to consider using the service.



Base: Those respondents with their own websites, AB: n=351, BC: n=418, MB and SK: n=205, Maritimes: n=200, ON: n=361.

**Consideration of DDF by Member Type**

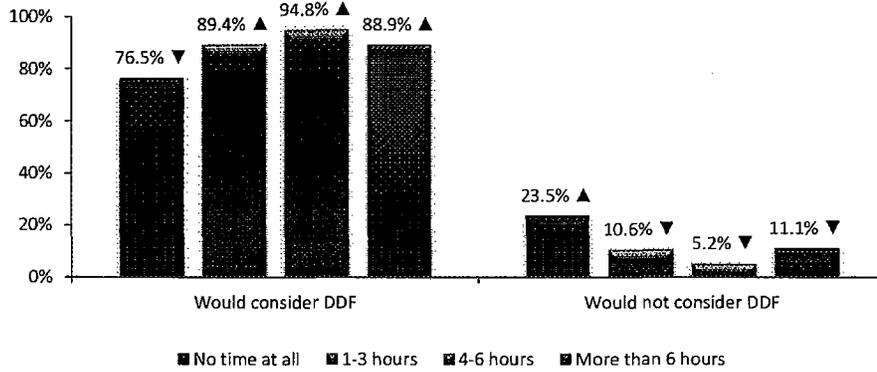
Salespersons are more likely than brokers to consider using the DDF in addition to their own websites.



1. Are you a...? Base: Those respondents with their own websites, Broker: n=339, Salesperson: n=1,196.

**Consideration of DDF by Time Spent Managing Listings**

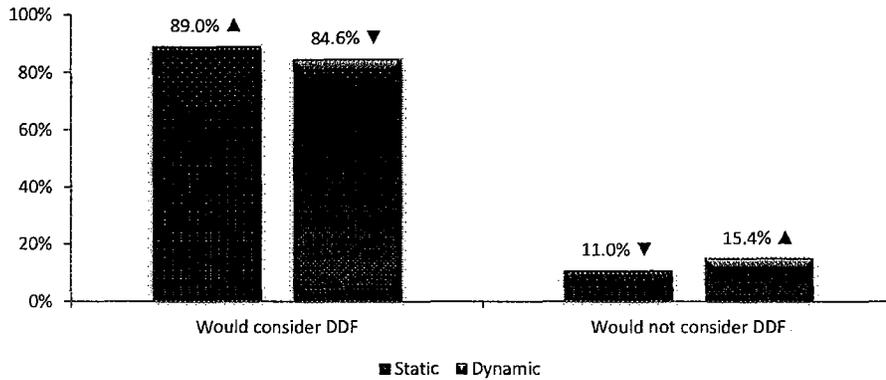
While respondents who spend time managing their listings on third party websites are more likely than those who do not to consider using the DDF, respondents do not spend anytime managing their listings on third party sites are most likely to not consider using the DDF.



4. On average, how much time per week do you spend managing your listings on sites other than the Board MLS® System?  
Base: Those respondents with their own websites, No time: n=395, 1-3 hrs: n=791, 4-6 hrs: n=232, More than 6 hrs: n=117.

**Consideration of DDF by Static vs. Dynamic Websites**

Respondents who operate a static website currently are more likely than those with dynamic sites to consider using the DDF.



11. Is your website static or dynamic? Base: Those respondents with their own websites, Static: n=639, Dynamic: n=762.

## Reasons for Not Considering DDF

The following are samples of verbatim comments provided by respondents as to why they are not consider using the DDF.

*"As an agent there has to be a line drawn on monthly expenses. Also having MLS and my website is enough. I don't want to have to scatter where buyers have to look and compete with myself by using multiple sources for my information. Having one main source and a back up website is plenty. I don't want to confuse buyers as to where they can go to get all the information they need. I also don't want two MLS-type systems (which I believe this may lead to) that in the end compete with each other and where an agent has to pay to use both sites like in the US. I believe such a system if it was ever created would dilute the effectiveness of both systems."*

*"Do not know enough about it. Would need to explore and analyse further."*

*"First, I know very little about it. 2nd my board and website provider already provides me with this service."*

*"I am SICK and FEDUP with CREA giving/selling all of our valuable information to third parties. If I want to upload my listings, I will. I do not want CREA to abuse a system that we have built over decades. This is our only profession in Winnipeg and cannot work part time, so security, sensitivity and respect is what we have paid CREA to protect!"*

*"I don't want another party access to the information as I would be worried about their opportunity to alter the information. We would have NO control and I would NOT be happy in that situation. At one point we used a text me company and I would never do that again."*

*"I want a strong public MLS site that the public will be trained to go to for real estate listings. I want the real estate industry to have control of our data. I don't want to weaken or dilute our MLS brand."*

*"I would like a clearer understanding of what is being proposed and offered. I do not think CREA has sufficiently explained the proposal."*

*"Our company does this for us. I am not interested in giving major franchises the ability to show my listings on their site. THIS A BIG MISTAKE. Look what is happening in the USA. They are trying to rescind the very thing you are trying to start here. GIVE IT UP. Our system is not broken. You plan is a solution looking for a problem!"*

*"Sounds redundant, this is already being done by links to my website as well as my office has links to up to 15 other websites which pick up my listings and post them as well. There is also a system in place that tracks the hits to my website and links which keeps track of how many viewings, where from and when the listings have been viewed. The only advantage would be if there was a mandatory link back to who is inquiring in order that I could contact them directly."*

*"The Real Estate Industry is out of touch with the abuse of information and erosion of ethical practices. The next issue is going to be who has the right to access this information. I get the sense in the not to near future anybody with a credit card will be given complete access to all information because it is what the public wants and it is a quick buck for CREA. CREA is far too self serving!"*

*"There are endless social media sites and methods of internet based advertising options. I don't want to have parameters on this. I hope CREA will not be painting us into a box...the world is ever changing. We should focus on improving Realtor.ca!"*

*"With the advent of social networking, face-to-face communication is being eroded. And, yet it is (always has been and always will be) critical to the continuing success of our industry, of our perceived usefulness to the public, of the integrity and relevance of realtor.ca. We are allowing the 'powers & capability of technology' to be the driving force of change. We should not simply be rushing into various technological possibilities because we can; we should be asking - how will it benefit our clients and our industry? How will it make us more efficient? Will it require more time, more staff and more expenditures, and if so - to what and whose advantage?"*

17. Please explain why you would not consider using the Data Distribution Facility (DDF)? Base: Those respondents with their own websites who would not consider using the DDF, n=202.

**APPENDIX A – OTHER METHODS OF WEBSITE UPDATING**

3rd party
3rd party provider - Internet Brokers
3rd party real web lead
3rd party, website manager
A company in Toronto "Success Websites"
A gentleman who has been looking after my personal website for 15 Years (works here in the city of Fredericton).
A link to MLS
Ad Media Agency
Admin
Admin staff
Administrator
Administrative assistant
Agency updates with my listings, I do the rest
An assistant is about to start after a long time without help.
An unlicensed assistant
Anyone in the office
Assistant(26)
Assistant - Full-time
Auto
Auto
Auto feed
Auto feed from franchise
Auto feed from Winnipeg Board
Auto loaded
Auto populated
Auto populated by Lone Wolf programmed
Auto update through MyRealPage my website company
Auto updates from Realtor.ca
Automated reciprocity system of website provider
Automatic(9)
Automatic Data feed
Automatic from board to website
Automatic from mlc.ca
Automatic from provider
Automatic from TRB
Automatic through filogix

Automatic through local Board
Automatic upload system
Automatic uploaded from MLS(R)
Automatic with MLS(3)
Automatic with MLS + VREB
Automatically done when I list a property
Automatically from board
Automatically linked
Automatically linked with Realtor.ca
Automatically populated via website provider
Automatically uploaded
Auto-populated
Board feed
Board feed
Bookkeeper
Both
Both
Both, website provider does pictures and my wife and I do uploads.
Brookline publishing House
Business Partner
CADREB
Client Coordinator
Combination between myself and the agency
Company I use auto populates
Computer technologist
Computer web builder
Contract(6)
CREB
CREB
CREV+
Currently inactive
Deep linked to realtor.ca
Depending on content
Don't do much
Dynamic
Filogix(3)
Fortress web
Friend(4)
Georgian business solution
Have linked from MLS to website

Head office
Hire web site manager
Hired person
Hired web person
Host
Hosting company updates listings automatically, and I update content myself.
Husband
Husband
Husband/partner
I am part of a team and we have an administrator of the website and social media.
I am supposed to, but don't often get round to it unfortunately.
I believe it comes direct some way from the BCNorthern Board.
I can and do, admin staff can and do
I do and realpage maker.
I do and/or someone of my agency.
I do or my assistant.
I have a client that does mine
I hire this service
I link to my company's website.
I pay someone to do it.
I tell the host to update
I use a virtual assistant.
IBC
IDX
IDX (BC)
Independent contractor
Independent administrator
Internet Brokers
Internet Brokers group
IT Assistant
It automatically updates from MLS
IT department
It does it automatically.
IT guy updates website, I update my various blogs
It is an auto update
It is populated automatically through the Victoria Real Estate Board
It is updated through my board
IT person
It rarely requires manual updating.
It's a link to our listings on REALTOR.ca.

It's automatic
it's linked to the MLS and updates
It's linked to the MLS system so it does it automatically
Licensed assistant
Link to MLS
Loads automatically
Loads from the matrix site automatically 4 times a day
Local nerd
Local Web Development Company
Lone Wolf(3)
Marketing coach
Marketing Manager
Marketlink
Master
Matrix IDX
MCS (4)
MCS Interactive
MCS updates with my content
MLS
MLS is uploaded directly. Other content we do ourselves.
MLS system
MLSLink does it automatically
My Webpage
MR Internet
My administrator
My assistant(8)
My Client care coordinator
My daughter
My family member
My Husband is my unl. Ass't
My listings are automatically updated. I have to manually update my properties that help Buyers buy to show that is sold" the property
My partner(3)
My provider
My Real Estate partner
My Real Page.com
My Real Page.com
My web host
My web master
My Webmaster

<i>My web provider</i>
<i>My webmaster whom I pay</i>
<i>My website company</i>
<i>My website company</i>
<i>My website person</i>
<i>My website provide updates to online</i>
<i>My website service provider</i>
<i>Myself</i>
<i>Myself and an assistant</i>
<i>Myself and my populated</i>
<i>Myself and my assistant</i>
<i>Myself and the Vancouver board</i>
<i>Myself and Web Designers</i>
<i>Myself and/or office administrator</i>
<i>New website - currently creating</i>
<i>No one</i>
<i>None</i>
<i>Not sure</i>
<i>Off site IT person</i>
<i>Office manager</i>
<i>OMG</i>
<i>One person does for all brokerages in Sask and Manitoba</i>
<i>Oracle Marketing</i>
<i>Out assistant</i>
<i>Our web team</i>
<i>Our website person</i>
<i>Outside help</i>
<i>Outside company</i>
<i>Outside company</i>
<i>Outside contractor</i>
<i>Outside design company</i>
<i>Outside Webmaster but I am working on getting one of my staff to do it and get the program to do it</i>
<i>Outside website manager</i>
<i>Page creator</i>
<i>Partially Automated/Partially Manual</i>
<i>Partner(s)</i>
<i>Partner, and or self, and or assistant</i>
<i>Pathways software solutions</i>
<i>Pay my website administrator</i>
<i>Personal admin staff</i>

Personal administrative assistant
Personal Assistant (Salary paid by me, not brokerage) and/or myself
Personal connection
Point2
Point2 agent linked to matrix
Point2
Private agency
Private company
Privately employed webmaster
Private provider
Provider(3)
Pull my listings from board office through agreement with board
Pull the info for realtor.ca
Radar Hill Technology Group Inc.
Real Estate Board
Real Estate Board
RealPageMaker(3)
Real web solutions
Realty Page Canada
Realty support
Reciprocity feature with REBGV
Reciprocity with web provider
Red Cow(3)
Redman & Ourselves, so both
Redman and real page maker
Redman technologies (13)
Remax
Residential listings by my website company, commercial listings by myself
RETs feed from Filogix
RE and state vte
Sales Associates
SEO
Server
Service provider(7)
Service provider done automatically
Site admin, or automatically
Site administrators
Site administrators
Site provider
Site provider

<i>Some manual by agents, staff, and data's feed from local MLS</i>
<i>Someone (10)</i>
<i>Someone who works for me</i>
<i>SON</i>
<i>Spouse</i>
<i>Stephanie</i>
<i>Support staff</i>
<i>Team member/staff</i>
<i>The company</i>
<i>The company that created it</i>
<i>The Operations Department (me and my team)</i>
<i>The site self populates</i>
<i>The web site company I deal with</i>
<i>Third party (2)</i>
<i>Third party via data feed</i>
<i>Third party web management</i>
<i>Third party web service</i>
<i>Unlicensed assistant (3)</i>
<i>Updated through CREB MLX</i>
<i>Updates automatically by host</i>
<i>Updates automatically from our MLS board</i>
<i>Uploaded from our board</i>
<i>Uploads automatically</i>
<i>Uploads from board by third party</i>
<i>V.U.E. Technologies Inc.</i>
<i>Via a link to the MLS system</i>
<i>Via the Filogix system automatically</i>
<i>Web admin</i>
<i>Web admin</i>
<i>Web company</i>
<i>Web company</i>
<i>Web company on automatic program</i>
<i>Web designer(9)</i>
<i>Web designer/host</i>
<i>Web host - my real page</i>
<i>Web hosting company - reciprocity</i>
<i>Web manager(3)</i>
<i>Web master(15)</i>
<i>Web people</i>
<i>Web provider(10)</i>

Web site
Web site automatically populated
Web site firm
Web site management company
Web site provider assist
Web tech
Web host
Webner
Website admin
Website administrator
Website auto link to MLS + I Update some content
Website company(3)
Website company who manages it
Website creator
Website creator
Website Design team
Website Designer
Website does it automatically
Website does it itself
Website host(4)
Website is linked from my personal Hallmark Realty
Website manager
Website manager hired by broker owner
Website manager Rodan Hill
Website Mgr
Website provider(14)
Website provider with 3rd party authority
Website updates itself
Website automatic
Website admin
Website company
Website manager
Wheretolive.com
Your On Line Agents(5)

**THE COMPETITION TRIBUNAL**

**THE COMMISSIONER OF COMPETITION**

**Applicant**

**- AND -**

**THE TORONTO REAL ESTATE BOARD**

**Respondent**

**- AND -**

**THE CANADIAN REAL ESTATE ASSOCIATION AND  
REALTYSELLERS  
REAL ESTATE INC.**

**Intervenors**

**WITNESS STATEMENT OF GARY SIMONSEN**

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