

# SPANISH PEAKS MULTIPLE LISTING SERVICE (MLS) RULES AND REGULATIONS

Effective Date: January 1, 2015 *Revised on 07/15/2021*

The Spanish Peaks MLS, Inc. ("SPMLS") is a Colorado nonprofit Corporation governed by its members. SPMLS is not owned, controlled or operated by any Association of REALTORS®. Notwithstanding, the SPMLS members and board of directors believe that many guidelines, rules and regulations established by the National Association of REALTOR® to govern REALTOR® controlled or owned multiple listing services are also in the best interests of SPMLS and its members. Therefore, SPMLS voluntarily by various references herein incorporates and implements certain guidelines, rules and regulations established by the National Association of REALTOR®. As used herein "service", "multiple listing service", "MLS" and other similar references shall refer to the Spanish Peak's multiple listing service as operated by SPMLS unless otherwise specified.

## Listing Procedures

**Section 1 Listing Procedures** Listings of real or personal property of the following types, which are listed subject to a real estate broker's license and are taken by members on exclusive right-to-sell and exclusive-agency listings shall be delivered to the multiple listing service within seventy-two (72) hours after all necessary signatures of seller(s) have been obtained (excepting weekends, holidays and postal holidays):

- a. single family homes for sale or exchange
- b. vacant lots and acreage for sale or exchange
- c. two-family, three-family, and four-family residential buildings for sale or exchange
- d. commercial
- e. farm and ranch

**Note 1:** The multiple listing service shall not require a member to submit listings on a form other than the form the member individually chooses to utilize provided the listing is of a type accepted by the service, although a property data form may be required as approved by the multiple listing service. However, the multiple listing service, through its legal counsel:

- may reserve the right to refuse to accept a listing form which fails to adequately protect the interests of the public and the members; and/or
- assure that no listing form filed with the multiple listing service establishes, directly or indirectly, any contractual relationship between the multiple listing service and the client (buyer or seller).

The multiple listing service shall accept exclusive right-to-sell listing contracts and exclusive agency listing contracts, and may accept other forms of agreement which make

it possible for the listing broker to offer compensation to the other members of the multiple listing service acting as subagents, buyer agents, or both.

The listing agreement must include the seller's written authorization to submit the agreement to the multiple listing service.

The different types of listing agreements include:

- exclusive right-to-sell
- open
- exclusive agency
- net

The **exclusive right-to-sell** listing is the conventional form of listing submitted to the multiple listing service in that the seller authorizes the listing broker to cooperate with and to compensate other brokers.

The **exclusive agency** listing also authorizes the listing broker, as exclusive agent, to offer cooperation and compensation on blanket unilateral bases, but also reserves to the seller the general right to sell the property on an unlimited or restrictive basis. Exclusive agency listings and exclusive right-to-sell listings with named prospects exempt should be clearly distinguished by a simple designation such as a code or symbol from exclusive right-to-sell listings with no named prospects exempt, since they can present special risks of procuring cause controversies and administrative problems not posed by exclusive right-to-sell listings with no named prospects exempt. Care should be exercised to ensure that different codes or symbols are used to denote exclusive agency and exclusive right-to-sell listings with prospect reservations.

**Note 2:** The multiple listing service does not regulate the type of listings its members may take. This does not mean that a multiple listing service must accept every type of listing. The multiple listing service shall decline to accept open listings (except where acceptance is required by law) and net listings, and it may limit its service to listings of certain kinds of property. But, if it chooses to limit the kind of listings it will accept, it shall leave its members free to accept such listings to be handled outside the multiple listing service.

**Note 3:** The multiple listing service may accept exclusively listed property that is subject to auction. If such listings do not show a listed price, they may be included in a separate section of the MLS compilation of current listings.

### **Section 1.1 Types of Properties**

Following are some of the types of properties that may be published through the service, including types described in the preceding paragraph that are required to be filed with the service and other types that may be filed with the service at the member's option provided, however, that any listing submitted is entered into within the scope of the member's licensure as a real estate broker:

- residential
- motel-hotel

- residential income
- mobile homes
- subdivided vacant lot
- mobile home parks
- farm and ranch
- commercial income
- business opportunity
- industrial

### **Section 1.1.1 Listings Subject to Rules and Regulations of the Service**

Any listing taken on a contract to be filed with the multiple listing service is subject to the rules and regulations of the service upon signature of the seller(s).

### **Section 1.2 Limited Service Listings**

Listing agreements under which the listing broker will not provide one, or more, of the following services:

- a. arrange appointments for cooperating brokers to show listed property to potential purchasers but instead gives cooperating brokers authority to make such appointments directly with the seller(s)
- b. accept and present to the seller(s) offers to purchase procured by cooperating brokers but instead gives cooperating brokers authority to present offers to purchase directly to the seller(s)
- c. inform the seller(s) as to the merits of offers to purchase
- d. assist the seller(s) in developing, communicating, or presenting counter-offers
- e. participate on the seller's(s') behalf in negotiations leading to the sale of the listed property

will be identified with an appropriate code or symbol (e.g., LR or LS) in MLS compilations so potential cooperating brokers will be aware of the extent of the services the listing broker will provide to the seller(s), and any potential for cooperating brokers being asked to provide some or all of these services to listing brokers' clients, prior to initiating efforts to show or sell the property.

**Section 1.2.2 MLS Entry-only Listings.** The SPMLS will not accept "entry-only" listings. Entry-only listings are those listings in which the listing broker does not provide the minimum duties required of a broker pursuant to Colorado law. For example, a listing in which the broker's only duty is to enter the listing into the SPMLS will not be accepted.

**Section 1.3 Exempt Listings** If the seller refuses to permit the listing to be disseminated by the service, the member may then take the listing (office exclusive) and such listing shall be filed with the service but not disseminated to the members. **Upon request the listing could be subject to review by the SPMLS Board and/or SPMLS Committee.**

**Section 1.4 Change of Status of Listing** Any change in listed price or other change in the original

listing agreement shall be made only when authorized in writing by the seller and shall be filed with the service within seventy-two (72) hours (excepting weekends, holidays, and postal holidays) after the authorized change is received by the listing broker.

### **Section 1.5 Withdrawal of Listing Prior to Expiration**

Listings of property may be withdrawn from the multiple listing service by the listing broker before the expiration date of the listing agreement.

Sellers do not have the unilateral right to require the MLS to withdraw a listing without the listing broker's concurrence. However, when a seller(s) can document that his exclusive relationship with the listing broker has been terminated, the multiple listing service may remove the listing at the request of the seller.

**Section 1.6 Contingencies Applicable to Listings** Any contingency or conditions of any term in a listing shall be specified and noticed to the members.

**Section 1.7 Listing Price Specified** The full gross listing price stated in the listing contract will be included in the information published in the MLS compilation of current listings, unless the property is subject to auction.

**Section 1.8 Listing Multiple Unit Properties** All properties which are to be sold or which may be sold separately must be indicated individually in the listing and on the property data form. When part of a listed property has been sold, proper notification should be given to the multiple listing service.

**Section 1.9 No Control of Commission Rates or Fees Charged to Members** The multiple listing service shall not fix, control, recommend, suggest, or maintain commission rates or fees for services to be rendered by members. Further, the multiple listing service shall not fix, control, recommend, suggest, or maintain the division of commissions or fees between cooperating members or between members and nonmembers. The commission listed on the MLS must reflect that of the Mutually Executed Listing Agreement signed by both the Broker and the Seller.

**Section 1.10 Expiration of Listings** Listings filed with the multiple listing service will automatically be removed from the compilation of current listings on the expiration date specified in the agreement, unless prior to that date that the listing has been extended or renewed. If notice of renewal or extension is received after the listing has been removed from the current listings, the extension or renewal will be published as *back on the market*. Extensions and renewals of listings must be signed by the seller(s).

**Section 1.11 Termination Date on Listings** Listings shall bear a definite and final termination date, as negotiated between the listing broker and the seller.

**Section 1.12 Jurisdiction** Only listings of the designated types of property located within the jurisdiction of the MLS are required to be submitted to the service. Listings of property located outside the MLS's jurisdiction will be accepted if submitted voluntarily by a member, but cannot be required by the service. The SPMLS accepts listings from beyond its jurisdiction into the MLS compilation.

**Section 1.13 Listings of Suspended Members** When a member of the service is suspended from the MLS for failing to abide by a membership duty (i.e., violation of the corporation bylaws, MLS

bylaws, MLS rules and regulations, or other membership obligation except failure to pay appropriate dues, fees, or charges), all listings currently filed with the MLS by the suspended member shall, at the member's option, be withdrawn or expired, and shall not be renewed or extended by the MLS beyond the termination date of the listing agreement in effect when the suspension became effective. If a member has been suspended from the corporation (except where MLS participation without corporation membership is permitted by law) or MLS (or both) for failure to pay appropriate dues, fees, or charges, the MLS is not obligated to provide MLS, including continued inclusion of the suspended member's listings in the MLS compilation of current listing information. Prior to any removal of a suspended member's listings from the MLS, the suspended member should be advised, in writing, of the intended removal so that the suspended member may advise his clients. Employing brokers must notify the MLS about any licensure change.

**Section 1.14 Listings of Expelled Members** When a member of the service is expelled from the MLS for failing to abide by a membership duty (i.e., violation of the corporation bylaws, MLS bylaws, MLS rules and regulations, or other membership obligations except failure to pay appropriate dues, fees, or charges), all listings currently filed with the MLS by the expelled member shall, at the member's option, be retained in the service until sold, withdrawn, or expired, and shall not be renewed or extended by the MLS beyond the termination date of the listing agreement in effect when the expulsion became effective. If a member has been expelled from the corporation (except where MLS participation without corporation membership is permitted by law) or MLS (or both) for failure to pay appropriate dues, fees, or charges, and corporation MLS is not obligated to provide MLS services, including continued inclusion of the expelled member's listings in the MLS compilation of current listing information. Prior to any removal of an expelled member's listings from the MLS, the expelled member should be advised, in writing, of the intended removal so that the expelled member may advise his clients.

Employing brokers must notify the MLS about any licensure change.

**Section 1.15 Listings of Resigned Members** When a member resigns from the MLS, the MLS is not obligated to provide services, including continued inclusion of the resigned member's listings in the MLS compilation of current listing information. Prior to any removal of a resigned member's listings from the MLS, the resigned member should be advised, in writing, of the intended removal so that the resigned member may advise his clients.

### **Selling Procedures**

**Section 2 Showings and Negotiations** Appointments for showings and negotiations with the seller for the purchase of listed property filed with the multiple listing service shall be conducted through the listing broker, except under the following circumstances:

- a. the listing broker gives the cooperating broker specific authority to show and/or negotiate directly, or
- b. after reasonable effort, the cooperating broker cannot contact the listing broker or his representative; however, the listing broker, at his option, may preclude such direct negotiations by cooperating brokers.
- c. lock box procedures

**Section 2.1 Presentation of Offers** The listing broker must make arrangements to present the offer as soon as possible, or give the cooperating broker a satisfactory reason for not doing so.

**Section 2.2 Submission of Written Offers and Counter-offers** The listing broker shall submit to the seller all written offers until closing unless precluded by law, government rule, regulation, or agreed otherwise in writing between the seller and the listing broker. Unless the subsequent offer is contingent upon the termination of an existing contract, the listing broker shall recommend that the seller obtain the advice of legal counsel prior to acceptance of the subsequent offer.

Members representing buyers or tenants shall submit to the buyer or tenant all offers and counter-offers until acceptance, and shall recommend that buyers and tenants obtain legal advice where there is a question about whether a pre-existing contract has been terminated.

**Section 2.3 Right of Cooperating Broker in Presentation of Offer** The cooperating broker (subagent or buyer agent) or his representative has the right to participate in the presentation to the seller or lessor of any offer he secures to purchase or lease. He does not have the right to be present at any discussion or evaluation of that offer by the seller or lessor and the listing broker. However, if the seller or lessor gives written instructions to the listing broker that the cooperating broker not be present when an offer the cooperating broker secured is presented, the cooperating broker has the right to a copy of the seller's or lessor's written instructions. None of the foregoing diminishes the listing broker's right to control the establishment of appointments for such presentations.

**Section 2.4 Right of the Listing Broker in Presentation of Counter-offer**

The listing broker or his representative has the right to participate in the presentation of any counter-offer made by the seller or lessor. He does not have the right to be present at any discussion or evaluation of a counter-offer by the purchaser or lessee (except when the cooperating broker is a subagent). However, if the purchaser or lessee gives written instructions to the cooperating broker that the listing broker not be present when a counter-offer is presented, the listing broker has the right to a copy of the purchaser's or lessee's written instructions.

**Section 2.5 Reporting Sales to the Service**

Status changes, including final closing of sales and sales prices and pending sales, shall be reported to the multiple listing service by the listing broker within seventy-two (72) hours after they have occurred (excepting weekends, holidays and postal holidays). If negotiations were carried on under Section 2 a. or b. hereof, the cooperating broker shall report accepted offers and prices to the listing broker within seventy-two (72) hours after the occurrence and the listing broker shall report them to the MLS within seventy-two (72) hours after receiving notice (excepting weekends, holidays and postal holidays) from the cooperating broker.

**Note 1:** The listing agreement of a property filed with the MLS by the listing broker should include a provision expressly granting the listing broker authority to advertise; to file the listing with the MLS; to provide timely notice of status changes of the listing to the MLS; and to provide sales information including selling price to the MLS upon sale of the property.

**SPMLS Board Members and/or Committees** may audit sold listings.

**Section 2.6 Reporting Resolution of Contingencies** The listing broker shall report to the multiple listing service within seventy-two (72) hours that a contingency on file with the multiple listing service has been fulfilled or renewed, or the agreement cancelled.

### **Section 2.7 Advertising of Listings Filed with the Service**

A listing shall not be advertised by any member other than the listing broker without the prior consent of the listing broker. Written consent must be given to place other brokers listings on a personal website and broker credit must be given.

**Section 2.8 Reporting Cancellation of Pending Sale** The listing broker shall report immediately to the multiple listing service the cancellation of any pending sale, and the listing shall be reinstated.

### **Section 2.9 Availability of Listed Property**

Listing brokers shall not misrepresent the availability of access to show or inspect listed property.

## **Refusal to Sell**

### **~~Section 3 Refusal to Sell~~**

~~If the seller of any listed property filed with the multiple listing service refuses to accept a written offer satisfying the terms and conditions stated in the listing, such fact shall be transmitted **within seventy-two (72) hours** to the service and to all members. (Removed by BOD action 05/12/2020)~~

## **Prohibitions**

**Section 4 Information for Members Only** Any listing filed with the service shall not be made available to any broker or firm not a member of the MLS without the prior consent of the listing broker.

**Section 4.1 For Sale Signs** Only the for sale sign of the listing brokerage may be placed on a property. For Sale Signs are required to be placed on the property within seventy-two (72) hours of the start date unless otherwise agreed upon in the listing agreement and mutually executed by the Broker and the Seller. On the contrary, the For Sale sign must be removed from the property within seventy-two (72) hours after the listing has been terminated. If Broker is found to be in violation the Broker will be assessed a \$75 fee and a \$100 fee will be assessed to the Designated Broker.

**Section 4.2 Sold Signs** Prior to closing, only the sold sign of the listing broker may be placed on a property, unless the listing broker authorizes the cooperating (selling) broker to post such a sign.

### **Section 4.3 Use of the Terms MLS and Multiple Listing Service**

No MLS member, subscriber, or licensee affiliated with any member shall, through the name of their firm, their URLs, their e-mail addresses, their website addresses, or in any other way represent, suggest, or imply that the individual or firm is an MLS, or that they operate an MLS. Members, subscribers and licensees affiliated with members shall not represent, suggest, or imply that consumers or others have direct access to MLS databases, or that consumers or others are able to

search MLS databases available only to members and subscribers. This does not prohibit members and subscribers from representing that any information they are authorized under MLS rules to provide to clients or customers is available on their websites or otherwise.

## **Division of Commissions**

### **Section 5 Compensation Specified on Each Listing**

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

In filing a property with the Spanish Peak's multiple listing service, the member of the service is making blanket unilateral offers of compensation to the other MLS members, and shall therefore specify on each listing filed with the service, the compensation being offered to the other MLS members. Specifying the compensation on each listing is necessary, because the cooperating broker has the right to know what his compensation shall be prior to his endeavor to sell.\*

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

This shall not preclude the listing broker from offering any MLS member compensation other than the compensation indicated on any listing published by the MLS, provided the listing broker informs the other broker, in writing, in advance of submitting an offer to purchase, and provided that the modification in the specified compensation is not the result of any agreement among all or any other members in the service. Any superseding offer of compensation must be expressed as either a percentage of the gross sales price or as a flat dollar amount.

**Note 1:** The multiple listing service shall not have a rule requiring the listing broker to disclose the amount of total negotiated commission in his listing contract, and the corporation multiple listing service shall not publish the total negotiated commission on a listing which has been submitted to the MLS by a member. The corporation multiple listing service shall not disclose in any way the total commission negotiated between the seller and the listing broker.

**Note 2:** The listing broker may, from time to time, adjust the compensation offered to other multiple listing service members for their services with respect to any listing by advance published notice to

the service so that all members will be advised.

**Note 3:** The multiple listing service shall make no rule on the division of commissions between members and nonmembers. This should remain solely the responsibility of the listing broker.

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\*The compensation specified on listings filed with the multiple listing service shall appear in one of two forms. The essential and appropriate requirement of the Spanish Peaks multiple listing service is that the information to be published shall clearly inform the members as to the compensation they will receive in cooperative transactions, unless advised otherwise by the listing broker, in writing, in advance of submitting an offer to purchase. The compensation specified on listings published by the MLS shall be shown in one of the following forms:

1. by showing a percentage of the gross selling price;
2. by showing a definite dollar amount; or
3. by showing a percentage of the net sales price.

“Net sales price” shall mean the gross selling price minus buyer upgrades (new construction) and seller concessions. “Seller concessions” shall mean buyer’s customary closing costs, loan discount points, loan origination fees, prepaid items (including any amounts that the seller agrees to pay because buyer is not allowed to pay to FHA, CHFA, VA, etc.) and any other fees, cost, charge, expense or expenditure related to buyer’s new loan or other legitimate and allowable seller concession.

Compensation information must specify, as applicable, that gross commissions established in the listing contract are subject to court approval; and that compensation payable to cooperating brokers may be reduced if the gross commission established in the listing contract is reduced by a court. In such instances, the fact that the gross commission is subject to court approval and either the potential reduction in compensation payable to cooperating brokers or the method by which the potential reduction in compensation will be calculated must be clearly communicated to the potential cooperating brokers prior to the time they submit an offer that ultimately results in a successful transaction. Any potential reduction in compensation and/or the method by which the reduction in compensation will be calculated should be included in Agent Remarks.

**Note 4:** Nothing in these MLS rules precludes a listing member and a cooperating member, as a matter of mutual agreement, from modifying the cooperative compensation to be paid in the event of a successful transaction.

**Note 5:** SPMLS Multiple listing services must give members the ability to disclose to other members any potential for a short sale. As used in these rules, short sales are defined as a transaction where title transfers; where the sale price is insufficient to pay the total of all liens and costs of sale; and where the seller does not bring sufficient liquid assets to the closing to cure all deficiencies. Multiple listing services may, as a matter of local discretion, require members to disclose potential short sales when members know a transaction is a potential short sale. In any instance where a member discloses a potential short sale, they may, as a matter of local discretion, also be permitted to communicate to other members how any reduction in the gross commission established in the

listing contract required by the lender as a condition of approving the sale will be apportioned between listing and cooperating members. All confidential disclosures and confidential information related to short sales, if allowed by local rules, must be communicated through dedicated fields or confidential “remarks” available only to members and subscribers.

### **Section 5.0.1 Disclosing Potential Short Sales**

The listing broker shall disclose to other members whether a Colorado Real Estate Commission Short Sale Addendum or substantially similar addendum has been signed by the seller. Such disclosure shall be made upon submission of the listing to the SPMLS or if a short sale addendum is signed after the listing is submitted to the SPMLS then disclosure shall be made within 72 hours of the time the seller has signed the short sale addendum. Failure to disclose the short sale addendum shall be treated as a failure to make a status change pursuant to Section 1.4 for enforcement purposes.

If a short sale addendum is not signed because the likelihood of a short sale is less than certain or because of other intervening factors then members may, but are not required to, disclose the potential of a short sale to other members on their listings filed with the SPMLS. When disclosed (whether by the existence of a signed short sale addendum or otherwise), members may, at their discretion, advise other members whether and how any reduction in the gross commission established in the listing contract, required by the lender as a condition of approving the sale, will be apportioned between listing and cooperating members. All confidential disclosures and confidential information related to short sales, must be communicated through fields dedicated to that purpose or if there are no fields dedicated to the particular disclosure then in the confidential “agent remarks” field available only to members or authorized subscribers.

Notwithstanding any discretion of a member regarding the disclosure of a potential short sale in a listing and any resulting potential reduction in the gross commission required by the lender, if a member knows or has reason to believe a short sale is likely and the short sale would likely result in a reduction of the gross commission, then the member should seriously consider disclosing such fact in the listing to avoid misunderstandings. In addition, to avoid disputes, the member should consider clearly communicating how a potential reduction in gross commission may likely be calculated and how such reduction would be apportioned between the listing and cooperating members.

As used in these Rules and Regulations, short sales are defined as a transaction where title transfers; where the sales price is insufficient to pay the total of all liens and costs of sale; and where the seller does not bring sufficient liquid assets to the closing to cure all deficiencies.

**Note 1:** This Section 5.0.1 option to disclose potential short sales only relates to listings filed with the SPMLS. It does not indicate that short sale disclosures should not be made once negotiations begin or contract offers and counter-offers are made.

**Note 2:** A member’s decision to disclose a potential short sale does not change his/her obligation to offer compensation in the form set forth in Section 5; and, regardless of the outcome of the transaction, does not excuse payment of the offered compensation unless it is excused through arbitration or legal action or is otherwise agreed to by the members involved.

**Note 3:** Potential modifications to cooperating broker commissions arising from a short sale and

lender conditions regarding approval of a short sale should be provided in the agent remarks.

The SPMLS shall withdraw listings that do not include an offer of compensation expressed as a percentage of the gross selling or lease price, a percentage of the net sales price or as a definite dollar amount, until such time as the appropriate commission is declared. The SPMLS shall not include listings that include general invitations by listing brokers to other members to discuss terms and conditions of possible cooperative relationships.

### **Section 5.1 Subscriber as Principal**

If a member or any licensee (or licensed or certified appraiser) affiliated with a member has any ownership interest in a property, the listing of which is to be disseminated through the multiple listing service, that person shall disclose that interest when the listing is filed with the multiple listing service and such information shall be disseminated to all multiple listing service members.

### **Section 5.2 Subscriber as Purchaser**

If a member or any licensee (including licensed and certified appraisers) affiliated with a member wishes to acquire an interest in property listed with another member, such contemplated interest shall be disclosed, in writing, to the listing broker not later than the time an offer to purchase is submitted to the listing broker.

### **Section 5.3 Dual or Variable Rate Commission Arrangements**

The existence of a dual or variable rate commission arrangement (i.e., one in which the seller/landlord agrees to pay a specified commission if the property is sold/leased by the listing broker without assistance and a different commission if the sale/lease results through the efforts of a cooperating broker; or one in which the seller/landlord agrees to pay a specified commission if the property is sold/leased by the listing broker either with or without the assistance of a cooperating broker and a different commission if the sale/lease results through the efforts of a seller/landlord) shall be disclosed by the listing broker as required by the MLS. The listing broker shall, in response to inquiries from potential cooperating brokers, disclose the differential that would result in either a cooperative transaction or, alternatively, in a sale/lease that results through the efforts of the seller/landlord. If the cooperating broker is a buyer/tenant representative, the buyer/tenant representative must disclose such information to their client before the client makes an offer to purchase or lease.

## **Service Charges**

### **Section 6 Service Fees and Charges**

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

**Initial Membership (Subscriber) Fee:** An applicant for membership in the service shall pay an application fee of \$100 with such fee to accompany the application. Such fee is subject to change from time to time as determined by the board of directors.

**Recurring Membership (Subscriber) Fee:** The annual participation fee of each member shall be an amount equal to \$400.00 times each salesperson. The annual participation fee of each member shall be an amount equal to \$200.00 times each affiliated member, such as appraisers, bankers,

mortgage brokers, title companies, etc who has access to and use of the service. Payment of such fee shall be made annually in advance on or before the first day of the fiscal year of the multiple listing service. Such fee is subject to change from time to time as determined by the board of directors. Fee will be prorated on a quarterly basis. No refunds upon termination. The SPMLS may establish various access levels and associated fees from time to time.

**Transfer Fee:** In the event that a broker is transferring from one brokerage to another, a \$25 Broker Transfer fee will be charged by the SPMLS board. If control of a member firm is sold, assigned, or transferred, membership of the firm in the service shall be automatically suspended subject to approval of the new potential member's membership in SPMLS. If more than 50% ownership interest in the participating firm is transferred, then a transfer fee of \$100.00 shall be paid to the SPMLS to cover the cost of recording such change in ownership. No participation shall be transferred unless same is current with monthly and annual fees paid. Any member who has not been a member of the service within the previous six (6) months must make a new application and pay all related fees, including without limitation, initial application fees.

Any member dues and fees not paid in full by January 25th will result in that member's account being suspended until payment is received. Memberships not paid by the due date will incur a \$50.00 late fee and a \$30.00 reactivation fee.

## Compliance with Rules

### **Section 7 Compliance with Rules—Authority to Impose Discipline**

By becoming and remaining a subscriber in this SPMLS, each subscriber agrees to be subject to the rules and regulations and any other SPMLS governance provision. The SPMLS may, through the administrative and hearing procedures established in these rules, impose discipline for violations of the rules and other MLS governance provisions. Discipline that may be imposed may only consist of one or more of the following:

- a. letter of warning
- b. letter of reprimand
- c. attendance at MLS orientation or other appropriate courses or seminars which the member or subscriber can reasonably attend taking into consideration cost, location, and duration
- d. appropriate, reasonable fine not to exceed \$15,000
- e. probation for a stated period of time not less than thirty (30) days nor more than one (1) year
- f. suspension of SPMLS rights, privileges, and services for not less than thirty (30) days nor more than one (1) year
- g. termination of MLS rights, privileges, and services with no right to reapply for a specified period not to exceed three (3) years.

\*Fines for inaccurate or incorrect content input into the SPMLS shall be a fine of \$75.00 to the Broker and \$100 to the Employing Broker. These fines are subject to modification from time to time. This penalty will be assessed 72 hours after member and their office has been notified of the incorrect content and such content has not been corrected, at the discretion of the board. If this fine is levied three times within any 12-month period, then the member will be denied access to the

SPMLS system until training, as deemed necessary by the board of directors, is accomplished. **The SPMLS Board and/or Committee reserves the right to request proper documentation from the Broker such as but not limited to a Fully Executed Exclusive Right to Buy, Exclusive Right to Sell, etc. In the event the information is not provided timely the SPMLS Board and/or Committee will assess further disciplinary action.**

- **MLS Fines**
  - \$75 fine issued to the Broker if the error is not corrected **within 72 hours of notification including weekends/holidays**
  - \$100 fine issued to the Employing Broker if not corrected **within 72 hours of notification including weekends/holidays**
  - If the error is not corrected within this time frame the listings will be automatically removed from the MLS.
  - Unpaid fines and repeat offenders will be deactivated **from Flex MLS, at the discretion of the board. Within 72 hours of the violation the SPMLS Board will discuss the violation and any further action that needs to take place.**
    - In the event of an error the Spanish Peaks Executive Director will email the offender as well as the Employing Broker outlining the error and state the fine if it is not corrected within the timeframe set forth.
    - The Executive Director will have a template SOP to insure the process is fair for all members
    - The Executive Director will prepare a list of offenders and offenses and present them to the board
    - Fine will be collected through paypal or by check to the SPMLS PO Box

## **Section 7.1 Compliance with Rules**

The following action may be taken for noncompliance with the rules:

- a. for failure to pay any service charge or fee within one (1) month of the date due, and provided that at least ten (10) days' notice has been given, the service shall be suspended until service charges or fees are paid in full
- b. for failure to comply with any other rule, the provisions of Sections 9 and 9.1 shall apply

**Section 7.2 Applicability of Rules to Users and/or Subscribers** Non-principal brokers, appraisers, and others authorized to have access to information published by the SPMLS are subject to these rules and regulations and may be disciplined for violations thereof provided that the user or subscriber has signed an agreement acknowledging that access to and use of MLS information is contingent on compliance with the rules and regulations. Further, failure of any user or subscriber to abide by the rules and/or any sanction imposed for violations thereof can subject the member to the same or other discipline. This provision does not eliminate the member's ultimate responsibility and accountability for all users or subscribers affiliated with the member.

## Meetings

**Section 8 Meetings** The meetings of the members in the service or the board of directors of the multiple listing service for the transaction of business of the service shall be held in accordance with the provisions of Article 4, bylaws of the SPMLS.

## Enforcement of Rules or Disputes

### **Section 9 Considerations of Alleged Violations**

The board of directors shall give consideration to all written complaints having to do with violations of the rules and regulations.

### **Section 9.1 Violations of Rules and Regulations**

If the alleged offense is a violation of the rules and regulations of the service and does not involve a charge of alleged unethical conduct or request for arbitration (if available), it may be administratively considered and determined by the board of directors of the service, and if a violation is determined, the board of directors may direct the imposition of sanction.

If the alleged offense is a violation of the rules and regulations of the service and does not involve a charge of alleged violation of one or more of the provisions of Section 16 of the rules and regulations or a request for arbitration (if available), it may be administratively considered and determined by the board of directors of the MLS and if a violation is determined, the board of directors may direct the imposition of sanction.

**Section 9.2 Complaints of Unethical Conduct** All other complaints of questionable conduct shall also be referred to the board of directors of the corporation for appropriate action in accordance with the professional standards procedures established in the corporation's bylaws, **and Rules and Regulations**.

## Confidentiality of MLS Information

**Section 10 Confidentiality of MLS Information** Any information provided by the multiple listing service to the members shall be considered official information of the service. Such information shall be considered confidential and exclusively for the use of members and real estate licensees affiliated with such members and those members who are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property and licensed or certified appraisers affiliated with such members.

Subscribers cannot share password with people other than subagents and/or personal assistants.

**Section 10.1 MLS Responsibility for Accuracy of Information** The information published and disseminated by the service is communicated verbatim, without change by the service, as filed with the service by the member. The service does not verify such information provided and disclaims any responsibility for its accuracy. Each member agrees to hold the service harmless against any liability arising from any inaccuracy or inadequacy of the information such member provides.

## Use of MLS Information

### **Section 13 Limitations on Use of MLS Information**

Use of information from MLS compilation of current listing information, from the corporation's statistical report, or from any sold or comparable report of the corporation or MLS for public mass-media advertising by an SPMLS member or in other public representations, may not be prohibited.

However, any print or non-print forms of advertising or other forms of public representations based in whole or in part on information supplied by the corporation or its MLS must clearly demonstrate the period of time over which such claims are based and must include the following, or substantially similar, notice:

Based on information from the Spanish Peaks MLS, Inc. (SPMLS) for the period *(date)* through *(date)*. Data maintained by the SPMLS may not reflect all real estate activity in the market and the accuracy of the data is not guaranteed by the SPMLS.

## Changes in Rules and Regulations

**Section 14 Changes in Rules and Regulations** Amendments to the rules and regulations of the service shall be by consideration and approval of the board of directors of the SPMLS.

## Standards of Conduct for MLS Members

**Standard 16.1** MLS members shall not engage in any practice or take any action inconsistent with exclusive representation or exclusive brokerage relationship agreements that other MLS members have with clients.

**Standard 16.2** Signs giving notice of property for sale, rent, lease, or exchange shall not be placed on property without consent of the seller/landlord.

**Standard 16.3** MLS members acting as agents or as buyer/tenant representatives or brokers shall not attempt to extend a listing broker's offer of cooperation and/or compensation to other brokers without the consent of the listing broker.

**Standard 16.4** MLS members shall not solicit a listing currently listed exclusively with another broker. In the event that MLS member feels that the listing period is not being advertised correctly the SPMLS board may ask the broker to produce the current listing agreement. If the MLS Listing and the Listing Agreement are reflected inaccurately the broker will be subject to notification of violation and subject to fines by the discretion of the board.

**Standard 16.5** MLS members shall not solicit buyer/tenant agreements from buyers/tenants who are subject to exclusive buyer/tenant agreements. However, if asked by an MLS member, the broker refuses to disclose the expiration date of the exclusive buyer/tenant agreement, the MLS member may contact the buyer/tenant to secure such information and may discuss the terms upon which the MLS member might enter into a future buyer/tenant agreement or, alternatively, may enter into a

buyer/tenant agreement to become effective upon the expiration of any existing exclusive buyer/tenant agreement.

**Standard 16.6** MLS members shall not use information obtained from listing brokers through offers to cooperate made through multiple listing services or through other offers of cooperation to refer listing brokers' clients to other brokers or to create buyer/tenant relationships with listing brokers' clients, unless such use is authorized by listing brokers.

[**Standard 16.7** The fact that an agreement has been entered into with an MLS member shall not preclude or inhibit any other MLS member from entering into a similar agreement after the expiration of the prior agreement.

**Standard 16.8** The fact that a prospect has retained an MLS member as an exclusive representative or exclusive broker in one or more past transactions does not preclude other MLS members from seeking such prospect's future business.

**Standard 16.9** MLS members are free to enter into contractual relationships or to negotiate with sellers/landlords, buyers/tenants or others who are not subject to an exclusive agreement but shall not knowingly obligate them to pay more than one commission except with their informed consent.

**Standard 16.10** When MLS members are contacted by the client of another MLS member regarding the creation of an exclusive relationship to provide the same type of service, and MLS members have not directly or indirectly initiated such discussions, they may discuss the terms upon which they might enter into a future agreement or, alternatively, may enter into an agreement which becomes effective upon expiration of any existing exclusive agreement.

**Standard 16.11** In cooperative transactions, MLS members shall compensate cooperating MLS members (principal brokers) and shall not compensate nor offer to compensate, directly or indirectly, any of the sales licensees employed by or affiliated with other MLS members without the prior express knowledge and consent of the cooperating broker.]

**Standard 16.12** MLS members are not precluded from making general announcements to prospects describing their services and the terms of their availability even though some recipients may have entered into agency agreements or other exclusive relationships with another MLS member. A general telephone canvass, general mailing, or distribution addressed to all prospects in a given geographical area or in a given profession, business, club, or organization, or other classification or group is deemed general for purposes of this rule.

[The following types of solicitations are prohibited: Telephone or personal solicitations of property owners who have been identified by a real estate sign, multiple listing compilation, or other information service as having exclusively listed their property with another MLS member; and mail or other forms of written solicitations of prospects whose properties are exclusively listed with another MLS member when such solicitations are not part of a general mailing but are directed specifically to property owners identified through compilations of current listings, for sale or for rent signs, or other sources of information intended to foster cooperation with MLS members.]

[**Standard 16.13** MLS members, prior to entering into a representation agreement, have an affirmative obligation to make reasonable efforts to determine whether the prospect is subject to a current, valid exclusive agreement to provide the same type of real estate service.

**Standard 16.14** MLS members, acting as buyer or tenant representatives or brokers, shall disclose that relationship to the seller/landlord's representative or broker at first contact and shall provide written confirmation of that disclosure to the seller/landlord's representative or broker not later than execution of a purchase agreement or lease.]

**Standard 16.15** On unlisted property, MLS members acting as buyer/tenant representatives or brokers shall disclose that relationship to the seller/landlord at first contact for that buyer/tenant and shall provide written confirmation of such disclosure to the seller/landlord not later than execution of any purchase or lease agreement.

**Standard 16.16** MLS members, acting as representatives or brokers of sellers/landlords or as subagents of listing brokers, shall disclose that relationship to buyers/tenants as soon as practicable, and shall provide written confirmation of such disclosure to buyers/tenants not later than execution of any purchase or lease agreement.

**Standard 16.17** MLS members are not precluded from contacting the client 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) or from offering the same type of service for property not subject to other brokers' exclusive agreements. However, information received through a multiple listing service or any other offer of cooperation may not be used to target clients of other MLS members to whom such offers to provide services may be made.

**Standard 16.18** MLS members, acting as subagents or buyer/tenant representatives or brokers, shall not use the terms of an offer to purchase/lease to attempt to modify the listing broker's offer of compensation to subagents or buyer/tenant representatives or brokers, or make the submission of an executed offer to purchase/lease contingent on the listing broker's agreement to modify the offer of compensation.

**Standard 16.19** All dealings concerning property exclusively listed or with buyer/tenants who are subject to an exclusive agreement shall be carried on with the client's representative or broker, and not with the client, except with the consent of the client's representative or broker or except where such dealings are initiated by the client. Before providing substantive services (such as writing a purchase offer or presenting a CMA) to prospects, MLS members shall ask prospects whether they are a party to any exclusive representation agreement. MLS members shall not knowingly provide substantive services concerning a prospective transaction to prospects who are parties to exclusive representation agreements, except with the consent of the prospects' exclusive representatives or at the direction of prospects.

**Standard 16.20** Members and subscribers, prior to or after their relationship with their current firm is terminated, shall not induce clients of their current firm to cancel exclusive contractual agreements between the client and that firm. This does not preclude members from establishing agreements with their associated licensees governing assignability of exclusive agreements.

**Standard 16.21** These rules are not intended to prohibit ethical, albeit aggressive or innovative business practices, and do not prohibit disagreements with other MLS members involving commission, fees, compensation, or other forms of payment or expenses.

**Standard 16.22** MLS members shall not knowingly or recklessly make false or misleading statements about other real estate professionals, their businesses, or their business practices. MLS

members' firm websites shall disclose the firm's name and state(s) of licensure in a reasonable and readily apparent manner.

**Standard 16.23** MLS members' firm websites shall disclose the firm's name and state(s) of licensure in a reasonable and readily apparent manner. Websites of licensees affiliated with a member's firm shall disclose the firm's name and the licensee's state(s) of licensure in a reasonable and readily apparent manner.

**Standard 16.24** MLS members shall present a true picture in their advertising and representations to the public, including Internet content posted, and the URLs and domain names they use, and members may not:

- a. engage in deceptive or unauthorized framing of real estate brokerage websites;
- b. manipulate (e.g., presenting content developed by others) listing and other content in any way that produces a deceptive or misleading result;
- c. deceptively use metatags, keywords or other devices/methods to direct, drive, or divert Internet traffic;
- d. present content developed by others without either attribution or without permission; or
- e. otherwise mislead consumers.

**Standard 16.25** The services which MLS members provide to their clients and customers shall conform to the standards of practice and competence which are reasonably expected in the specific real estate disciplines in which they engage; specifically, residential real estate brokerage, real property management, commercial and industrial real estate brokerage, land brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate.

MLS members shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or service, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth.

It is required that all MLS listings must have a "main" picture. For Residential listings, the main picture must be of the street view of the home only; this can include an aerial drone photo of the home, however, no other pictures are allowed for a "main" photo, except where sellers expressly in writing direct that photographs of their property are not to appear in MLS compilations. Photos are limited to 60 photos per listing. No Real Estate signs of any kind are allowed in the photos. Contact info i.e. Brokerage Firm, Broker's name, phone, websites, email is not allowed in public remarks.

All MLS listings must contain accurate directions to the listing.

If the broker is found in violation of any of the above the Broker will be assessed a \$75 fee and a \$100 fee to the Designated Broker.

## Orientation

### **Section 17 Orientation**

Any applicant for MLS participation and any licensee (including licensed or certified appraisers) affiliated with an MLS member who has access to and use of MLS-generated information *may be required to complete* an orientation program of no more than eight (8) classroom hours devoted to the MLS rules and regulations and computer training related to MLS information entry and retrieval and the operation of the MLS within thirty (30) days after access has been provided.

Members and subscribers may be required, at the discretion of the MLS, to complete additional training of not more than four (4) classroom hours in any twelve (12) month period when deemed necessary by the MLS to familiarize members and subscribers with system changes or enhancements and/or changes to MLS rules or policies. Members and subscribers must be given the opportunity to complete any mandated additional training remotely.

## Internet Data Exchange (IDX)

**Section 18 IDX Defined** IDX affords MLS members the ability to authorize limited electronic display of their listings by other members.

**Section 18.1 Authorization** Members' consent for display of their listings by other members pursuant to these rules and regulations is presumed unless a member affirmatively notifies the MLS that the member refuses to permit display (either on a blanket or on a listing-by-listing basis). If a member refuses on a blanket basis to permit the display of that member's listings, that member may not download, frame or display the aggregated MLS data of other members. Even where members have given blanket authority for other members to display their listings on IDX sites, such consent may be withdrawn on a listing-by-listing basis where the seller has prohibited all Internet display.

**Section 18.2 Participation** Participation in IDX is available to all MLS members engaged in real estate brokerage who consent to display of their listings by other members.

**Section 18.2.1** Members must notify the MLS of their intention to display IDX information and must give the MLS direct access for purposes of monitoring/ensuring compliance with applicable rules and policies.

**Section 18.2.2** MLS members may not use IDX-provided listings for any purpose other than display as provided for in these rules. This does not require members to prevent indexing of IDX listings by recognized search engines.

**Section 18.2.3** Listings, including property addresses, can be included in IDX displays except where a seller has directed their listing broker to withhold their listing or the listing's property address from all display on the Internet (including, but not limited to, publicly-accessible websites or VOWs).

**Section 18.2.4** Members may select the listings they choose to display on their IDX sites based only on objective criteria including, but not limited to, factors such as geography or location (“uptown,” “downtown,” etc.), list price, type of property (e.g., condominiums, cooperatives, single-family detached, multi-family), cooperative compensation offered by listing brokers, type of listing (e.g., exclusive right-to-sell or exclusive agency), or the level of service being provided by the listing firm. Selection of listings displayed on any IDX site must be independently made by each member.

**Section 18.2.5** Members must refresh all MLS downloads and IDX displays automatically fed by those downloads at least once every three (3) days.

**Section 18.2.6** Except as provided in the IDX policy and these rules, an IDX site or a member or user operating an IDX site or displaying IDX information as otherwise permitted may not distribute, provide, or make any portion of the MLS database available to any person or entity.

**Section 18.2.7** Any IDX display controlled by a member must clearly identify the name of the brokerage firm under which they operate in a readily visible color and typeface. For purposes of the IDX policy and these rules, “control” means the ability to add, delete, modify and update information as required by the IDX policy and MLS rules.

**Section 18.2.8** Any IDX display controlled by a member or subscriber that

- a. 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
- b. displays an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing,

either or both of those features shall be disabled or discontinued for the seller’s listings 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 displays controlled by members. Except for the foregoing and subject to Section 18.2.9, a member’s IDX display may communicate the member’s professional judgment concerning any listing. Nothing shall prevent an IDX display from notifying its customers that a particular feature has been disabled at the request of the seller.

**Section 18.2.9** Members 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 member beyond that supplied by the MLS and that relates to a specific property. Members 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 the property explaining why the data or information is false. However, members shall not be obligated to remove or correct any data or information that simply reflects good faith opinion, advice, or professional judgment.

**Section 18.3 Display** Display of listing information pursuant to IDX is subject to the following rules:

**Section 18.3.1** Deceptive or misleading advertising (including co-branding) on pages displaying IDX-provided listings is prohibited. For purposes of these rules, co-branding will be presumed not to

be deceptive or misleading if the member's logo and contact information is larger than that of any third party.

**Section 18.4 Service Fees and Charges** Service fees and charges for participation in IDX shall be as established annually by the Board of Directors.

### Virtual Office Websites (VOWs)

Subscribers agree to use reasonable practices when creating VOWs- Complaints will be handled at the discretion of the board.

#### **Section 19.1 VOW Defined**

a. A "Virtual Office Website" (VOW) is a member's Internet website, or a feature of a member's website, through which the member is capable of providing real estate brokerage services to consumers with whom the member 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 member's oversight, supervision, and accountability. A non-principal broker or sales licensee affiliated with a member may, with his or her member's consent, operate a VOW. Any VOW of a non-principal broker or sales licensee is subject to the member's oversight, supervision, and accountability.

b. As used in Section 19 of these rules, the term "member" includes a member's affiliated non-principal brokers and sales licensees—except when the term is used in the phrases "member's consent" and "member's oversight, supervision, and accountability". References to "VOW" and "VOWs" include all Virtual Office Websites, whether operated by a member, by a non-principal broker or sales licensee, or by an "Affiliated VOW Partner" (AVP) on behalf of a member.

c. "Affiliated VOW Partner" (AVP) refers to an entity or person designated by a member to operate a VOW on behalf of the member, subject to the member'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 member. No AVP has the right to use MLS listing information, except in connection **with the operation** of a VOW on behalf of one or more members. Access by an AVP to MLS listing information is derivative of the rights of the member 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 members to the MLS and aggregated and distributed by the MLS to members.

Please note there are **significant changes** to the previous Rules and Regulations.

By signing this page and returning it via mail, you are acknowledging that you have read and understand the revised Rules and Regulations of the SPMLS revised on 12/12/2019 and you will comply to said Rules and Regulations from this date moving forward.

**\*Signature pages are due on or before 1/31/20 and if they are not received by that deadline, your FLEX account will be deactivated. Thank you.**

Please return this page, with your printed name, signature, and date to:

Spanish Peaks MLS, Inc.

PO Box 1182 La Veta, CO 81055

[spanishpeaksmls@gmail.com](mailto:spanishpeaksmls@gmail.com)

Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date \_\_\_\_\_