

FIRST AMENDED AND RESTATED
BYLAWS OF SPANISH PEAKS BOARD OF REALTORS INCORPORATED
N/K/A
SPANISH PEAKS MLS, INC.
Effective Date: January 1, 2015

Article 1. Principal Office

Section 1. *Principal Office.* The principal office of the corporation shall be located at *Huerfano County*, Colorado. The principal office may be changed by the board of directors. The corporation may also have offices at other places within or outside of Colorado as the board of directors may approve.

Article 2. Members

Section 1. *Classes of Membership.* The corporation shall have two classes of Subscribers, Affiliate Subscribers and Member Subscribers.

Section 2. *Qualifications.*

- (a) Member Subscribers shall be active Colorado licensed real estate brokers (broker associate) or appraisers who is a principal, partner, corporate officer, or branch office manager, acting on behalf of a principal, without further qualification, except as otherwise stipulated in these bylaws, shall be eligible to be a member and participate in the Spanish Peak's multiple listing service upon agreeing in writing to conform to the rules and regulations thereof and to pay the costs incidental thereto.
- (b) Affiliate Subscribers must be under supervision of a Colorado Regulatory Agency (i.e. Banks, Title Companies, etc).

Under no circumstances is any individual or firm, regardless of membership status, entitled to multiple listing service membership or participation unless they hold a current, valid real estate broker's license and offer or accept compensation to and from other members or are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property. Use of information developed by or published by the Spanish Peak's multiple listing service is strictly limited to the activities authorized under a member's licensure(s) or certification and unauthorized uses are prohibited. Further, none of the foregoing is intended to convey membership or any right of access to information developed by or published by the Spanish Peak's multiple listing service where access to such information is prohibited by law. The member principal of any firm, partnership, corporation, or the branch office manager designated by said firm, partnership, or corporation as the participant shall have all rights, benefits, and privileges of the service, and shall accept all obligations to the service for the participant's firm, partnership, or corporation, and for compliance with the bylaws and rules and regulations of the service by all persons affiliated with the participant who utilize the service.

Mere possession of a broker's license is not sufficient to qualify for Spanish Peak's MLS membership. Rather, the requirement that an individual or firm offers or accepts cooperation and compensation means that the member 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 Spanish Peak's MLS. "Actively" means active licensure status on a continual and ongoing basis during the operation of the member's real estate business. The "actively" requirement

is not intended to preclude MLS membership by a member or potential member 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 membership to a member or potential member who has not achieved a minimum number of transactions despite good faith efforts. Nor is it intended to permit the Spanish Peak's MLS to deny membership based on the level of service provided by the member or potential member as long as the level of service satisfies Colorado law.

The key is that the subscriber or potential subscriber 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 and can include operating online. The Spanish Peak's MLS may evaluate whether a member or potential member actively endeavors during the operation of its real estate business to offer or accept cooperation and compensation only if the Spanish Peak's MLS has a reasonable basis to believe that the member or potential member is in fact not doing so. The membership requirement shall be applied in a nondiscriminatory manner to all members and potential members.

Any applicant for Spanish Peak's MLS membership and any licensee (including licensed or certified appraisers) affiliated with an MLS member who has access to and use of the Spanish Peak's MLS-generated information shall, as required by the corporation, complete an orientation program of no more than eight (8) classroom hours.

The corporation may deny membership to any individual: (1) with continued non-compliance violation(s) and/or breach of the SPMLS Rules & Regs; (2) with official sanctions involving unprofessional conduct; and (3) who has failed to timely complete any course of instruction on the Spanish Peak's MLS rules and regulations and computer training related to Spanish Peak's MLS information entry and retrieval. In addition, the corporation may also consider other relevant factors when determining whether to permit or deny membership to any person, for example, if the potential member is a REALTOR® then the following can be considered: (i) all final findings of Code of Ethics violations and violations of other membership duties within the past three (3) years; (ii) pending ethics complaints (or hearings); (iii) unsatisfied discipline pending; (iv) pending arbitration requests (or hearings); and (v) unpaid arbitration awards or unpaid financial obligations to this corporation or any REALTOR® association or other MLS.

(b) Member Subscribers shall have the same rights and obligations with respect to voting and all other matters. Affiliate Subscribers do not have voting rights.

(c) Application for membership shall be made in such manner and form as may be prescribed by the board of directors. The application form shall contain a signed statement agreeing to abide by these bylaws and any other applicable rules and regulations of the Spanish Peak's MLS as from time to time amended or adopted.

(d) Subscribers of the Spanish Peak's MLS may discontinue their Subscription to the Spanish Peak's MLS by giving the corporation thirty (30) days' written notice and may reapply after two (2) months by making formal application in the manner prescribed for new applicants for participation provided all past dues and fees are fully paid.

(e) Member Subscribers (or users) of the MLS include non-principal brokers, and licensed and certified appraisers affiliated with members. Subscribers also include affiliated unlicensed administrative and clerical staff, personal assistants, and individuals seeking licensure or certification as real estate

appraisers who are under the direct supervision of an MLS Subscriber or the Subscriber's licensed designee. Affiliate Subscriber's shall not be considered members and therefore shall have no vote but shall be responsible for complying with these bylaws and all rules and regulations of the Spanish Peak's MLS and payment of all dues and fees for subscribers.

Article 3. Dues and Assessments

Section 1. *Members.* Member Subscribers and Affiliate Subscribers shall pay dues or assessments in the amounts and at the times determined by the board of directors.

Section 2. *Nonpayment of Dues and Assessments.* The failure to pay dues or assessments in the amounts and at the times determined by the board of directors shall cause the member's or subscriber's, as the case may be, privileges or membership to be suspended or terminated, as determined by the board of directors.

Article 4. Meetings of Members

Section 1. *Annual Meeting.* An annual meeting of the members of the corporation shall be held during the month of __November_ at a time and date stated in or fixed in accordance with a resolution of the board of directors. The annual meeting shall be held for the election of directors and the transaction of such other business as may properly come before it.

Section 2. *Regular Meetings.* Regular membership meetings may be held at a time and date stated in or fixed in accordance with a resolution of the board of directors.

Section 3. *Special Meetings.* A special meeting of the members may be called by the board of directors or by or at the direction of the president or by 10% members of the corporation . Written notice stating the day, place, and hour of the meeting, the purpose or purposes for which the meeting is called, shall be electrically delivered to all members not less than 10 days prior to said meeting. A special meeting may also be called by the members in accordance with Colorado law.

Section 4. *Notice of Meetings.* Notice of a meeting, whether annual, regular or special, shall include the place, date and time of the meeting and shall be posted inside of the FLEXmls.com data system no fewer than 10 days, nor more than 60 days before the meeting. Notice of an annual or regular meeting shall include a description of any matter or matters that must be approved by the members or for which membership approval is sought. Notice of a special meeting shall include a description of the purpose or purposes for which the meeting is called.

Section 5. *Voting by Members.* All acts, motions and resolutions of the members shall be deemed adopted upon a favorable vote of a majority of the votes cast by members qualified to vote at a meeting attended by a quorum. A member entitled to vote may vote or otherwise act in person or by proxy.

Section 6. *Quorum/Voting Groups.* Unless otherwise provided by law, a simple majority of the votes entitled to be cast on the matter by a voting group constitutes a quorum of that group for action on that matter.

Section 7. *Action Without Meeting.* Any action required or permitted to be taken at a members' meeting may be taken without a meeting if members entitled to vote thereon unanimously agree and consent to such action in (electronic) writing.

Section 8. *Meetings by Telecommunication.* Any or all of the members may participate in an annual, regular, or special meetings of the members, or the meeting may be conducted through the use of, any means of communicating by which all persons participating in the meeting may hear each other during the meeting. A person participating in a meeting by this means is deemed to be present in person at the meeting.

Section 9. *Written Ballots.* Any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a written (by email or electronic delivery) ballot to every member entitled to vote on the matter.

Section 10. *Nomination and Election of Officers and Directors.* The officers and directors of the corporation shall be nominated by a vote of the members or the corporation in accordance with the provisions of this Article 7, meetings, of these bylaws and as set forth below.

10.1 Nominating Committee: The president of the corporation shall appoint a nominating committee each year, which committee shall be comprised of 3 members of the corporation. The appointment of the nominating committee shall be made by such a date as to enable the committee to meet and select a proposed slate of officers and directors of the corporation not more than 15 nor less than 10 days prior to the date of the meeting of the members of the corporation at which nominees shall be selected by vote of the members. The proposed slate of officers and directors shall be reported to the president and secretary of the corporation.

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

10.3 Rights of Members to Select Additional Nominees: The names of additional proposed nominees may be added to the list selected by the nominating committee by a petition submitted to the secretary of the corporation by 10% of the members of the corporation, with said petition received not less than 10 days prior to the date of meeting of the members to select nominees for officers and directors. The names contained in such petition, if duly received and certified, shall be presented in writing to the members at the meeting to select nominees as additional nominees for consideration for such office as specified in the petition. In addition, nominations may be made from the floor at the duly noticed meeting of the members to select nominees for officers and directors and, if seconded, shall be added to the list of proposed nominees.

10.4 Voting by Written Secret Ballot: Voting for selection of nominees, if other than on a motion to cast a unanimous vote for the original proposed slate shall be by secret ballot.

10.5 Vote to Select Nominees: Voting shall be in accordance with provisions of Article 4 of these bylaws.

Article 5. Board of Directors

Section 1. *Size of Board.* The board of the corporation shall consist of not less than 5 directors and not more than 9 directors, including the president, vice president and secretary-treasurer, all to be elected from among of the members. The number of directors may be fixed or changed from time to time within the range by the voting members of the board of directors. In addition to the elected directors, the immediate past president of the service shall serve as director, ex-officio, with full voting privileges. A director need not be a resident of Colorado but must be a member of the corporation.

Section 2. *Vacancies.* Vacancies on the board of directors may be filled for the unexpired term of the predecessor in office by a majority vote of the remaining directors at any meeting of the board of directors. A vacancy created by an increase in the number of directors may be filled for a term of office continuing only until the next election of directors. If, however, the vacant office was held by a director elected by a voting group of voting members or was held by a director elected by a voting group of directors, the vacancy shall be filled in accordance with the requirements of Colorado law.

Section 3. *Power and Duties of the Directors.* The board of directors shall have control and general management of the affairs, property and business of the corporation and, subject to these bylaws, may adopt such rules and regulations for that purpose and for the conduct of its meetings as the board of directors may deem proper. The powers shall include but not be limited to the appointment and removal of the officers of the corporation.

Section 4. *Election and Term of Directors.* The election of directors shall be at the annual meeting of the membership or such other method authorized by these bylaws. Directors shall take office upon the effective date of their offices and shall continue until their successors are elected, qualified, and installed. No director shall be nominated and elected to the same office for more than two consecutive terms, unless by unanimous consent of the board.

Section 5. *President of the Board.* From among its members, the board of directors shall elect a chairperson. The chairperson of the board shall preside at meetings of the members and the board of directors.

Article 6. Meetings of Directors

Section 1. *Regular Meetings.* Regular meetings of the board directors may be held without notice of the date, time, place or purpose of the meeting.

Section 2. *Special Meetings.* Special meetings of the board of directors shall be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the meeting unless otherwise required by law.

Section 3. *Quorum and Voting.* A quorum of the board of directors consists of a majority of the number of directors in office immediately before the meeting begins. The affirmative vote of a majority of directors present is the act of the board of directors unless the vote of a greater number of directors is required by law.

Section 4. *Action Without Meeting.* Any action required or permitted to be taken at a board of directors' meeting may be taken without a meeting if each and every member of the board in electronic writing either: (a) votes for the action; or (b) votes against the action or abstains, and waives the right to demand that a meeting be held. The affirmative votes must equal or exceed the minimum number necessary to

take action at a meeting at which all of the directors then in office were present and voted.

Article 7. Officers and Duties

Section 1. *Officers.* The officers of the corporation, who shall also be directors, shall consist of a president (who shall also act as the chairperson of the board), a vice president, and a secretary-treasurer. Any two or more offices may be held by the same person, except the offices of president and secretary. Officers shall be elected or appointed by the board of directors at the annual meeting of the directors. A vacancy in any office may be filled by the board of directors at any regular or special meeting called for that purpose. The officers shall serve for a one-year term. Officers shall take office upon the effective date of their offices and shall continue until their successors are elected, qualified, and installed. No officer shall be nominated and elected to the same office for more than two consecutive terms.

Section 2. *President.* The President shall act as chairperson of the board and shall preside at all meetings of the members and the board of directors, and may have any other powers and duties as may be conferred by the board of directors. The president shall, subject to the direction and supervision of the board of directors, be the chief executive officer of the corporation and shall have general and active control of its affairs and business and general supervision of its officers, agents, administrators, contractors and employees. The president shall have the authority to sign all contracts and other instruments on behalf of the corporation, except as the authority may be restricted by resolutions of the board of directors adopted from time to time.

Section 3. *Vice Presidents.* Vice presidents shall have the duties that the board of directors or the president may delegate to them from time to time. In the absence of the president or his or her inability to act, the duties and powers of the office shall be performed and exercised by a vice president.

Section 4. *Secretary-Treasurer.* The secretary-treasurer shall have the responsibility for the preparation and maintenance of minutes of the directors' and members' meetings and supervision of other records and information required to be kept by the corporation and for authenticating records of the corporation. The secretary-treasurer shall perform all duties usually incident to the office of the secretary-treasurer, those duties specified in these bylaws, and other duties that may from time to time be delegated by the board of directors. The secretary-treasurer shall have general supervision over the care and custody of the funds and securities of the corporation and shall deposit the same or cause the same to be deposited in the name of the corporation in the bank or banks, trust company or trust companies that the board of directors may designate. The secretary-treasurer shall keep or cause to be kept full and accurate accounts of all receipts and disbursements of the corporation and whenever required by the board of directors, shall render or cause to be rendered financial statements of the corporation.

Article 8. Duties of Officers and Directors

The duties of the officers and directors are as follows:

1. The president shall be the chairperson of the board of the corporation and shall preside at its meetings and those of the board of directors, and shall perform all the duties of the president subject to declared policies and, as required, subject to confirmation of the board of directors.
2. The vice president shall, in the absence of the president, perform all of the duties of the president.

3. The secretary-treasurer shall be the custodian of the funds of the corporation and shall keep an accurate record of all receipts and disbursements. The secretary-treasurer shall provide to all members of the board of directors a quarterly statement of all accounts and financial affairs for the corporation. Also, there shall be an annual independent review by a certified public accountant.

4. The board of directors of the corporation shall be the governing body of the corporation and shall have control of all the affairs of the corporation and shall authorize all expenditures of funds. The board of directors shall, prior to the end of each year, prepare a budget reflecting projected costs and expenses of the corporation for the next fiscal year, indicating projected income from all sources. The budget shall be submitted to the Directors of the corporation for approval on a date not less than 30 days prior to the first day of the next fiscal year. The board of directors shall employ such executive, legal, and office personnel it deems necessary to care for and maintain the properties of the corporation and otherwise conduct the administrative business of the corporation. The board of directors shall have the right to make an audit of all books and accounts at any time without notice. The board of directors shall have the power from time-to-time to adopt such rules and regulations that they may deem appropriate. Except as otherwise provided in these bylaws and rules and regulations, the action of the board of directors shall be final.

Article 9. Removal of Officers and Directors

In the event that an officer or director of the corporation is deemed to be incapable of fulfilling the duties for which elected, but will not resign from office voluntarily, the officer or director may be removed from office under the following procedure:

1. A petition requiring the removal of an officer or director and signed by not less than one-third of the members or a majority of all directors of the corporation shall be filed with the president, or if the president is the subject of the petition, with the next-ranking officer, and shall specifically set forth the reasons the individual is deemed to be disqualified from further corporation.

2. Upon receipt of the petition, and not less than twenty (20) days or more than forty-five (45) days thereafter, a special meeting of the members of the corporation shall be held, and the sole business of the meeting shall be to consider the charge against the officer or director, and to render a decision on such petition.

3. The special meeting shall be noticed to all members at least ten (10) days prior to the meeting, and shall be conducted by the president of the corporation unless the president's continued corporation in office is being considered at the meeting. In such case, the next-ranking officer will conduct the meeting or the hearing by the members. Provided a quorum is present, a three-fourths vote of members present and voting shall be required for removal from office.

Article 10. Amendment of Bylaws

Section 1. Board Action. The board of directors may amend the bylaws at any time to add, change, or delete a provision unless it would result in a change of the rights, privileges, preferences, restrictions, or conditions of a membership class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class.

Section 2. Membership Action. The members may amend the bylaws even though the bylaws may also be amended by the board of directors.

Article 11. Amendments to Rules and Regulations

Amendments to the rules and regulations of the Spanish Peak's MLS shall be by consideration and approval of the board of directors in accordance with the provisions of Article 6 concerning meetings of the board of directors.

Article 12. Committees

The president, with the approval of the board of directors, shall create such standing or ad hoc committees as the president deems desirable and shall appoint their members. Each committee shall consist of not less than 1 Director of the corporation, but may also include Colorado licensed real estate brokers or appraisers, employed by or affiliated as independent contractors with a member serving as representatives of said member and with their consent, and who may serve either as a chairperson or member of a committee.

Article 13. Fiscal Year

The fiscal year of the service shall commence on Jan 1 and shall end on Dec 31.

Article 14. Service Area

The area within which the Spanish Peak's MLS shall function shall at all times be coextensive with or within the territorial jurisdiction of Las Animas and Huerfano Counties, Colorado.

Wynell Turner, Secretary-treasurer