**Bylaws of the**
Kauai Board of REALTORS®
(December 2024)

## Article I – Name and Objectives

**Section 1. Name**. The name of this organization shall be the Kauai Board of REALTORS®, hereinafter referred to as the "Association".

**Section 2**. **Objectives**: The objectives of the Association shall be:

A. to unite those engaged in the recognized branches of the real estate profession for the purpose of exerting a beneficial influence upon the profession and related interests

B. to promote and maintain high standards of conduct in the real estate profession as expressed in the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®

C. to provide a unified medium for real estate owners and those engaged in the real estate profession whereby their interests may be safeguarded and advanced

D. to further the interests of home and other real property ownership

E. to unite those engaged in the real estate profession in this community with the Hawaii Association of REALTORS® and the NATIONAL ASSOCIATION OF REALTORS®, thereby furthering their own objectives throughout the state and nation, and obtaining the benefits and privileges of membership therein.

## Article II– Membership

**Section 1. Classes of Membership** There shall be four (4) classes of members, as follows**:** REALTOR® Members, Institute Affiliate Members, Affiliate Members, and Honorary Members.

**Section 2. Definition of Membership Classes**

**(a) REALTOR® Members.** REALTOR® Members, whether primary or secondary shall be:

(1) **Individuals who, as sole proprietors, partners, corporate officers, or branch office managers,** are engaged actively in the real estate profession, including buying, selling, exchanging, renting or leasing, managing, appraising for others for compensation, counseling, building, developing or subdividing real estate, and who maintain or are associated with an established real estate office in the State of Hawaii or a state contiguous thereto. All persons who are partners in a partnership, or all officers in a corporation who are actively engaged in the real estate profession within the state or a state contiguous thereto shall qualify for REALTOR® membership only, and each is required to hold

REALTOR® membership (except as provided in the following paragraph) in an Association of REALTORS® within the state, unless otherwise qualified for Institute Affiliate membership.

In the case of a real estate firm, partnership, or corporation, whose business activity is substantially all commercial, only those principals actively engaged in the real estate business in connection with the same office, or any other offices within the jurisdiction of the Association in which one of the firm's principals holds REALTOR® membership, shall be required to hold REALTOR® membership unless otherwise qualified for Institute Affiliate membership.

**NOTE:** REALTOR® members may obtain membership in a "secondary" Association in another state.

(2) **Designated REALTOR® Members**. Each firm (or office in the case of firms with multiple office locations) shall designate in writing one REALTOR® member who shall be responsible for all duties and obligations of membership, including the obligation to arbitrate (or to mediate if required by the Association) pursuant to Article 17 of the Code of Ethics and the payment of Association dues as established. The "Designated REALTOR®" must be a sole proprietor, partner, corporate officer, or branch office manager acting on behalf of the firm's principal(s), and must meet all other qualifications for REALTOR® membership.

(3) **Individuals who are engaged in the real estate profession** other than as sole proprietors, partners, corporate officers, or branch office managers and are associated with a REALTOR® member and meet the qualifications (i.e. Licensed Salesperson, Sales Brokers or Brokers).

(4) **Franchise REALTOR® Membership**. Corporate officers (who may be licensed or unlicensed) of a real estate brokerage franchise organization with at least one hundred fifty (150) franchisees located within the United States, its insular possessions and the commonwealth of Puerto Rico, elected to membership pursuant to the provisions in the NAR *Constitution and Bylaws*. Such individuals shall enjoy all of the rights, privileges, and obligations of REALTOR® membership (including compliance with the Code of Ethics) except: obligations related to Association-mandated education, meeting attendance, or indoctrination classes or other similar requirements; the right to use the term REALTOR® in connection with their franchise organization's name; and the right to hold elective office in the local Association, state Association, and National Association.

**(b) Institute Affiliate Members.** Institute Affiliate members shall be individuals who hold a professional designation awarded by an Institute, Society, or Council affiliated with the NATIONAL ASSOCIATION OF REALTORS that addresses a specialty area other than residential brokerage or individuals who otherwise hold a class of membership in such Institute, Society, or Council that confers the right to hold office. Any such individual, if otherwise eligible, may elect to hold REALTOR® membership, subject to payment of applicable dues for such membership.

**(c) Affiliate Members.** Affiliate members shall be real estate owners and other individuals or firms who, while not engaged in the real estate profession as defined in paragraphs (a) or (b) of this section, have interests requiring information concerning real estate and are in sympathy with the objectives of the Association.

**(d) Honorary Members.** Honorary members shall be individuals not engaged in the real estate profession who have performed notable service for the real estate profession, for the Association, or for the public.

## Article III – Application Process

### Section 1: Application

**(a) Form of Application**: An application for membership shall be made in such manner and form as may be prescribed by the board of directors and made available to anyone requesting it. The application form shall contain among the statements to be signed by the applicant

(1) that applicant agrees as a condition to membership to thoroughly familiarize himself/herself with the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®, the Constitutions, Bylaws, and Rules and Regulations of the Association, the State and National Association, and will abide by the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®, including the obligation to arbitrate (or to mediate if required by the Association) controversies arising out of real estate transactions as specified by Article 17 of the Code of Ethics.

(2) that applicant consents that the Association, through its membership committee or otherwise, may invite and receive information and comment about applicant from any member or other persons, and that applicant agrees that any information and comment furnished to the Association shall be conclusively deemed to be privileged and not form the basis of any action for slander, libel, or defamation of character. The applicant shall, with the form of application, have access to a copy of the Bylaws, Constitution, Rules and Regulations, and Code of Ethics referred to above.

**(b) Primary and Secondary REALTOR® Members**. An individual is a primary member if the Association pays state and National dues based on such member. An individual is a secondary member if state and National dues are remitted through another Association. One of the principals in a real estate firm must be a designated REALTOR® member of the Association in order for licensees affiliated with the firm to select the Association as their "primary" Association.

### Section 2. Qualification

(a) Principal, Sole Proprietors, Designated Realtors: An applicant for REALTOR® Principal membership who is a sole proprietor, partner, corporate officer, or branch office manager of a real estate firm shall supply evidence satisfactory to the Association, through its membership committee or otherwise, that:

1. he/she is actively engaged in the real estate profession, and maintains a current, valid real estate broker's or salesperson's license or is licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property;
2. has a place of business within the state or a state contiguous thereto (unless a secondary member)
3. has no recent or pending bankruptcy as an applicant or any real estate firm in which the applicant is a sole proprietor, general partner, corporate officer, or branch office manager, is not involved in any pending bankruptcy or insolvency proceedings or, has not been adjudged bankrupt in the past three (3) years. If a bankruptcy proceeding as described above exists, membership may not be rejected unless the Association establishes that its interests and those of its members and the public could not be adequately protected by requiring that the bankrupt applicant pay cash in advance for Association and MLS fees for up to one (1) year from the date that membership is approved or from the date that the applicant is discharged from bankruptcy (whichever is later). In the event that an existing member initiates bankruptcy proceedings, the member may be placed on a "cash basis" from the date that bankruptcy is initiated until one (1) year from the date that the member has been discharged from bankruptcy.
4. has no record of official sanctions involving unprofessional conduct is intended to mean that the Association may only consider:
    a. judgments against the applicant within the past three (3) years of violations of (1) civil rights laws, (2) real estate license laws, and (3) or other laws prohibiting unprofessional conduct against the applicant rendered by the courts or other lawful authorities
    b. criminal convictions if (1) the crime was punishable by death or imprisonment in excess of one year under the law under which the applicant was convicted, and (2) no more than ten (10) years have elapsed since the date of the conviction or the release of the applicant from the confinement imposed for that conviction, whichever is the later date (Amended 5/07)

(b) REALTOR Non-Principals: Individuals who are actively engaged in the real estate profession other than as sole proprietors, partners, corporate officers, or branch office managers, in order to qualify for REALTOR® membership, shall at the time of application be associated either as an employee or as an independent contractor with a designated REALTOR® member of the Association or a designated REALTOR® member of another Association (if a secondary member) and must maintain a current, valid real estate broker's or salesperson's license or be licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property, has no record of official sanctions involving

unprofessional conduct. No record of official sanctions involving unprofessional conduct is intended to mean that the Association may only consider:

A. judgments against the applicant within the past three (3) years of violations of

1. civil rights laws

2. real estate license laws

3. or other laws prohibiting unprofessional conduct against the applicant rendered by the courts or other lawful authorities

B. criminal convictions

1. the crime was punishable by death or imprisonment in excess of one year under the law under which the applicant was convicted, and

2. no more than ten years have elapsed since the date of the conviction or the release of the applicant from the confinement imposed for that conviction, whichever is the later date

**NOTE 1:** One or more of the requirements for REALTOR® membership set forth above may be deleted at the association's discretion. However, Association ***may NOT*** adopt membership qualifications more rigorous than specified in the *Membership Qualification Criteria for REALTOR® Membership*, approved by the Board of Directors of the National Association.

**NOTE 2:** NAR *Bylaws* prohibits Member Boards from knowingly granting REALTOR® membership to any applicant who has an unfulfilled sanction pending which was imposed by another Association of REALTORS® for violation of the Code of Ethics.

(c) Additional Qualifications: The Association will also consider the following in determining an applicant's qualifications for all REALTOR® membership:

1. All final findings of Code of Ethics violations and violations of other membership duties in this or any other REALTOR® Association within the past three (3) years

2. Pending ethics complaints (or hearings)

3. Unsatisfied discipline pending

4. Pending arbitration requests (or hearings)

5. Unpaid arbitration awards or unpaid financial obligations to this or any other REALTOR® Association or REALTOR® Association MLS

6. Any misuse of the term REALTOR® or REALTORS® in the name of the applicant's firm

**Section 3. Review and Approval**

The procedure for approval to membership shall be as follows.

(a) The chief staff executive (or duly authorized designee) shall determine whether the applicant is applying for the appropriate class of membership. Applicants for REALTOR® membership may be granted provisional membership immediately upon submission of a completed application form and remittance of applicable Association dues and any application fee. Provisional members shall be considered REALTORS® and shall be subject to all of the same privileges and obligations of membership. Provisional membership is granted subject to final review of the application by the board of directors.

(b) If the board of directors determines that the individual does not meet all of the qualifications for membership as established in the association's Bylaws, or, if the individual does not satisfy all of the requirements of membership, the board of directors may terminate the applicant's application. In such instances, dues shall be returned to the individual less a prorated amount to cover the number of days that the individual received Association services and any application fee. The board of directors shall vote on the applicant's eligibility for membership. If the applicant receives a majority vote of the board of directors, he/she shall be declared elected to membership.

(c) The board of directors may not reject an application without providing the applicant with advance notice of the findings, an opportunity to appear before the board of directors, to call witnesses on his/her behalf, to be represented by counsel, and to make such statements as he/she deems relevant. The board of directors may also have counsel present. The board of directors shall require that written minutes be made of any hearing before it or may electronically or mechanically record the proceedings.

(d) If the board of directors determines that the application should be rejected, it shall record its reasons with the chief staff executive (or duly authorized designee). If the board of directors believes that denial of membership to the applicant may become the basis of litigation and a claim of damage by the applicant, it may specify that denial shall become effective upon entry in a suit by the Association for a declaratory judgment by a court of competent jurisdiction of a final judgment declaring that the rejection violates no rights of the applicant.

**Section 4: "Provisional" Membership** may be granted in instances where ethics complaints or arbitration requests (or hearings) are pending in other Associations or where the applicant for membership has unsatisfied discipline pending in another Association, provided all other qualifications for membership have been satisfied. Association may reconsider the membership status of such individuals when all pending ethics and arbitration matters (and related discipline) have been resolved or if such matters are not resolved within six (6) months from the date that provisional membership is approved. Provisional members shall be considered REALTORS® and shall be subject to all of the same privileges and obligations of REALTOR® membership. If a member resigns from another Association with an ethics complaint or

arbitration request pending, the Association may condition membership on the applicant's certification that he/she will submit to the pending ethics or arbitration proceeding (in accordance with the established procedures of the Association to which the applicant has made application) and will abide by the decision of the hearing panel.

## Article IV– Membership Obligations and Privileges

### Section 1: Code of Ethics Training

(a) **New Member Code of Ethics Orientation**: Applicants for REALTOR® membership and provisional REALTOR® members shall complete an orientation program on the Code of Ethics of not less than two (2) hours and thirty (30) minutes of instructional time. This requirement does not apply to applicants for REALTOR® membership or provisional members who have completed comparable orientation in another Association, provided that REALTOR® membership has been continuous, or that any break in membership is for one (1) year or less.

Failure to satisfy this requirement within ninety (90) days of the date of application (or, alternatively, the date that provisional membership was granted), will result in denial of the membership application or termination of provisional membership.

**NOTE:** Orientation programs must meet the learning objectives and minimum criteria established from time to time by the NATIONAL ASSOCIATION OF REALTORS®. (Adopted 1/01)

(b) **Continuing REALTOR® Code of Ethics Training:** Effective March 1, 2025, through December 31, 2027, and for successive three year periods thereafter, each REALTOR® member of the Association (with the exception of REALTOR® members granted REALTOR® Emeritus status by the National Association) shall be required to complete ethics training of not less than two (2) hours and thirty (30) minutes of instructional time. This requirement will be satisfied upon presentation of documentation that the member has completed a course of instruction conducted by this or another Association, the State Association of REALTORS®, the NATIONAL ASSOCIATION OF REALTORS®, or any other recognized educational institution or provider which meets the learning objectives and minimum criteria established by the NATIONAL ASSOCIATION OF REALTORS® from time to time. REALTOR® members who have completed training as a requirement of membership in another Association and REALTOR® members who have completed the New Member Code of Ethics Orientation during any three (3)-year cycle shall not be required to complete additional ethics training until a new three (3)-year cycle commences.

Failure to satisfy the required periodic ethics training shall be considered a violation of a membership duty. Failure to meet the requirement in any three (3)-year cycle will result in suspension of membership for the first two months (January and February) of the year following the end of any three (3)-year cycle or until the requirement is met, whichever

occurs sooner. On March 1 of that year, the membership of a member who is still suspended as of that date will be automatically terminated. (Adopted 1/01, Amended 11/08, Amended 11/2014, Amended 11/2019)

**(c) Resignation or Termination with a Pending Arbitration or Ethics Complaint**

(1) Arbitration: If a member resigns or otherwise causes membership to terminate, the duty to submit to arbitration (or to mediation if required by the Association) continues in effect even after membership lapses or is terminated, provided that the dispute arose while the former member was a REALTOR®.

(2) Ethics: If a member resigns from the Association or otherwise causes membership to terminate with an ethics complaint pending, the complaint shall be processed until the decision of the Association with respect to disposition of the complaint is final by this Association (if respondent does not hold membership in any other Association) or by any other Association in which the respondent continues to hold membership. If an ethics respondent resigns or otherwise causes membership in all Boards to terminate before an ethics complaint is filed alleging unethical conduct occurred while the respondent was a REALTOR®, the complaint, once filed, shall be processed until the decision of the Association with respect to disposition of the complaint is final. In any instance where an ethics hearing is held subsequent to an ethic respondent's resignation or membership termination, any discipline ratified by the Board of Directors shall be held in abeyance until such time as the respondent rejoins an Association of REALTORS®. (Amended 5/16)

**Section 2. Continuing Fair Housing Training**

(a) Effective January 1, 2025, through December 31, 2027 and for successive three year periods thereafter, each REALTOR® member of the association (with the exception of REALTOR® members granted REALTOR® Emeritus status by the National Association) shall be required to complete Fair Housing training of not less than two (2) hours of instructional time. This requirement will be satisfied upon presentation of documentation that the member has completed a course of instruction conducted by this or another REALTOR® association, the State Association of REALTORS®, the NATIONAL ASSOCIATION OF REALTORS®, or the Institutes, Societies, and Councils, which meets the learning objectives and minimum criteria established by the NATIONAL ASSOCIATION OF REALTORS® from time to time. Fair Housing training approved by a state licensing authority for an existing Fair Housing requirement to maintain licensure shall also fulfill this requirement, provided it also meets the learning objectives and minimum criteria established by the NATIONAL ASSOCIATION OF REALTORS® from time to time. REALTOR® members who have completed Fair Housing training as a requirement of membership in another association shall not be required to complete additional Fair Housing training until a new three year cycle commences.

Failure to satisfy the required periodic Fair Housing training shall be considered a violation of a membership duty. Failure to meet the requirement in any three year cycle will result in suspension of membership for the first two months (January and February) of the year following the end of any three year cycle or until the requirement is met, whichever occurs

sooner. On March 1 of that year, the membership of a member who is still suspended as of that date will be automatically terminated.

**(b) New Member Fair Housing Orientation**

Applicants for REALTOR® membership and provisional REALTOR® members (where applicable) shall complete Fair Housing training of not less than two (2) hours of instructional time. This requirement will be satisfied upon presentation of documentation that the member has completed a course of instruction conducted by this or another REALTOR® association, the State Association of REALTORS®, the NATIONAL ASSOCIATION OF REALTORS®, or the Institutes, Societies, and Councils, which meets the learning objectives and minimum criteria established by the NATIONAL ASSOCIATION OF REALTORS® from time to time. Fair Housing training approved by a state licensing authority for an existing Fair Housing requirement to gain or maintain licensure shall also fulfill this requirement, provided it also meets the learning objectives and minimum criteria established by the NATIONAL ASSOCIATION OF REALTORS® from time to time. This requirement does not apply to applicants for REALTOR® membership or provisional members who have completed comparable orientation in another association, provided that REALTOR® membership has been continuous, or that any break in membership is for one (1) year or less.

Failure to satisfy this requirement within 60 days of the date of application (or, alternatively, the date that provisional membership was granted), will result in denial of the membership application or termination of provisional membership.

**Section 3. Disciplinary Action**

(a) Violations of the Bylaws or Membership Obligations: Any member of the Association may be reprimanded, fined, placed on probation, suspended, or expelled by the board of directors for a violation of these Bylaws and Association rules and regulations consistent with these Bylaws, after a hearing as provided in the *Code of Ethics and Arbitration Manual* of the Association. Although members other than REALTORS® are not subject to the Code of Ethics, nor its enforcement by the Association, such members are encouraged to abide by the principles established in the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS® and conduct their business and professional practices accordingly. Further, members other than REALTORS® may, upon recommendation of the membership committee, or upon recommendation by a hearing panel of the professional standards committee, be subject to discipline as described above, for any conduct, which in the opinion of the board of directors, applied on a nondiscriminatory basis, reflects adversely on the terms REALTOR® or REALTORS®, and the real estate industry, or for conduct that is inconsistent with or adverse to the objectives and purposes of the local Association, the State Association, and the NATIONAL ASSOCIATION OF REALTORS®.

(b) **Violations of the Code of Ethics**. Any REALTOR® member of the Association may be disciplined by the board of directors for violations of the Code of Ethics or other duties of membership, after a hearing as described in the *Code of Ethics and Arbitration Manual* of

the Association, provided that the discipline imposed is consistent with the discipline authorized by the Professional Standards Committee of the NATIONAL ASSOCIATION OF REALTORS® as set forth in the *Code of Ethics and Arbitration Manual* of the National Association.

**Section 4. Status Changes, Resignations and Broker Certification**

**(a) Member Status Changes**

(1) A REALTOR® who changes the conditions under which he/she holds membership shall be required to provide written notification to the Association upon change. (i.e. license type; contact information; legal or licensed name, etc.)

a. **Change of REALTOR Principa**l - A REALTOR® (non-principal) who becomes a principal in the firm with which he/she has been licensed or, alternatively, becomes a principal in a new firm which will be comprised of REALTOR® principals may be required to satisfy any previously unsatisfied membership requirements applicable to REALTOR® (principal) members but shall, during the period of transition from one status of membership to another, be subject to all of the privileges and obligations of a REALTOR® (principal). If the REALTOR® (non-principal) does not satisfy the requirements established in these Bylaws for the category of membership to which they have transferred within 30 thirty days of the date they advised the Association of their change in status, their new membership application will terminate automatically unless otherwise so directed by the board of directors.
b. A REALTOR® who is transferring his/her license to another firm composed of REALTOR® shall be subject to all of the privileges and obligations of membership during the period of transition. If the transfer is not completed within thirty 30 days of the date the Association is advised of the disaffiliation with the current firm, membership will terminate automatically unless otherwise directed by the board of directors. (Amended 1/98)

(The board of directors, at its discretion, may waive any qualification which the applicant has already fulfilled in accordance with the association's Bylaws.)

(2). **Resignations of members** shall become effective when received in writing by the board of directors, provided, however, that if any member submitting the resignation is indebted to the Association for dues, fees, fines, or other assessments of the Association or any of its services, departments, divisions, or subsidiaries, the Association may condition the right of the resigning member to reapply for membership upon payment in full of all such monies owed.

**(b) Annual Designated REALTOR Certification**. All "Designated" REALTOR® members of the Association shall certify to the Association during the last quarter of the year on a form provided by the Association, a complete listing of all individuals licensed or certified in the REALTOR®'s office(s) and shall designate a primary Association for each individual who holds membership. Designated REALTORS® shall also identify any non-member licensees in the REALTOR®'s office(s) and if designated REALTOR® dues have been paid to another Association based on said non-member licensees, the designated REALTOR® shall identify the Association to which dues have been remitted. These declarations shall be used for purposes of calculating dues. "Designated" REALTOR® members shall also notify the Association of any additional individual(s) licensed or certified with the firm(s) within thirty 30 days of the date of affiliation or severance of the individual.

**Section 5. Privileges**

**(a) REALTORS**. REALTOR® Members. REALTOR® members, whether primary or secondary, in good standing are entitled to vote and to hold elective office in the Association; and may use the terms REALTOR®. For purposes of this section, the term "good standing: means the member satisfies the "Obligation of REALTOR® Members", is current with all financial and disciplinary obligations to the association and MLS, has completed any new member requirements, and complies with NAR's trademark rules.

(1) Suspension or Expulsion: In any action taken against a REALTOR® member for suspension or expulsion under Section 4(a) (1) hereof, notice of such action shall be given to all REALTORS® employed by or affiliated as independent contractors with such REALTOR® member and they shall be advised on the above policies.

**(b) Institute Affiliate Members**. Institute Affiliate Members. Institute Affiliate members shall have rights and privileges and be subject to obligations prescribed by the board of directors consistent with the *Constitution and Bylaws of the NATIONAL ASSOCIATION OF REALTORS®*.

**(c) Affiliate Members**. Affiliate Members. Affiliate members shall have rights and privileges and be subject to obligations prescribed by the board of directors.

**(d) Honorary Members**. Honorary Members. Honorary membership shall confer only the right to attend meetings and participate in discussions.

## Article V– Professional Standards and Arbitration

**Section 1**. Association Responsibilities: The responsibility of the Association and of Association members relating to the enforcement of the Code of Ethics, the disciplining of members, and the arbitration of disputes, and the organization and procedures incident thereto

shall be governed by the Code of Ethics and Arbitration Manual of the Association, as amended from time to time, which is by this reference incorporated into these Bylaws, provided however, that any provision deemed inconsistent with state law shall be deleted or amended to comply with state law.

**Section 2. REALTOR Duties & Responsibilities**: It shall be the duty and responsibility of every REALTOR® member of this Association to safeguard and promote the standards, interest, and welfare of the association and the real estate profession, and to protect against conduct that may cause a lack of public confidence in the real estate profession or in REALTORS®. REALTOR® members must also abide by the governing docs and policies of the Association, the State Association, and the *NATIONAL ASSOCIATION OF REALTORS®* as well as the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®, including the duty to arbitrate controversies arising out of real estate transactions as specified by Article 17 of the Code of Ethics, and in accordance with the procedures set forth in the Code of Ethics and Arbitration Manual.

Every REALTOR® member shall maintain a high level of integrity and adhere to the association's membership criteria. Any violent act or threat of violence to person or property, hateful conduct, or acts of moral turpitude impacting the public shall not be tolerated and may be cause for disciplinary action, up to and including termination of membership.

**Section 3. Enforcement:** The responsibility of the Association and Association members relating to the enforcement of the Code of Ethics, the disciplining of members, the arbitration of disputes, and the organization and procedures incident thereto, shall be consistent with the cooperative professional standards enforcement agreement entered into by the Association, which by this reference is made a part of these Bylaws.

## Article VI – Use of the Terms REALTOR® and REALTORS®

**Section 1**. **Authority & Member Use** Use of the terms REALTOR® and REALTORS® by members shall, at all times, be subject to the provisions of the *Constitution and Bylaws of the NATIONAL ASSOCIATION OF REALTORS®* and to the Rules and Regulations prescribed by its board of directors. The Association shall have the authority to control, jointly and in full cooperation with the NATIONAL ASSOCIATION OF REALTORS®, use of the terms within its jurisdiction. Any misuse of the terms by members is a violation of a membership duty and may subject members to disciplinary action by the board of directors after a hearing as provided for in the association's Code of Ethics and Arbitration Manual. (Amended 5/06)

**(a) REALTOR Use**: A REALTOR® member who is a principal of a real estate firm, partnership, or corporation may use the terms REALTOR® and REALTORS®, only if all the principals of such firm, partnership, or corporation who are actively engaged in the real estate profession within the state or a state contiguous thereto are REALTOR® members or Institute Affiliate members.

**(b) Principal Suspension**: Use of the Term REALTOR or REALTORS. If a REALTOR® member is a sole proprietor in a firm, a partner in a partnership or an officer in a corporation

and is suspended or expelled, the firm, partnership, or corporation shall not use the terms REALTOR® or REALTORS® in connection with its business during the period of suspension, or until readmission to REALTOR® membership, or unless connection with the firm, partnership, or corporation is severed, whichever may apply. The membership of all other principals, partners, or corporate officers shall suspend or terminate during the period of suspension of the disciplined member, or until readmission of the disciplined member, or unless connection of the disciplined member with the firm, partnership, or corporation is severed, whichever may apply. Further, the membership of REALTORS® other than principals who are employed by or affiliated as independent contractors with the disciplined member shall suspend or terminate during the period of suspension of the disciplined member or until readmission of the disciplined member or until connection of the disciplined member with the firm, partnership, or corporation is severed, or unless the REALTOR® member (non-principal) elects to sever his/her connection with the REALTOR® and affiliate with another REALTOR® member in good standing in the Association, whichever may apply.

**(c) Non-Principal Suspension**: If a REALTOR® member who is other than a principal in a firm, partnership, or corporation is suspended or expelled, the use of the terms REALTOR® or REALTORS® by the firm, partnership, or corporation shall not be affected.

**Section 2**. **Place of Business Use** REALTOR® members of the Association shall have the privilege of using the terms REALTOR® and REALTORS® in connection with their places of business within the state or a state contiguous thereto so long as they remain REALTOR® members in good standing. No other class of members shall have this privilege. (Amended 1/96)

**Section 3. Use in Commercial Membership**. In the case of a REALTOR® member who is a principal of a real estate firm, partnership, or corporation whose business activity is substantially all commercial, the right to use the term REALTOR® or REALTORS® shall be limited to office locations in which a principal, partner, corporate officer, or branch office manager of the firm, partnership, or corporation holds REALTOR® membership. If a firm, partnership, or corporation operates additional places of business in which no principal, partner, corporate officer, or branch office manager holds REALTOR® membership, the term REALTOR® or REALTORS® may not be used in any reference to those additional places of business. (Amended 1/01)

## Article VII – State and National Memberships

**Section 1**. The Association shall be a member of the NATIONAL ASSOCIATION OF REALTORS® and the Hawaii Association of REALTORS®. By reason of the association's membership, each REALTOR® member of the Member Board shall be entitled to membership in the NATIONAL ASSOCIATION OF REALTORS® and the Hawaii Association of REALTORS® without further payment of dues (refer to option below). The Association shall continue as a member of the State and National Association, unless by a majority vote of all of its REALTOR® members, decision is made to withdraw, in which case the State and National Association shall be notified at least one month in advance of the date designated for the termination of such membership.

**Section 2**. The Association recognizes the exclusive property rights of the NATIONAL ASSOCIATION OF REALTORS® in the terms REALTOR® and REALTORS®. The Association shall discontinue use of the terms in any form in its name, upon ceasing to be a member of the National Association, or upon a determination by the board of directors of the National Association that it has violated the conditions imposed upon the terms.

**Section 3**. The Association adopts the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS® and agrees to enforce the Code among its REALTOR® members. The Association and all of its members agree to abide by the *Constitution*, *Bylaws*, Rules and Regulations, and policies of the National Association and the Hawaii Association of REALTORS®.

## Article VIII – Dues, Application Fees and Assessments

**Section 1. Application Fee.** The board of directors may adopt an application fee for REALTOR® membership in reasonable amount, not exceeding three (3) times the amount of the annual dues for REALTOR® membership, which shall be required to accompany each application for REALTOR® membership and which shall become the property of the Association upon final approval of the application.

**Section 2. Dues.** The annual dues of members shall be as follows.

(a) **Designated REALTOR® Members**. The annual dues of each designated REALTOR® member shall be an amount amount established annually by the board of directors plus an additional amount times the number of real estate salespersons and licensed or certified appraisers who

(1) are otherwise directly or indirectly licensed with such REALTOR® member, and

(2) are not REALTOR® members of any Association in the state or Institute Affiliate members of the Association. In calculating the dues payable to the Association by a designated REALTOR® member, non-member licensees as defined in (1) and (2) of this paragraph shall not be included in the computation of dues if the designated REALTOR® has paid dues based on said non-member licensees in another Association in the state, provided the designated REALTOR® notifies the Association in writing of the identity of the Association to which dues have been remitted. In the case of a designated REALTOR® member in a firm, partnership, or corporation whose business activity is substantially all commercial, any assessments for non-member licensees shall be limited to licensees affiliated with the designated REALTOR® (as defined in (1) and (2) of this paragraph) in the office where the designated REALTOR® holds membership, and any other offices of the firm located within the jurisdiction of this Association. (Amended 1/05)

(b) **Individual REALTOR® members**: A REALTOR member of a Member Board shall be held to be any member who has a place or places of business within the state who, as a principal, partner, corporate officer, or branch office manager of a real estate firm, partnership, or corporation, is actively engaged in the real estate profession as defined in the Constitution of the NATIONAL ASSOCIATION OF REALTORS®. An individual shall be deemed to be licensed with a REALTOR® if the license of the individual is held by the REALTOR®, or by any broker who is licensed with the REALTOR®, or by any entity in which the REALTOR® has a direct or indirect ownership interest and which is engaged in other aspects of the real estate business (except as provided for in Section 2(a)(1) hereof) provided that such licensee is not otherwise included in the computation of dues payable by the principal, partner, corporate officer, or branch office manager of the entity.

(c) **Referral members:** A REALTOR® with a direct or indirect ownership interest in an entity engaged exclusively in soliciting and/or referring clients and customers to the REALTOR® for consideration on a substantially exclusive basis shall annually file with the Association on a form approved by the Association a list of the licensees affiliated with that entity and shall certify that all of the licensees affiliated with the entity are solely engaged in referring clients and customers and are not engaged in listing, selling, leasing, renting, managing, counseling, or appraising real property. The individuals disclosed on such form shall not be deemed to be licensed with the REALTOR® filing the form for purposes of this section and shall not be included in calculating the annual dues of the designated REALTOR®. Designated REALTORS® shall notify the Association within three (3) days of any change in status of licensees in a referral firm.

The exemption for any licensee included on the certification form shall automatically be revoked upon the individual being engaged in real estate licensed activities (listing, selling, leasing, renting, managing, counseling, or appraising real property) other than referrals, and dues for the current fiscal year shall be payable.

d. **Membership dues** shall be prorated for any licensee included on a certification form submitted to the Association who during the same calendar year applies for REALTOR® membership in the Association. However, membership dues shall not be prorated if the licensee held REALTOR membership during the preceding calendar year.

(1) **REALTOR® Members**. The annual dues of REALTOR® members other than the designated REALTOR® shall be as established annually by the board of directors.

(2) **Institute Affiliate Members**. The annual dues of each Institute Affiliate member shall be as established in Article II of the Bylaws of the NATIONAL ASSOCIATION OF REALTORS®.

**NOTE:** The Institutes, Societies, and Councils of the National Association shall be responsible for collecting and remitting dues to the National Association for Institute Affiliate members ($105). The National Association shall credit $35 to the account of a local Association for each Institute Affiliate Member whose office address is within the

assigned territorial jurisdiction of that Association, provided, however, if the office location is also within the territorial jurisdiction of a Commercial Overlay Board (COB), the $35 amount will be credited to the COB, unless the Institute Affiliate member directs that the dues be distributed to the other Association. The National Association shall also credit $35 to the account of the State Association for each Institute Affiliate member whose office address is located within the territorial jurisdiction of the state Association. Local and state Association may not establish any additional entrance, initiation fees or dues for Institute Affiliate members, but may provide service packages to which Institute Affiliate members may voluntarily subscribe.

(3) **Affiliate Members**. The annual dues of each Affiliate member shall be as established annually by the board of directors.

(4) **Honorary Members**. Dues payable, if any, shall be at the discretion of the board of directors.

**Section 3. Dues Payable.** Dues for all members shall be payable annually in advance on the first day of January. Dues for new members shall be computed from the date of application and granting of provisional membership.

(a) **Assessments**: In the event a sales licensee or licensed or certified appraiser who holds REALTOR® membership is dropped for nonpayment of Association dues, and the individual remains with the designated REALTOR®'s firm, the dues obligation of the "designated" REALTOR® will be increased to reflect the addition of a non-member licensee. Dues shall be calculated from the first day of the current fiscal year and are payable within thirty (30) days of the notice of termination.

(b) **Emeritus Members.** The dues of REALTOR® members who are REALTOR® Emeriti (as recognized by the National Association), past presidents and past treasurers of the National Association or recipients of the Distinguished Service Award shall be as determined by the board of directors.

**NOTE:** A Member Board's dues obligation to the National Association is reduced by an amount equal to the amount which the Association is assessed for a REALTOR® member, times the number of REALTOR® Emeriti (as recognized by the National Association), past presidents and past treasurers of the National Association, and recipients of the Distinguished Service Award of the National Association who are REALTOR® members of the Association. The dues obligation of such individuals to the local Association should be reduced to reflect the reduction in the association's dues obligation to the National Association. The Association may, at its option, choose to have no dues requirement for such individuals except as may be required to meet the association's obligation to the State Association with respect to such individuals. Member Boards should determine whether the dues payable by the Association to the State Association are reduced with respect to such individuals. It should be noted that this does not affect a "designated" REALTOR®'s dues obligation to the Association with

respect to those licensees employed by or affiliated with the "designated" REALTOR® who are not members of the local Association.

**Section 4. Nonpayment of Financial Obligations.** If dues, fees, fines, or other assessments including amounts owed to the Association or the association's multiple listing service are not paid within one (1) month after the due date, the non paying Member is subject to suspension at the discretion of the board of directors. Two (2) months after the due date, membership of the non paying member may be terminated at the discretion of the board of directors. Three (3) months after the due date, membership of the non paying Member shall automatically terminate unless within that time the amount due is paid. However, no action shall be taken to suspend or expel a member for nonpayment of disputed amounts until the accuracy of the amount owed has been confirmed by the board of directors. A former member who has had his/her membership terminated for nonpayment of dues, fees, fines, or other assessments duly levied in accordance with the provisions of these Bylaws or the provisions of other rules and regulations of the Association or any of its services, departments, divisions, or subsidiaries may apply for reinstatement in a manner prescribed for new applicants for membership, after making payment in full of all accounts due as of the date of termination.

**Section 5. Notice of Dues, Fees, Fines, Assessments,** and Other Financial Obligations of Members. All dues, fees, fines, assessments, or other financial obligations to the Association or Association multiple listing service shall be noticed to the delinquent Association member in writing setting forth the amount owed and due date.

## Article IX – Officers and Directors

**Section 1. Board of Directors**. The governing body of the Association shall be a board of directors consisting of the elected officers that includes the President, President Elect, Vice President, Secretary, Treasurer, Treasurer-Elect and three REALTOR® Director members of the Association, and the immediate Past President. Directors shall be elected to serve for three (3) years staggered terms. Thereafter, as many directors shall be elected each year as are required to fill vacancies.

**Section 2. Duties of Officers**. The duties of the officers shall be such as their titles, by general usage, would indicate and such as may be assigned to them by the board of directors. It shall be the particular duty of the chief staff executive to keep the records of the Association and to carry on all necessary correspondence with the NATIONAL ASSOCIATION OF REALTORS® and the Hawaii Association of REALTORS®.

**Section 3. Executive Officer**. There shall be a chief staff executive officer, appointed by the Board of Directors, who shall be the Administrative Officer of the Association. The Executive Officer shall have the authority to hire, supervise, evaluate and terminate other staff, if any, and shall perform such other duties as prescribed by the Board of Directors.

**Section 4. Election of Officers**

(a) At least three (3) months before the annual meeting, a nominating committee of five (5) REALTOR® members shall be appointed by the President with the approval of the board of directors.

The Executive Officer shall mail, or electronically post the Slate of Nominees as submitted by the nominating Committee to each member eligible to vote. Additional candidates may be nominated by petition signed by five (5) REALTOR® members eligible to vote. The Executive Officer shall mail or electronically send ballots to all members eligible to vote. In the event of an uncontested Slate, no ballots will be issued via mail or electronically.

(b) The president, with the approval of the board of directors, shall appoint an election committee of (3) three REALTOR® members, who are not candidates or affiliated with any candidate on the ballot to act under the direction of the Executive Officer to tabulate the votes received. In case of a tie vote, the issue shall be determined by lot.

(c) The election/installation of Officers and Directors shall take place at the annual meeting.

**Section 5. Vacancies**. Vacancies among the officers and the board of directors shall be filled by a simple majority vote of the board of directors until the next annual election.

**Section 6. Removal of Officers.** In the event that an officer or director 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.

(a) A petition requiring the removal of an officer or director and signed by not less than one-third of the voting membership or a majority of all directors 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 service.

(b) 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 voting membership of the Association 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.

(c) The special meeting shall be noticed to all voting members at least ten (10) days prior to the meeting, and shall be conducted by the president of the Association unless the president's continued service in office is being considered at the meeting. In such a case, the next-ranking officer will conduct the meeting of 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 X – Committees

**Section 1. Committees of the Board.** A committee of the Board is a committee solely comprised of Directors that may exercise board authority, except (a) authorize distributions, (b)

approve or recommend to members, a dissolution, merger, or the sale, pledge, or transfer of all or substantially all of the corporation's assets, (c) elect or remove directors or fill vacancies on the Board or on any of its committees, or (c) adopt, amend, or repeal the Articles of Incorporation or the Bylaws. The Board of Directors may create Committees of the Board and appoint members of the Board to serve on them by a vote of a majority of the Directors in office. The President shall have the authority to appoint chairpersons or members of all committees with the approval of the Board of Directors (i.e. Executive Committee)

**Section 2. Advisory/Standing Committees**. An advisory committee is a committee whose members include non-Directors (REALTORS and/or Affiliates). Advisory committees shall have such powers as authorized by the Board to further their purpose and shall only act in an advisory capacity to the Board in no case shall exercise Board authority. The president shall appoint a chairperson from among the REALTOR® members, subject to confirmation by the Board of Directors.

> **NOTE:** Standing committees which may be listed under this section include, but are not limited to, finance, legislative, public relations, membership, REALTOR® protection, education, equal opportunity, RPAC fundraising, international, commercial, affordable housing, community service, REALTOR®-of-the-year, etc.).

**Section 3. Special Committees**. The president shall appoint, subject to confirmation by the Board of Directors a Professional Standards and Arbitration Committee and a Grievance Committee that shall be composed of REALTOR members only.

**Section 4. Hawaii Information Service Directors.** The President, with the approval of the Board of Directors shall appoint three (3) Directors to serve staggered terms on the Hawaii Information Service ("HIS") Shareholder Board of Directors. Each shall take office on the effective date as designated by the HIS Governing Documents. The appointed Directors will be representatives of the Shareholder Board to HIS. The Directors shall be members in good standing of the Shareholder Board of Directors and must be current and active participants in HIS. These Directors shall not be part of the Shareholder Board of Directors.

(a) **Vacancies**. Vacancies in the appointment of the HIS Directors shall be filled as in the case of original appointment by the President with confirmation of the Shareholder Board of Directors. A vacancy may be filled before it actually occurs so long as the new Director does not take office until the vacancy occurs.

(b) **Resignation of Directors**. An HIS Director may resign at any time by delivering written notice to the HIS Board of Directors, its chairperson, or to the Shareholder Board of Directors . A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

(c) **Removal**. Any HIS Director or the entire HIS Board of Directors may be removed, with or without cause, by a vote of the holders of the majority of the shares then entitled to vote.

**Section 5. Organization**. All committees shall be of such size and shall have duties, functions, and powers as assigned by the president or the board of directors except as otherwise provided in these Bylaws.

**Section 6. President & President-elect**. The President and President-Elect shall be an *ex-officio* member of all standing committees with the exception of the Grievance and Professional Standards and Arbitration Committees and shall be notified of their meetings. They shall have voting powers of the committees but will be excluded from quorum requirements.

## Article XI– Meetings

**Section 1. Annual Meetings**. The annual meeting of the Association shall be held during the 4th Quarter of each year, the date, place, and hour to be designated by the Board of Directors. (Amended 1/05)

**Section 2. Board of Directors Meetings.** The board of directors shall designate a regular time and place of meetings. Absence from three (3) regular meetings without an excuse deemed valid by the board of directors shall be construed as resignation. A quorum for the transaction of business shall be a majority of the board of directors, except as may otherwise be required by state law. (Amended 05/2013)

**Section 3. Special Board of Directors Meetings**. Notice of each special meeting shall be given in accordance with Section 5 below and shall be open to the members which shall be preceded by at least two (2) days' notice to each Director stating the date, time and place of the meeting but purpose (unless otherwise decided).

**Section 4. Other Member Meetings**. Meetings of the members may be held at other times as the president or the board of directors may determine, or upon the written request of at least 25 voting members or 10% of the members eligible to vote.

**Section 5. Notice of Meetings**. Written notice, which could be mail or electronically, where state law permits, shall be given to every Member entitled to participate in the meeting at least one (1) week preceding all meetings. If a special meeting is called, it shall be accompanied by a statement of the purpose of the meeting.

**Section 6. Quorum for Membership Meetings.** A quorum for the transaction of business at general and/or special meetings of the membership shall be 10%, or twenty five (25) members eligible to vote, whichever is more, except as may otherwise be required by state law.

**Section 7. Electronic Transaction of Business.** To the fullest extent permitted by law, the board of directors or membership may conduct business by electronic means whereby all Directors can hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

**Section 8. Proxy Voting.** Proxy voting is prohibited.

## Article XII – Fiscal and Elective Year

**Section 1**. The fiscal and elective year of the Association shall be January 1 to December 31 or as may otherwise be established by the Board of Directors.

## Article XIII – Rules of Order

**Section 1**. **Robert's Rules of Order,** latest edition, shall be recognized as the guide in parliamentary procedures for all meetings of the Association, its Board of Directors, and committees, in all instances wherein its provisions do not conflict with these Bylaws.

## Article XIV – Amendments

**Section 1**. These Bylaws may be amended by a majority vote of the Board of Directors present and qualified to vote at any meeting at which a quorum is present, provided the substance of such proposed amendment or amendments shall be plainly stated in the call for the meeting.

When Bylaws amendments are mandated by NAR policy, these Bylaws shall be automatically amended, as permitted by State law to reflect the mandate as of the effective date of the policy changes authorized by the NATIONAL ASSOCIATION OF REALTORS®. The Association shall provide notice of that change in a regular or special membership communication.

**Section 2**. Notice of all meetings at which amendments are to be considered shall be mailed or sent by electronic mail to every member eligible to vote at least one (1) week prior to the meeting.

**Section 3**. Amendments/Restatement of Articles of Incorporation. Subject to Section 5 below, the Articles of Incorporation may be amended or restated by the Board of Directors by an affirmative vote of not less than a majority of the Board at a meeting duly called and noticed for that purposed.

**Section 4**. Amendments Terminating or Canceling Members. The membership must approve any amendments or restatement of the Articles of Incorporation or the Bylaws which would terminate, redeem or cancel all membership or any class of membership by the following procedures:

(1) Before adopting a resolution proposing such amendment, the Board of Directors must give notice of the general nature of the amendment to the members.

(2) After adopting a resolution proposing such amendment, the Board must give notice to the members proposing the amendment. The notice to the members must include one or more statements of up to five hundred (500) words opposing the amendment if such statement is submitted by any five (5) members

or by members having three percent (3%) or more of the voting power, whichever is less, not later than twenty (20) days after the date that the Board has voted to submit the amendment to the members for approval. The Association shall pay for the production and postage.

(3) The proposed amendment must be approved by two-thirds (2/3) of the votes cast by the voting members present at the meeting at which the amendment is voted upon.

**Section 2**. Notice of all meetings at which amendments are to be considered shall be mailed to every member eligible to vote at least one (1) week prior to the meeting.

**Section 3**. Amendments to these Bylaws affecting the admission or qualification of REALTOR® and Institute Affiliate members, the use of the terms REALTOR® and REALTORS®, or any alteration in the territorial jurisdiction of the Association shall become effective upon their approval as authorized by the board of directors of the NATIONAL ASSOCIATION OF REALTORS®.

## Article XV – Dissolution

**Section 1**. Upon the dissolution of this Association, the board of directors, after providing for the payment of all obligations, shall distribute any remaining assets to the Hawaii Association of REALTORS® or, within its discretion, to any other non-profit tax exempt organization.

## Article XVI – Multiple Listing

**Section 1. Authority**. The Association of REALTORS® shall maintain for the use of its members a Multiple Listing Service which shall be a lawful corporation of the State of Hawaii, all the stock of which shall be owned by the Kauai Board of REALTORS and the Hawaii Island Board of REALTORS.

**Section 2. Purpose.** A multiple listing service is a means by which authorized participants make blanket unilateral offers of compensation to other participants (acting as subagents, buyer agents, or in other agency or non agency capacities defined by law); by which cooperation among participants is enhanced; by which information is accumulated and disseminated to enable authorized participants to prepare appraisals, analyses, and other valuations of real property for bonafide clients and customers; by which participants engaging in real estate appraisal contribute to common databases; and is a facility for the orderly correlation and dissemination of listing information so participants may better serve their clients and the public. Entitlement to compensation is determined by the cooperating broker's performance as a procuring cause of the sale (or lease). (Amended 11/04)

**Section 3. Governing Documents.** The Board of Directors shall cause any multiple listing service established by it pursuant to this article to conform its Corporate Charter, Constitution, Bylaws, rules, regulations, and policies, practices, and procedures at all times to the

*Constitution*, *Bylaws*, rules, regulations, and policies of the NATIONAL ASSOCIATION OF REALTORS®.

**Section 4. Participation**. Any REALTOR® of this or any other Association who is a principal, partner, corporate officer, or branch office manager acting on behalf of a principal, without further qualification, except as otherwise stipulated in these Bylaws, shall be eligible to participate in multiple listing upon agreeing in writing to conform to the rules and regulations thereof and to pay the costs incidental thereto.* However, under no circumstances is any individual or firm, regardless of membership status, entitled to multiple listing service "membership" or "participation" unless they hold a current, valid Hawaii real estate broker's license and offer or accept compensation to and from other participants or are licensed or certified by an appropriate Hawaii regulatory agency to engage in the appraisal of real property.** Use of information developed by or published by an Association multiple listing service is strictly limited to the activities authorized under a participant's licensure(s) or certification and unauthorized uses are prohibited. Further, none of the foregoing is intended to convey "participation" or "membership" or any right of access to information developed by or published by an Association multiple listing service where access to such information is prohibited by law.

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 ongoing 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 in a nondiscriminatory manner to all participants and potential participants.

***Optional qualification, may be adopted at the local association's discretion:**

> Any applicant for MLS participation and any license (including licensed or certified appraisers) affiliated with an MLS participant who has access to and use of MLS-generated information shall complete an orientation program of no more than eight (8) classroom hours devoted to the MLS rules and regulations and computer training related to MLS information entry and retrieval within thirty (30) days after access has been provided.
>
> Participants 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 participants and subscribers with system changes or enhancement and/or changes to MLS rules or policies. Participants and subscribers must be given the opportunity to complete any mandated additional training remotely.

**NOTE:** Associations are not required to establish prerequisites for MLS participation beyond holding REALTOR® (principal) membership in an Association. However, if the Association wishes to establish these requirements for MLS participation or for access to MLS-generated information, the requirement of attendance at an orientation program is the most rigorous requirement that may be established.

**Generally, Association of REALTORS®, when there is more than one principal in a real estate firm, define the chief principal officer of the firm as the MLS "participant". If each principal is defined as a "participant", then each shall have a separate vote on MLS matters. Brokers or salespersons other than principals are not considered "participants" in the service, but have access to and use of the service through the principal(s) with whom they are affiliated.

(a) A nonmember applicant for MLS participation who is a principal, partner, corporate officer, or branch office manager acting on behalf of a principal, shall supply evidence satisfactory to the membership committee that he/she has no record of recent or pending bankruptcy; has no record of official sanctions involving unprofessional conduct; agrees to complete a course of instruction (if any) covering the MLS rules and regulations and computer training related to MLS information entry and retrieval, and shall pass such reasonable and non-discriminatory written examination thereon as may be required by the MLS; and shall agree that if elected as a participant, he/she will abide by such rules and regulations and pay the MLS fees and dues, including the nonmember differential (if any), as from time to time established. Under no circumstances is any individual or firm entitled to MLS participation or membership unless they hold a current, valid real estate broker's license and offer or accept compensation to and from other participants, 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 an Association multiple listing service is strictly limited to the activities authorized under a participant's licensure(s) or certification and unauthorized uses are prohibited. Further, none of the foregoing is intended to convey participation or membership or any right of access to

information developed by or published by an Association multiple listing service where access to such information is prohibited by law.

*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 ongoing 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. (Adopted 11/08)*

*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 in a nondiscriminatory manner to all participants and potential participants. (Adopted 11/08)*

**NOTE 1:** The requirements of (1) no record of recent or pending bankruptcy; (2) no record of official sanctions involving unprofessional conduct; and (3) completion of a course of instruction on the MLS rules and regulations and computer training related to MLS information entry and retrieval may be deleted from this section at the option of each Association. In states where law requires non-Association members be admitted to the MLS of an Association of REALTORS®, any limitations or restrictions imposed on participation or membership shall be no more stringent than permissible under the National Association's *Membership Qualification Criteria*. However, in states where non-Association member access to the MLS is not a requirement of state law, Association may, at their discretion, establish additional qualifications for non-Association member participation and membership in the MLS.

**NOTE 2:** An Association may also choose to have the membership committee consider the following when determining a nonmember applicant's qualifications for MLS participation or membership:

1. All final findings of Code of Ethics violations and violations of other membership duties in this or any other REALTOR® Association within the past three (3) years
2. pending ethics complaints (or hearings)
3. unsatisfied discipline pending
4. pending arbitration requests (or hearings)
5. unpaid arbitration awards or unpaid financial obligations to any other Association or Association MLS (Amended 11/09)

**Section 5**. Subscribers. Subscribers (or users) of the MLS include non-principal brokers, sales associates, and licensed and certified appraisers affiliated with participants. Subscribers also include affiliated unlicensed administrative and clerical staff, personal assistants, and individuals seeking licensure or certification as real estate appraisers who are under the direct supervision of an MLS participant or the participant's licensed designee.