

BAR CONSTITUTION & BYLAWS

April 28, 2010

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CONSTITUTION AND BYLAWS

THE BIRMINGHAM ASSOCIATION OF REALTORS®, INC.

August, 2010

ARTICLE I - NAME

Section 1. Name. The name of this organization shall be the Birmingham Association of REALTORS®, Inc., hereafter referred to as the “Association.”

Section 2. REALTORS®. Inclusion and retention of the Registered Collective Membership Mark “REALTORS®” in the name of the Association shall be governed by the Constitution and Bylaws of the NATIONAL ASSOCIATION OF REALTORS®, hereafter referred to as the “NAR,” as from time to time amended.

ARTICLE II - OBJECTIVES

The objectives of the Association are:

Section 1. 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.

Section 2. To promote and maintain high standards of conduct in the real estate profession as expressed in the Code of Ethics of the NAR.

Section 3. 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.

Section 4. To further the interests of home and other real property ownership.

Section 5. To unite those engaged in the real estate profession in this community with the Alabama Association of REALTORS® Inc., hereafter referred to as the “AAR,” and the NAR, thereby furthering their own objectives throughout the state and nation, and obtaining the benefits and privileges of membership therein.

Section 6. To designate, for the benefit of the public, individuals authorized to use the terms REALTOR® and REALTORS® as licensed, prescribed, and controlled by the NAR.

ARTICLE III - JURISDICTION

Section 1. The territorial jurisdiction of the Association as a member of the NAR shall include that part of Jefferson County north and east of a dividing line as follows: Commencing on the south line of Section 32, Township 19 south range 3 west, where the railroad line of the L & N Railroad crosses; thence proceed north along the centerline of said railroad to its intersection with Alabama State Highway No. 150; thence northwesterly along said State Highway No. 150 to the crest of Red Mountain at Readers Gap near Muscoda; thence northeasterly along the crest of Red Mountain to a point in Section 34 Township 18 south range 4, west which point would be on a projection of County Road No. 66 if extended southeasterly from Brownsville to the crest of Red Mountain; thence northwesterly along such projection if made of County Road No. 66 along County Road 66 and Rutledge Way to State Highway

No. 56 in Section 22. Township 18 South Range 4 west - except that such line in this area shall vary at the City limit of Brownsville, to include all of the corporate limits of Brownsville, in the Bessemer jurisdiction and at the City Limits of Midfield and Fairfield to include all corporate limits of Midfield; and Fairfield as now or hereafter amended or relocated in the jurisdiction of Birmingham; thence northwesterly to the northwest corner of said Section 22; thence westerly along the north line of Sections 21, 20 and 19 in Township 18 range 4 west, and Section 24 and 23 Township 18, south range 5 west to the point where State Highway 46 intersects; thence northwesterly along State Highway 46 to the Jefferson County Line, and the entire area of Shelby County.

Section 2. Territorial jurisdiction is defined to mean the right and duty to control the use of the terms REALTOR® and REALTORS®, subject to the conditions set forth in these Bylaws and those of the NAR, in return for which the Association agrees to protect and safeguard the property rights of the NAR in the terms.

ARTICLE IV - MEMBERSHIP

Section 1. There shall be six classes of Members as follows:

(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 Alabama, 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 a board or association of REALTORS® within the state or a state contiguous thereto unless otherwise qualified for Institute Affiliate Membership as described in Section 1 (b) of Article IV.

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 board or 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 as described in Section 1 (b) of Article IV.

NOTE: REALTOR® Members may obtain membership in a "secondary" board or association in another state.

(2) 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 set out in Article V.

(3) 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 board 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 board or association, the AAR and the NAR.

(4) **Primary and Secondary REALTOR® Members.** An individual is a primary Member if the Association pays AAR and NAR dues based on such member. An individual is a secondary Member if AAR and NAR dues are remitted through another board or 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.

(5) **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 pursuant to Article 17 of the Code of Ethics and the payment of Association dues as established in Article XI of the Bylaws. 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 established in Article V, Section 2, of the Bylaws.

(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 NAR 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. Affiliate Membership shall also be granted to individuals licensed or certified to engage in real estate practice who, if otherwise eligible, do not elect to hold REALTOR® Membership in the Association, provided the applicant is engaged exclusively in a specialty of the real estate business other than brokerage of real property.

(d) **Public Service Members.** Public Service Members shall be individuals who are interested in the real estate profession as employees of or affiliated with educational, public utility, governmental or other similar organizations, but are not engaged in the real estate profession on their own account or in association with an established real estate business.

(e) **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.

(f) **Student Members.** Student Members shall be individuals who are seeking an undergraduate or graduate degree with a specialization or major in real estate at institutions of higher learning, and who have completed at least two years of college and at least one college level course in real estate, but are not engaged in the real estate profession on their own account or not associated with an established real estate office.

ARTICLE V - QUALIFICATION AND ELECTION

Section 1. Application

(a) 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 NAR, the Constitutions, Bylaws, and Rules and Regulations of the Association, the AAR and the NAR, and if elected a Member, will abide by the Constitution and Bylaws, and Rules and Regulations of the Association, the AAR and the NAR, and if a REALTOR[®] Member, will abide by the Code of Ethics of the NAR, including the obligation to arbitrate controversies arising out of real estate transactions as specified by Article 17 of the Code of Ethics, and as further specified in the Code of Ethics and Arbitration Manual of the NAR, as from time to time amended; and (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 by any person in response to the invitation 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.

Section 2. Qualification

(a) An applicant for REALTOR[®] 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 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, has a place of business within the state or a state contiguous thereto (unless a secondary member), has no record of recent or pending bankruptcy*, has no record of official sanctions involving unprofessional conduct**, agrees to complete a course of instruction covering the Bylaws and Rules and Regulations of the Association, the Bylaws of the AAR, and the Constitution and Bylaws and Code of Ethics of the NAR, and shall pass such reasonable and nondiscriminatory written examination thereon as may be required by the Committee, and shall agree that if elected to membership, he/she will abide by such Constitutions and Bylaws, Rules and Regulations, and Code of Ethics.

* No recent or pending bankruptcy is intended to mean that the 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.

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

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.

NOTE 1: One or more of the requirements for REALTOR[®] Membership set forth above in Article V, Section 2(a) may be deleted at the Association's discretion. However, Associations 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 NAR.

NOTE 2: Article IV, Section 2, of the NAR Bylaws prohibits Member Boards from knowingly granting REALTOR® Membership to any applicant who has an unfulfilled sanction pending which was imposed by another board or association of REALTORS® for violation of the Code of Ethics. (Adopted 1/01)

(b) 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 board or 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, shall complete a course of instruction covering the Bylaws and Rules and Regulations of the Association, the Bylaws of the AAR and the Constitution and Bylaws and Code of Ethics of the NAR, and shall pass such reasonable and nondiscriminatory written examinations thereon as may be required by the Membership Committee, and shall agree in writing that if elected to membership he/she will abide the Code of Ethics of the NAR, and by the Constitution, Bylaws, and Rules and Regulations of the Association, the AAR, and the NAR.

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

1. All final findings of Code of Ethics violations and violations of other membership duties in any other 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

“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 (except for violations of the Code of Ethics; See Article V, Section 2(a) NOTE 2) provided all other qualifications for membership have been satisfied. Associations 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 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.

Section 3. Election. The procedure for election to membership shall be as follows:

(a) The Membership Committee shall determine whether the applicant is applying for the appropriate class of membership. It shall then give written notice to the REALTOR® Members of such application and invite written comment. If one or more of the REALTOR® Members object to the approval of the application, basing such objection on lack of qualification as set forth in these Bylaws, the Committee shall invite any objecting Member to appear and substantiate his/her objections. Objections which are not substantiated shall be totally disregarded. The Committee may not find objections substantiated without (1) informing the applicant in advance, in writing, of the objections and identifying the objecting Member, and (2) giving the applicant a full opportunity to appear before the Committee and establish

his/her qualifications. The Committee shall thereafter make a written report of its findings. The Membership Committee shall conduct all proceedings with strict attention to the principles of due process and compliance with the Bylaws of the Association.

(b) Thereafter, within 60 days, the Membership Committee shall report its recommendation to the Board of Directors in writing. If the recommendation is adverse to the approval of the application, the reasons shall be specifically stated. If any member of the Membership Committee submits a dissenting recommendation, it shall also be transmitted to the Board of Directors.

(c) The Board of Directors shall review the qualifications of the applicant and the recommendation of the Committee and then 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 and shall be advised by written notice.

(d) The Board of Directors may not reject an application without providing the applicant with advance notice of the findings and recommendations of the Membership Committee, 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.

(e) If the Board of Directors determines that the application should be rejected, it shall record its reasons with the Chief Staff Executive. 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. New Member Code of Ethics Orientation: Applicants for REALTOR® Membership and provisional REALTOR® Membership (where applicable) shall complete an orientation program on the Code of Ethics of not less than two hours and thirty 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 year or less.

Failure to satisfy this requirement within 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 NAR.

Section 5. Continuing Member Code of Ethics Training: Effective January 1, 2001, through December 31, 2004, and for successive four year periods thereafter, each REALTOR® Member of the Association shall be required to complete quadrennial ethics training of not less than two hours and thirty 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 AAR, the NAR, or any other recognized educational institution or provider which meets the learning objectives and minimum criteria established by the NAR 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 four year cycle shall not be required to complete additional ethics training until a new four year cycle commences.

Failure to satisfy this requirement shall be considered a violation of a membership duty for which REALTOR® Membership shall be suspended until such time as the training is completed.

Members suspended for failing to meet the requirement for the first four (4) year cycle (2001 – 2004) will have until December 31, 2005 to meet the requirement. Failure to meet the requirement by that time will result in automatic termination of membership.

Failure to meet the requirement for the second (2005 – 2008) cycle and subsequent four (4) year cycles will result in suspension of membership for the first two months (January and February) of the year following the end of any four (4) year cycle or until the requirement is met, whichever occurs sooner. On March 1 of that year, the membership of member who is still suspended as of that date will be automatically terminated.

Section 6. Status Changes

(a) A REALTOR® who changes the conditions under which he/she holds membership shall be required to provide written notification to the Association within 30 days of such change. 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® principles 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 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) Dues shall be prorated from the first day of the month in which the member is notified of election by the Board of Directors and shall be based on the new membership status for the remainder of the year.

ARTICLE VI - PRIVILEGES AND OBLIGATIONS

Section 1. The privileges and obligations of Members, in addition to those otherwise provided in these Bylaws, shall be as specified in this Article.

Section 2. 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 NAR 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 AAR, and the NAR.

Section 3. 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 NAR as set forth in the Code of Ethics and Arbitration Manual of the NAR.

Section 4. 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.

Section 5. If a Member resigns from the Association or otherwise causes membership to terminate with an ethics complaint pending, the Board of Directors may condition the right of the resigning Member to reapply for membership upon the applicant's certification that he/she will submit to the pending ethics proceeding and will abide by the decision of the hearing panel. Further, if a Member resigns or otherwise causes membership to terminate, the duty to submit to arbitration continues in effect even after membership lapses or is terminated, provided that the dispute arose while the former member was a REALTOR®.

Section 6. REALTOR® Members

(a) Only REALTOR® Members, whether primary or secondary, whose financial obligations to the Association have been paid in full shall be entitled to vote and hold elective office in the Association.

(b) Only REALTOR® Members may use the terms REALTOR® or REALTORS®, which use shall be subject to the provisions of Article IX hereof.

(c) REALTOR® Members have the primary responsibility to safeguard and promote the standards, interests, and welfare of the Association and the real estate profession.

(d) 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, or management control is relinquished, 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, or unless the REALTOR® who is suspended or expelled removes himself/herself from any form or degree of management control of the firm for the term of the suspension or until readmission to membership, whichever may apply. Removal of an individual from any form or degree of management control must be certified to the Association by the Member who is being suspended or expelled and by the individual who is assuming management control, and the signatures of such certification must be notarized. In the event the suspended or expelled Member is so certified to have relinquished all form or degree of management control of the firm, the membership of other partners, corporate officers, or other individuals affiliated with the firm shall not be affected, and the firm, partnership or corporation may continue to use the terms REALTOR® and REALTORS® in connection with its business during the period of suspension or until the former Member is readmitted to membership in the Association. The foregoing is not intended to preclude a suspended or expelled Member from functioning as an employee or independent contractor, providing no management control is exercised.

Further, the membership of REALTORS® other than principals who are employed 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 management control is relinquished, or unless the REALTOR[®] Member (non-principal) elects to sever his/her connection with the disciplined REALTOR[®] and affiliate with another REALTOR[®] Member in good standing in the Association, whichever may apply.

If a REALTOR[®] Member other than a sole proprietor in a firm, partner in a partnership or an officer of a corporation is suspended or expelled, the use of the terms REALTOR[®] or REALTORS[®] by the firm, partnership or corporation shall not be affected.

(e) In any action taken against a REALTOR[®] Member for suspension or expulsion under Section 6 (d) 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 that the provisions in Article VI, Section 6 (d) shall apply.

Section 7. 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 NAR, however, Institute Affiliate Members shall not have the right to use the term REALTOR[®] or the REALTOR[®] logo; to serve as President of the Association; or to be a participant in the Association's Multiple Listing Service.

Section 8. Affiliate Members. Affiliate Members shall have such rights and privileges and be subject to obligations prescribed by the Board of Directors.

Section 9. Public Service Members. Public Service Members shall have rights and privileges and be subject to obligations prescribed by the Board of Directors.

Section 10. Honorary Members. Honorary Membership shall confer only the right to attend meetings and participate in discussions.

Section 11. Student Members. Student members shall have rights and privileges and be subject to obligations prescribed by the Board of Directors.

Section 12. Certification by REALTOR[®]. Designated REALTOR[®] Members of the Association shall certify to the Association 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 board or association for each individual who holds membership. Designated REALTOR[®]'s 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 under Article XI, Section 2 (b) of the Bylaws. Designated REALTOR[®] Members shall also notify the Association of any additional individual(s) licensed or certified with the firms(s) within thirty (30) days of the date of affiliation or severance of the individual.

Section 13. Harassment. Any Member of the Association may be reprimanded, placed on probation, suspended or expelled for harassment of an Association or MLS employee or Association officer or director after an investigation in accordance with the procedures of the Association. As used in this Section, harassment means any verbal or physical conduct including threatening or obscene language, unwelcome sexual advances, stalking, actions including strikes, shoves, kicks, or other similar physical contact, or threats to do the same, or any other conduct with the purpose or effect of unreasonably interfering with an individual's work performance by creating a hostile, intimidating or offensive work

environment. The decision of the appropriate disciplinary action to be taken shall be made by the investigatory team comprised of the President, and President-elect and/or Vice President and one member of the Board of Directors selected by the highest ranking officer not named in the complaint, upon consultation with legal counsel for the Association. Disciplinary action may include any sanction authorized in the association's Code of Ethics and Arbitration Manual. If the complaint names the President, President-elect or Vice President, they may not participate in the proceedings and shall be replaced by the Immediate Past President or, alternatively, by another member of the Board of Directors selected by the highest ranking officer not named in the complaint.

NOTE: Suggested procedures for processing complaints of harassment are available online at <http://www.REALTOR.org>, or from the Member Policy Department. (Amended 5/08)

ARTICLE VII - COMMISSIONS ARE NEGOTIABLE

The commissions payable for the sale, lease or management of real property are not set by the Birmingham Association of REALTORS[®], Inc., but in all cases are negotiable between the broker and the client.

ARTICLE VIII - PROFESSIONAL STANDARDS AND ARBITRATION

Section 1. The responsibility of the Association and of its 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 from time to time amended, which by this reference is made a part of these Bylaws.

Section 2. It shall be the duty and responsibility of every REALTOR[®] Member of this Association to abide by the Constitution and Bylaws and the Rules and Regulations of the Association, the Constitution and Bylaws of the AAR, the Constitution and Bylaws of the NAR, and to abide by the Code of Ethics of the NAR, including the duty to arbitrate controversies arising out of real estate transactions as specified by Article 17 of the Code of Ethics, and as further defined and in accordance with the procedures set forth in the Code of Ethics and Arbitration Manual of this Association as from time to time amended.

ARTICLE IX - USE OF THE TERMS REALTOR[®] AND REALTORS[®]

Section 1. Use of the terms REALTOR[®] or REALTORS[®] by Members shall at all times be subject to the provisions of the Constitution and Bylaws of the NAR and 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 NAR, 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 6/06)

Section 2. REALTOR[®] Members of the Association shall have the privilege of using the terms REALTOR[®] or 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.

Section 3. 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 as described in Section 1(b) of Article IV.

(a) 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.

Section 4. Institute Affiliate Members shall not use the terms REALTOR® or REALTORS®, nor the imprint of the emblem seal of the NAR.

ARTICLE X - STATE AND NATIONAL MEMBERSHIPS

Section 1. The Association shall be a Member of the NAR and the AAR. By reason of the Association's membership, each REALTOR® Member of the Association shall be entitled to membership in the NAR and the AAR without further payment of dues. The Association shall continue as a Member of the AAR and NAR, unless by a majority vote of all its REALTOR® Members, decision is made to withdraw, in which case the AAR and NAR shall be notified as 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 NAR 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 NAR, or upon a determination by the Board of Directors of the NAR that it has violated the conditions imposed upon the terms.

Section 3. The Association adopts the Code of Ethics of the NAR 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 NAR and the AAR.

ARTICLE XI - DUES AND ASSESSMENTS

Section 1. Application Fee. The Board of Directors may adopt an application fee for REALTOR® Membership in reasonable amount, not exceeding three 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. Application fees for other classifications of membership except for Institute Affiliate Membership shall be those as established by the Board of Directors.

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

(a) Prior to its January meeting each year, the Board of Directors shall fix the annual dues for each classification of membership. However, in the absence of specific action to the contrary, the dues shall remain the same as in the year just closed. The same regulation will apply to any application fee.

(b) REALTOR® Members. The annual dues of each Designated REALTOR® Member shall be in such amount as established annually by the Board of Directors, plus an additional amount to be established annually by the Board of Directors times the number of real estate salespersons and licensed or certified

appraisers who (1) are employed by or affiliated as independent contractors, or who are otherwise directly or indirectly licensed with such REALTOR[®] Member, and (2) are not REALTOR[®] Members of any association in the state or a state contiguous thereto 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 or a state contiguous thereto, 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.

(1) For the purpose of this Section, a REALTOR[®] Member of a member association shall be held to be any Member who has a place or places of business within the State or a state contiguous thereto and 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 Article III, Section 1, of the Constitution of the NAR. 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 (b) (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.

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, 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 the Section and shall not be included in calculating the annual dues of the Designated REALTOR[®].

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[®] or REALTOR[®]-ASSOCIATE[®] membership in the association. However, membership dues shall not be prorated if the licensee held REALTOR[®] or REALTOR[®]-ASSOCIATE[®] membership during the preceding calendar year.

(2) REALTOR[®] Members. The annual dues of each REALTOR[®] Member other than the Designated REALTOR[®] shall be as established annually by the Board of Directors.

(c) Institute Affiliate Members. The annual dues of each Institute Affiliate Member shall be as established in Article II of the Bylaws of the NAR.

(d) Affiliate Members. The annual dues of each Affiliate Member shall be as established annually by the Board of Directors.

(e) Public Service Members. The annual dues of each Public Service Member shall be as established annually by the Board of Directors.

(f) Honorary Members. Dues payable, if any, shall be at the discretion of the Board of Directors.

(g) Student 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 first day of the month in which a Member is notified of election and shall be prorated for the remainder of the year. 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® (as set forth in Article XI, Section 2, (b)) 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 30 days of the notice of termination.

Section 4. Non-payment 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 nonpaying Member is subject to suspension at the discretion of the Board of Directors. Two (2) months after the due date, membership of the nonpaying Member may be terminated at the discretion of the Board of Directors. Three (3) months after the due date, membership of the nonpaying 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 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. Deposits and Expenditures. All money received by the Association for any purpose shall be deposited to the credit of the Association in a financial institution or institutions selected by resolution of the Board of Directors. Deposits and expenditures of funds shall be in accordance with policies established by the Board of Directors.

Section 6. 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's Multiple Listing Service shall be noticed to the delinquent Association Member in writing setting forth the amount owed and due date.

ARTICLE XII - OFFICERS AND DIRECTORS

Section 1. Officers. The elected officers of the Association shall be: a President, a President-Elect, a Vice President, a Treasurer and a Secretary, all of which shall be elected for a one year term. The President-Elect shall succeed to the office of President and the Vice President shall succeed to the office of President-Elect each year. The elected officers and the immediate Past President shall constitute the Executive Committee.

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 Secretary to keep the records of the Association and to carry on all necessary correspondence with the NAR and the AAR.

Section 3. Board of Directors. The governing body of the Association shall be a Board of Directors consisting of the elected officers, the immediate past President of the Association, twelve elected REALTOR® Members of the Association, one director selected by and representing the BCRC (Birmingham Commercial REALTORS® Council), the immediate past president of the Birmingham

Chapter of WCR, and one director at-large appointed as set forth below. Directors shall be elected to serve for terms of three years. As many directors shall be elected each year as are required to fill vacancies. (Amended 8/06)

(a) There shall be twelve elected directors, four to be elected by the members of the Association each year to serve for three years. The tenure for an elected director shall be limited to two consecutive three year terms. At the expiration of the term of each President of the Association, he/she shall become an ex-officio director of the Association for one year.

(b) The Board of Directors will appoint one (1) at-large African American director to serve for a three year term.

(c) The director selected by the BCRC will serve a one-year term. (Amended 8/06)

(d) The immediate past president of the Birmingham Chapter of WCR will serve a one-year term. (Amended 8/07)

Section 4. Election of Officers and Directors

(a) At least two months before the annual election, a Nominating Committee shall be formed. The Nominating Committee shall consist of three of the most immediate former Presidents who agree to serve, and four at-large Members. The most immediate former President who agrees to serve shall be the chair. The President will choose two of the at-large Members, one of whom must be an agent and the other must be a managing broker or an owner or officer of a company. The Directors will choose two of the at-large Members, one of whom must be an agent and the other must be a managing broker or an owner or officer of a company. All at-large Members chosen must have had sales and/or management experience and made significant contributions to the Association.

(b) The Nominating Committee shall meet at least four weeks prior to the election. Written notice of this meeting shall be given to all REALTOR[®] Members at least one week prior thereto, requesting that members submit, orally or in writing, suggested names of candidates for officer and director positions. The Board of Directors shall approve guidelines to govern the activities of the Nominating Committee and qualifications of candidates to be published to the membership. The Nominating Committee shall select one candidate for each officer position that is not succeeded and one candidate for each director position.

(c) The report of the Nominating Committee shall be mailed or electronically transmitted to each REALTOR[®] Member at least three weeks preceding the election. Additional candidates for the offices to be filled may be placed in nomination by petition signed by at least ten percent (10%) of the REALTOR[®] Members. The petition shall be filed with the Chief Staff Executive at least two weeks before the election. The Chief Staff Executive shall send notice of such additional nominations to all Members eligible to vote before the election.

(d) At least one month prior to the date of the election, the President shall appoint from among the REALTOR[®] Members entitled to vote an Election Commissioner and two Assistant Commissioners (the "Commissioners"), who shall supervise and conduct the election. No appointee as Commissioner may be an officer, director, candidate or member of the Nominating Committee. The final vote count and membership quorum shall be validated by the Election Commissioner, who shall verify the results of the election to the President in writing prior to adjournment of the annual meeting. If a vacancy occurs in any of the Commissioner positions, or if a Commissioner is absent from the membership election meeting, the President shall promptly appoint a new Commissioner to the vacant position.

(e) At the annual membership meeting voting shall be by written ballot, which may be combined with a proxy. A copy of the written ballot, listing the names of all candidates and the offices for which they are nominated and containing appropriate voting instructions, shall be distributed to each REALTOR[®] Member directly or through Designated REALTORS[®] at least seven (7) days prior to the election. The ballot may be cast in person or by any means acceptable to the Board of Directors and described in the voting instructions. Each such Member may vote for no more than the total number of director positions to be filled in that election, and for only one candidate for each officer position. If there are more candidates for the director positions than there are positions to be filled, the candidates receiving the most votes for those positions shall be deemed elected.

(f) Any ballot that is marked for too many candidates or that is not properly completed and signed by the member will be disqualified and not counted. Any dispute as to the right of a Member to vote, validity or effect of a ballot, or method or results of the vote count shall be decided by majority vote of the commissioners, whose decision shall be final and conclusive.

(g) In the event of a tie vote for a position, the President shall immediately choose one of the candidates receiving the tie vote by lot in the presence of all the Members then present at the polling place and the candidate so selected shall be deemed elected.

(h) Persons casting ballots in accordance with this Article by proxy shall be deemed present in determining whether a quorum exists at the annual election meeting solely for the purposes of permitting the election to go forward. No business other than the election shall be conducted at the meeting unless a quorum is present in person or by proxy.

Section 5. Vacancies. Vacancies among the officers and the Board of Directors shall be filled by the Board of Directors until the next annual election. The nominating committee shall select a candidate for each unexpired director term to be filled at the annual election.

Section 6. Resignation and Removal From Office.

(a) An Officer or Director shall be deemed to have submitted a resignation from his/her elected or appointed positions upon the occurrence of any of the following:

(1) Failure to attend three consecutive Board of Directors meetings without an excused absence acceptable to the majority of the Board of Directors; or

(2) Convicted of a felony; or

(3) Incapacity by reason of mental or physical condition to the extent that the Officer or Director is unable or unwilling to fulfill the duties of the office for a period of ninety (90) days or more; or

(4) Failure to remain qualified as a REALTOR[®] Member; or

(5) Failure to abide by the Code of Ethics of the NAR, or by the Constitution, Bylaws and Rules and Regulations of the Local, State and National Associations, which results in a suspension of or expulsion from membership in the Association.

(6) Upon the suspension or revocation of his/her real estate license by the Alabama Real Estate Commission, whether the suspension or revocation is appealed, stayed or waived, unless reversed on motion of the Executive Committee with the approval of a two-thirds (2/3's) majority of the Board of Directors.

(b) Officers and Directors may be removed from their respective offices on motion of the Executive Committee and by approval of a two-thirds (2/3's) majority vote of the Board of Directors. After the filing of a motion by the Executive Committee and before the vote of the Board, the officer or director shall have the opportunity to come before the Board to explain why he or she should not be removed from office.

(c) Resignations shall become effective only when accepted by the Board of Directors.

Section 7. Chief Staff Executive. The Executive Committee may employ, establish the duties in writing and fix the salary of an Executive Officer, who shall be the chief administrative officer of the Association. The Chief Staff Executive 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. The compensation package of all employees shall be approved by the Board of Directors as a whole, in lieu of individual employee review.

ARTICLE XIII - MEETINGS

Section 1. Annual Meetings. The annual membership meeting of the Association shall be held during August or September of each year, the date, place, and hour to be designated by the Board of Directors.

Section 2. Meetings of Directors. The Board of Directors shall designate a regular time and place of meetings. Absence from three consecutive regular meetings without an excuse deemed valid by the Board of Directors shall be construed as resignation. The President or three directors may call a special meeting of the Directorate. A quorum for the transaction of business shall consist of fifty percent (50%) of the directors.

Section 3. Other 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 ten percent (10%) of the REALTOR[®] Members.

Section 4. Notice of Meetings. Except for committee meetings, written notice shall be given to every Member entitled to participate in the meeting at least one week preceding all meetings. If a special meeting, it shall be accompanied by a statement of the purpose of the meeting.

Section 5. Quorum. A quorum for the transaction of business shall consist of ten percent (10%) of the REALTOR[®] Members.

Section 6. Electronic Transaction of Business. To the fullest extent permitted by law, the Board of Directors or membership may conduct business by electronic means.

Section 7. Notice. "Notice" as used throughout these Bylaws includes but is not limited to fax, publication in a newsletter, email, U. S. mail.

ARTICLE XIV - COMMITTEES

Section 1. Standing Committees. The President shall appoint from among the REALTOR[®] Members, subject to confirmation by the Board of Directors, the following standing committees, and such other committees as may be approved by the Board of Directors: Grievance, and Professional Standards.

Section 2. Special Committees. The President shall appoint such other committees as he/she deems advisable, subject to the following approval. Each such committee, its purposes, membership, and budget requirements to support and staff it shall first be approved by the Executive Committee and Board of Directors. Such committees shall be temporary committees.

Section 3. Organization. All committees shall be of such size and shall have such duties, functions and powers as assigned by the President and the Board of Directors, except as otherwise provided in these Bylaws.

Section 4. President. The President shall be an ex-officio member of all standing committees and shall be notified of their meetings.

Section 5. Action without Meeting. Any committee may act by unanimous consent in writing without a meeting. The consent shall be evidenced by one or more written approvals, each of which sets forth the action taken and bears the signature of one or more of the members of the committee.

ARTICLE XV - FISCAL AND ELECTIVE YEAR

Section 1. The fiscal and elective year of the Association shall be the calendar year, January 1st through December 31st.

ARTICLE XVI - RULES OF ORDER

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

ARTICLE XVII – AMENDMENTS

Section 1. These Bylaws may be amended by the majority vote of the Members 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, except that the Board of Directors may, at any regular or special meeting of the Board of Directors at which a quorum is present, approve amendments to the Bylaws which are mandated by NAR policy.

Section 2. Written notice of all meetings at which amendments are to be considered shall be given to every REALTOR[®] Member at least one 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 NAR.

ARTICLE XVIII - 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 AAR or, within its discretion, to any other non-profit tax exempt organization.

ARTICLE XIX - MULTIPLE LISTING SERVICE

Section 1. Authority. The Association shall maintain for the use of its Members a Multiple Listing Service which shall be a lawful corporation of the State of Alabama, all the stock of which shall be owned by this Association.

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 nonagency 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 bona fide 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).

Section 3. Governing Documents. The Board of Directors shall cause any Multiple Listing Service established by it pursuant to this Article to conform at all times its Articles of Incorporation, Constitution and Bylaws, Rules and Regulations, Policies, Practices, and Procedures and to the Constitution and Bylaws, Rules and Regulations, and Policies of the NAR.

Section 4. Participation. Any REALTOR® Member of this Association 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 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 the Association's 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 or published by the Association's Multiple Listing Service where access to such information is prohibited by law. (Amended 11/08)

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)

*Any applicant for MLS participation and any licensee (including licensed or certified appraisers) affiliated with an MLS Participant who desires access to and use of MLS-generated information shall complete an orientation program of not more than eight (8) classroom hours devoted to the MLS Rules and Regulations and computer training related to MLS information entry and retrieval within ninety (90) days after access has been provided.

Section 5. Nonmember Participation Rights (“Open MLS”):

(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’s 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’s 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)

(b) The Membership Committee will also consider the following in 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 any other 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’s MLS.

Section 6. Access to Comparable and Statistical Information. Association members who are actively engaged in real estate brokerage, management, mortgage financing, appraising, land development or building, but who do not participate in the MLS, are nonetheless entitled to receive, by purchase or lease, all information other than current listing information that is generated wholly or in part by the MLS including “comparable” information, “sold” information, and statistical reports. This information is provided for the exclusive use of Association Members and individuals affiliated with Association Members who are also engaged in the real estate business and may not be transmitted, retransmitted, or provided in any manner to any unauthorized individual, office or firm except as otherwise specified in the MLS Rules and Regulations. Association Members who receive such information, either as an Association service or through the Association’s MLS, are subject to the applicable provisions of the MLS Rules and Regulations whether they participate in the MLS or not.

Section 7. 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.

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Statements of Membership Policy Related to Board of Choice

(The following policy statements are informational, and not part of the Bylaws.)

That, effective upon approval by the Board of Directors, the following statements of membership policy and amendments to the Model Association Bylaws to implement the board of choice proposal be adopted.

1. The primary board of affiliation elected by a REALTOR® must be in the state where the REALTOR® is licensed and maintains his/her principal place of business. Licensees affiliated with a REALTOR® firm may choose as their “primary” board any board in the state where the firm maintains a “Designated” REALTOR®.
2. Membership shall be available in a secondary board on terms and conditions no more stringent than the requirements established in the Association’s Bylaws for REALTOR® membership. The privileges of membership shall be the same including the right to vote and hold office. Membership will be granted to individuals who hold REALTOR® membership in their primary board without any requirement that the Designated REALTOR® they are licensed or affiliated with hold membership in the secondary board. However, MLS services will only be available if the Designated REALTOR® participates in the MLS. Board dues shall not include a national allocation since NAR dues have been paid through the member’s primary board. A state allocation may only be included if the member’s primary board is located in a different state.
3. REALTORS® shall be entitled to purchase services from boards other than their primary board without the necessity of holding membership in those boards. Service fees will be determined by the individual boards. However, the board may require that a REALTOR® (principal) be licensed in the state as a condition of MLS participation. (Adopted 2/94; Amended 11/96)

Concerning Board of Choice Across State Lines

That the membership choices currently provided under Board of Choice be expanded across state lines as follows: Members may join a primary board across contiguous state lines. State association membership would be in the state where primary board membership is held. (Adopted 11/95)

Portability of Membership Records (Files)

In order to facilitate timely processing of applications for membership and to assist associations in determining an applicant’s qualification for REALTOR® membership, associations shall, based on a request from another association, share information about current or former members. Minimum “core” member’s information shall include:

1. Previous applications for membership;
2. All final findings of Code of Ethics violations and violations of other membership duties within the past three (3) years (when available);
3. Pending complaints alleging violations of the Code of Ethics or alleging violations of other membership duties;

4. Incomplete or (pending) disciplinary measures;
5. Pending arbitration requests (or hearings);
6. Unpaid arbitration awards or unpaid financial obligations to the Association or its MLS.

An Association may, at its discretion, consider information received from other associations when determining whether an applicant satisfies the Association's membership requirements as established in the association's Bylaws (not to exceed NAR's Membership Qualification Criteria). (Adopted 2/96)

Clarification of the Term "Principal"

The term "principal" as used in the NAR Constitution and Bylaws and in other relevant policies, includes licensed or certified individuals who are sole proprietors, partners in a partnership, officers or majority shareholders of a corporation, or office managers (including branch office managers) acting on behalf of principals of a real estate firm. (Adopted 11/96)

Secondary Membership in a Board/Association

When a member has joined a primary association and paid local, state, and national dues, secondary membership may be held in a local association in another state (provided the applicant meets all of the qualifications for membership) without holding membership in that state association, or alternatively, secondary membership may be held directly in the state association without holding membership in a local association in that state. (Adopted 11/96)

Membership Requirements Related to Multiple Office Locations

When considering an applicant for REALTOR® membership who is a principal in a real estate firm, associations have an obligation to determine that all of the principals of the real estate firm who are actively engaged in the real estate business in the state are either applying for or already hold REALTOR® membership (or Institute Affiliate membership, if applicable) in a board or association. (Adopted 11/96)

If an association (local, state, national) is notified by another association that a REALTOR® member has an office location elsewhere in the state that is not functioning as a "REALTOR®-office" (i.e., licensees affiliated with the office are not members or are not accounted for under the DR dues formula) the association where the REALTOR® holds primary membership shall be responsible, in cooperation with the state and national associations, for ensuring compliance with applicable membership policies (i.e., that said licensees hold membership in the REALTOR®'s primary association - or some other association in the state where the firm maintains a designated REALTOR® presence - or that dues have been paid to an association based on non-member licensees affiliated with the office. (Adopted 11/96)

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FIRST AMENDMENT
TO
CONSTITUTION AND BYLAWS OF THE BIRMINGHAM ASSOCIATION OF
REALTORS® , INC.

THIS FIRST AMENDMENT to The Constitution and Bylaws of The Birmingham Association of Realtors®, Inc. (the “Bylaws”) is made this ____ day of _____, 2014 by the The Birmingham Association of Realtors®, Inc. an Alabama non-profit corporation (the “Association”).

WITNESSETH

WHEREAS, the Bylaws govern the Association;

WHEREAS, the Association desires to amend the Bylaws as set forth below; and

WHEREAS, pursuant to Article XVII of the Bylaws, the members of the Association have the right, power, and authority to amend the Bylaws and have by majority vote at a duly called and noticed meeting voted in favor of amending the Bylaws as set forth herein in accordance with said Article XVII.

NOW, THEREFORE, the Bylaws are hereby amended as follows:

1. The Association, pursuant to Article XVII of the Bylaws, hereby amends Article XII of the Bylaws as follows:

a. The paragraph beginning “Section 3. Board of Directors” is deleted in its entirety and the following is substituted in lieu thereof (all subsections under the existing Section 3 shall remain, unless specifically amended below):

Section 3. Board of Directors. The governing body of the Association shall be a Board of Directors consisting of the elected officers, the immediate past President of the Association, twelve elected REALTOR® Members of the Association, one director selected by and representing the BCRC (Birmingham Commercial REALTORS® Council), one director at-large appointed as set forth below, and the current president of the Greater Alabama Multiple Listing Service, Inc. (“MLS”) provided that such person is a Member of the Association and remains a Member. Directors shall be elected to serve for terms of three years. As many directors

shall be elected each year as are required to fill vacancies.

- b. The following is hereby added to the end of the existing Section 3(a):

No more than three (3) of the elected directors may be affiliated with the same commercial brand, provided that any change in the affiliation status of any such elected director during his or her term, shall not affect the right for such director to complete his or her term (herein this restriction shall be referred to as the “Brand Restriction”). Notwithstanding anything contained in this subsection to the contrary, all directors shall comply with all Rules and Regulations of the Association, including, without limitation any conflict of interest policy adopted by the Association.

- c. The existing Section 3(d) is hereby deleted in its entirety and the following new Section 3(d) is substituted in lieu thereof:

(d) Provided that such person is a Member of the Association and remains a Member, the current president of the MLS shall serve until such time as he or she is no longer the president of the MLS, and at that time, provided that such person is a Member of the Association and remains a Member, the new president of the MLS shall begin his or her term and shall serve until such time as he or she is no longer the president of the MLS.

- d. The existing Section 4(a) is hereby deleted in its entirety and the following new Section 4(a) is substituted in lieu thereof:

(a) No later than three months prior to the general election, a Nominating Committee of six Members shall be appointed equally by the President, President-Elect and the immediate past President with the approval of the Board of Directors. The Nominating Committee shall elect one of its members to serve as Chairperson.

- e. The existing Section 4(b) is hereby deleted in its entirety and the following new Section 4(b) is substituted in lieu thereof:

(b) The Nominating Committee shall seek and interview applicants for Officer and Director positions, and shall recommend one candidate for each office or open position no later than four weeks prior to the annual meeting of the Members. The Nominating Committee should consult with the Nominating Committee for MLS to attempt to nominate one director each year to serve on both the Association Board of Directors and the MLS Board of Directors. In selecting the candidates for the director's position(s), the Nominating Committee shall assume that all such nominees will be elected to the Board of Directors and, in doing so, shall be mindful not to nominate individuals who, if elected, would violate the Brand Restriction requirement.

f. The existing Section 4(c) is hereby deleted in its entirety and the following new Section 4(c) is substituted in lieu thereof:

(c) The report of the Nominating Committee along with the official ballot shall be mailed or electronically transmitted to each REALTOR® Member at least three weeks preceding the election. Provided that such person is a Member of the Association, any candidate not selected by the Nominating Committee may request to be added to the ballot, provided that he or she has completed the application process and has been interviewed by the Nominating Committee. This request must be submitted no later than three weeks prior to the annual meeting of the Members. Notwithstanding the foregoing, at no time shall any at-large individual be included on the ballot for a position on the Board of Directors if the inclusion of such person would violate the Brand Restriction requirement when either (1) one takes into consideration the make-up of the existing Board of Directors as is, or (2) one takes into consideration the make-up of the resulting Board of Directors if all board nominations from the Nominating Committee have been appointed. For example, if there is one existing REALTOR® Member on the Board of Directors from Brand A and there are two

REALTOR® Members included in the Nomination Committee recommendation from Brand A, then no REALTOR® Member from Brand A is qualified to be included at large.

g. A new Section 4(i) is hereby added as follows:

(i) In the event that two or more individuals affiliated with the same brand are included on the ballot as outlined in Section 4(c) above, and when taking into consideration the provisions of Section 4(c)(1) and Section 4(c)(2) above, the addition of less than all of such individuals to the Board of Directors would not be a violation of the Brand Restriction requirement but the addition of all such individuals to the Board of Directors (if they all were to win) would result in a violation of the Brand Restriction requirement, then in such case, said individuals shall be deemed to be running for a lesser number of slots on the Board of Directors so that there would not be a resulting violation of the Brand Restriction requirement if such slots were filled with individuals from the same brand. For example, if there is one existing REALTOR® Member on the Board of Directors from Brand A, there are no REALTOR® Members included in the Nomination Committee recommendation from Brand A, and there are three REALTOR® Members from Brand A that are included at large, then (1) the three individuals included at large shall be deemed to be running for two slots on the Board of Directors, and (2) the two individuals at large who receive the largest number of votes shall win the two positions. In the event of a tie between the individuals at large under this subsection, the provisions of Section 4(g) shall control.

2. Except for the aforesaid, the terms and conditions of the Bylaws shall continue in full force and effect without any other changes whatsoever.

IN WITNESS WHEREOF, the Association has adopted and executed this First Amendment to the Constitution and Bylaws of The Birmingham Association of Realtors®, Inc. on the ___ day of _____, 2014.

THE BIRMINGHAM ASSOCIATION OF REALTORS®, INC.
an Alabama non-profit corporation

By: _____

Name: _____

Its: President

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that _____, whose name as President of The Birmingham Association of Realtors®, Inc. an Alabama nonprofit corporation, is signed to the foregoing First Amendment to Constitution and Bylaws of the Birmingham Association of Realtors®, Inc., and who is known to me, acknowledged before me on this day that, being informed of the contents of the above Amendment, he, as such officer and with full authority, executed the same voluntarily on the date the same bears date.

Given under my hand and official seal of office this _____ day of _____, 2014.

Notary Public
My Commission Expires:

[NOTARIAL SEAL]