



**CONSTITUTION & BYLAWS OF THE**

**BIRMINGHAM ASSOCIATION OF REALTORS®, INC.**

**ADOPTED MARCH 1, 2021**

**TABLE OF CONTENTS**

<b>ARTICLE I - NAME.....</b>	<b>2</b>
<b>ARTICLE II - OBJECTIVES.....</b>	<b>2</b>
<b>ARTICLE III - JURISDICTION.....</b>	<b>3</b>
<b>ARTICLE IV – MEMBERSHIP.....</b>	<b>3</b>
<b>ARTICLE V - QUALIFICATION ANDELECTION.....</b>	<b>4</b>
<b>ARTICLE VI - PRIVILEGES AND OBLIGATIONS.....</b>	<b>8</b>
<b>ARTICLE VII - COMMISSIONS ARE NEGOTIABLE.....</b>	<b>11</b>
<b>ARTICLE VIII - PROFESSIONAL STANDARDS AND ARBITRATION.....</b>	<b>11</b>
<b>ARTICLE IX - USE OF THE TERMS REALTOR® AND REALTORS®.....</b>	<b>11</b>
<b>ARTICLE X - STATE AND NATIONAL MEMBERSHIPS.....</b>	<b>12</b>
<b>ARTICLE XI - DUES AND ASSESSMENTS.....</b>	<b>12</b>
<b>ARTICLE XII - OFFICERS AND DIRECTORS.....</b>	<b>15</b>
<b>ARTICLE XIII - MEETINGS.....</b>	<b>17</b>
<b>ARTICLE XIV – COMMITTEES.....</b>	<b>18</b>
<b>ARTICLE XV - FISCAL AND ELECTIVE YEAR.....</b>	<b>19</b>
<b>ARTICLE XVI - RULES OF ORDER.....</b>	<b>19</b>
<b>ARTICLE XVII - AMENDMENTS.....</b>	<b>19</b>
<b>ARTICLE XVIII - DISSOLUTION.....</b>	<b>19</b>
<b>ARTICLE XIX - MULTIPLE LISTING SERVICE.....</b>	<b>20</b>
<b>Concerning Board of Choice Across State Lines.....</b>	<b>22</b>
<b>Portability of Membership Records (Files).....</b>	<b>22</b>
<b>Clarification of the Term "Principal".....</b>	<b>22</b>
<b>Secondary Membership in a Board/Association.....</b>	<b>22</b>
<b>Membership Requirements Related to Multiple Office Locations.....</b>	<b>22</b>

# **CONSTITUTION AND BYLAWS**

## **BIRMINGHAM ASSOCIATION OF REALTORS® , INC.**

February 25, 2021

### **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®” 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 NATIONAL ASSOCIATION OF REALTORS®.

#### **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 NATIONAL ASSOCIATION OF REALTORS®, thereby furthering their own objectives throughout the state and nation, as well as 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 NATIONAL ASSOCIATION OF REALTORS®.

## **ARTICLE III - JURISDICTION**

### **SECTION 1.**

The territorial jurisdiction of the Association as a member of the NATIONAL ASSOCIATION OF REALTORS® shall include Jefferson, Randolph, Blount, Clay, and Shelby Counties and from the NW corner of Chilton County to the NE Corner of Chilton County abutting Shelby County border towards the boundary of Coosa County South to the boundary of Goose Pond Creek. Following Goose Pond Creek through the city of Clanton Connecting to HWY 22 at HWY 191 to Maplesville and HWY 139 connecting to HWY 183 to the NW corner of the Talladega Forest, Western boundary of the Talladega Forest to 139 N to the Chilton County line straight North to the NW Corner of Chilton County, AL.

### **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 NATIONAL ASSOCIATION OF REALTORS®, in return for which the Association agrees to protect and safeguard the property rights of the NATIONAL ASSOCIATION OF REALTORS® 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 an association of REALTORS® within the state or a state contiguous thereto 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.

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.
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 *National Association of REALTORS® 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, the state association and National Association.

4. **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.
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. 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.

**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. 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.

**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 NATIONAL ASSOCIATION OF REALTORS<sup>®</sup>, the Constitutions, Bylaws, and Rules and Regulations of the Association, the AAR and the NATIONAL ASSOCIATION OF REALTORS<sup>®</sup>, and if elected a Member, will abide by the Constitution and Bylaws, and Rules and Regulations of the Association, the AAR and the NATIONAL ASSOCIATION OF REALTORS<sup>®</sup>, and if a REALTOR<sup>®</sup> Member, will abide by the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS<sup>®</sup>, 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 NATIONAL ASSOCIATION OF REALTORS<sup>®</sup>, as from time to time amended.
  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<sup>®</sup> 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 NATIONAL ASSOCIATION OF REALTORS<sup>®</sup>, 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 a bankruptcy proceeding, 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:** Article IV, Section 2, of the NATIONAL ASSOCIATION OF REALTORS® 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 NATIONAL ASSOCIATION OF REALTORS®, 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 NATIONAL ASSOCIATION OF REALTORS®, and by the Constitution, Bylaws, and Rules and Regulations of the Association, the AAR, and the NATIONAL ASSOCIATION OF REALTORS® .
- 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 TO MEMBERSHIP**

The procedure for election 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. If the association has adopted provisional 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 (for example, completion of a mandatory orientation program) within 60 days from the association's receipt of their application, membership may, at the discretion of the Board of Directors, be terminated. 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 and shall be advised by written notice.
- 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. (Adopted 1/98, Amended 1/05/Amended 1/17)

### **SECTION 4. NEW MEMBER CODE OF ETHICS ORIENTATION:**

- A. 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 (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 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.

### **SECTION 5. CONTINUING MEMBER CODE OF ETHICS TRAINING:**

Effective January 1, 2019, through December 31, 2021, 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 REALTOR®

association, the State Association of REALTORS®, or the NATIONAL ASSOCIATION OF REALTORS®, 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 11/14, Amended 11/16, Amended 2/21).

## **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. A REALTOR® who is transferring his/her license from one firm comprised of REALTOR® principals to another firm comprised of REALTOR® principals shall be subject to all of the privileges and obligations of membership during the period of transition. If the transfer is not completed within 30 days of the date the Association is advised of the disaffiliation with the current firm, membership will terminate automatically unless otherwise so directed by the Board of Directors. (Amended 1/98)
- C. 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 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 AAR, and the NATIONAL ASSOCIATION OF REALTORS®.

### **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 NATIONAL ASSOCIATION OF REALTORS® as set forth in the Code of Ethics and Arbitration Manual of the National Association.

### **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 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 ethics 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®.

- A. If a member resigns or otherwise causes membership to terminate, the duty to submit to arbitration (or 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®. (Amended 1/00 and 11/11 and 5/16)

### **SECTION 6. REALTOR® MEMBERS**

- A. REALTOR® members, whether primary or secondary in good standing, are entitled to vote and 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 "Obligations 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.
- B. 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.

- C. 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 NATIONAL ASSOCIATION OF REALTORS® except cannot serve as the President of the Association. Institute Affiliate members shall not use the term REALTOR® or REALTORS®, nor the imprint of the emblem seal of the NATIONAL ASSOCIATION OF REALTORS®.

#### **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® 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.

## **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 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 NATIONAL ASSOCIATION OF REALTORS® as from time to time amended, which by this reference is 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.**

It shall be the duty and responsibility of every REALTOR® Member of this Association to safeguard and promote the standards, interests, 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 also must abide by the governing documents 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.

## **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 NATIONAL ASSOCIATION OF REALTORS®* 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 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 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® principal member 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.

In the case of a REALTOR® principal member 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 holds REALTOR® membership. If a firm, partnership, or corporation operates additional places of business in which no principal holds REALTOR® Membership, the term REALTOR® or REALTORS® may not be used in any reference to those additional places of business.

## **ARTICLE X - STATE AND NATIONAL MEMBERSHIPS**

### **SECTION 1.**

The Association shall be a member of the NATIONAL ASSOCIATION OF REALTORS® and the Alabama Association of REALTORS®. By reason of the Association's membership, each REALTOR® member of the Association shall be entitled to membership in the NATIONAL ASSOCIATION OF REALTORS® and the AAR without further payment of dues. The Association shall continue as a member of the state and National, unless by a majority vote of all its REALTOR® members, decision is made to withdraw, in which case the state and National 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 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 OF REALTORS® 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.

## **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 (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. 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. DESIGNATED 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. 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 or a state contiguous thereto and who, as a principal is actively engaged in the real estate profession as defined in Article III, Section 1, of 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 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®. Designated REALTORS® shall notify the association within three (3) days of any change in status of licensees in a referral form.

The exemption for any licensee included on the certification from 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 does for the current fiscal year shall be payable,

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 REALTOR® members 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 NATIONAL ASSOCIATION OF REALTORS®
- 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 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.

### **SECTION 7. REALTOR EMERITUS.**

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. (Amended 11/2013)

**NOTE 1:** 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."

## **ARTICLE XII - OFFICERS AND DIRECTORS**

### **SECTION 1. OFFICERS.**

The elected officers of the Association shall be a President, a Vice President, a Treasurer, and a Secretary, all of which shall be elected for a one (1) year term. The Vice President shall succeed to the office of President each year, the Treasurer shall succeed to the office of Vice President, and the Secretary shall succeed to the office of Treasurer. 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 NATIONAL ASSOCIATION OF REALTORS® 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 (12) elected REALTOR® Members of the Association, the current Chairman of the Birmingham Commercial REALTORS® Committee (BCRC), one director at-large appointed as set forth below, and the current president of the Greater Alabama Multiple Listing Service, Inc. ("MLS"). Directors shall be elected to serve for terms of three (3) years. As many directors shall be elected each year as are required to fill vacancies. (Amended 2/2015)

- A. There shall be twelve (12) elected directors, four (4) to be elected by the members of the Association each year to serve for three (3) years. The tenure for an elected director shall be limited to two (2) consecutive three (3) 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 (1) year.
- B. The Board of Directors will appoint one (1) at-large African American director to serve in the Carl Scott Chair for a three (3) year term.
- C. The BAR Large Board Representative to NATIONAL ASSOCIATION OF REALTORS®, will have an ex-officio seat on the Board of Directors

- D. 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, 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.

#### **SECTION 4. ELECTION OF OFFICERS AND DIRECTORS**

- A. No later than three (3) months prior to the general election, a Nominating Committee shall be appointed per policy.
- B. The Nominating Committee shall seek and interview applicants for Officer and Director positions and shall recommend one (1) candidate for each office or open position no later than four (4) 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 (1) director each year to serve on both the Association Board of Directors and the MLS Board of Directors.
- 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 (3) 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 (3) weeks prior to the annual meeting of the members.
- D. At the annual membership meeting voting shall be by electronic vote. A copy of the written electronic 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 deadline. Each such member may vote for no more than the total number or 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.
- E. 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 Election Task Force, whose decision shall be final and conclusive.
- F. The President, with the approval of the Board of Directors, shall appoint an Election Task Force of two (2) REALTOR members to certify all votes cast.
- G. In case of a tie vote, the issue shall be determined by a special election.

#### **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. An event described in Article XIII Section 8 herein (Adopted 7/2017)
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<sup>®</sup> member; or
5. Failure to abide by the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS<sup>®</sup>, 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 of Directors, the officer or director shall have the opportunity to come before the Board of Directors 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 a chief staff executive, 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 the Fall 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. The President or at least three (3) directors may call a special meeting of the Board of Directors. A quorum for the transaction of business shall consist of fifty percent (50%) of the directors. (Amended 7/2017).

#### **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<sup>®</sup> 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 (1) 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 five percent (5%) of the REALTOR® members (Amended 2/21).

#### **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.

#### **SECTION 8. DIRECTOR AND OFFICER ATTENDANCE POLICY.**

- A. Purpose. This Director and Officer Attendance Policy is intended to encourage and facilitate full contribution of all Directors and Officers. (Adopted 7/2017)
  
- B. Definition of a Director and Officer Attendance Problem.
  - (1) An Officer’s or a Director’s attendance problem exists if said party has three (3) absences to properly called meetings during a rolling twelve (12) month period, none of which are due to a medical hardship (shown by a written physician’s excuse), death of an immediate family member, or travel associated with the Association. An exception exists for absences that occur when a published meeting date has been changed with less than a 60-day notice. (Adopted 7/2017)
  
- C. Response to a Director and Officer Attendance Problem. If a Director and Officer attendance problem exists, the Director or Officer, as applicable, shall be deemed to have submitted a resignation from his or her elected or appointed position effective as of the date of the third meeting missed and the chief staff executive or the organization will promptly notify the individual in writing of such deemed resignation and the Board of Directors shall begin to take steps to replace such individual. Upon receipt of such notification from the chief staff executive, the subject Director or Officer shall be granted the opportunity to request to come before the Board of Directors and explain why he or she should not be removed from his or her position, provided that such request is delivered to the chief staff executive prior to the earlier of (a) thirty (30) days following the deemed submission of his or her resignation, or (b) the installation of his or her replacement (the “Request Deadline”). If the subject Director or Officer does not deliver his or her request prior to the Request Deadline, the party shall be deemed to have waived his or her right to request a review by the Board of Directors. (Adopted 7/2017)

### **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.**

All committees, or special task force groups, shall be of such size and shall have duties, functions, and powers as assigned by the President with the approval of the Board of Directors except as otherwise provided in these Bylaws.

### **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 (1) or more written approvals, each of which sets forth the action taken and bears the signature of one (1) or more of the members of the committee. (Housekeeping changes can be made as part of NATIONAL ASSOCIATION OF REALTORS® updates)

## **ARTICLE XV - FISCAL AND ELECTIVE YEAR**

### **SECTION 1.**

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

## **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 NATIONAL ASSOCIATION OF REALTORS® policy SECTION 2.

Written notice of all meetings at which amendments are to be considered shall be delivered to every REALTOR® member at least one (1) week prior to the meeting.

### **SECTION 2.**

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 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 NATIONAL ASSOCIATION OF REALTORS®.

### **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 the Multiple Listing Service 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)

#### **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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