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**The National Association of REALTORS® (NAR) has settled a major lawsuit with the Department of Justice regarding NAR’s MLS Rules. The settlement in *United States of America v. National Association of REALTORS®*, Civil Action #05C5140, has allowed NAR to change the definition of a participant in an MLS. Commencing on May 27, 2009, a member, in order to be deemed a Participant, must be actively engaged in making or accepting offers of cooperation and compensation to other Participants.**

One of the most important changes in implementing the MLS VOW Model Rules was the amendment to the definition of an MLS Participant. Under the former definition of participation, as set forth in Multiple Listing Policy Statement 7.9, definition of MLS “Participant”, individuals were eligible for participation if they held a current, valid real estate broker’s license, and were *capable* of offering and accepting cooperation and compensation to and from other participants, or were licensed or certified by an appropriate State regulatory agency to engage in the appraisal of real property.

Under the new definition of participation, the Participant must be “actively engaged” in making or accepting offers of cooperation and compensation to other participants. Under the revised MLS Bylaws, “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 a potential Participant that operates a real estate business on a part time, seasonal, or similarly time limited basis, or that has its business interrupted for periods of relative inactivity occasioned by market conditions. Similarly, the requirement is not intended to deny MLS participation to a Participant, or a 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.

Under the new definition a Participant must be an individual who actively endeavors to make or accept offers of cooperation and compensation with respect to properties of the type that are listed in the MLS in which that person participates. It should be noted that an MLS is not permitted to deny participation, of a Participant or potential Participant that operates a Virtual Office Website, if that Participant or potential Participant actively endeavors to make or accept offers of cooperation and compensation. The MLS may evaluate the Participant to determine if he or she actively endeavors during the operation of its real estate business, to offer to or accept cooperation and compensation, only in situations where the MLS has a reasonable basis for believing that the potential Participant is in fact not doing so.

The new definition of an MLS Participant has been adopted by your MLS and every Association that owns an MLS, and it applies to Participants immediately, upon adoption. Enforcement will commence May 27, 2009.

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