



**Revisions to the**  
**MLS Hawaii, Inc.**  
**d/b/a Hawaii Information Service Rules**  
**Effective July 1, 2018**

Following are the recent red-lined excerpts of the revisions to the HIS MLS Rules. The most current version of the rules is posted in REsearch.

The revision to Section 1.04 exempts waived licensees from having to complete an orientation program. They will be required to complete the program in the event that their waivers are revoked. The referenced Section 13.05 is a new section that has been added to address our need to make full waivers available to licensees who sign up with other MLSs.

**Section 1.04. Orientation.** Any applicant for participation in the service and any subscriber affiliated with a participant who has access to and use of listing records and listing compilations must complete an orientation program of 3 classroom hours devoted to these rules and computer training related to information entry and retrieval and the operation of the service within 45 days after the service has provided access. The previous sentence applies to licensees subject to fee waiver under Section 13.05 only if their waiver status is revoked.

**Revision to Article II. Definitions and usage.** Under the new NAR Policy, all references to “jurisdiction” must be changed to “service area”

“JurisdictionService Area” means the State of Hawaii.

**Added to Article II. Definitions and usage.** “, is a definition for “Mandatory-Listing Area” to define the areas that listings are required to be submitted to the service.

“Mandatory-Listing Area” means the islands of Hawaii and Kauai.

**Section 3.02 Required listings** was revised to incorporate the new definition “Mandatory-Listing Area” and to not permit any licensee who is waived to submit listings to the service.

**Section 3.02. Required listings.** A participant must submit all required listings to the service, except as otherwise provided in these Rules. A “required listing” is one where the listed property is listed subject to a real estate broker’s license, is of a required property type, and is located on the island of Hawaii or Kauai within the Mandatory-Listing Area. “Required property type” means single family homes, condos, vacant land, leased/fee interest, and business and commercial properties for sale. In the event that the listing of a participant has as its listing agent or salesperson licensee who is subject to a fee waiver under Section 13.05, then that listing shall be ineligible for submission to the service.

The following revision to Section 3.19 is to clarify that the conditions under which a participant may solicit a contract on a property that another participant has an active listing as permitted under the Code of Ethics still applies to waived licensees.

**Section 3.19. Solicitation of listing filed with the service.** A participant may solicit a contractual agreement on property for which another participant has an active listing only if the solicitation would be consistent with Article 16 of the REALTORS® Code of Ethics, its Standards of Practice, and its Case Interpretations. The service will construe this section in a manner consistent with Article 16 of the Code of Ethics and particularly Standard of Practice 16-4. This Section does not preclude solicitation of listings under the circumstances otherwise recognized by the Standards of Practice related to Article 16 of the Code of Ethics. The prohibition in the previous sentence applies to licensees affiliated with a participant who are subject to a fee waiver under Section 13.05.

This new Section 4.11 clarifies that a listing broker does not have an obligation to compensate a cooperating broker if the affiliated salesperson with the cooperating broker was subject to a fee waiver as determined in arbitration.

Section 4.11. No Compensation for Fee-Waived Selling Salesperson. The listing broker’s obligation to compensate any cooperating broker as the procuring cause of the sale (or lease) shall be excused if it is determined through arbitration that the selling salesperson affiliated with the cooperating broker was subject to fee waiver under Section 13.05 at any time between the offer to purchase and the closing of the sale.

**The revision to Section 7.01 emphasizes that only licensees entitled to access to MLS data are permitted to use it.**

**Section 7.01. Confidentiality of MLS information.** All information the service provides to the participants is official information of the service. This information is proprietary, confidential, and exclusively for the use of participants, associate and support subscribers entitled to access.

**Revisions to Section 8.01 and 8.03 excludes waived licensees from access to the MLS data.**

**Section 8.01. Service for participants only.** No participant, associate subscriber, or support subscriber may make any listing submitted to the service available to any broker or firm that is not a participant in the service without the prior consent of the listing broker. A participant with licensees who are subject to a fee waiver under Section 13.05 may not make available to those licensees listings of other brokers in the MLS. The preceding sentence does not prohibit a licensee from accessing listing records from another MLS or from any other source lawfully available to the licensee.

**Section 8.03. Access for associate subscribers and support subscribers.** Each participant is entitled to lease from the service a number of login ID/passwords to each listing compilation sufficient to provide the participant and each associate subscriber or support subscriber (if authorized by the service) affiliated with the participant access to the listing compilation, but not including any licensee subject to fee waiver under Section 13.05. The participant shall pay for each such access the rental fee set by the service. By these leases, participants acquire only the right to use the listing compilation in accordance with these rules and regulations.

**The following revisions excludes fee-waived licensees from being eligible to display HIS IDX listings on their websites.**

**Section 10.14. IDX under participant control.** Non-principal brokers and sales licensees affiliated with IDX participants may display information available through IDX on their own websites subject to their participant's consent and control and the requirements of state law and/or regulation. The previous sentence does not apply to licensees subject to fee waiver under Section 13.05.

**Section 11.01. Definitions and Usage.** (NAR Section 19.1)

- a. "VOW" or "Virtual Office Website" is a participant's Internet website, or a feature of a participant's website, through which the participant is capable of providing real estate brokerage services to consumers with whom the participant has first established a broker-consumer relationship (as defined by state law) where the consumer has the opportunity to search MLS Listing Information, subject to the participant's oversight, supervision, and accountability. References to "VOW" and "VOWs" include all VOWs, whether operated by a participant, by a non-principal broker or sales licensee, except one subject to fee waiver under Section 13.05, or by an Affiliated VOW Partner ("AVP") on behalf of a participant.
- b. "Participant," as used in Article XI of these rules, includes a participant's affiliated non-principal brokers and sales licensees other than those subject to fee waiver under Section 13.05 – except when the term is used in the phrases "participant's consent" and "participant's oversight, supervision, and accountability". A non-principal broker or sales licensee affiliated with a participant may, with his or her participant's consent, operate a VOW. Any VOW of a non-principal broker or sales licensee is subject to the participant's oversight, supervision, and accountability.

**This language added to Sections 13.01 and the revisions to Section 13.02 reflect the new waiver policy described in Section 13.05. The monthly participation fee per office may be assessed for all licensees, unless a waiver is filed.**

**Section 13.01. Obligation to pay fees.** In consideration for participation in the service, each participant must pay all fees set out in the service's current schedule of fees, which may be amended from time to time by the service with notice to all participants. The fees applicable may, but need not, include application fees, initial participation fees, recurring participation fees, listing fees, computer access fees, fees for associate subscribers (except that this fee shall be waived for associate subscribers subject to a fee waiver under Section 13.05,) and support subscribers affiliated with participants, listing fees, printed compilation subscription fees, and optional service fees. Each participant is responsible for fees associated with associate subscribers, except that this fee shall be waived for associate subscribers subject to a fee waiver under Section 13.05, and support subscribers affiliated with it, if the schedule of fees provides for them.

**Section 13.02. Fees assessed for all subscribers.** The service may require each participant to lease a copy, or access code, or both, for each associate subscriber and support subscriber affiliated with the participant, except for any associate subscriber or support subscriber who is subject to a fee waiver under Section 13.05 engaged exclusively in a specialty of the real estate business other than listing, selling, or appraising the types of properties that are required to be submitted to the service, and who does not, at any time, have access to or use of any listing compilation.

**Section 13.04 was added to address waived Licensed Support Subscribers specifically. They are required to complete an application form that is different from the waiver form that is for licensees applying for full waivers.**

Section 13.04. Licensed Support Subscribers. Licensed Support Subscribers that do not actively engage in real estate selling and buying activities, and do not receive commissions or referral fees, but need access to the service to assist real estate brokers and salespersons with data entry, maintenance of listings, or research are eligible for reduced subscription fees. Submission of the service's License Support Subscriber Application is required for each Licensed Support Subscriber eligible under this section, which is subject to HIS Board of Directors approval.

**New Section 13.05 has been added to address the need to provide full waivers to licensees that do not participate in the real estate sales activity and those that have membership with other MLSs. It covers who is eligible for waivers, the process of application and approval of the waivers, the calculation of fees that may be assessed, restrictions while on waiver, and consequences in the event of waiver revocation.**

Section 13.05. Associate Subscriber Fee Waivers. MLS provides participants the option of a no-cost waiver of MLS fees, dues, and charges for the following:

- a. any licensee or licensed or certified appraiser in a participating office who can demonstrate subscription to a different MLS where the principal broker for the office also participates. MLS requires waiver recipients and their participants to sign a certification for nonuse of MLS services, which includes penalties and termination of the waiver if violated; or
- b. any licensed real estate broker or licensee who does not participate in real estate selling and buying activities, does not receive commission or referral fees, and is engaged exclusively in a specialty of the real estate business other than listing, selling, or appraising the types of properties that are required to be submitted to the service, including property managers, corporate, executive or administrative officers or managers, and time share agents.

Principal Brokers, Individual (Sole Owners) or Brokers-in-Charge (as displayed in the State of Hawaii Department of Commerce & Consumer Affairs Professional Vocational License search site) are not eligible for Support Subscriptions or Full Waivers.

Normally, under Sections 13.01 and 13.02, any per-subscriber fee is calculated based on each salesperson and licensed or certified appraiser affiliated with a participating office. The effect of fee waiver is that the number of subscribers in a participating office for purposes of any recurring per-subscriber fees paid by a participant under Sections 13.01 and 13.02 shall be reduced by the number of licensees and certified appraisers who are subject to waiver under this Section 13.05. For purposes of this Section 13.05 and all rule provisions referring to it, "licensee" refers to non-principal salespersons and licensed and certified appraisers. Section 13.05.1 sets out the conditions for fee waiver, Section 13.05.2 the process for obtaining and maintaining waivers, Section 13.05.3 circumstances under which waiver is revoked and consequences of revocation, and Section 13.05.4 the consequences of repeated violations of these policies.

Section 13.05.1 Conditions for Waiver. Fee waivers are available for non-principal broker and non-principal appraiser licensees in offices participating in MLS, provided the participant and any fee-waived licensee(s) meet all the following requirements:

- a. Any fee-waived licensee must be (i) a subscriber in another multiple listing service that will certify this information to this MLS on the frequency established by this MLS or (ii) engaged exclusively in a specialty of the real estate business other than listing, selling, or appraising the types of properties that are required to be submitted to the service.
- b. During any period for which a licensee's fees are waived, the licensee shall refrain from using any of the following services of this MLS:
  1. Using this MLS's systems, databases, lockboxes, etc. This does not include accessing listing information of the licensee's own broker or of other brokers through the participant's IDX site or elsewhere. It does include accessing such information on the participant's VOW (which is for consumers' personal use).
  2. Being identified as a listing agent on an active or pending property listing in this MLS.
  3. Working as the selling agent on a property listed in this MLS by a firm other than participant's, unless the listing appears in an MLS to which the selling agent is a subscriber. This does not apply to the fee-waived participant's own listings, because the participant is free to share them within its firm (and anywhere else) without MLS consent or involvement.
  4. Use of any data feed from this MLS (except one that includes listings only of the licensee's broker).
  5. Using this MLS's data on an IDX or VOW website identified as the fee-waived subscriber's site or page.
  6. Using MLS's data in an automated valuation product or tool in any product or service identified as coming from the fee-waived subscriber.

**Section 13.05.2 Process for Obtaining and Maintaining Waivers.** The participant must at all times provide to MLS up-to-date information on all licensees, whether they are subscribers or fee-waived licensees, in each participating office. The participant must identify which licensees are subject to fee waivers and for each waived licensee the other MLS in which he/she is a subscriber on the waiver certification form.

In order to obtain a waiver for any licensee in the participant's office, the participant must execute the MLS's form for listing fee-waived licensees and the certification on it. Each fee-waived licensee must also execute a certification. The participant must procure from another MLS, or arrange for the other MLS to provide to this MLS, a certification that each fee-waived subscriber in this MLS is a subscriber in that MLS. (The other MLS may have a one-time or periodic charge for providing these certifications.)

In order to maintain a waiver for any licensee, the participant and licensee must continue to satisfy the requirements of Section 13.05.1 and must recertify of the matters addressed in this Section with the frequency set by this MLS.

**Section 13.05.3 Revocation of Waiver.** The fee waiver for a licensee may be revoked under various circumstances, and the consequences of the revocation vary depending on its circumstances, as provided in this section.

- a. The participant or fee-waived licensee may revoke the waiver at any time upon notice to this MLS. In that case, the fee-waived licensee immediately becomes a subscriber and any fees due to MLS under its normal fee schedule for the current period for the subscriber (including pro-rata fees for any partial service period and any application fees if none have previously been paid for the subscriber) shall immediately become due and payable. In the event a fee-

waived licensee appears as a listing agent on an active or pending listing in this MLS, the participant and fee-waived licensee shall be deemed to have revoked the waiver under this subsection (a).

- b. If this MLS determines that the fee-waived licensee has used any of the services of this MLS listed in Section 13.05.1(b) during a fee-waiver period, MLS may terminate the fee waiver upon notice to the participant and subscriber. In this case, the consequences of subsection (a) apply, and in addition to them, MLS may recover from participant or subscriber all the fees MLS would have collected had the fee-waived licensee been a subscriber during the entire period of the waiver. After six months, the participant and subscriber can re-certify the subscriber to be a fee-waived licensee.

**Section 13.05.4 Consequences of Repeated Violations.** A pattern of repeated violations of Section 13.05.1(b) exists when a participant allows any combination of three or more violations of Section 13.05.1(b), whether the participant is aware of the violations and whether committed by one fee-waived licensee or more; or when a subscriber commits three or more violations of Section 13.05.1(b). In the event that a participant or subscriber exhibits a pattern of repeated violations of Section 13.05.1(b), MLS may suspend all fee waivers for the participant or subscriber (or both) for a period of up to three years. If, after such a period of suspension, a participant or subscriber again exhibits a pattern of repeated violations, MLS may permanently terminate fee waivers for the participant or subscriber (or both). In the event a participant or subscriber subject to suspension or termination of waivers moves to a new office as a participant, that office shall be ineligible for waivers during the pendency of its participant's suspension or termination. In the event a participant or subscriber subject to suspension or termination of waivers moves to a new office as a non-principal licensee, that non-principal licensee shall be ineligible for waivers during the pendency of his or her suspension or termination.

**The additions to Sections 14 below note that participants are responsible for compliance of all their licensees, including those who are subject to a fee waiver, and provides the authority to the MLS to assess the retroactive subscription fees in the event that it is discovered that a waived licensee has used the service.**

**Section 14.01. Authority to Impose Discipline.** By becoming and remaining a participant or subscriber in Hawaii Information Service, each participant and subscriber agrees to be subject to the rules and regulations and any other MLS governance provision. Each participant is subject to these rules with regard to licensees affiliated with the participant who are subject to fee waiver under Section 13.05. Hawaii Information Service may, through the administrative and hearing procedures established in these rules, impose discipline for violations of the rules and other MLS governance provisions. Discipline that may be imposed may consist only of one or more of the following:

- a. letter of warning.
- b. letter of reprimand.
- c. attendance at MLS orientation or other appropriate courses or seminars which the participant or subscriber can reasonably attend taking into consideration cost, location, and duration.
- d. **retroactive fees related to any licensee granted a fee waiver under Section 13.05 in the event the MLS determines that the licensee made any use of MLS services prohibited in Section 13.05 during the period of waiver.**
- d.e. appropriate, reasonable processing fee not to exceed \$15,000.
- e.f. suspension of MLS rights, privileges, and services for not less than thirty (30) days nor more than one (1) year.
- f.g. termination of MLS rights, privileges, and services with no right to reapply for a specified period not to exceed three (3) years.

Note: A participant or subscriber can be placed on probation. Probation is not a form of discipline. When a participant or subscriber is placed on probation, the discipline is held in abeyance for a stipulated period of time not longer than one (1) year. Any subsequent finding of a violation of the MLS rules during the probationary period may, at the discretion of the Board of Directors, result in the imposition of the suspended discipline. Absent any subsequent findings of a violation during the probationary period, both the probationary status and the suspended discipline are considered fulfilled, and the individual's record will reflect the fulfillment. The fact that one or more forms of discipline are held in abeyance during the probationary period does not bar imposition of other forms of discipline, which will not be held in abeyance.

**Section 14.02. Participant responsibility.** Each participant has ultimate responsibility and accountability for compliance with the rules by associate subscribers and support subscribers affiliated with the participant. Failure of any associate subscriber or support subscriber to abide by the rules or to satisfy any sanction imposed for violations of the rules may subject the participant with whom the associate subscriber or support subscriber or is affiliated to discipline. The participant is subject to these rules with regard to licensees affiliated with the participant who are subject to fee waiver under Section 13.05.