

Terms of Use for Myers E-Mail Marketing Campaign Services

This document sets forth the terms and conditions (the "Terms of Use") under which you may use the *E-Mail Marketing Campaign Services* (the "Services") of eMagic.com LLC, doing business as "Myers" or "Myers Internet" ("Myers"), and this website (the "Site"). Before using the Services or this Site, please read these terms and conditions and indicate your acceptance of them by clicking the "Accept" button set forth below.

At any time and from time to time, Myers may modify the terms and conditions of access and use of either this Site and/or the Services. Accordingly, please review these Terms of Use whenever you access or use the Services or this Site. Your use of the Services or the Site, after Myers has posted modifications to these Terms of Use, will constitute your acceptance of any and all such modifications. If you do not wish to accept any modified Terms of Use, you may not continue to use the Services or this Site.

Certain specific Services may be subject to additional posted guidelines or rules applicable to such Services.

Any terms or conditions proposed by you which are in addition to or which conflict with the then-current Terms of Use are expressly rejected by Myers and shall be devoid of all force and effect to the fullest extent allowed by applicable law.

As used in these Terms of Use, the term "you" shall mean the user of this Site or the Services, and such user's representatives, employees, successors, assigns, contractors, all persons claiming by or through such user, and any person who accesses and uses this Site.

1. *Description of the Services.* This Site allows you to utilize the Services, consisting of various web-based tools that will allow you to target your marketing efforts through one or more e-mail marketing campaigns. Through this site, you can:
 - Create an e-mail campaign either from scratch or by using one of several existing templates;
 - Insert both text and images into your e-mail;
 - Include the customer opt-out language required by federal and/or state law;
 - Enter individual e-mail addresses for the campaign or select from your existing e-mail address groups;
 - Schedule the e-mail campaign for launch;
 - Monitor the status of one or more campaigns; and
 - Gather certain statistical data to judge the effectiveness of your e-mail campaigns.
2. *Myers Website Required.* In order to use this Site or the Services, you must, at the time you use the Site or Services, (a) have a valid, active Myers-sponsored website and (b) be in compliance with all terms and conditions under which the Myers website services are provided.
3. *Prohibited Uses.* The Services may be used only for the lawful and legitimate marketing, promotion or advertising of mortgage-related or real estate-related products or services offered by or through you. Any other use is strictly prohibited. You agree to be solely responsible for any information, data or material uploaded by you to this Site, as well as the content of all e-mails created or sent through this Site. You also represent, warrant and agree that e-mails created or sent through this Site:
 - shall not include any unlawful, fraudulent, deceptive, misleading, defamatory, libelous, harassing, hateful, harmful, threatening, abusive, obscene, offensive, pornographic, sexually-explicit, vulgar, tortious, or pirated material of any kind;
 - shall not violate or infringe upon any patent, trademark, trade secret, copyright or other intellectual property right of any third party;
 - shall not violate any third party's right of confidentiality or privacy under any federal, state or local law;
 - shall not contain or facilitate the transmission, downloading, uploading, installation or implementation of any computer virus, worm, spyware or other computer code, files or programs designed to interrupt, destroy, limit

or interfere with the functionality of any computer software, hardware or telecommunications service or equipment;

- shall not be used for any "mailbombing" or "denial of service" attacks;
- shall not be used to remove or export from the United States any services, product, technical data, or other information in violation of any restrictions, laws, or regulations of the United States or any other applicable country; and
- shall not violate any applicable law.

4. *Compliance with CAN-SPAM Act of 2003.* The federal CAN-SPAM Act of 2003 (Controlling the Assault of Non-Solicited Pornography and Marketing Act,) (the "CAN-SPAM Act") establishes requirements for those who send commercial e-mail, spells out penalties for senders of commercial e-mail who violate the law, and gives consumers the right to ask e-mailers to stop sending them commercial e-mails. You represent, warrant and agree that your use of this Site and the Services will comply in all respects with the CAN-SPAM Act and will not violate any other federal, state or local laws, rules, regulations, ordinances, orders or decrees. Without limiting the foregoing, you represent, warrant, and agree that:

- No e-mail sent using this Site or the Services will contain any false or misleading header information. Each of your e-mail's "From," "To," and routing information – including the originating domain name and e-mail address – shall be accurate and shall identify the initiator of the e-mail.
- No e-mail sent using this Site or the Services will contain a deceptive subject line. The subject line of your commercial e-mails shall not mislead the recipient about the contents or subject matter of the message.
- Each of your commercial e-mails sent using this Site or the Services will give recipients a clear and conspicuous method to opt-out of receiving further commercial e-mails from you. You will provide a true and functioning return e-mail address or another Internet-based response mechanism that allows a recipient to ask you not to send future messages to the recipient's e-mail address, and you shall honor each such request.
- You will not send any e-mail to any person or entity who has previously asked or instructed you not to send them e-mails or other electronic messages.
- You shall not sell or transfer the e-mail addresses of people who choose not to receive your commercial e-mail, even in the form of a mailing list.
- You shall identify each commercial e-mail you send through this Site or using the Services as an advertisement.
- Each e-mail sent using this Site or the Services shall contain your valid physical postal address.
- You will not use any third party mailing lists to prepare, distribute or send any unsolicited e-mail using this Site or the Services.

5. *Monitoring by Myers.* If, in Myers' sole opinion, any e-mail developed or sent by you through this Site or using the Services fails to comply with Section 3 (*Prohibited Uses*), Section 4 (*Compliance with the CAN-SPAM Act of 2003*), or any other provision in these Terms of Use, Myers may, without limiting Myers other rights hereunder or under applicable law: (a) remove all or any part of any e-mail not yet sent, (b) prohibit your use of this Site or the Services, and (c) terminate any or all agreements or services provided to you by Myers. Myers reserves the right, but shall not be obligated to, monitor or review the content and format of any e-mail message sent by you using this Site or the Services.

6. *Links to Other Websites.* This Site may contain links to other websites. Please be aware that Myers has no control over third-party websites or resources and is not responsible for either the availability of such websites or for any content, products or services obtained from such websites. For information about any linked website, you should read the terms of use posted at that website.

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8. *Fees.* Your access to and use of the Site and Services is conditioned upon your payment of the applicable fees set forth on Myers' generally published fee schedule, as such may be modified at anytime and from time to time.
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10. *Indemnification.* You agree to indemnify and hold Myers, its affiliated companies, and all of their respective officers, directors, employees, agents, and representatives from all claims, demands, lawsuits, losses, damages and costs (including, but not limited to, court costs and reasonable attorneys' fees) arising from: (a) any breach of these Terms of Use by you; (b) the content of any e-mail developed or sent by you using this Site or the Services, (c) your use of this Site or the Services, (d) any failure by you to comply with the CAN-SPAM Act or any similar state law, or (e) your violation of the rights of any third party.
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16. *General Provisions.* Neither these Terms of Use nor your use of this Site or the Services will create any agency, partnership, or joint venture of any kind between Myers and you. Except for the (a) Website Package Terms of Use, (b) the Back Office Terms of Use, (c) the Privacy Statement, (d) the Website Package Agreement, and (e) the Acceptable Use Policies (collectively, the "Other Policies"), all of which Other Policies are available at www.Myers.com/legal, these Terms of Use constitute the entire agreement between Myers and you pertaining to your use of this Site and the Services, and supersede any and all prior agreements, offers, proposals, representations and understandings between Myers and you relating to this Site or the Services. To the extent these Terms of Use conflict in any way with the Other Policies, these Terms of Use shall control. Failure by Myers to exercise or enforce any right or provision shall not constitute a waiver of such right or provision. If any of these Terms of Use is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, it is agreed that the court should attempt to give effect to the intentions expressed by these Terms of Use and the remaining Terms of Use shall not be affected by such determination and shall be enforced to the fullest extent permitted by law. You agree that notwithstanding any law to the contrary, any claim you may have relating to these Terms of Use, this Site, or the Services must be commenced by you within one year of the circumstance or event giving rise to such claim or forever be barred. These Terms of Use shall survive the termination of your use of this Site or the Services, regardless of the reason for termination.