

Exclusive Right of Sale Listing Agreement Preparation Manual

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General Considerations for Completing Preprinted Agreements

Adequacy of Contract. Any preprinted contract is only appropriate when its provisions adequately convey the intent of the parties in a particular transaction. If extensive modifications are required to conform the contract to the parties' intent, it may be advisable for the parties to retain legal counsel to draft a custom agreement.

Contract Formation. A listing agreement is an agreement for services. It is not required to be in writing in order for it to be enforceable. If a written listing agreement is used, it must comply with certain requirements of law if a real estate licensee is involved. Chapter 475.25(1)(r) of the Florida Statutes requires that a written listing agreement include a definite expiration date, description of the property, price and terms, fee or commission and proper signature of the principal(s). The listing agreement may not contain a provision requiring the person signing the listing to notify the broker of the intention to cancel the listing after such definite expiration date.

Completing the Contract. To ensure clarity:

1. Fill in all blanks, using "N/A" or "-0-" if necessary.
2. Check at least one box where a choice is given.
3. If a particular sentence or clause does not apply, either cross it out or state in additional clause that the particular clause has been deleted.
4. If additional information relating to a particular clause is inserted into an addendum, be sure to write in a reference to the clause number in the addendum. For example, "This sentence modifies paragraph _____ of the agreement."

Specific Considerations for Completing the Exclusive Right of Sale Listing Agreement

Use of Agreement

This agreement is specifically drafted for use in the sale of residential property. Residential sale is defined in Chapter 475.278, Florida Statutes, as the sale of improved residential property of four units or fewer, the sale of unimproved residential property intended for use of four units or fewer, or the sale of agricultural property of 10 acres or fewer. In this agreement, the seller grants to the listing broker the sole right to sell the property, including the right to offer sub agency and cooperation with buyer's agents and transaction brokers.

It is not intended to be used for commercial sales transactions, sale of business enterprise or opportunity, tax exchanges, or deed transfers.

Organization of Agreement. This Agreement was designed with the following features:

1. **Readable Type.** The type in this Agreement is larger than that used in other agreements. This makes it easier to read and to fax.
2. **Line Numbers.** Each line is numbered for easy reference to text. Plus, the lines that contain a blank or box are indicated by an asterisk next to the line number.

3. Acknowledgment of Receipt of Page. An acknowledgment line is given at the bottom of each page of the agreement. Each party should initial to indicate that he/she received a copy of the page. The Broker and the Sales Associate should initial at the bottom of each page. The acknowledgment line states:

Seller (____) (____) and Broker/Sales Associate (____) (____) acknowledge receipt of a copy of this page, which is Page 1 of 4 Pages.

4. Blanks and Boxes. If any blank is inapplicable to the agreement, fill it in with “N/A” or “-0-” or some other appropriate filler. Do not leave any blank empty. All boxes appear to the left of the term to which the box applies.

5. Headings.

This agreement contains topical headings to facilitate quick reference to any clause. The agreement is organized as follows:

a. Authority to Sell Property. This section gives the Broker the exclusive right to sell the Property described. It also outlines the term of the listing agreement. If a contract for sale and purchase of the property is fully executed during the term of the listing, the Agreement is automatically extended through the closing of the sales contract.

b. Description of Property. This section includes the property address, legal description and description of items included and excluded from the sale. It also includes the occupancy status.

c. Price and Terms. This section breaks down the purchase price and financing terms. It also includes a blank for mortgage discount or other closing costs Seller is willing to pay.

d. Broker Obligations and Authority. This section outlines the Broker obligations including authority to advertise the Property, to place for sale signs on the Property, to obtain mortgage information on the Property, to place the Property in the MLS, to provide market analysis to potential buyers, to use a lock box, to withhold verbal offers, and to withhold all offers once Seller accepts a sales contract. There is also a provision dealing with Virtual Office Websites where Seller can refuse to authorize that an automated estimate of market value be displayed with the Seller's property and where Seller can refuse to authorize third parties from blogging or writing reviews about the Seller's Property.

e. Seller Obligations. This section deals with Seller obligations to cooperate with Broker, provide keys and access to the Property, inform Broker prior to leasing or encumbering the Property, indemnify Broker from losses, comply with FIRPTA obligations, and disclose all facts that materially affect the value of the Property which are not observable or known by the buyer and to consult with appropriate professionals for related legal, tax and other specialized advice.

f. Compensation. This section deals with the compensation to the Broker. There is a provision for commission based on percentage of the total purchase price plus flat fee or commission based on a dollar amount. Also, there are provisions for commission in the event an option is created and in the event the Property is leased. This section outlines specific instances when Broker's fee is due. This section also establishes a Protection Period where Broker's fee would be due in the event seller transfers or contracts to transfer the Property during the Protection Period. Finally, there is a blank for the amount of retained deposits that Broker is entitled to receive.

g. Cooperation and Compensation with Other Brokers. This section outlines the compensation that broker is agreeing to pay to buyer's agents, brokers who have no brokerage relationship with the buyer and transaction brokers.

h. Brokerage Relationship. This section deals with the recognized agency relationships of Chapter 475.278 of the Florida Statutes. It outlines the duties of a transaction broker.

i. Conditional Termination. This section includes a conditional termination clause. Broker may agree to conditionally terminate the Agreement if the Seller agrees to pay the cancellation fee. If Seller transfers the Property during the time period beginning from the conditional termination date up to the Termination Date and Protection Period, if any, then Broker's fee would be due.

j. Dispute Resolution. This section includes a mandatory mediation agreement for settlement of all disputes. If the Seller and Broker initial the arbitration clause, all disputes not resolved by mediation will be settled by binding arbitration.

k. Miscellaneous. This section contains miscellaneous clauses dealing with persons bound, assignment, complete agreement, and modification.

l. Additional Terms. This section provides space for the Broker and Seller to insert additional terms as the parties deem necessary.

Copyright Protection. This Agreement is protected under federal copyright law. You are authorized to make copies for the purpose of completing a draft copy of the final agreement. You are also authorized to reproduce, by photocopy or facsimile, a completed draft or final copy of the agreement. You are not authorized to duplicate this Agreement in any way on your computer or word processor or for any purpose not listed above. If you are interested in obtaining a license to reproduce the agreement with your firm's name or logo at the top, please contact Florida Realtors at 407-438-1400. Computerized versions of the Agreement are also available on <http://floridarealtors.org>.

Organization of Manual

This manual examines the **Exclusive Right of Sale Listing Agreement** clause-by-clause as follows:

Reprint of Clause. At the beginning of each section, the applicable Agreement paragraph is reprinted with reference numbers in each blank.

Purpose. This section briefly explains why the clause is included in the Agreement.

Blanks/Boxes. This section briefly describes how to complete Agreement blanks and boxes.

Explanation. This section provides in-depth information regarding each clause.

Practice Tips. These tips are practical pointers about handling situations that may arise when working with a particular clause.

Section 1

1	This Exclusive Right of Sale Listing Agreement ("Agreement") is between	1		("Seller") and
2*				
3*		2		("Broker").
4	1. AUTHORITY TO SELL PROPERTY: Seller gives Broker the EXCLUSIVE RIGHT TO SELL the real and personal property			
5*	(collectively "Property") described below, at the price and terms described below, beginning the	3		day of
6*		4		
7			5	day of
8				6
9	("Termination Date"). Upon full execution of a contract for sale and purchase of the Property, all rights and obligations of this			
10	Agreement will automatically extend through the date of the actual closing of the sales contract. Seller and Broker			
11	acknowledge that this Agreement does not guarantee a sale. This Property will be offered to any person without regard to race, color, religion, sex, handicap, familial status, national origin or any other factor protected by federal, state or local law. Seller certifies and represents that he/she/it is legally entitled to convey the Property and all improvements.			

Purpose:

To identify the parties and the term of the Agreement

Blanks:

1 Insert the full name of Seller(s). Copy exactly the name(s) as shown on the title.

2 Insert the full name of Broker.

3 Insert the day that the Agreement will begin.

4 Insert month and year on which the Agreement will commence.

5 Insert the day that the Agreement will terminate.

6 Insert the month and year the Agreement will terminate.

Explanation:

- **Corporation.** Insert the complete corporate name including "Inc.," "Corp.," etc. Verify the exact name of the corporation with the Florida Department of State, Division of Corporations at <http://www.sunbiz.org>.
- **Estate.** Insert the name of the estate's personal representative using the words, "as Personal Representative of the Estate of _____, deceased." For example, "John Doe as Personal Representative of the Estate of Joe Smith, deceased."
- **Trust.** Insert the name of the trustee and the title "Trustee," e.g., "John Doe, Trustee."
- **Power of Attorney.** If a person has a signed, written power of attorney authorizing him/her to sell the property on behalf of another person (the "principal"), insert the name of the principal and name of person acting as attorney in fact under the power of attorney, e.g. "John Doe as power of attorney (POA) for Bob Smith."
- **Definite Expiration Date.** Chapter 475.25(1) (r) of the Florida Statutes requires that a written listing agreement where a real estate licensee is involved include a definite expiration date. The listing agreement may not contain a provision requiring the person signing the listing to notify the broker of the intention to cancel the listing after such definite expiration date. This means the listing agreement cannot contain an automatic renewal clause.
- **Term of the Listing.** If a contract is executed prior to the expiration of the listing agreement, the listing agreement is automatically extended through the closing on the contract.

Section 2

12	2. DESCRIPTION OF PROPERTY:	7
13*	(a) Real Property Street Address: _____	
14*	_____	
15*	Legal Description: _____	8
16*	_____ <input type="checkbox"/> See Attachment _____	9
17*	(b) Personal Property, including appliances: _____	10
18*	_____	
19*	_____ <input type="checkbox"/> See Attachment _____	11
20*	(c) Occupancy: Property <input type="checkbox"/> is <input type="checkbox"/> is not currently occupied by a tenant. If occupied, the lease term expires _____	12

Purpose:

To identify the Property included in the sale


Blanks:

- 7 Insert street address (and unit number, if any) of the Property. Remember to include city and zip code.
- 8 Insert the legal description of the Property.
- 9 Insert name of the Attachment that contains the legal description (i.e. deed, survey or title policy).
- 10 Describe the personal property included in the sale.
- 11 Insert name of the Attachment detailing the personal property to be sold with the Property.
- 12 Check whether the Property is or is not currently occupied by a tenant. If occupied, insert date the lease expires.

Explanation:

- **Correct Legal Description.** Use the legal description found on the previous deed, an owner's title insurance policy or a survey. Do not rely on the tax assessor's description or the description in the Multiple Listing System; they are often inaccurate or abbreviated.
- **Platted Subdivision.** Include the county where located, lot and block, name of subdivision (with phase or unit if applicable), plat book and page number of recorded plat and tax folio number.
- **Unplatted Property.** Include the county where located, legal description and reference to section, township and range.
- **Condominium.** Include the county where located, unit or parcel number, name of condominium, identification of any common elements (such as parking or storage space) included in the real property, tax folio number, record book and page number of Declaration of Condominium with all subsequent amendments and record book and page number of any ground or recreational leases.
- **Controversy Regarding Property Included in Sale.** Disputes often arise over whether or not a particular item was to be included in the purchase. Avoid this conflict by compiling an accurate list of all items included and excluded from the purchase.
- **Personal Property.** Items that are not permanently attached to the real property must be specifically listed in the contract if the buyer wants them included as part of the purchase. Otherwise, the seller is entitled to keep his/her personal property.
- **Fixtures.** Items that are permanently attached to the property are always included in the purchase unless specifically excluded. The following questions will help you determine whether or not an item is a fixture:
1. Is the item so attached to the property that its removal would damage the property; i.e., is it permanently affixed to the property?

2. When the owner installed the item, did he/she intend to make it a permanent part of the property?
3. Is the item integral to the use or purpose of the real property?

 **Practice Tip.** Beware! Each party's opinion may differ on whether an item is a fixture or personal property. As a real estate licensee, you are not expected or recommended to determine whether a particular item is a fixture or personal property; however, you should be aware of the problem and of items that could be interpreted different ways. This will give you the opportunity to clarify in the contract whether those items are included or excluded. An item that is listed in this Agreement as included or excluded from the sale must also be included or excluded in the purchase and sale contract. The terms of this Agreement with respect to personal property are binding only on the Seller and Broker and not binding on the buyer. Here are some commonly disputed items to look for: water softeners, pumps, mailboxes, window air conditioning units, satellite dishes, garage door openers, security alarms and pool equipment, such as heaters and cleaning systems.

Section 3

21 **3. PRICE AND TERMS:** The property is offered for sale on the following terms, or on other terms acceptable to **Seller**:

22* (a) **Price:** _____ 13

23* (b) **Financing Terms:** ☐ Cash ☐ Conventional ☐ VA ☐ FHA ☐ Other _____ 14

24* ☐ **Seller Financing:** **Seller** will hold a purchase money mortgage in the amount of \$ _____ 15 with the

25* following terms: _____ 16

26* ☐ **Assumption of Existing Mortgage:** Buyer may assume existing mortgage for \$ _____ 17 plus

27* an assumption fee of \$ _____ 18. The mortgage is for a term of _____ 19 years beginning in _____ 20, at

28* an interest rate of _____ 21 %. ☐ fixed ☐ variable (describe) _____ 22

29* Lender approval of assumption ☐ is required ☐ is not required ☐ unknown. Notice to **Seller:** You may remain liable for an

30 assumed mortgage for a number of years after the Property is sold. Check with your lender to determine the extent of your

31 liability. **Seller** will ensure that all mortgage payments and required escrow deposits are current at the time of closing and will

32 convey the escrow deposit to the buyer at closing.

33* (c) **Seller Expenses:** **Seller** will pay mortgage discount or other closing costs not to exceed _____ 23 % of the purchase

34 price; and any other expenses **Seller** agrees to pay in connection with a transaction.

Purpose:

To establish price, financing terms and Seller expenses

Blanks:

- 13 Insert listing price.
- 14 If financing will be accomplished through other means such as private lender or homebuyer assistance program, indicate here.
- 15 Insert the amount of financing Seller will provide.
- 16 Insert terms of Seller financing.
- 17 Insert the approximate amount remaining to be paid on the mortgage as of the date of the Agreement.
- 18 Insert the amount of the assumption fee, if any.


- 19 Indicate the term (number of years) of the mortgage that exists on the Property.
- 20 Indicate the year the existing mortgage began.
- 21 Insert the interest rate of the existing mortgage.
- 22 If the interest is something other than fixed or variable or a combination of variable and fixed, indicate here.
- 23 Insert the maximum percentage of the purchase price that Seller is agreeing to pay towards mortgage discount or other closing costs.

Boxes:

- 3(b)** Line 23 check if the Property is offered for sale through cash, conventional, VA, FHA or other means of financing
Line 24 check if Seller is offering Seller financing
Line 26 check if Buyer is assuming the Seller's mortgage
Line 28 check the type of interest rate on the existing mortgage
Line 29 check whether approval of the assumption of the mortgage is or is not required by the lender

Explanation:

- **Purchase Money Mortgage.** This is a mortgage taken by a lender (either the seller or a third party) to finance the buyer's acquisition of the property. In many cases, the buyer will request seller financing because he/she is unable to obtain financing from an institutional lender (because of a poor credit history, short sale, foreclosure, divorce, bankruptcy, etc.). In other cases, the buyer requests seller financing simply to avoid closing costs, or the seller may want to provide financing for income tax reasons.
- **Mortgage Form.** In the case of Seller financing, the mortgage must be prepared by an attorney, who may incorporate terms consistent with those specified in the addendum to the contract.
- **Assumable Mortgages.** This is a mortgage that may be taken over or acquired from a prior holder. Permission from the lender may or may not be required, depending on the terms of the mortgage. A seller may remain liable for an assumed mortgage for a number of years after the Property is sold. The Seller must check with his/her lender to determine the extent of the liability.
- **Requirements for Assumption.** The requirements are found in the mortgage document. If the mortgage has no provision relating to sale or assumption, it is assumable without any additional requirements, such as having to notify the lender. If it has an assumption clause or a "due-on-sale" clause (as do most form mortgages created after 1975), the lender has the right to control assumptions. Even loans promoted as "assumable non-qualifying" may have assumption conditions, such as completing transfer and insurance forms, escalating the interest rate or paying a fee for assumption or transfer of the loan.
- **Interest Rate.** Check the mortgage to determine whether there is a fixed or variable interest rate.
- **Seller Expenses.** This is the maximum percentage of the purchase price that Seller is willing to pay towards closing costs or discount points. Often times, a dispute arises regarding whether closing costs includes prepaid, taxes and commissions. Instead of trying to state which closing costs the Seller contribution will be applied to, the better practice is to state a maximum percentage of the purchase price to be used for buyer's total settlement charges at closing. Remember that the total settlement charges amount would not include items paid outside of closing.

 **Practice Tip.** Do not rely on the seller's statements regarding rates, payments or conditions of assumption. Instead, verify the amount by looking at a copy of the mortgage and note or by requesting the information in writing from the lender (which is the best way). Inaccurate information could result in the transaction failing to close, the seller being held civilly liable and you being held liable for misrepresentation.

Section 4

35 **4. BROKER OBLIGATIONS AND AUTHORITY:** Broker agrees to make diligent and continued efforts to sell the Property until
36 a sales contract is pending on the Property. Seller authorizes Broker to:
37 (a) Advertise the Property as Broker deems advisable including advertising the Property on the Internet unless limited in
38 (4)(a)(i) or (4)(a)(ii) below.
39 (Seller opt-out)(Check one if applicable)
40* ☐ (i) Display the Property on the Internet except the street address of the Property shall not be displayed on the Internet.
41* ☐ (ii) Seller does not authorize Broker to display the Property on the Internet.
42 Seller understands and acknowledges that if Seller selects option (ii), consumers who conduct searches for listings on
43 the Internet will not see information about the listed property in response to their search.
44* 24 / _____ Initials of Seller.
45 (b) Place appropriate transaction signs on the Property, including "For Sale" signs and "Sold" signs (once Seller signs a sales
46 contract) and use Seller's name in connection with marketing or advertising the Property.
47 (c) Obtain information relating to the present mortgage(s) on the Property.
48 (d) Place the Property in a multiple listing service ("MLS"). Seller authorizes Broker to report to the MLS this listing
49 information and price, terms and financing information on any resulting sale for use by authorized Board / Association
50 members, MLS participants and subscribers; and
51* Seller (_____) (_____) and Broker/Sales Associate (_____) (_____) acknowledge receipt of a copy of this page, which is Page 1 of 4 Pages.
52 (e) Provide objective comparative market analysis information to potential buyers; and
53* (f) (Check if applicable) ☐ Use a lock box system to show and access the Property. A lock box does not ensure the
54 Property's security; Seller is advised to secure or remove valuables. Seller agrees that the lock box is for Seller's benefit and
55 releases Broker, persons working through Broker and Broker's local Realtor Board / Association from all liability and
56* responsibility in connection with any loss that occurs. ☐ Withhold verbal offers. ☐ Withhold all offers once Seller accepts a
57 sales contract for the Property.
58 (g) Act as a transaction broker of Seller.
59 (h) **Virtual Office Websites:** Some real estate brokerages offer real estate brokerage services online. These websites are
60 referred to as Virtual Office Websites ("VOW"). An automated estimate of market value or reviews and comments about a
61 property may be displayed in conjunction with a property on some VOWs. Anyone who registers on a Virtual Office Website
62 may gain access to such automated valuations or comments and reviews about any property displayed on a VOW. Unless
63 limited below, a VOW may display automated valuations or comments/reviews (blogs) about this Property.
64* ☐ Seller does not authorize an automated estimate of the market value of the listing (or hyperlink to such estimate) to be
65 displayed in immediate conjunction with the listing of this Property.
66* ☐ Seller does not authorize third parties to write comments or reviews about the listing of the Property (or display a hyperlink
67 to such comments or reviews) in immediate conjunction with the listing of this Property.

Purpose:

To establish the Broker's authority and obligations in the listing agreement

Blanks:

24 Seller should initial here if Seller selects option (ii).

Boxes:

- 4(a) (i) Line 40 check if the Property is to be advertised on the internet but the street address will not be displayed
4(a) (ii) Line 41 check if the Property will not be advertised on the internet
4(f) Line 53 check if the Seller desires to use a lock box to show the Property
Line 56 check if the Seller agrees to Broker withholding verbal offers and/or all offers once Seller accepts a contract
4(h) Line 64 check if Seller does not want an automated estimate of value displayed with the Property
Line 66 check if Seller does not want comments, reviews or blogs about the Property displayed next to the Property

Explanation:

• **Advertising the Property.** This clause is a result of a settlement agreement between the National Association of Realtors and the US Department of Justice regarding NAR MLS policies and model rules. These rules were implemented in February, 2009. The provision allows the Broker to advertise the Property as Broker deems advisable without limitation unless one of the boxes in (4) (a) is checked. The Seller can refuse to allow the Broker to advertise the Property on the internet without displaying the street address of the Property. In that case, the Seller checks the box in (4) (a) (i). If the

Seller does not want the Property advertised on the internet at all, then the box in (4) (a) (ii) should be checked. Also, the Seller should initial on line 44 to acknowledge that Seller understands that by selecting (4) (a) (ii), consumers who search for listings on the internet will not see information about the listed Property.

• **Withholding Offers.** These boxes allow Broker to withhold verbal offers or withhold offers once Seller accepts a contract on the Property. Chapter 475.278, Florida Statutes, requires a licensee to present all offers and counteroffers in a timely manner unless a party has previously directed the licensee otherwise in writing. This duty applies to all licensees acting in a single agent or transaction broker capacity. If Broker is to withhold offers or counteroffers from the Seller, then Seller must check the boxes regarding withholding all verbal offers and all offers once Seller accepts a contract. The check boxes may serve as written direction from the Seller to withhold offers and counteroffers. Broker should highlight this provision to the Seller if these boxes are to be checked to eliminate any future argument by the Seller that Broker withheld offers without written direction. As an extra precaution, it may be wise to insert an additional clause in the listing agreement that requires the Seller to acknowledge that all verbal offers and offers once contract has been accepted will be withheld.

• **Virtual Office Websites.** This provision is a result of a settlement agreement between the National Association of Realtors and the US Department of Justice regarding NAR MLS policies and rules on virtual office websites. Virtual Office Websites (VOWs) are websites where a brokerage conducts brokerage services including contract negotiation, showing property etc. online. If a brokerage is running a VOW, then the Seller must be given the option of refusing to allow an automated valuation of the Property or review/blog to be posted in conjunction with the listing of the Property. If Seller does not wish to have automated valuations or blogs displayed with the Property, then Seller should check either or both boxes in 4(h).

• **Broker Obligations and Authority.** This section of the listing outlines several obligations of the Broker including advertising the Property, placing appropriate signs on the Property, placing the Property in the MLS, and obtaining mortgage information on the property. Most Multiple Listing Services require a sales associate or broker to place the Property in the MLS within a certain amount of time (usually within 24 hours) of the Seller executing the listing agreement. If the Seller does not wish to place the property in the MLS or wishes to delay the time for the Property to be placed in the MLS, then an additional provision in the listing should be added to reflect the Seller's desires.

Section 5

68 **5. SELLER OBLIGATIONS:** In consideration of **Broker's** obligations, **Seller** agrees to:

69 (a) Cooperate with **Broker** in carrying out the purpose of this Agreement, including referring immediately to **Broker** all

70 inquiries regarding the Property's transfer, whether by purchase or any other means of transfer.

71 (b) Provide **Broker** with keys to the Property and make the Property available for **Broker** to show during reasonable times.

72 (c) Inform **Broker** prior to leasing, mortgaging or otherwise encumbering the Property.

73 (d) Indemnify **Broker** and hold **Broker** harmless from losses, damages, costs and expenses of any nature, including

74 attorney's fees, and from liability to any person, that **Broker** incurs because of (1) **Seller's** negligence, representations,

75 misrepresentations, actions or inactions, (2) the use of a lock box, (3) the existence of undisclosed material facts about the

76 Property, or (4) a court or arbitration decision that a broker who was not compensated in connection with a transaction is

77 entitled to compensation from **Broker**. This clause will survive **Broker's** performance and the transfer of title.

78 (e) To perform any act reasonably necessary to comply with FIRPTA (Internal Revenue Code Section 1445).

79 (f) Make all legally required disclosures, including all facts that materially affect the Property's value and are not readily

80 observable or known by the buyer. **Seller** certifies and represents that **Seller** knows of no such material facts (local

81* government building code violations, unobservable defects, etc.) other than the following: _____ 25

82*

83 **Seller** will immediately inform **Broker** of any material facts that arise after signing this Agreement.

84 (g) Consult appropriate professionals for related legal, tax, property condition, environmental, foreign reporting requirements

85 and other specialized advice.

Purpose:

To establish Seller's obligations under the listing agreement

Blanks:

25 This blank is for Seller to disclose facts about the Property that materially affect value that are not readily observable.

Explanation:

• **Seller Obligations.** This section of the Agreement outlines several obligations of the Seller including providing keys and access to the Property for showings, informing Broker prior to leasing or encumbering the Property, complying with FIRPTA requirements, consulting with appropriate professionals for legal, tax, property condition and environmental

advice and disclosing all known facts that materially affect the value of the Property which are not readily observable or discoverable by buyer.

• **Indemnification and Hold Harmless.** This section also contains an indemnification and hold harmless clause for damages, loss or costs incurred by Broker as a result of Seller's negligence or misrepresentation or failure to disclose facts that materially affect value which are not observable or known by buyer; as a result of the use of the lock box; and as a result of a court or arbitration decision where a broker was not compensated in connection with the transaction.

Section 6

86 **6. COMPENSATION:** Seller will compensate **Broker** as specified below for procuring a buyer who is ready, willing and able to
87 purchase the Property or any interest in the Property on the terms of this Agreement or on any other terms acceptable to
88 **Seller. Seller** will pay **Broker** as follows (plus applicable sales tax);

89* (a) **26** % of the total purchase price plus \$ **27** OR \$ **28**, no later than
90 the date of closing specified in the sales contract. However, closing is not a prerequisite for **Broker's** fee being earned.

91* (b) **29** (\$ or %) of the consideration paid for an option, at the time an option is created. If the option is exercised,
92 **Seller** will pay **Broker** the paragraph 6(a) fee, less the amount **Broker** received under this subparagraph.

93* (c) **30** (\$ or %) of gross lease value as a leasing fee, on the date **Seller** enters into a lease or agreement to
94 lease, whichever is soonest. This fee is not due if the Property is or becomes the subject of a contract granting an exclusive
95 right to lease the Property.

96 (d) **Broker's** fee is due in the following circumstances: (1) If any interest in the Property is transferred, whether by sale, lease,
97 exchange, governmental action, bankruptcy or any other means of transfer, regardless of whether the buyer is secured by
98 **Broker, Seller** or any other person. (2) If **Seller** refuses or fails to sign an offer at the price and terms stated in this Agreement,
99* defaults on an executed sales contract or agrees with a buyer to cancel an executed sales contract. (3) If, within **31** days after
100 Termination Date ("Protection Period"), **Seller** transfers or contracts to transfer the Property or any interest in the Property to any
101 prospects with whom **Seller, Broker** or any real estate licensee communicated regarding the Property prior to Termination Date.
102 However, no fee will be due **Broker** if the Property is relisted after Termination Date and sold through another broker.

103* (e) Retained Deposits: As consideration for **Broker's** services, **Broker** is entitled to receive **32** % of all deposits that
104 **Seller** retains as liquidated damages for a buyer's default in a transaction, not to exceed the paragraph 6(a) fee.

Purpose:

To outline the compensation structure of the listing agreement

Blanks:

- 26** Insert the percentage of the total purchase that Seller is to pay Broker
- 27** Insert flat fee that is to be charged to Seller in addition to the percentage amount
- 28** Insert total dollar amount of the commission Seller is to pay Broker
- 29** Insert a dollar amount or percentage amount Seller to pay Broker if Seller enters into an option agreement with buyer
- 30** Insert a dollar amount or percentage of gross lease value Seller to pay Broker if Seller enters into a lease or agreement to lease with a tenant
- 31** Indicate the number of days for the Protection Period
- 32** Insert the percentage amount of the retained deposit that Broker is entitled to receive

Explanation:


• **Commission plus Flat Fee:** This agreement allows the Broker to obtain a percentage plus flat fee as the commission from the Seller. Section 8(b) of the Real Estate Settlement Procedures Act (RESPA) applies to federally related loan transaction. Under RESPA, a settlement service provider (in this case, a real estate broker) is prohibited from charging a fee to a consumer where the provider furnishes a service that is nominal or duplicative. However, a real estate broker is

permitted to charge its client/customer a real estate commission which could be a percentage amount or fixed amount or a combination of both. If a broker charges a seller a separate fee from the commission, the fee must be disclosed and must be in exchange for real estate services provided that is not nominal or duplicative of services already provided to the Seller. Though a listing broker can charge a seller a flat fee plus percentage commission, a broker may not charge a transaction fee if the listing broker does not perform additional services to justify the fee.

• **Leasing Fee:** This section contains a clause that allows the Broker to obtain a fee if the Seller enters into a lease or agreement to lease the Property. However, the fee would not be due if the Seller enters into an Exclusive Right to Lease agreement for the Property.

• **Broker's Fee:** Broker's fee is due if the Seller transfers the Property (by sale, lease, governmental action, bankruptcy etc.), if Seller does not sign or refuses to sign an offer at the price and terms of the listing agreement, if Seller defaults under a fully executed contract or if Seller and buyer agree to cancel an executed contract. Broker's fee is also due if Seller transfers or contracts to transfer the Property (within the Protection Period) to anyone Seller, Broker or any real estate licensee communicated with about the Property before the Termination Date. This means that if Seller sells or contracts to sell the Property to anyone that saw or expressed interest in the Property during the term of the listing agreement, then Broker's fee would be due if the Property was sold or contracted to be sold during the Protection Period. However, no fee would be due to the Broker if the Property is relisted with another broker after the Termination Date (after listing expires) and sold through the other broker.

• **Retained Deposits:** This clause deals with percentage of the deposit that Broker is entitled to receive. These are deposits that the Seller retains as liquidated damages for a buyer's default in the transaction. This percentage of the retained deposits cannot exceed the fee in paragraph 6(a) of the Agreement. The Broker is entitled to the percentage of the retained deposit inserted in the blank but only after Seller retains the deposit for buyer's default.

 **Practice Tip.** The longer the Protection Period, the more "protection" the Broker has regarding Broker's commission. Broker should consider a 6 months or perhaps a one year Protection Period to prevent a Seller from waiting until both the listing and Protection Period expires to sell or contract to sell to a buyer that saw or expressed interest in the Property during the term of the listing agreement.

Section 7

105 **7. COOPERATION AND COMPENSATION WITH OTHER BROKERS:** Broker's office policy is to cooperate with all other
106* brokers except when not in **Seller's** best interest: ☐ and to offer compensation in the amount of 33 % of the
107* purchase price or \$ 34 to **Buyer's** agents, who represent the interest of the buyers, and not the interest of **Seller** in
108* **Seller** () () and **Broker/Sales Associate** () () acknowledge receipt of a copy of this page, which is Page 2 of 4 Pages.
109* a transaction; ☐ and to offer compensation in the amount of 35 % of the purchase price or \$ 36 to a
110* broker who has no brokerage relationship with the **Buyer** or **Seller**; ☐ and to offer compensation in the amount of
111* 37 % of the purchase price or \$ 38 to Transaction brokers for the **Buyer**; ☐ None of the above (if this is
112 checked, the Property cannot be placed in the MLS.)

Purpose:

To disclose to Seller the amount of compensation being offered to cooperating brokers

Blanks:

33 This is the percentage of the purchase price that is offered to buyer's agents who represent the interest of the buyers only and not the interest of the Seller.

34 This is the dollar amount that is offered to buyer's agents who represent the interest of the buyers only and not the interest of the Seller.

35 This is the percentage of the purchase price that is offered to a broker who has no brokerage relationship with the buyer or Seller.

- 36 This is the dollar amount that is offered to a broker who has no brokerage relationship with the Buyer or Seller.
- 37 This is the percentage of the purchase price that is offered to a broker who has a transaction broker relationship with the buyer.
- 38 This is the dollar amount that is offered to a broker who has a transaction broker relationship with the buyer.

Boxes:

Line 106 check if Broker is offering compensation to buyer's agents who represent buyer only and not Seller
 Line 109 check if Broker is offering compensation to broker who has no brokerage relationship with buyer or Seller
 Line 110 check if Broker is offering compensation to a transaction broker for the buyer
 Line 111 check if Broker is not offering any compensation to cooperating brokers

Explanation:

• **Cooperation and Compensation with other Brokers:** Article 1 of the Realtor Code of Ethics requires Realtors®, when entering into listing agreements, to disclose to a seller the Realtor's® company policy regarding cooperation and the amount of any compensation offered to subagents, buyer's agents, and brokers acting in legally recognized non-agency capacities. Though the Code of Ethics does not require the disclosure to be made in the listing agreement, this section is included in the listing agreement to help Broker comply with the Code of Ethics requirement. This section is often confused with variable rate commission. This provision deals with the amount of compensation offered to buyer's agents, transaction brokers and no brokerage relationship brokers. By contrast, variable rate commission agreements are listing agreements where one amount of commission is payable if the listing broker's firm is the procuring cause of the sale and a different amount of commission is payable if the sale is a result of the efforts of the seller or cooperating broker. In essence, this section deals with compensation offered to cooperating brokers while variable rate listing agreements deal with varying commission to the listing broker depending on whether property is sold through the listing broker's firm or the property is sold through the seller or cooperating broker. The amounts offered in the MLS should not reflect the listing broker's share of the commission. The amounts offered under this section should only reflect the cooperating broker's share of the commission.

• **Compensation Offered:** Broker may offer different amounts of compensation to buyer's agents, transaction brokers and for brokers acting in no brokerage relationship with the buyer. For example, Broker may offer 3% to buyer's agents, 2% to transaction brokers and 1% to brokers acting in a no brokerage relationship with the buyer. Broker may also choose to offer the same amount of commission for all cooperating brokers regardless of the type of agency relationship involved. If Broker is not offering any compensation to cooperating brokers, the Property cannot be placed in the MLS.

Section 8

113 **8. BROKERAGE RELATIONSHIP:** Under this Agreement, **Broker** will be acting as a transaction broker, **Broker** will deal
 114 honestly and fairly with **Seller**, will account for all funds, will use skill, care, and diligence in the transaction, will disclose all
 115 known facts that materially affect the value of the residential property which are not readily observable to the buyer, will present
 116 all offers and counteroffers in a timely manner unless directed otherwise in writing and will have limited confidentiality with **Seller**
 117 unless waived in writing.

Purpose:

To state the duties of a transaction broker outlined in Chapter 475.278 of the Florida Statutes.

Explanation:

• **Brokerage Relationships:** A real estate licensee in Florida may enter into a brokerage relationship as a single agent or transaction broker. A licensee may also be in a no brokerage relationship with buyer or seller. There is a presumption that all licensees are operating as transaction broker unless a single agent or no brokerage relationship is established in writing. Since July 1, 2008, licensees who are acting as a transaction broker no longer have to give a transaction broker notice to their customers. However, if under the listing agreement, the listing broker is acting as single agent or acting in a no brokerage relationship capacity with the Seller, then listing broker must give the Seller the single agent disclosure or the no brokerage relationship disclosure. Broker should use the listing agreement that relates to the type of agency relationship listing broker has established with the Seller. In the case of the listing agreement where Broker is acting as single agent or acting as no brokerage relationship or where seller consents for broker to transition to transaction broker,

Broker must insert the name of the brokerage firm and name of the associate in the appropriate disclosure. This preparation manual contains a reprint of the Brokerage Relationship clause for a broker acting in a transaction broker capacity with the seller. Since there is no agency disclosure required to be given to a buyer or seller when acting as transaction broker, only the duties of transaction broker has been included in the listing agreement where a transaction broker relationship has been established.

Section 9

118 **9. CONDITIONAL TERMINATION:** At **Seller's** request, **Broker** may agree to conditionally terminate this Agreement. If **Broker**
119 agrees to conditional termination, **Seller** must sign a withdrawal agreement, reimburse **Broker** for all direct expenses incurred
120* in marketing the Property and pay a cancellation fee of \$ ³⁹ plus applicable sales tax. **Broker** may void the
121 conditional termination and **Seller** will pay the fee stated in paragraph 6(a) less the cancellation fee if **Seller** transfers or
122 contracts to transfer the Property or any interest in the Property during the time period from the date of conditional termination
123 to Termination Date and Protection Period, if applicable.

Purpose:


To establish the terms of a conditional termination of the listing agreement

Blanks:

³⁹ Insert the amount of cancellation fee here

Explanation:

• **Conditional Termination:** This clause establishes the terms of a conditional termination. Broker may agree to conditionally terminate the Agreement. Broker is not required to terminate the agreement at Seller's request. If Broker agrees to conditionally terminate the Agreement, then Seller is required to pay the cancellation fee stated in this blank. If Seller transfers the Property or contracts to transfer the Property during the time period from the date of conditional termination to Termination Date and Protection Period, then Broker may void the conditional termination and Seller is obligated to pay the full commission stated in (6)(a) of the Agreement less the cancellation fee paid. This means that the termination is conditioned on the fact that Seller does not sell or contract to sell the Property during the time period stated. If Seller sells or contracts to sell the Property during the time period from the conditional termination date to the Termination Date and Protection Period date (if any) then Seller is obligated to pay the full amount of the commission under the listing agreement minus the cancellation fee. Sometimes a dollar amount is not inserted in this blank. This does not mean, however, that Seller may cancel the listing agreement without liability for the commission to the Broker. If there is no cancellation fee under the Agreement, then Seller does not pay a fee to Broker if Broker allows Seller to conditionally terminate the Agreement.

 **Practice Tip.** If Broker agrees to conditionally terminate the Agreement, Broker should state in the cancellation that the listing agreement is conditionally terminated. Otherwise, a dispute may arise as to whether the listing was conditionally or unconditionally terminated. A listing that is withdrawn from the MLS is not automatically terminated. It is good practice for a termination, whether it is conditional or unconditional, to be in writing and the terms of such termination clearly stated.

Section 10

124 **10. DISPUTE RESOLUTION:** This Agreement will be construed under Florida law. All controversies, claims and other matters
125 in question between the parties arising out of or relating to this Agreement or the breach thereof will be settled by first
126 attempting mediation under the rules of the American Mediation Association or other mediator agreed upon by the parties. If
127 litigation arises out of this Agreement, the prevailing party will be entitled to recover reasonable attorney's fees and costs, unless
128 the parties agree that disputes will be settled by arbitration as follows: **Arbitration:** By initialing in the space provided, **Seller**
129* (____) (____), Listing Associate (____) and Listing Broker (____) agree that disputes not resolved by mediation will be settled
130 by neutral binding arbitration in the county in which the Property is located in accordance with the rules of the American
131 Arbitration Association or other arbitrator agreed upon by the parties. Each party to any arbitration (or litigation to enforce the
132 arbitration provision of this Agreement or an arbitration award) will pay its own fees, costs and expenses, including attorney's
133 fees, and will equally split the arbitrators' fees and administrative fees of arbitration.

Purpose:


To outline the dispute resolution procedures that the parties must follow

Parentheses

Broker and Seller to insert their initials only if both Broker and Seller agree to settle their dispute through neutral binding arbitration after mediation fails

Explanation:

- **Mediation.** Mediation is the process by which a third person tries to persuade two parties to adjust or settle their dispute. The mediator first meets with both parties together so that each side can explain its point of view. Next, the mediator meets with one party individually to try to explain the strengths of the other side's argument and to persuade that party to agree to a settlement. Then, the mediator meets with the other party and follows the same procedure. Finally, the mediator brings the parties back together to conclude the proceeding.
- **Cost of Mediation.** Mediation may or may not be free, depending on who mediates. If the mediator charges a fee or if there is a cost for using the facilities, the parties split the fees equally.
- **Who Can Mediate.** Currently there is no licensure requirement. Anyone can facilitate mediation. A real estate licensee involved in the transaction may initially act as a mediator as part of the normal negotiation process. However, a neutral mediator should be obtained if the parties become deadlocked, if they appear to not work well with the licensee or if the licensee wants to avoid the appearance of favoritism, especially if he/she is the agent of one of the parties.
- **Arbitration.** This is the dispute resolution process by which the parties to a dispute choose an impartial person to hear their arguments and to issue a decision to which the parties will adhere. This process is intended to avoid the formalities, delay, expense and aggravation of ordinary litigation. Chapter 682, Florida Statutes, provides the right to have the arbitration decision reviewed by a court in limited circumstances.
- **Arbitrator.** The arbitration must be conducted in accordance with the rules of the American Arbitration Association (AAA) or those of another arbitrator mutually agreed upon by the parties. Providers of arbitration services can be found in the Yellow Pages business listings.
- **Costs of Arbitration.** Each party pays his/her own costs, fees and expenses. All the parties to the arbitration pay an equal share of the arbitrator's costs and administrative fees.
- **Location of Arbitration.** The arbitration must be held anywhere in the county where the real property is located. Always try to choose a neutral site such as the arbitrator's office.
- **Specific Enforcement of Arbitration Agreement.** If any party files a lawsuit or otherwise refuses to arbitrate any dispute, the other party may ask the court to compel the arbitration of the dispute.
- **Arbitrator's Power.** The arbitrator cannot rewrite the contract. He/she must review the evidence in light of the contract's terms and determine which side presents the most compelling evidence. The award must state findings of fact (those facts which the arbitrator found to be true or most likely to be true) as well as the contractual authority on which the award is based. The arbitrator also has the authority to solve any questions related to discovery, if any.
- **Arbitration Award.** The award must be in line with the provisions of the contract. If a party fails to comply with the arbitrator's decision, the other party can file the decision with a court. The court's decision has the same legal effect as any judgment issued by a court.
- **Litigation.** If both the Broker and Seller do not initial the parentheses in this paragraph, any dispute not resolved by mediation shall be litigated. The prevailing party to any litigation is entitled to attorney's fees, costs and expenses.

 **Practice Tip.** Some local Boards/Associations of REALTORS, some local bar associations and the AAA currently offer mediation services. There is also an online mediator, the National Arbitration Forum (NAF), <http://www.arb-forum.com>, which may be useful when the parties are in different locations. The local bar association or NAF may also offer arbitration services at a less expensive rate than the AAA, so it could pay to shop around.

Section 11


134 **11. MISCELLANEOUS:** This Agreement is binding on **Broker's** and **Seller's** heirs, personal representatives, administrators,
135 successors and assigns. **Broker** may assign this Agreement to another listing office. This Agreement is the entire agreement
136 between **Broker** and **Seller**. No prior or present agreements or representations shall be binding on **Broker** or **Seller** unless
137 included in this Agreement. Signatures, initials and modifications communicated by facsimile will be considered as originals.
138 The term "buyer" as used in this Agreement includes buyers, tenants, exchangors, optionees and other categories of potential
139 or actual transferees.

Purpose:

To provide for assignment of the Agreement and to indicate that the Agreement will bind the Seller's and Broker's successors and assigns and to provide standard boilerplate language regarding definitions, signatures and modifications

Explanation:

- **Assignment.** This Agreement may be assigned by the Broker. The assignee (another broker) would be bound to perform under the listing agreement as written and cannot change any provision without Seller's consent.
- **Death of Party.** This Agreement will continue to be in effect even if Seller or Broker dies. The deceased party's estate will assume responsibility for performance.
- **Contract Terms Express the Agreement Between the Parties.** When the Broker and Seller sign the Agreement, a court that is called upon to subsequently interpret the Agreement will not look beyond what is written in the "four corners" of the Agreement. If the parties verbally agreed to terms that were not written into the Agreement, the verbal terms will not be enforceable. Make sure each party's intent is clearly expressed in the Agreement. Put every negotiated item in the Agreement. Do not let verbal agreements between the parties go unwritten.
- **Signatures and Initials.** All parties should initial every change to the preprinted words of the Agreement to indicate their consent to the modification. Lengthy changes should be written in paragraph 12, additional clauses or on a separate addendum. A Modification to Listing Agreement form may be used to modify the terms of this Agreement.
- **Electronic Communications.** Florida Statutes section 668.50 gives legal recognition to contracts formed by electronic means. It provides that persons who have agreed to conduct a transaction by electronic means may do so as long as the information is provided, sent or delivered in an electronic record capable of retention by the recipient at the time of receipt, i.e. the recipient can print or store the electronic record. This Agreement includes a clause that the Agreement, signatures, modifications, etc., may be communicated electronically.
- **Conflicting Provisions.** Under general contract interpretation rules, if a preprinted contract term conflicts with a handwritten or typed term, the handwritten or typed term will prevail because it presumably shows the last intent of the parties.

 **Practice Tip.** The Broker should seek legal advice prior to assigning the Agreement to another Broker. Since the listing agreement is an agreement between Seller and Broker, a sales associate or broker associate working for the Broker does not have the authority to assign the listing to a new broker if the sales associate or broker associate leaves the Broker they were with when they procured the listing.

Section 12

140*	12. ADDITIONAL TERMS:	40
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157* Seller () () and Broker/Sales Associate () () acknowledge receipt of a copy of this page, which is Page 3 of 4 Pages.		

Purpose:

To provide a place to indicate additional terms that the parties want included.

40 Insert any terms the parties want that are not covered in the preprinted Agreement.

Explanation:

- **Additional Terms.** If any terms are added in this paragraph, make sure they clearly express the intent of the parties.

Section 13

158* Date: _____	Seller's Signature: _____	Tax ID No: _____ - _____ - _____
159* Home Telephone: _____	Work Telephone: _____	Facsimile: _____
160* Address: _____		
161* Date: _____	Seller's Signature: _____	Tax ID No: _____ - _____ - _____
162* Home Telephone: _____	Work Telephone: _____	Facsimile: _____
163* Address: _____		
164* Date: _____	Authorized Listing Associate or Broker: _____	
165* Brokerage Firm Name: _____	Telephone: _____	
166* Address: _____		

Purpose:

To provide a place for Seller and Broker's signatures and contact information

- 41 Insert the date of Seller's signature
- 42 Seller must sign here
- 43 Insert Seller's Tax ID Number
- 44 Insert Seller's home phone number
- 45 Insert Seller's work phone number
- 46 Insert Seller's fax number
- 47 Insert Seller's address
- 48 Insert the date of Seller's signature
- 49 Seller must sign here
- 50 Insert Seller's Tax ID Number
- 51 Insert Seller's home phone number
- 52 Insert Seller's work phone number

- 53 Insert Seller's fax number
- 54 Insert Seller's address
- 55 Insert the date that the authorized listing associate or Broker signs
- 56 Authorized listing associate or Broker must sign here
- 57 Insert Brokerage firm name
- 58 Insert Brokerage telephone number
- 59 Insert Brokerage address

Section 14

167*

Copy returned to **Customer** on the ____ day of _____, ____ by: ☐ personal delivery ☐ mail ☐ E-mail ☐ facsimile.

- 60 Date on which a copy of this Agreement was returned to the Seller

Explanation:

- **Seller's Signature.** If a written listing agreement is used, it must comply with certain requirements of law if a real estate licensee is involved. Chapter 475.25(1) (r) of the Florida Statutes requires that a written listing agreement include among other things proper signature of the principal(s). This means that Seller must sign this listing agreement.
- **Copy to Seller.** The date on which a copy of the Agreement is returned to Seller is important because Chapter 475.25(1) (r) of the Florida Statutes requires a licensee to give the principal(s) a legible, signed, true and correct copy of the listing agreement within 24 hours of obtaining the listing agreement. While failure to provide a signed copy of the listing agreement to the Seller within 24 hours may result in a violation of this statute and expose the listing associate and/or Broker to administrative action against the real estate license in front of the Florida Real Estate Commission (FREC), it does not invalidate the listing agreement if the Seller and Broker mutually agreed to all the material terms.

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168* Seller (____) (____) and Broker/Sales Associate (____) (____) acknowledge receipt of a copy of this page, which is Page 4 of 4 Pages.