

GUIDELINES FOR COMPLETING THE EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT (standard form 101)

INTRODUCTION: These guidelines are provided to assist an agent who is completing the Exclusive Right to Sell Listing Agreement (standard form 101) on behalf of the firm with which the agent is affiliated. The rules of the North Carolina Real Estate Commission require agreements for brokerage services in real estate transactions to be in writing, among other things. These guidelines include general comments about completion of the form as well as suggestions and explanations regarding several provisions with which agents sometimes have difficulty. However, situations will frequently arise that are not covered by these guidelines. Agents should always remember that the firm's broker-in-charge should be consulted if there is uncertainty regarding the proper completion of the form.

USE OF FORM: The form is produced by the North Carolina Association of REALTORS® for use by its members, only as printed. The form was developed for use by firms wishing to establish exclusive agency relationships with sellers who are interested in selling residential real property.

GENERAL INSTRUCTIONS:

1. Type this form if possible; otherwise print or write legibly in ink.
2. Fill in all blank spaces. If any space is not used, enter "N/A" or "None" as appropriate.
3. Be precise. Avoid the use of abbreviations, acronyms, jargon, and other terminology that may not be clearly understood.
4. Every change, addition or deletion to the agreement must be initialed and should be dated by both buyer and agent.
5. Both buyer and agent should initial those pages where indicated at the bottom in the spaces provided.
6. Advise the buyer to consult an attorney if they have any question about the legal consequences of the agreement or any particular provision.

NAMES OF SELLER AND FIRM: Fill in the complete name of each seller. If husband and wife, show the names of both (John A. Doe and wife, Mary B. Doe). Do not use "Mr. And Mrs. John A. Doe." Fill in the complete name of the agent's firm, NOT the agent's name, since the agreement is between the seller and the agent's firm.

SELLER REPRESENTATION (bold type immediately above paragraph 1): This section of the form contains two important representations by the seller. The first representation is set forth to assist the agent in discharging the ethical obligation imposed by Standard of Practice 16-9 of the *Code of Ethics* of the National Association of REALTORS®, which provides as follows: "REALTORS®, prior to entering into an agency agreement or other exclusive relationship, have an affirmative obligation to make reasonable efforts to determine whether the client is subject to a current, valid exclusive agreement to provide the same type of real estate service." The second representation relates to the agent's duty under the rules of the North Carolina Real Estate Commission to give the seller a copy of the "Working with Real Estate Agents" brochure prescribed by the Commission and review it with the seller.

1. **REAL PROPERTY:** Fill in the Street Address (**NOT** the mailing address, which may be different from the street address). Also fill in the city, county and zip code. **CAUTION:** This information alone is generally not an adequate legal description.

Legal Description: Complete ALL applicable blanks.

- **Reference to a recorded plat (map):** Include the lot/unit #, block/section #, name of subdivision/condominium, and recording reference for the plat as recorded in the Register of Deeds office. **CAUTION:** A reference to a tax map alone is generally not an adequate legal description.
- **PIN/PID or other identification number:** Although helpful, reference to a **PIN/PID** alone is generally not an adequate legal description.
- **Other description:** A survey attached as an exhibit or an abbreviated description such as 10+/- acres at the northeasterly quadrant of the intersection of Route 41 and Jackson Boulevard may be helpful. A copy of the Seller's deed may be attached as an exhibit. Do not attempt to complete a metes and bound description as an exhibit. An attorney should be consulted if a metes and bounds description is necessary or if the information available is inadequate to clearly describe the Property.

Reference to a recorded deed: If known, insert the book number and page number of the Seller's deed as recorded in the office of the Register of Deeds office.



2. **FIXTURES:** The following items should be listed in the blank space: (i) any items presently on the Property which are listed in the fixtures clause that the seller intends to exclude from any sale, (ii) any items presently on the Property which may be considered fixtures but which are NOT listed in the fixtures clause (EXAMPLES: storage shed, mailbox, hot tub) that the seller intends to exclude from any sale, and (iii) any items described in (i) or (ii) that are presently on the Property but are leased or not owned by the seller. It is not necessary to cross out items that are listed in the fixtures clause but are not on the Property. Note that some items are considered fixtures, particularly the range/stove/oven, even if not permanently attached to the Property. If in doubt as to whether an item that the seller wishes to exclude from any sale is or is not a fixture, it is advisable to list the item to avoid a later dispute.

3. **PERSONAL PROPERTY:** List all items of personal property that are to be included in any sale. (EXAMPLES: Curtains, draperies, etc.; free standing appliances such as a refrigerator or washer and dryer; fireplace tools; window air conditioner; etc.) *NOTE: Care should be taken to ascertain that any personal property **included** in the sale is owned by the Seller and is not merely rented or leased.*

4. **HOME WARRANTY:** Indicate whether the Seller will or will not agree to obtain and pay for a one-year home warranty by checking the appropriate box. If the Seller will provide a home warranty, insert the maximum amount that the Seller will pay in the first blank and insert the amount of any fee that the home warranty company will pay to the Firm for its assistance in obtaining the home warranty in the second blank. If the Seller will not pay for a home warranty, insert "N/A" in the both blanks in paragraph 4.

5. **LISTING PRICE:** Insert the list price for the Property and indicate what terms, including types of financing a buyer might seek, the Seller is willing to accept by checking the appropriate box(es). If FHA or VA financing might be sought, Sellers should be made aware of the terms of the FHA/VA Addendum and that appraisals by such lenders might be binding for a period of time in the future.

6. **TERM:** The rules of the NC Real Estate Commission require that any written agreement for brokerage services "shall provide for its existence for a definite period of time." Therefore, specific dates should be inserted in the two blanks in this section. Although there is no rule which limits the period of time that the agreement can be in effect, the period of time should be reasonable, taking into account the period of time within which the objective of the agreement—the sale of and closing on the seller's property—can probably be accomplished. The Real Estate Commission rules also provide that an agreement for brokerage services cannot contain a provision that would require notice prior to termination. Although the form does not contain any such provision, agents are cautioned against inserting any "prior notice" or "automatic renewal" provision in the form.

7. **FIRM'S COMPENSATION:**

Subparagraph (a). Insert dollar amount, percentage of purchase price, or other method of determining Firm's fee.

Subparagraph (b). Insert in the blank in (b)(iii) the number of days for the Protection Period. This provision is designed to protect the Firm's entitlement to its Fee under certain circumstances following the expiration of the listing agreement. **NOTE: The Protection Period provision does NOT apply if the Seller enters into a valid listing agreement with another firm during the Protection Period.**

Subparagraph (c). An agent is required by the rules of the NC Real Estate Commission to fully and timely disclose to the agent's client the expected receipt of any compensation, incentive, bonus, rebate, or other consideration of more than nominal value from another party or person (e.g., a listing firm or seller). According to the rule, "full" disclosure includes a description of the compensation, incentive, bonus, rebate or other consideration, including its value. If compensation in addition to that described in the listing agreement is offered to the Firm for the sale of the Property, the additional compensation should be disclosed orally to the Seller then confirmed in writing before the Seller makes or accepts an offer to sell the Property. NCAR Form 770 was designed to satisfy the written confirmation requirement.

8. **COOPERATION WITH/COMPENSATION TO OTHER FIRMS:** Standard of Practice 1-12 of the REALTOR® Code of Ethics provides that "[w]hen entering into listing contracts, REALTORS® must advise sellers/landlords of the REALTOR®'s company policies regarding cooperation and the amount(s) of any compensation that will be offered to subagents [and] buyer/tenant agents..." Article 3 of the Code of Ethics provides that "REALTORS® shall cooperate with other brokers except when cooperation is not in the client's best interest. The obligation to cooperate does not include the obligation to share commissions, fees, or to otherwise compensate another broker." The firm should indicate whether it will cooperate with subagents and/or buyer agents by checking the appropriate box(es) and if so, the amount of compensation that will be offered should be inserted in the appropriate blank(s).

10. **MARKETING:** Check all applicable boxes. Note that checking the "Open Houses" box *permits* the Firm to hold open houses at such times as the Firm and the Seller may agree but does not require that open houses be held. Also note that if the "Advertising Other Than On The Internet" box is checked, it does *not* constitute a blanket authorization to *other* firms to advertise the Property in non-Internet media. Other firms may engage in such advertising only to the extent that the Firm may permit. With respect to the "Internet Advertising" box, if the Seller desires to limit or prohibit such advertising, the Seller must complete a separate form confirming the extent to which such advertising will be limited or prohibited. NCAR Form #105 may be used for this purpose. As set

out in Form #105, Sellers should be clear that prohibiting automated estimates of the market value of the Property and third-party comments about the Property on broker IDX and VOW web sites will NOT prevent those from appearing on “third-party” web sites such as Zillow, Trulia and Realtor.com.

12. **SELLER REPRESENTATIONS:** This paragraph contains numerous representations by the Seller. The listing agent should carefully go over each of these representations with the Seller.

Subparagraph (a). The appropriate box in BOTH sets of boxes (one set in the first sentence of this subparagraph and the other in the second sentence) should be checked based upon Seller’s instructions. A definition of the term “Special Flood Hazard Area” can be obtained from the website of the Federal Emergency Management Agency at www.fema.gov. Information about the state of North Carolina’s Floodplain Mapping Program is available online at www.ncfloodmaps.com.

Subparagraph (b). The blank should be completed if the Seller is aware that the Property was previously clad partly or entirely with synthetic stucco.

Subparagraph (c). Check the appropriate box. If there is an owners’ association, the Offer to Purchase and Contract now *requires* the attachment of an Owners’ Association Disclosure and Addendum form (form 2A12-T) to the Contract. Therefore, the Seller should promptly complete the Addendum so that it may be made available to prospective buyers and their agents.

Subparagraph (d). Check the appropriate box in the first sentence. If there is termite bond on the Property, also check the appropriate box in the second sentence. If there is a termite bond on the Property and if the bond is transferrable, the transfer cost should be inserted in the first blank in the third sentence and the name of the bonding company inserted in the second blank in the third sentence.

Subparagraph (e). Check the applicable box disclosing how long the Seller has owned the Property or whether the Seller owns the Property at the time Seller executes the listing agreement. Seller’s term of ownership may affect a buyer’s ability to obtain mortgage financing. Some mortgage lenders require proof that the property is not being *flipped* from one purchaser at a lower price to another purchaser at a higher price within a short period of time.

Subparagraph (f). Check the box indicating whether the Property is or is not the Seller’s primary residence. This information is required by North Carolina law to be included in the deed conveying the Property from the Seller to a buyer.

Subparagraph (g). Although not required, it is strongly recommended that the Seller be given a sample copy of the Offer to Purchase and Contract form at the time the listing agreement is entered into, as well as a sample copy of the Professional Services Disclosure and Election form (Standard form # 760). The check boxes in paragraph 12 should be checked to confirm that the Seller has been given copies of these documents.

Subparagraph (h)(1). Check the appropriate box in subparagraph (h)(1) whether the Property is subject to one or more deeds of trust or mortgages. If the Property is subject to one or more deeds of trust or mortgages, each such deed of trust or mortgage should be described by filling in the appropriate blanks in subparagraphs (h)(1)(i) through (h)(1)(iii).

Subparagraph (h)(2)—(h)(7). Seller is making five different representations in subparagraphs (h)(2) through (h)(6). These representations are to the best of Seller’s knowledge. Information about any representation which is not accurate should be inserted in the blank in subparagraph (h)(7).

In subparagraphs (h)(2) and (h)(3), the Seller is representing that Seller is current and not in default on any loans identified in subparagraph (h)(1).

In subparagraph (h)(4), the Seller is representing that there are no liens on the Property *and* that the Seller isn’t aware of any situation that may result in a lien being filed during the listing agreement. “Lien” is described in the NC Real Estate Commission’s North Carolina Real Estate Manual as “[a] charge, hold, or claim that one person has upon the property of another as a security for the payment of a debt.” Examples of liens include IRS tax liens for unpaid federal income taxes, owner association liens for unpaid dues, and materialmen’s liens for unpaid labor or materials for improvements to property.

In subparagraph (h)(5), the Seller is representing that there are no judgments affecting the Property *and* that the Seller isn’t aware of any situation that may result in such a judgment being filed during the listing agreement. “Judgment” is defined in the NC Real Estate Commission’s North Carolina Real Estate Manual as “[t]he decision...of a court of law...A properly docketed judgment declaring that one individual is indebted to another individual creates a lien on any real property owned by the judgment debtor.”

In subparagraph (h)(6), the Seller is representing that there are no UCC fixture filings affecting the Property *and* that the Seller isn’t aware of any situation that may result in a fixture filing during the listing agreement. “Fixture filing” is defined in Article 9 of the Uniform Commercial Code as “the filing of a financing statement covering goods that are or are to become fixtures.” For example, a fixture filing may be made by a company installing an HVAC system in a house when the owner will pay for the system over time. If the owner fails to make payments, the fixture filing would give the installing company specific rights with respect to the HVAC system.

Subparagraph (i). Check the appropriate boxes in subparagraphs (i)(1) and (i)(2). A bankruptcy proceeding may, but does not necessarily, affect the ability of the Seller to market and sell the Property without the permission of the bankruptcy trustee and/or the bankruptcy court. If the Seller is in bankruptcy or is contemplating bankruptcy, it is strongly recommended that the Firm seek competent legal advice prior to taking the listing.

Subparagraph (j). If legal access to a public right-of-way is by private road/easement, check appropriate box whether there is a road maintenance agreement, and obtain a copy of the agreement and/or other information from Seller if such an agreement exists.

Subparagraph (k). Check appropriate box whether the Property is subject to any lease(s), and if so, obtain a copy of the lease agreement(s) or a written statement of the terms of any oral lease.

Subparagraph (l). Check appropriate box whether a FHA or VA appraisal has been performed on the Property within six months of the commencement date of the listing agreement. It is important to know if a FHA or VA appraisal has been recently performed as it is binding for a period of time following the date of the appraisal for FHA or VA financing.

Subparagraph (m). See definitions of “Special Assessments,” “Proposed Special Assessment” and “Confirmed Special Assessment” in Paragraph 1(n) of the Offer to Purchase and Contract (form 2-T). If Seller is aware of any Proposed or Confirmed Special Assessment, describe the assessment in the blank.

13. **SELLER’S DUTIES:** Insert in the blank in subparagraph (e) any circumstance of which Seller is aware that might prohibit Seller from conveying fee simple marketable title to the Property (known defect in the title to the Property, restrictive covenant violation, purchase price for Property possibly insufficient to pay costs of sale and Seller without sufficient liquid assets to cover such costs, etc.). The Short Sale Addendum to Exclusive Right to Sell Listing Agreement should be attached to the listing agreement if any sale of the Property may be a “short sale” as that term is defined in the Addendum.

14. **HOME INSPECTION:** Check the appropriate box whether Seller will obtain a home inspection. It should be noted that the listing firm is advising the Seller to obtain a home inspection in order to (i) provide proper evaluation of the condition of the Property, (ii) to allow for efforts to enhance its marketability, including appropriate pricing, and (iii) to reduce concerns of prospective buyers. If Seller will obtain a home inspection, insert the number of days within which the inspection will be obtained in the blank.

(NOTE: It is generally recommended that a buyer have their own inspection performed and buyer should not rely upon the seller’s inspection report.)

Although not required, it is recommended that the Seller be given a copy of the Real Estate Commission’s brochure “Questions and Answers on: Home Inspections.” Copies of the brochure may be obtained from the Commission’s website at www.ncrec.gov. The check box in paragraph 14 should be checked to confirm that the Seller has been given copies of the brochure.

15. **ADDITIONAL TERMS AND CONDITIONS:** Additional terms and conditions may be added in this space if necessary. Identify each additional provision as (a), (b), etc. If any additional provision conflicts with another provision of the Agreement, clarify which provision is to govern. NOTE: Since the brokerage firm is a party to the Agreement, the drafting of additional provisions would not constitute the unauthorized practice of law. However, in order to insure that the contractual relationship between the Firm and the Seller is clear and unambiguous, great care should be taken in drafting any additional provisions.

16. **DUAL AGENCY:** A firm is not required to offer dual agency to its clients. However, if the Firm does offer dual agency, the listing agent should review subsections (a), (b) and (c) with the Seller in order to help insure that any decision by the Seller to authorize dual agency is an informed one. The Seller should indicate whether the Seller will authorize the firm to engage in dual agency if a buyer client of the Firm becomes interested in the Seller’s Property by initialing *one* of the two blanks in subsection (d).

When a firm represents both the buyer and seller in the same real estate transaction, the firm may, with the prior express approval of its buyer and seller clients, designate one or more individual brokers associated with the firm to represent only the interests of the seller and one or more other individual brokers associated with the firm to represent only the interests of the buyer in the transaction. This option may allow each “designated agent” to more fully represent each party. An individual broker shall not be so designated and shall not undertake to represent only the interests of one party if the broker has actually received confidential information concerning the other party in connection with the transaction. A broker-in-charge shall not act as a designated broker for a party in a real estate sales transaction when a provisional broker under his or her supervision will act as a designated broker for another party with a competing interest.

If the Seller authorizes dual agency and the Firm also offers designated agency, the agent should at this point review subsection (e) with the Seller to determine whether the Seller will authorize the Firm to engage in designated agency. The Seller should initial the blank provided in subsection (e) in order to authorize designated agency.

Initialing blanks for Dual Agency and/or Designated Agency permits (“authorizes”), but does not require, the Firm to practice either or appoint a designated agent. Typically, this authority is given at the time the agency agreement is first completed.

SIGNATURES: All parties named as “Seller” must sign as seller. A married seller’s spouse should join in the execution of the listing agreement and any subsequent purchase agreement, even if the spouse is not a record owner of the Property. The non-owner spouse holds a potential “marital life estate” and a right to dissent from the will under North Carolina law and must sign the deed in order for the other spouse to convey clear title. The signature of the non-owner spouse on the contract will obligate that spouse to join in signing the deed. If the married Sellers have executed and recorded a pre-nuptial agreement, post-nuptial agreement, or a free trader agreement, consult a North Carolina Real Estate Attorney to determine who must sign.

