

LISTING AGREEMENT FORMS

The type of listing agreement: Exclusive-right-to-sell, exclusive agency, open listing or net listing. The type of listing will determine the authority of the broker on behalf of the seller.

The names of all parties to the contract: All persons with an ownership interest in the property must be named in the listing agreement and the agreement must have their signatures. If one or more owners are married, then their spouses should also be named and their signatures included in the listing agreement. If the property is leased to a tenant or tenants, whether entirely or in part, it is a material fact that should be disclosed and the terms of the lease(s) provided. (There is also usually a separate addendum to the agreement where sellers consent to the showing of the property and/or the placing of a lockbox on it for entry when the occupant is not present.

The real estate broker or firm: The listing salesperson's name as well as his or her broker's name and/or the company name are required. Remember that a written contract evidencing an agreement with the seller is required to entitle a licensee to a commission or fee.

The description of the property: This would cover the legal description as well as the street address. These items will be necessary in the final sales contract. If the property is an acreage tract and your seller does not have a good legal description, you may have to go to the county deed records and obtain a copy of the original deed. This may be especially helpful if the property does not front on a public street, so that you can confirm legal accessibility to the property, something most title companies require.

Real property vs. personal property: Any items of real property (personal property that is permanently attached to the real property) that will be removed by the seller prior to closing must be specifically addressed as well as any personal property that the seller intends to leave with the property. These items may become points of negotiation in the final sales contract and must be addressed again there, since a buyer is not bound by a listing agreement. Such items may include refrigerators, washers and dryers, fireplace accessories, window treatments, pool equipment and storage sheds. Licensees should advise the seller to remove and/ or replace all attached property to be removed so that a buyer will not assume that it conveys with the real property. For example, if a seller has an antique chandelier in the dining room that will not convey, he should be advised to remove it and replace it with another fixture before showing the property.

Leased equipment: A matter that should also be covered when identifying what property conveys is “leased equipment”. Water softeners, cable television boxes, and security systems are some examples of items that may be leased by the owner/ seller. The listing agreement should address the length and cost of the lease agreement as well as whether the items have transferability.

The listing price: This is the expected gross sale price. The seller’s net proceeds will be determined by the gross sales price minus any unpaid real estate taxes, closing costs, remaining mortgage balance and any other liens or outstanding debts secured by the property. The listing price is merely the initial asking price, not the price for which the property will end up selling. Other provisions of the listing agreement spell out that the broker will earn the fee or commission if and when the seller accepts an offer from a ready willing and able buyer at a purchase price and on terms agreeable to both during the listing term.

Term of Listing Agreement: This is probably one of the most vital portions of a listing agreement since it specifies in writing the dates of commencement and termination. An acceptable offer that results in a contract must be obtained during the listing term for an agent to be entitled to the negotiated fee or commission.

Broker’s authority and responsibilities: Includes the broker’s authority to advertise the property and stipulates where it can be advertised, in addition to the seller’s permission for the broker to place a “For Sale” sign on the property and the broker’s authority to work with other brokers through an MLS. Other marketing issues such as when and how showings are to take place are also covered under this paragraph in the listing agreement.

Commission agreement: The conditions under which a commission will be paid is here specified. Typically, the conditions require that the salesperson be the “procuring cause” of the sale and obtain a buyer who is “ready, willing, and able to buy”. This section also addresses whether the commission is a flat fee or a percentage of the sales price; how it is earned; when will it be paid; and whether the seller will pay it separately or from escrow at closing.

The broker protection clause: This clause allows for the broker to receive a commission after the termination of the listing agreement. This could happen, for instance, when an interested buyer sees the property while it is listed but is reluctant to make an offer until the listing terminates. In this instance, the broker would still receive a commission if an offer was made within the time frame specified in the broker protection clause. Typically, the clause rescinds this protection when the property is relisted by another broker. Sometimes the clause states that within a certain number of days from the termination of the listing, the broker may identify a list of potential buyers to the seller for whom the broker will still earn a commission, if one of them purchases the property.

Seller representations and warranties: This is where the seller represents and warrants to the broker the following:

1. That he or she has title to and peaceable possession of the real property with any improvements thereon. For something like a mobile home with a separate title, the licensee should actually investigate public records to confirm that the seller is indeed the actual owner. If there is a discrepancy, ask for proof by requesting a copy of the deed or other legal conveyance document; failing to do so could cause you to misrepresent the property to other brokers and potential buyers.
2. That he or she has the legal capacity to convey the property and enter into a listing agreement authorizing the selling or leasing of the property. This also should be confirmed to prevent misrepresentation.
3. That he or she is not currently a party to any other listing agreement with another broker and will not contract with another broker during the term of the listing.
4. That there is no person or entity with any current claim or later right to acquire title or any other legal interest in the property for lease or sale.
5. That any improvements on the property comply with current building codes, were built with proper permitting procedures followed, and that the property is zoned for the purposes for which it is being offered for sale or lease.
6. That if there are any repairs or defects known to the seller at the time of listing, the items will be properly disclosed and/or repaired prior to closing.
7. That the seller is not currently in default or delinquent on any note or mortgage covering the property (i.e., that the property is not being foreclosed). Even if the seller is in default, a licensee can still market the property, as long as this fact is conveyed to a potential buyer, as in a pre-foreclosure sale.
8. That there are no judgment liens or other legal issues currently before a court of law concerning the property.
9. That he or she has available copies of all rental contracts covering all or any portion of the property, i.e. a duplex with one or both sides rented out, and, get permission from the agent prior to rentals during the listing term.
10. That he or she agrees to furnish at his or her own expense a title insurance policy to a potential buyer.

Seller's Disclosure Notice: A separate document that a seller fills out, fully disclosing to the best of his or her knowledge all known visible or latent (invisible) defects affecting the property. Most states have a law covering this that setting out which items must be covered. Some states even have a standardized form to be used, which nevertheless allows real estate brokers and associations to add to the list on the form. The National Association of Realtors® and most of the state associations under it have established their own disclosure form (along

with their own Listing Agreement), which its member brokers and agents agree to use. More on this form specifically will be discussed later in this course. An example of the Seller's Disclosure Notice that must be used under Texas laws is provided to exemplify how such forms typically appear, though the real estate professional should consult their state laws on this issue. There is also a duty to disclose any change that may happen during the listing period that materially affects the property.

Texas State Seller's Disclosure Notice:

<\\sapna\development\Content\verticals\Real Estate\NEW CORE OCT 2003\Listing Agreements\Docs\PDF Attachments\Seller's Disclosure Sample.pdf>

Residential service contract: Also known as a homeowner warranty, it is an insurance policy covering the major appliances in the house; for example, the air conditioner, heater, water heater, garage door opener, pool equipment, etc. These are usually offered through nationwide companies and regulated by the states, and have become common in the last ten years. They address the condition of the property and the potential for future problems: if the property is old or the life of the equipment and systems in the property is almost over, a buyer may be reluctant to purchase the property because of the fear of future repair or replacement costs. By offering a homeowner warranty, the seller inspires more confidence in potential buyers. In the listing agreement, the paragraph concerning residential service contracts merely offers the seller the option to obtain one or opt out, with no obligation.

Lockbox: This section handles the usage of a lockbox on the seller's property and will appear in most listings, especially if there is an affiliated MLS involved. The seller gives the agent permission to place a lockbox containing a key to the property on the door for other licensees to access when the seller is not present. It is critical to get this in writing, since the seller also agrees to indemnify and hold harmless the broker for any and all damages or claims that arise through the lockbox's use, such as unauthorized entry or theft. There are safeguards on most lockboxes now used, which involve the use of an electronic key and a record of who made the last entry. The agent should present the pros and cons of allowing lockbox usage, as it is optional. If tenants are present on the property, the agent should also get written permission from each to use the lockbox, since they, too, have a property interest.

IRS: This section states that the Internal Revenue Service requires escrow officers to report gross sales price and the seller's tax identification number, and that a percentage of the sales price will be withheld if the seller is foreign. Facts of nationality must usually be confirmed by affidavit; the seller should certify on the listing agreement whether or not he or she is foreign in order to document this fact for the broker's protection.

Special Provisions: This is a blank section put in most listings for the seller and agent to write in any other items that need to be addressed – for example, referral by another agent, special instructions for showing, move out time frame, or a reduced commission structure that could not be written in full above, etc. If you need to attach another page to handle this, label it an exhibit so it is “incorporated” into the document.

Indemnification wording: This allows for the broker and seller to be protected and hold each other harmless, i.e. to agree to not sue each other, in the event that one supplies incorrect information to the other. This may include misinformation that was intentional or unintentional.

Antitrust wording: Federal and state statutes prohibit brokers from price fixing services and commissions. The listing agreement should state that the commission and/ or services were negotiated by the seller and broker and not set by any trade association or organization.

Nondiscrimination wording: In compliance with federal fair housing laws, the seller must offer the property to be shown to or purchased by any buyer regardless of race, creed, color, national origin, family status, sex, handicap or religious preference. State laws may add to the list of protected classes. The broker should be aware of these protected classes, since violation penalties are extensive. As a rule, licensees should refuse listings from sellers who do not wish to comply with the law.

Lead Based Paint Notice: If property improvements were built before 1978, federal law requires the seller to: 1) provide an EPA lead hazard information pamphlet; 2) disclose the presence of lead based paint or other hazards and provide any reports previously obtained; and, 3) permit buyers to conduct risk assessment or inspection for presence of lead based paint hazards. Any contracts for sale of properties built before 1978 must contain a legally prescribed Lead Warning Statement to the buyer. For a copy of the pamphlet, see www.epa.gov/opptintr/lead/leadpdf.pdf and for more information see www.hud.gov/lea/leadhelp.html

Signatures of parties: The contract must be signed by all parties named that have a legal right of ownership in the property. There are also lines for their Social Security Numbers (or Tax Identification Numbers) so that you have them when they are needed later for closing. If you don't get the SS or Tax ID numbers, they can be obtained later, since they are not required to contract for the listing, only to close and to obtain loan payoffs, etc.