

KEY POINT REVIEW

A **listing agreement** is an **employment contract** between a real estate broker and a property seller. In all states, an **exclusive listing agreement** must be in writing to be enforceable in court. The broker is a **special agent** of the seller.

As an **agent**, the **broker** is authorized to represent the **principal** and the principal's real estate to consumers. A real estate **sales associate** is a **general agent** of the broker and can carry out listing services only in the name of and under the supervision of the broker.

In an **exclusive right-to-sell listing**, **one broker** is appointed as the seller's **sole agent**, and if the property is sold while the listing is in effect, the broker is entitled to a commission, no matter who sells the property.

An **exclusive agency listing** authorizes **one broker** to act as the **sole agent** of the seller but allows the **seller** to retain the right to sell the property without obligation of payment to the broker.

In an **open listing** (also known as a **nonexclusive listing**), the seller retains the right to employ **any** number of brokers; the seller is obligated to pay a commission **only** to the broker who successfully produces a **ready, willing, and able buyer**; and the seller is not obligated to pay a commission if the seller personally sells the property without the aid of a broker.

A **net listing** in which the excess over the seller's desired net from the sale is paid to the broker as compensation may be prohibited by state law.

A **multiple listing clause** permits cooperation with other brokers in the **multiple listing service (MLS)**.

An **agreement to represent a seller** may be **terminated** when

- the agreement's **purpose** is fulfilled,
- the agreement's **term expires**,
- the property is **destroyed**,
- **title** to the property is transferred by operation of law (e.g., bankruptcy),
- the broker and the seller **mutually agree** to end the agreement,
- either the broker or the seller **breaches** the contract, or
- either party **dies** or becomes **incapacitated**.

All **exclusive listings** should have a **definite termination date** and should not have an automatic extension provision.

The **broker protection clause** preserves a broker's right to compensation if, within a certain number of days after the listing agreement expires, the owner transfers the property to a purchaser who was brought to the seller by the listing broker.

The **listing presentation** is usually made by a sales associate of the broker and is the job interview with a prospective client—the property owner. The sales associate presents information about the firm, the market, and how the firm can provide the best service to the owner. The sales associate also makes a **comparative market analysis (CMA)** to help the seller have a realistic idea of the price range in which the subject property falls.

A **listing agreement** will identify the property owner(s) and the property, describe the property improvements, list any loans held by the owner and their current status, itemize loan

and other payments on the property, and provide the details of a short sale, if the lender is willing to accept one.

Disclosures of agency relationships and property condition are important consumer safeguards and may be required by state law.

The listing agreement must specify any **personal property** that will be included in the sale of the real estate, as well as any **fixtures** or other items that will be excluded from the sale. **Leased equipment** also should be identified.

The seller may make a **home warranty** policy available for the buyer.

A **buyer representation agreement** is an employment contract in which a prospective property buyer employs a broker for the purpose of finding a suitable property. State law may specify the type of agreement that is available to the broker when representing a buyer. In an **agency** relationship, the broker will have a **fiduciary** responsibility to the buyer. In an **exclusive buyer representation** agreement, the buyer works with only one broker, but the broker is free to represent other buyer clients.

The buyer's broker will be **compensated** by a retainer, a flat fee for services, an hourly rate, a percentage of the purchase price, or some combination of these methods. The **source of compensation** does not determine the relationship of the parties and compensation is always negotiable.

Buyer representation is **terminated** when

- the agreement's purpose is **fulfilled**,
- the agreement's **term expires**,
- broker and buyer **mutually agree** to cancel the agreement,
- broker or buyer **breaches** the terms of the agreement, or
- broker or buyer **dies** or becomes **incapacitated**.