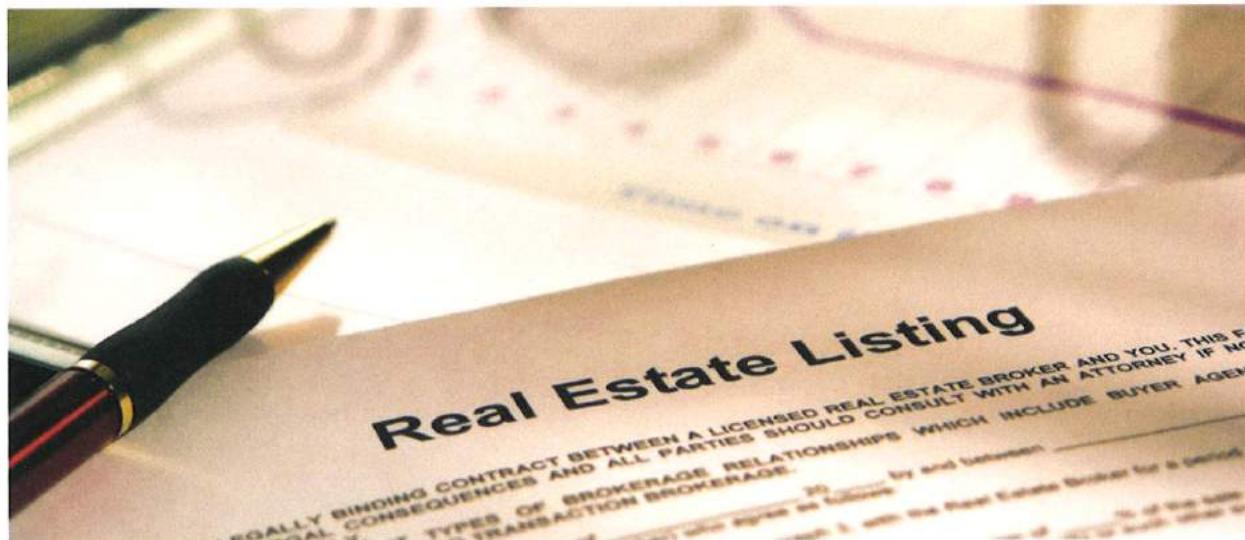


Chapter 6



Listing Contracts & the Listing Presentation Process

Chapter 6 Goals:

- Understand listing agreements and the basic operations of preparing one
- Recognize the various listing types
- Understand the exclusive-right-to-represent agreement
- Understand the exclusive-authorization-and-right-to-sell listing
- Know the elements of a listing agreement

Chapter 6: Listing Contracts & Listing Presentations

Key Terms

bilateral agreement Buyer Representation Agreement - Exclusive exclusive agency listing exclusive authorization and right-to-sell listing	exclusive right-to-represent listing legally binding listing agreement net listing open listing	procuring cause Residential Listing Agreement safety clause short sale standard sale unilateral contract
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Chapter Overview

In this chapter, readers will learn about:

- What a listing agreement is
- The various types of listing agreements for buyers and sellers
- Listing a short sale
- How to close a listing

What is a Listing Agreement?

A **listing agreement** – also known simply as “a listing” – is a binding contract between a property owner and a real estate agent that contracts the agent’s services for the sale, purchase, rent, or lease of real property. A listing agreement used for residential property is known as a **Residential Listing Agreement**.

A listing derives its name from the fact that it gives an agent the ability to “list” a property for sale. Sellers typically retain an agent’s services to help them locate prospective buyers; buyers may do so in order to gain assistance in locating potential properties.

A listing is technically a **bilateral agreement**. This refers to when two parties promise to do something in return for something else. In the case of real estate, an agent promises to render real estate services whereas a client promises to pay for those services.

A listing clearly articulates all terms and conditions in a transaction, including:

- A clearly defined offer to provide services
- The responsibilities of each party
- The legal relationship and dynamic between an agent/broker and a client

- Consideration to be delivered upon completion (i.e. an agent's commission)
- Consequences if one or both parties fail to complete their duties in the transaction

To be **legally binding** and protect all parties involved, a listing agreement must be made in writing. Oral agreements are not valid. Any modifications to a listing must be agreed-upon by both parties and also be in writing.

Typically, listings are made for a specific period of time. If a client's desired result does not occur within that time period, the listing becomes null and void unless both parties agree to modify the dates.

There are various types of listing agreements. Although the most common is for residential real estate, they also exist for commercial, industrial, farm, and special use properties.

Listing Agreement Types

The listings explored in this chapter are:

- Open listing
- Exclusive authorization and right-to-sell listing
- Exclusive agency listing
- Exclusive right-to-represent listing
- Net listing
- Option listing
- Short sales

Open Listing

An **open listing** – also known as a non-exclusive listing – allows multiple agents to represent the interests of a seller simultaneously. The agent who ultimately locates the buyer that results in a sale is entitled to the commission.

An open listing is considered a **unilateral contract**. This is an agreement whereby only one party is legally obligated to do something. In the case of real estate, a seller is required to pay the agent who produces a buyer, but the agent is not required to render services.

Sellers who have had their property on the market for a long period of time or who want their property sold as fast as possible often use open listings. Such listings typically entail a seller placing his or her property on the MLS and allowing agents to

produce potential buyers. This allows a seller to promote his or her property as widely as possible without making a guarantee to a particular agent.

One of the benefits of an open listing is a seller's ability to pursue buyers at the same time as agents. If it is the seller's efforts that lead to a sale, he or she does not need to pay an agent's commission. A seller may also terminate or withdraw a listing from the MLS at any time.

However, open listings do have clear disadvantages. As an agent is not exclusively representing a seller, he or she is not guaranteed to make money on the deal. Even if an agent works hard and produces a solid buyer with an offer, another agent may bring forth a better offer that the seller accepts. Consequently, an agent may not be fully committed to assisting the seller.

In situations with multiple agents, there is also room for dispute regarding which agent gets the commission. A **procuring cause** is a legal concept stipulating that an agent must prove that he or she initiated an uninterrupted chain of events that led to a sale in order to get paid. Simply providing property addresses or making an introduction to a buyer are not valid procuring causes; an agent's direct actions must directly influence and lead to the sale. Procuring causes require that an agent stay in continuous contact with a seller throughout a transaction.

Open listings often do not result in a sale. Therefore, many sellers ultimately decide to list the property with an agent using an exclusive authorization and right-to-sell listing.

Many real estate offices no longer accept open listings due to the likelihood of an agent losing a commission.

Exclusive Authorization and Right-to-Sell Listing

An **exclusive authorization and right-to-sell listing** is an agreement whereby one agent represents the interests of a seller. Only the listed agent is allowed to sell the property and in return, he or she is entitled to an exclusive, negotiated commission.

These listings incentivize an agent to sell a property for the highest price in the shortest amount of time possible in order to obtain the commission. Consequently, these listings produce the highest likelihood of finding a buyer.

The vast majority of listings are exclusive authorization and right-to-sell listings.

Exclusive authorization and right-to-sell listings cannot be for an indefinite period of time or use vague language such as "in effect indefinitely until the home sells". They must have a clear beginning and end date.

If an agent fails to sell the property during the agreed-upon time period, the seller has

the right to terminate the listing or begin a new one.

Unless an agent has violated the agreement, a seller cannot terminate the listing prior to its agreed-upon end date without the agent's consent. Should a seller cancel a listing without reason, or sell the property without informing the listing agent, the agent is still entitled to his or her commission.

A **safety clause** protects an agent's right to his or her entitled commission.



CALIFORNIA
ASSOCIATION
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RESIDENTIAL LISTING AGREEMENT
(Exclusive Authorization and Right to Sell)
(C.A.R. Form RLA, Revised 6/17)

Date Prepared:

1. EXCLUSIVE RIGHT TO SELL:

hereby employs and grants
beginning (date) and ending at 11:59 P.M. on (date)
the exclusive and irrevocable right to sell or exchange the real property described as
, situated in
(County), California, (Zip Code), Assessor's Parcel No. (City), ("Seller")
("Broker")
("Listing Period")
("Property").

This Property is a manufactured (mobile) home. See addendum for additional terms.

This Property is being sold as part of a probate, conservatorship or guardianship. See addendum for additional terms.

2. LISTING PRICE AND TERMS:

A. The listing price shall be:

Dollars (\$).

B. Listing Terms:

3. COMPENSATION TO BROKER:

Notice: The amount or rate of real estate commissions is not fixed by law. They are set by each Broker individually and may be negotiable between Seller and Broker (real estate commissions include all compensation and fees to Broker).

A. Seller agrees to pay to Broker as compensation for services irrespective of agency relationship(s), either percent of the listing price (or if a purchase agreement is entered into, of the purchase price), or \$ AND , as follows:

(1) If during the Listing Period, or any extension, Broker, cooperating broker, Seller or any other person procures a ready, willing, and able buyer(s) whose offer to purchase the Property on any price and terms is accepted by Seller, provided the Buyer completes the transaction or is prevented from doing so by Seller. (Broker is entitled to compensation whether any escrow resulting from such offer closes during or after the expiration of the Listing Period, or any extension.)

OR (2) If within calendar days (a) after the end of the Listing Period or any extension; or (b) after any cancellation of this Agreement, unless otherwise agreed, Seller enters into a contract to sell, convey, lease or otherwise transfer the Property to anyone ("Prospective Buyer") or that person's related entity: (i) who physically entered and was shown the Property during the Listing Period or any extension by Broker or a cooperating broker; or (ii) for whom Broker or any cooperating broker submitted to Seller a signed, written offer to acquire, lease, exchange or obtain an option on the Property. Seller, however, shall have no obligation to Broker under paragraph 3A(2) unless, not later than the end of the Listing Period or any extension or cancellation, Broker has given Seller a written notice of the names of such Prospective Buyers.

OR (3) If, without Broker's prior written consent, the Property is withdrawn from sale, conveyed, leased, rented, otherwise transferred, or made unmarketable by a voluntary act of Seller during the Listing Period, or any extension.

B. If completion of the sale is prevented by a party to the transaction other than Seller, then compensation which otherwise would have been earned under paragraph 3A shall be payable only if and when Seller collects damages by suit, arbitration, settlement or otherwise, and then in an amount equal to the lesser of one-half of the damages recovered or the above compensation, after first deducting title and escrow expenses and the expenses of collection, if any.

C. In addition, Seller agrees to pay Broker:

D. Seller has been advised of Broker's policy regarding cooperation with, and the amount of compensation offered to, other brokers.

(1) Broker is authorized to cooperate with and compensate brokers participating through the multiple listing service(s) ("MLS") by offering to MLS brokers out of Broker's compensation specified in 3A, either percent of the purchase price, or \$

(2) Broker is authorized to cooperate with and compensate brokers operating outside the MLS as per Broker's policy.

E. Seller hereby irrevocably assigns to Broker the above compensation from Seller's funds and proceeds in escrow. Broker may submit this Agreement, as instructions to compensate Broker pursuant to paragraph 3A, to any escrow regarding the Property involving Seller and a buyer, Prospective Buyer or other transferee.

F. (1) Seller represents that Seller has not previously entered into a listing agreement with another broker regarding the Property, unless specified as follows:

(2) Seller warrants that Seller has no obligation to pay compensation to any other broker regarding the Property unless the Property is transferred to any of the following individuals or entities:

(3) If the Property is sold to anyone listed above during the time Seller is obligated to compensate another broker: (i) Broker is not entitled to compensation under this Agreement; and (ii) Broker is not obligated to represent Seller in such transaction.



Property Address:

Date:

4. A. **ITEMS EXCLUDED AND INCLUDED:** Unless otherwise specified in a real estate purchase agreement, all fixtures and fittings that are attached to the Property are included, and personal property items are excluded, from the purchase price.

ADDITIONAL ITEMS EXCLUDED:**ADDITIONAL ITEMS INCLUDED:**

Seller intends that the above items be excluded or included in offering the Property for sale, but understands that: (i) the purchase agreement supersedes any intention expressed above and will ultimately determine which items are excluded and included in the sale; and (ii) Broker is not responsible for and does not guarantee that the above exclusions and/or inclusions will be in the purchase agreement.

- B. (1) **Leased Or Not Owned Items:** The following items are leased or not owned by Seller:

Solar power system Alarm system Propane tank Water Softener
 Other

- (2) **Liened Items:** The following items have been financed and a lien has been placed on the Property to secure payment:

Solar power system Windows or doors Heating/Ventilation/Air conditioning system
 Other

Seller will provide to Buyer, as part of the sales agreement, copies of lease documents, or other documents obligating Seller to pay for any such leased or liened item.

5. MULTIPLE LISTING SERVICE:

- A. Broker is a participant/subscriber to Multiple Listing Service (MLS) and possibly others. Unless otherwise instructed in writing the Property will be listed with the MLS(s) specified above. That MLS is (or if checked is not) the primary MLS for the geographic area of the Property. All terms of the transaction, including sales price and financing, if applicable, (i) will be provided to the MLS in which the property is listed for publication, dissemination and use by persons and entities on terms approved by the MLS and (ii) may be provided to the MLS even if the Property was not listed with the MLS.

BENEFITS OF USING THE MLS; IMPACT OF OPTING OUT OF THE MLS; PRESENTING ALL OFFERS

WHAT IS AN MLS? The MLS is a database of properties for sale that is available and disseminated to and accessible by all other real estate agents who are participants or subscribers to the MLS. Property information submitted to the MLS describes the price, terms and conditions under which the Seller's property is offered for sale (including but not limited to the listing broker's offer of compensation to other brokers). It is likely that a significant number of real estate practitioners in any given area are participants or subscribers to the MLS. The MLS may also be part of a reciprocal agreement to which other multiple listing services belong. Real estate agents belonging to other multiple listing services that have reciprocal agreements with the MLS also have access to the information submitted to the MLS. The MLS may further transmit listing information to Internet sites that post property listings online.

EXPOSURE TO BUYERS THROUGH MLS: Listing property with an MLS exposes a seller's property to all real estate agents and brokers (and their potential buyer clients) who are participants or subscribers to the MLS or a reciprocating MLS.

CLOSED/PRIVATE LISTING CLUBS OR GROUPS: Closed or private listing clubs or groups are not the same as the MLS. The MLS referred to above is accessible to all eligible real estate licensees and provides broad exposure for a listed property. Private or closed listing clubs or groups of licensees may have been formed outside the MLS. Private or closed listing clubs or groups are accessible to a more limited number of licensees and generally offer less exposure for listed property. Whether listing property through a closed, private network - and excluding it from the MLS - is advantageous or disadvantageous to a seller, and why, should be discussed with the agent taking the Seller's listing.

NOT LISTING PROPERTY IN A LOCAL MLS: If the Property is listed in an MLS which does not cover the geographic area where the Property is located then real estate agents and brokers working that territory, and Buyers they represent looking for property in the neighborhood, may not be aware the Property is for sale.

OPTING OUT OF MLS: If Seller elects to exclude the Property from the MLS, Seller understands and acknowledges that: (a) real estate agents and brokers from other real estate offices, and their buyer clients, who have access to that MLS may not be aware that Seller's Property is offered for sale; (b) Information about Seller's Property will not be transmitted from the MLS to various real estate Internet sites that are used by the public to search for property listings; (c) real estate agents, brokers and members of the public may be unaware of the terms and conditions under which Seller is marketing the Property.

REDUCTION IN EXPOSURE: Any reduction in exposure of the Property may lower the number of offers and negatively impact the sales price.

PRESENTING ALL OFFERS: Seller understands that Broker must present all offers received for Seller's Property unless Seller gives Broker written instructions to the contrary.

Seller's Initials () ()Broker's/Agent's Initials () ()Seller's Initials () ()**RLA REVISED 6/17 (PAGE 2 OF 5)****RESIDENTIAL LISTING AGREEMENT - EXCLUSIVE (RLA PAGE 2 OF 5)**Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

Property Address:

Date:

- B. MLS rules generally provide that residential real property and vacant lot listings be submitted to the MLS within 2 days or some other period of time after all necessary signatures have been obtained on the listing agreement. Broker will not have to submit this listing to the MLS if, within that time, Broker submits to the MLS an appropriate form signed by Seller.
- Seller elects to exclude the Property from the MLS as provided by C.A.R. Form SELM or the local equivalent form.
- C. MLS rules allow MLS data to be made available by the MLS to additional Internet sites unless Broker gives the MLS instructions to the contrary. Seller acknowledges that for any of the below opt-out instructions to be effective, Seller must make them on a separate instruction to Broker signed by Seller. Specific information that can be excluded from the Internet as permitted by (or in accordance with) the MLS is as follows:
- (1) **Property Availability On The MLS; Address On the MLS:** Seller can instruct Broker to have the MLS not display the Property or the Property address on the Internet. Seller understands that either of these opt-outs would mean consumers searching for listings on the Internet may not see the Property or Property's address in response to their search.
- (2) **Feature Opt-Outs:** Seller can instruct Broker to advise the MLS that Seller does not want visitors to MLS Participant or Subscriber Websites or Electronic Displays that display the Property listing to have the features below. Seller understands (i) that these opt-outs apply only to Websites or Electronic Displays of MLS Participants and Subscribers who are real estate broker and agent members of the MLS; (ii) that other Internet sites may or may not have the features set forth herein; and (iii) that neither Broker nor the MLS may have the ability to control or block such features on other Internet sites.
- (a) **Comments And Reviews:** The ability to write comments or reviews about the Property on those sites; or the ability to link to another site containing such comments or reviews if the link is in immediate conjunction with the Property display.
- (b) **Automated Estimate Of Value:** The ability to create an automated estimate of value or to link to another site containing such an estimate of value if the link is in immediate conjunction with the Property display. Seller elects to opt out of certain Internet features as provided by C.A.R. Form SELI or the local equivalent form.
6. **SELLER REPRESENTATIONS:** Seller represents that, unless otherwise specified in writing, Seller is unaware of: (i) any Notice of Default recorded against the Property; (ii) any delinquent amounts due under any loan secured by, or other obligation affecting, the Property; (iii) any bankruptcy, insolvency or similar proceeding affecting the Property; (iv) any litigation, arbitration, administrative action, government investigation or other pending or threatened action that affects or may affect the Property or Seller's ability to transfer it; and (v) any current, pending or proposed special assessments affecting the Property. Seller shall promptly notify Broker in writing if Seller becomes aware of any of these items during the Listing Period or any extension thereof.
7. **BROKER'S AND SELLER'S DUTIES:**
- A. Broker agrees to exercise reasonable effort and due diligence to achieve the purposes of this Agreement. Unless Seller gives Broker written instructions to the contrary, Broker is authorized, but not required, to (i) order reports and disclosures including those specified in 7C as necessary, (ii) advertise and market the Property by any method and in any medium selected by Broker, including MLS and the Internet, and, to the extent permitted by these media, control the dissemination of the information submitted to any medium; and (iii) disclose to any real estate licensee making an inquiry the receipt of any offers on the Property and the offering price of such offers.
- B. Seller agrees to consider offers presented by Broker, and to act in good faith to accomplish the sale of the Property by, among other things, making the Property available for showing at reasonable times and, subject to paragraph 3F, referring to Broker all inquiries of any party interested in the Property. Seller is responsible for determining at what price to list and sell the Property.
- C. **Investigations and Reports:** Seller agrees, within 5 (or) Days of the beginning date of this Agreement, to pay for the following pre-sale reports: Structural Pest Control General Property Inspection | Homeowners Association Documents Other
- D. Seller further agrees to indemnify, defend and hold Broker harmless from all claims, disputes, litigation, judgments attorney fees and costs arising from any incorrect or incomplete information supplied by Seller, or from any material facts that Seller knows but fails to disclose including dangerous or hidden conditions on the Property..
8. **DEPOSIT:** Broker is authorized to accept and hold on Seller's behalf any deposits to be applied toward the purchase price.
9. **AGENCY RELATIONSHIPS:**
- A. **Disclosure:** The Seller acknowledges receipt of a X "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD).
- B. **Seller Representation:** Broker shall represent Seller in any resulting transaction, except as specified in paragraph 3F.
- C. **Possible Dual Agency With Buyer:** Depending upon the circumstances, it may be necessary or appropriate for Broker to act as an agent for both Seller and buyer, exchange party, or one or more additional parties ("Buyer"). Broker shall, as soon as practicable, disclose to Seller any election to act as a dual agent representing both Seller and Buyer. If a Buyer is procured directly by Broker or an associate-licensee in Broker's firm, Seller hereby consents to Broker acting as a dual agent for Seller and Buyer. In the event of an exchange, Seller hereby consents to Broker collecting compensation from additional parties for services rendered, provided there is disclosure to all parties of such agency and compensation. Seller understands and agrees that: (i) Broker, without the prior written consent of Seller, will not disclose to Buyer that Seller is willing to sell the Property at a price less than the listing price; (ii) Broker, without the prior written consent of Buyer, will not disclose to Seller that Buyer is willing to pay a price greater than the offered price; and (iii) except for (i) and (ii) above, a dual agent is obligated to disclose known facts materially affecting the value or desirability of the Property to both parties.
- D. **Confirmation:** Broker shall confirm the agency relationship described above, or as modified, in writing, prior to or concurrent with Seller's execution of a purchase agreement.

Seller's Initials () () ()

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RESIDENTIAL LISTING AGREEMENT - EXCLUSIVE (RLA PAGE 3 OF 5)

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Property Address:

Date:

E. Potentially Competing Sellers and Buyers: Seller understands that Broker may have or obtain listings on other properties, and that potential buyers may consider, make offers on, or purchase through Broker, property the same as or similar to Seller's Property. Seller consents to Broker's representation of sellers and buyers of other properties before, during and after the end of this Agreement. Seller acknowledges receipt of a "Possible Representation of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRBS).

10. SECURITY, INSURANCE, SHOWINGS, AUDIO AND VIDEO: Broker is not responsible for loss of or damage to personal or real property, or person, whether attributable to use of a keysafe/lockbox, a showing of the Property, or otherwise. Third parties, including, but not limited to, appraisers, inspectors, brokers and prospective buyers, may have access to, and take videos and photographs of, the interior of the Property. Seller agrees: (i) to take reasonable precautions to safeguard and protect valuables that might be accessible during showings of the Property; and (ii) to obtain insurance to protect against these risks. Broker does not maintain insurance to protect Seller. Persons visiting the Property may not be aware that they could be recorded by audio or visual devices installed by Seller (such as "nanny cams" and hidden security cameras). Seller is advised to post notice disclosing the existence of security devices.

11. PHOTOGRAPHS AND INTERNET ADVERTISING:

- A. In order to effectively market the Property for sale it is often necessary to provide photographs, virtual tours and other media to buyers. Seller agrees (or checked, does not agree) that Broker may photograph or otherwise electronically capture images of the exterior and interior of the Property ("Images") for static and/or virtual tours of the Property by buyers and others for use on Broker's website, the MLS, and other marketing materials and sites. Seller acknowledges that once Images are placed on the Internet neither Broker nor Seller has control over who can view such Images and what use viewers may make of the Images, or how long such Images may remain available on the Internet. Seller further assigns any rights in all Images to the Broker and agrees that such Images are the property of Broker and that Broker may use such Images for advertising, including post sale and for Broker's business in the future.
- B. Seller acknowledges that prospective buyers and/or other persons coming onto the property may take photographs, videos or other images of the property. Seller understands that Broker does not have the ability to control or block the taking and use of Images by any such persons. (If checked) Seller instructs Broker to publish in the MLS that taking of Images is limited to those persons preparing Appraisal or Inspection reports. Seller acknowledges that unauthorized persons may take images who do not have access to or have not read any limiting instruction in the MLS or who take images regardless of any limiting instruction in the MLS. Once Images are taken and/or put into electronic display on the Internet or otherwise, neither Broker nor Seller has control over who views such Images nor what use viewers may make of the Images.

12. KEYSAFE/LOCKBOX: A keysafe/lockbox is designed to hold a key to the Property to permit access to the Property by Broker, cooperating brokers, MLS participants, their authorized licensees and representatives, authorized inspectors, and accompanied prospective buyers. Broker, cooperating brokers, MLS and Associations/Boards of REALTORS® are not insurers against injury, theft, loss, vandalism or damage attributed to the use of a keysafe/lockbox. Seller does (or if checked does not) authorize Broker to install keysafe/lockbox. If Seller does not occupy the Property, Seller shall be responsible for obtaining occupant(s)' written permission for use of a keysafe/lockbox (C.A.R. Form KLA).

13. SIGN: Seller does (or if checked does not) authorize Broker to install a FOR SALE/SOLD sign on the Property.

14. EQUAL HOUSING OPPORTUNITY: The Property is offered in compliance with federal, state and local anti-discrimination laws.

15. ATTORNEY FEES: In any action, proceeding or arbitration between Seller and Broker to enforce the compensation provisions of this Agreement, the prevailing Seller or Broker shall be entitled to reasonable attorney fees and costs from the non-prevailing Seller or Broker, except as provided in paragraph 19A.

16. ADDITIONAL TERMS: REO Advisory Listing (C.A.R. Form REOL) Short Sale Information and Advisory (C.A.R. Form SSIA) Trust Advisory (C.A.R. Form TA)

17. MANAGEMENT APPROVAL: If an associate-licensee in Broker's office (salesperson or broker-associate) enters into this Agreement on Broker's behalf, and Broker or Manager does not approve of its terms, Broker or Manager has the right to cancel this Agreement, in writing, within 5 Days After its execution.

18. SUCCESSORS AND ASSIGNS: This Agreement shall be binding upon Seller and Seller's successors and assigns.

19. DISPUTE RESOLUTION:

- A. **MEDIATION:** Seller and Broker agree to mediate any dispute or claim arising between them regarding the obligation to pay compensation under this Agreement, before resorting to arbitration or court action. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this paragraph applies, any party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action. **Exclusions from this mediation agreement are specified in paragraph 19B.**

Seller's Initials () () ()

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RESIDENTIAL LISTING AGREEMENT - EXCLUSIVE (RLA PAGE 4 OF 5)

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Property Address:

Date:

- B. ADDITIONAL MEDIATION TERMS:** The following matters shall be excluded from mediation: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; (iii) the filing or enforcement of a mechanic's lien; and (iv) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver or violation of the mediation provisions.
- C. ADVISORY:** If Seller and Broker desire to resolve disputes arising between them through arbitration rather than court, they can document their agreement by attaching and signing an Arbitration Agreement (C.A.R. Form ARB).
- 20. ENTIRE AGREEMENT:** All prior discussions, negotiations and agreements between the parties concerning the subject matter of this Agreement are superseded by this Agreement, which constitutes the entire contract and a complete and exclusive expression of their agreement, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. This Agreement and any supplement, addendum or modification, including any photocopy or facsimile, may be executed in counterparts.
- 21. OWNERSHIP, TITLE AND AUTHORITY:** Seller warrants that: (i) Seller is the owner of the Property; (ii) no other persons or entities have title to the Property; and (iii) Seller has the authority to both execute this Agreement and sell the Property. Exceptions to ownership, title and authority are as follows:

REPRESENTATIVE CAPACITY: This Listing Agreement is being signed for Seller by an individual acting in a Representative Capacity as specified in the attached Representative Capacity Signature Disclosure (C.A.R. Form RCSD-S). Wherever the signature or initials of the representative identified in the RCSD appear on this Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in an individual capacity, unless otherwise indicated. Seller (i) represents that the entity for which the individual is signing already exists and (ii) shall Deliver to Broker, within 3 Days After Execution of this Agreement, evidence of authority to act (such as but not limited to: applicable trust document, or portion thereof, letters testamentary, court order, power of attorney, resolution, or formation documents of the business entity).

By signing below, Seller acknowledges that Seller has read, understands, received a copy of and agrees to the terms of this Agreement.

Seller				Date
Address		City		
Telephone	Fax		E-mail	
Seller				Date
Address		City		
Telephone	Fax		E-mail	

Additional Signature Addendum attached (C.A.R. Form ASA)

Real Estate Broker (Firm)			CalBRE Lic. #	
Address		City	State	Zip
By	Tel.		CalBRE Lic.#	Date
By	Tel.	E-mail	CalBRE Lic.#	Date

Two Brokers with different companies are co-listing the Property. Co-listing Broker information is on the attached Additional Broker Acknowledgement (C.A.R. Form ABA).

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Reviewed by _____ Date _____

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Paragraph 1. Indicates the names of the parties involved in the agreement. The first line is for the "Seller" and the second is for the "Broker". The listed broker becomes the exclusive broker of record for the transaction.

The "Listing Period" is noted by a beginning and end date. Typically, most agents use between 3-6 months for an agreement. If the economy is slow or very few borrowers are being qualified for loans, an agent may request a longer listing period to match market conditions.

The "Property" lines indicate the subject property's address. If a property has recently been subdivided or does not have clear, definable borders, a parcel number must be provided.

Paragraph 2. Indicates which items are included and excluded in the sale. A seller has the right to exclude any personal decor, fixtures, or miscellaneous items from a sale, as long as it is made in writing.

Paragraph 3. Indicates the listing price for the property and any additional terms of the transaction. Such terms may include loan obligations or cash considerations.

Paragraph 4. Indicates the agent/broker's compensation. There is no set compensation or commission percentage that a seller must pay an agent for representation in a sale. This must be negotiated on a transaction-by-transaction basis.

A. Indicates the percentage of commission that will be paid to agent in the event the property sells.

A1. Indicates that the agent/broker will be paid a commission if the property sells within the listing period, regardless of who originates the sale.

A2. Indicates that the agent/broker will be paid a commission in the event that the property sells within three days of the listing's expiration. This clause only applies if the agent physically showed the property to the interested buyer prior to the expiration of the agreement. This ensures that an agent/broker receives a commission for his or her work, even if the transaction closes after the listing expired.

A3. Indicates that the agent/broker is entitled to a commission if the property is sold, leased, or rented during the duration of the agreement.

B. Indicates that if a party other than the seller prevents the completion of the sale, and the seller recovers damages as a result of a legal suit, arbitration, or settlement, then the agent/broker must still be paid the agreed-upon commission or an amount that is equal to the lesser of one-half of the damages recovered after deducting title and escrow expenses.

C. Indicates any additional agent/broker fees or expenses related to selling the home. For example, some real estate companies charge a documentation preparation fee for creating the listing in addition to a standard commission. An agent/broker must clearly express all additional charges in writing in the listing.

D. Indicates that the agent has the right to cooperate and divide commissions between other brokers who contribute to the transaction.

E. Indicates that the seller will assign all commissions to escrow. In the event that the property sells, the agent/broker's payment will be automatically paid.

F. Indicates that the seller has not entered into another listing agreement with a competing agent/broker. It guarantees that the agent/broker will receive his or her full commission unless a specific individual or entity is indicated.

Paragraph 5. Indicates that the seller, or person acting as the seller, has clear claim to the property's title and is able to execute a transaction on behalf of the property.

Paragraph 6. Indicates that the listing and all terms of the transaction will be provided to the MLS and available to be seen by other agents/buyers, unless there are specific instructions to the contrary.

Paragraph 7. Indicates that the seller is unaware of any financial information that may prevent the sale of the property. This includes a notice of default, bankruptcy, delinquent loan payments, delinquent taxes, or a government investigation. If any such changes to the seller's finances occur, the seller must disclose the information to the agent/broker.

Paragraph 8. Indicates that the agent/broker will do his or her due diligence in regards to the representation of the property. This includes ordering the necessary disclosures and reports to verify all property data. It also indicates that the information provided by the seller about the property is accurate to the best of the seller's knowledge. The seller agrees to not hold the agent/broker liable for providing inaccurate information that resulted from the seller's failure to provide reliable information.

Paragraph 9. Indicates that the agent/broker is authorized to accept deposits on behalf of the seller.

Paragraph 10. Indicates the type of agency relationship that exists between the seller and the agent/broker.

Paragraph 11. Indicates that the seller is responsible for taking precautions to prevent theft. The agent/broker is not responsible for any damages or theft on the property during the listing period.

Paragraph 12. Provides the seller with the option to provide or not provide a lockbox for the listing. This clause reaffirms that the agent is not responsible for any damages or theft that result from using a lockbox.

Paragraph 13. Provides the seller with the option to authorize the agent/broker to use a "For Sale" sign outside the property.

Paragraph 14. Indicates that the listing is being offered in compliance with all state and federal fair housing laws.

Paragraph 15. Indicates that in the event of legal action or proceedings between the seller and the agent/broker, the non-prevailing party will be responsible for paying all attorney fees and associated legal costs.

Paragraph 16. Provides space for the seller and agent/broker to note any additional terms to the agreement.

Paragraph 17. Indicates that if an associate-licensee within the agent/broker's office enters the listing agreement on the agent/broker's behalf and the broker or manager does not approve its terms, the broker/manager has the right to cancel the agreement within five days of its execution.

Paragraph 18. Indicates that the agreement is binding upon the seller's successors and/or assigns.

Paragraph 19. Provides instructions for dispute resolution.

A: Indicates that the seller and the agent/broker agree to mediate disputes outside of court.

B: Indicates that any disputes that cannot be resolved through mediation will be decided by neutral arbitration. The arbitrator must be a retired judge/justice or an attorney with at least five years experience in residential real estate law. By initialing the final paragraph, the agent/broker and seller waive their rights to have any disputes heard by a judge or jury in court.

Paragraph 20. The seller and the agent/broker agree that the listing agreement is the only valid agreement between them. It supersedes any other written or verbal agreements.

Signatures. The seller acknowledges that he or she has read the terms of the listing agreement, understands them, and accepts them.

Exclusive Agency Listing

An **exclusive agency listing** grants an agent the exclusive right to represent a seller's

interests, while also granting the seller the right to sell his or her property on his or her own.

If an agent's actions lead to the sale of a property, the agent is entitled to a commission. However, if a seller's actions lead to the sale of the property, the seller is not required to pay a commission.

In this case, the term "exclusive" is misleading. Although a seller cannot retain the services of another agent under an exclusive agency listing, the seller can technically represent him/herself.

Like option listings, exclusive agency listings leave much room for interpretation. This can subsequently cause disputes between the agent and seller over their duties and efforts within the transaction.

Exclusive agency listings are the most preferred agreements for consumers. It is common for a seller to request an exclusive agency listing when he or she already has interest in the property. This allows the seller to keep all options on the table.

Conversely, exclusive agency listings are the least preferred type of agreement for agents. Unlike an open listing, an exclusive agent is required to uphold due diligence throughout the transaction. However, unlike an exclusive authorization and right-to-sell listing, an agent is not guaranteed a commission. Therefore, many agents refuse to accept exclusive agency listings.

If a seller requests an exclusive agency listing and an agent believes there is strong interest in the seller's property, the agent should suggest that they first engage in a short-term exclusive authorization and right-to-sell listing (such as fourteen days) to allow the agent to try to close the transaction. The seller may be inclined to list with the agent if he or she knows that the agent can close the transaction quickly.

Exclusive Right-to-Represent Listing

Many buyers do not have the necessary time, knowledge, or resources to find a home. A buyer may use an agent to assist in his or her search, particularly in periods when the real estate market is competitive.

An **exclusive right-to-represent listing**, otherwise known as an **exclusive buyer representation form** is an agreement in which an agent represents a buyer in his or her search for a property.

An exclusive right-to-represent listing sets the general terms of representation between a buyer and an agent. For example, a buyer is not required to purchase a property brought to them by an agent, but the buyer cannot buy a house without using the agent. This ensures that an agent is paid a commission for his or her efforts.

The listing also guarantees that an agent will be paid a commission if the buyer defaults on his or her obligations.

An agent's commission for representing a buyer is typically between 1-3% of the property's final sale price. However, this percentage is negotiable.

An exclusive right-to-represent listing must be in writing and must indicate a clear start and end date.



BUYER REPRESENTATION AGREEMENT - EXCLUSIVE

(C.A.R. Form BRE, Revised 12/17)

1. EXCLUSIVE RIGHT TO REPRESENT:

grants ("Buyer")
 beginning on (date) ("Broker") and ending at: (i) 11:59 P.M. on (date) or
 (ii) completion of a resulting transaction, whichever occurs first ("Representation Period"), the exclusive and irrevocable right, on the
 terms specified in this Agreement, to represent Buyer in acquiring real property or a manufactured home as follows:

A. PROPERTY TO BE ACQUIRED:

- (1) Any purchase, lease or other acquisition of any real property or manufactured home described as
 Location:
 Other:
 Price range: \$ to \$
- OR (2) The following specified properties only:
 OR (3) Only the properties identified on the attached list.

- B. Broker agrees to exercise due diligence and reasonable efforts to fulfill the following authorizations and obligations.
 C. Broker will perform its obligations under this Agreement through the individual signing for Broker below or another real estate licensee assigned by Broker, who is either Broker individually or an associate-licensee (an individual licensed as a real estate salesperson or Broker who works under Broker's real estate license). Buyer agrees that Broker's duties are limited by the terms of this Agreement, including those limitations set forth in paragraphs 5 and 6.

2. AGENCY RELATIONSHIPS:

- A. **DISCLOSURE:** Unless the property is 5 or more residential dwelling units, Buyer acknowledges receipt of the "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD) prior to entering into this Agreement.
 B. **BUYER REPRESENTATION:** Broker will represent, as described in this Agreement, Buyer in any resulting transaction.
 C. **(1) POSSIBLE DUAL AGENCY WITH SELLER:** (C(1) APPLIES UNLESS C(2)(i) or (ii) is checked below.)
 Depending on the circumstances, it may be necessary or appropriate for Broker to act as an agent for both Buyer and a seller, exchange party, or one or more additional parties ("Seller"). Broker shall, as soon as practicable, disclose to Buyer any election to act as a dual agent representing both Buyer and Seller. If Buyer is shown property listed with Broker, Buyer consents to Broker becoming a dual agent representing both Buyer and Seller with respect to those properties. In event of dual agency, Buyer agrees that: (a) Broker, without the prior written consent of Buyer, will not disclose to Seller that the Buyer is willing to pay a price greater than the price offered; (b) Broker, without the prior written consent of Seller, will not disclose to Buyer that Seller is willing to sell Property at a price less than the listing price; and (c) other than as set forth in (a) and (b) above, a dual agent is obligated to disclose known facts materially affecting the value or desirability of the property to both parties.

OR (2) SINGLE AGENCY ONLY: (APPLIES ONLY IF (i) or (ii) is checked below.)

- (i) **Broker's firm lists properties for sale:** Buyer understands that this election will prevent Broker from showing Buyer those properties that are listed with Broker's firm or from representing Buyer in connection with those properties. Buyer's acquisition of a property listed with Broker's firm shall not affect Broker's right to be compensated under paragraph 3. In any resulting transaction in which Seller's property is not listed with Broker's firm, Broker will be the exclusive agent of Buyer and not a dual agent also representing Seller.
 OR (ii) **Broker's firm DOES NOT list property:** Entire brokerage firm only represents buyers and does not list property. In any resulting transaction, Broker will be the exclusive agent of Buyer and not a dual agent also representing Seller.
 D. **OTHER POTENTIAL BUYERS:** Buyer understands that other potential buyers may, through Broker, consider, make offers on or acquire the same or similar properties as those Buyer is seeking to acquire. Buyer consents to Broker's representation of such other potential buyers before, during and after the Representation Period, or any extension thereof.
 E. **NON CONFIDENTIALITY OF OFFERS:** Buyer is advised that Seller or Listing Agent may disclose the existence, terms, or conditions of Buyer's offer unless all parties and their agent have signed a written confidentiality agreement. Whether any such information is actually disclosed depends on many factors, such as current market conditions, the prevailing practice in the real estate community, the Listing Agent's marketing strategy and the instructions of the Seller.
 F. **CONFIRMATION:** Unless the property is for 5 or more residential dwelling units, Broker shall confirm the agency relationship described above, or as modified, in writing, prior to or concurrent with Buyer's execution of a Property Contract (as defined below).

3. COMPENSATION TO BROKER:

NOTICE: The amount or rate of real estate commissions is not fixed by law. They are set by each Broker individually and may be negotiable between Buyer and Broker (real estate commissions include all compensation and fees to Broker).

Buyer agrees to pay to Broker, irrespective of agency relationship(s), as follows:

A. AMOUNT OF COMPENSATION: (Check (1), (2) or (3). Check only one.)

- (1) percent of the acquisition price AND \$
 OR (2) \$
 OR (3) Pursuant to the compensation schedule attached as an addendum

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Buyer's Initials () ()

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BRE REVISED 12/17 (PAGE 1 OF 4)

BUYER REPRESENTATION AGREEMENT - EXCLUSIVE (BRE PAGE 1 OF 4)

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Buyer:

Date:

- B. COMPENSATION PAYMENTS AND CREDITS:** Buyer is responsible for payment of compensation provided for in this Agreement. However, if anyone other than Buyer compensates Broker for services covered by this Agreement, that amount shall be credited toward Buyer's obligation to pay compensation. If the amount of compensation Broker receives from anyone other than Buyer exceeds Buyer's obligation, the excess amount shall be disclosed to Buyer and if allowed by law paid to Broker, or credited to Buyer, or other

C. BROKER RIGHT TO COMPENSATION: Broker shall be entitled to the compensation provided for in paragraph 3A:

(1) If during the Representation Period, or any extension thereof, Buyer enters into an agreement to acquire property described in paragraph 1A, on terms acceptable to Buyer provided Seller completes the transaction or is prevented from doing so by Buyer. (Broker shall be entitled to compensation whether any escrow resulting from such agreement closes during or after the expiration of the Representation Period.)

(2) If, within calendar days after expiration of the Representation Period or any extension thereof, Buyer enters into an agreement to acquire property described in paragraph 1A, which property Broker introduced to Buyer, or for which Broker acted on Buyer's behalf. The obligation to pay compensation pursuant to this paragraph shall arise only if, prior to or within 3 (or) calendar days after expiration of this Agreement or any extension thereof, Broker gives Buyer a written notice of those properties which Broker introduced to Buyer, or for which Broker acted on Buyer's behalf.

D. TIMING OF COMPENSATION: Compensation is payable:

(1) Upon completion of any resulting transaction, and if an escrow is used, through escrow.

(2) If acquisition is prevented by default of Buyer, upon Buyer's default.

(3) If acquisition is prevented by a party to the transaction other than Buyer, when Buyer collects damages by suit, settlement or otherwise. Compensation shall equal one-half of the damages recovered, not to exceed the compensation provided for in paragraph 3A, after first deducting the unreimbursed payments, credits and expenses of collection, if any.

E. Buyer hereby irrevocably assigns to Broker the compensation provided for in paragraph 3A from Buyer's funds and proceeds in escrow. Buyer agrees to submit to escrow any funds needed to compensate Broker under this Agreement. Broker may submit this Agreement, as instructions to compensate Broker, to any escrow regarding property involving Buyer and a seller or other transferor.

F. "BUYER" includes any person or entity, other than Broker, related to Buyer or who in any manner acts on Buyer's behalf to acquire property described in paragraph 1A.

G. (1) Buyer has not previously entered into a representation agreement with another broker regarding property described in paragraph 1A, unless specified as follows (name other broker here):

(2) Buyer warrants that Buyer has no obligation to pay compensation to any other broker regarding property described in paragraph 1A, unless Buyer acquires the following property(ies):

(3) If Buyer acquires a property specified in G(2) above during the time Buyer is obligated to compensate another broker, Broker is neither: (i) entitled to compensation under this Agreement, nor (ii) obligated to represent Buyer in such transaction.

4. INTERNET ADVERTISING; INTERNET BLOGS; SOCIAL MEDIA: Buyer acknowledges and agrees that: (i) properties presented to them may have been marketed through a "virtual tour" on the Internet, permitting potential buyers to view properties over the Internet, or that the properties may have been the subject of comments or opinions of value by others on Internet blogs or other social media sites; (ii) neither the service provider(s) nor Broker has control over who will obtain access to such services or what action such persons might take; and (iii) Broker has no control over how long the information concerning the properties will be available on the Internet or social media sites.

5. BROKER AUTHORIZATIONS AND OBLIGATIONS:

A. Buyer authorizes Broker to: (i) locate and present selected properties to Buyer, present offers authorized by Buyer, and assist Buyer in negotiating for acceptance of such offers; (ii) assist Buyer with the financing process, including obtaining loan pre-qualification; (iii) upon request, provide Buyer with a list of professionals or vendors who perform the services described in the attached Buyer's Inspection Advisory; (iv) order reports, and schedule and attend meetings and appointments with professionals chosen by Buyer; (v) provide guidance to help Buyer with the acquisition of property; and (vi) obtain a credit report on Buyer.

B. For property transactions of which Broker is aware and not precluded from participating in by Buyer, Broker shall provide and review forms to create a property contract ("Property Contract") for the acquisition of a specific property ("Property"). With respect to such Property, Broker shall: (i) if the Property contains residential property with one to four dwelling units, conduct a reasonably competent and diligent on-site visual inspection of the accessible areas of the Property (excluding any common areas), and disclose to Buyer all facts materially affecting the value or desirability of such Property that are revealed by this inspection; (ii) deliver or communicate to Buyer any disclosures, materials or information received by, in the personal possession of or personally known to the individual signing for Broker below during the Representation Period; and (iii) facilitate the escrow process, including assisting Buyer in negotiating with Seller. Unless otherwise specified in writing, any information provided through Broker in the course of representing Buyer has not been and will not be verified by Broker. Broker's services are performed in compliance with federal, state and local anti-discrimination laws.

Broker Initials () ()

Buyer's Initials ()()



Buyer:

Date:

6. SCOPE OF BROKER DUTY:

- A. While Broker will perform the duties described in paragraph 6B, Broker recommends that Buyer select other professionals, as described in the attached Buyer's Inspection Advisory, to investigate the Property through inspections, investigations, tests, surveys, reports, studies and other available information ("Inspections") during the transaction. Buyer agrees that these Inspections, to the extent they exceed the obligations described in paragraph 6B, are not within the scope of Broker's agency duties. Broker informs Buyer that it is in Buyer's best interest to obtain such Inspections.
 - B. Buyer acknowledges and agrees that Broker: (i) does not decide what price Buyer should pay or Seller should accept; (ii) does not guarantee the condition of the Property; (iii) does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; (iv) does not have an obligation to conduct an inspection of common areas or offsite areas of the Property; (v) shall not be responsible for identifying defects on the Property, in common areas or offsite unless such defects are visually observable by an inspection of reasonably accessible areas of the Property or are known to Broker; (vi) shall not be responsible for inspecting public records or permits concerning the title or use of the Property; (vii) shall not be responsible for identifying the location of boundary lines or other items affecting title; (viii) shall not be responsible for verifying square footage, representations of others or information contained in Investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; (ix) shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and (x) shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer agrees to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.
 - C. Broker owes no duty to inspect for common environmental hazards, earthquake weaknesses, or geologic and seismic hazards. If Buyer receives the booklets titled "Environmental Hazards: A Guide for Homeowners, Buyers, Landlords and Tenants," "The Homeowner's Guide to Earthquake Safety," or "The Commercial Property Owner's Guide to Earthquake Safety," the booklets are deemed adequate to inform Buyer regarding the information contained in the booklets and, other than as specified in 6B above, Broker is not required to provide Buyer with additional information about the matters described in the booklets.

7. BUYER OBLIGATIONS:

- A.** Buyer agrees to timely view and consider properties selected by Broker and to negotiate in good faith to acquire a property. Buyer further agrees to act in good faith toward the completion of any Property Contract entered into in furtherance of this Agreement. Within 5 (or **) calendar days** from the execution of this Agreement, Buyer shall provide relevant personal and financial information to Broker to assure Buyer's ability to acquire property described in paragraph 1. If Buyer fails to provide such information, or if Buyer does not qualify financially to acquire property described in paragraph 1, then Broker may cancel this Agreement in writing. Buyer has an affirmative duty to take steps to protect him/herself, including discovery of the legal, practical and technical implications of discovered or disclosed facts, and investigation of information and facts which are known to Buyer or are within the diligent attention and observation of Buyer. Buyer is obligated, and agrees, to read all documents provided to Buyer. Buyer agrees to seek desired assistance from appropriate professionals, selected by Buyer, such as those referenced in the attached Buyer's Inspection Advisory.

B. Buyer shall notify Broker in writing (C.A.R. Form BMI) of any material issue to Buyer, such as, but not limited to, Buyer requests for information on, or concerns regarding, any particular area of interest or importance to Buyer ("Material Issues").

C. Buyer agrees to: (i) indemnify, defend and hold Broker harmless from all claims, disputes, litigation, judgments, costs and attorney fees arising from any incorrect information supplied by Buyer, or from any Material Issues that Buyer fails to disclose in writing to Broker; and (ii) pay for reports, Inspections and meetings arranged by Broker on Buyer's behalf.

D. Buyer is advised to read the attached Buyer's Inspection Advisory for a list of items and other concerns that typically warrant Inspections or investigation by Buyer or other professionals.

8. OTHER TERMS AND CONDITIONS: The following disclosures or addenda are attached:

- A. Buyer's Inspection Advisory (C.A.R. Form BIA-B)
 - B. Statewide Buyer and Seller Advisory (C.A.R. Form SBSA)
 - C. _____
 - D. _____

9. ATTORNEY FEES: In any action, proceeding or arbitration between Buyer and Broker regarding the obligation to pay compensation under this Agreement, the prevailing Buyer or Broker shall be entitled to reasonable attorney fees and costs, except as provided in paragraph 11A.

10. ENTIRE AGREEMENT: All understandings between the parties are incorporated in this Agreement. Its terms are intended by the parties as a final, complete and exclusive expression of their agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. This Agreement may not be extended, amended, modified, altered or changed, except in writing signed by Buyer and Broker. In the event that any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. This Agreement and any supplement, addendum or modification, including any copy, whether by copier, facsimile, NCR or electronic, may be signed in two or more counterparts, all of which shall constitute one and the same writing.

Broker Initials () ()

Buyer's Initials () ()



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BUYER REPRESENTATION AGREEMENT - EXCLUSIVE (BRE PAGE 3 OF 4)

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Buyer:

Date:

11. DISPUTE RESOLUTION:

- A. MEDIATION:** Buyer and Broker agree to mediate any dispute or claim arising between them regarding the obligation to pay commission under this Agreement, before resorting to arbitration or court action. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this paragraph applies, any party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney's fees, even if they would otherwise be available to that party in any such action. Exclusions from the mediation agreement are specified in paragraph 11B.
- B. MEDIATION TERMS:** The following matters are excluded from mediation: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; (iii) the filing or enforcement of a mechanic's lien; and (iv) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the mediation provisions.
- C. ADVISORY:** If Buyer and Broker desire to resolve disputes arising between them through arbitration rather than court, they can document their agreement by attaching and signing an Arbitration Agreement (C.A.R. Form ARB).

Buyer acknowledges that Buyer has read, understands, received a copy of and agrees to the terms of this Agreement.

Buyer				Date
Address				State
Telephone	Fax	City	E-mail	Zip
Buyer				Date
Address				State
Telephone	Fax	City	E-mail	Zip
Real Estate Broker (Firm)				DRE License #
By (Agent)				Date
Address		City		State
Telephone	Fax		E-mail	Zip

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BUYER REPRESENTATION AGREEMENT - EXCLUSIVE (BRE PAGE 4 OF 4)

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It is more difficult to convince a buyer to use an agent's services than it is to convince a seller.

The Internet and the growing prevalence of real estate websites have made it easier for buyers to locate and purchase properties without an agent.

Websites Visited by Buyers

- **city-data.com:** Provides data about a specific city, community, or zip code, including the cost of living, crime rates, and demographics.
- **forsalebyowner.com:** Provides seller listings whose homes are not represented by agents.
- **homeseekers.com:** Provides data about available listings.
- **move.com:** Database of available properties and information regarding affordability. Provides information regarding moving, buying, and other important real estate tips.
- **realtor.com:** Real estate company that lobbies to promote policy on behalf of the real estate industry. Also provides available listings.
- **redfin.com:** Online portal for buying and selling homes.
- **trulia.com:** Provides real estate statistics based on community data and market trends, a real estate search engine, and articles from real estate professionals.

Buyers will not pay for something if they feel they can do it on their own. This is why an agent must provide value to a buyer. It is an agent's responsibility to convince a buyer that his or her services are essential to a buyer's search for the perfect home.

To do this, an agent must prove that he or she can find suitable properties...

- *...that buyers cannot find themselves.* For example, properties that have not yet been listed on the market and uncommon properties such as foreclosures, REOs, and open listings.
- *...in a shorter amount of time.*
- *...for a better deal.* An agent must stay current with available inventory and any price fluctuations and/or discounts in order to negotiate the best price.

For example, an agent could say the following to convince a buyer to use his or her services:

- *"Sellers use agents to ensure that they obtain the highest price for their current home. You need an agent to ensure that you obtain the lowest price for your future home. I spend all day negotiating prices with other agents. Let me help you and your family find the perfect home for the best price."*

Net Listing

In a **net listing**, an agent's commission is derived from the difference between the minimum net price and the ultimate sales price, rather than a percentage commission based off the sale price. In this case, the seller lists the property at the lowest minimum price he or she is willing to accept.

This produces a great risk / great reward scenario: if a property's final sale price is much higher than the net listing price, an agent's commission can be lucrative; if the sale price is the same, an agent may earn no commission.

For example, assume Sandy hires a real estate agent, Dave, to sell her property. Sandy would prefer not to pay a standard commission. She proposes a net listing. Dave, an experienced agent with extensive knowledge of the local market, agrees. Sandy lists her property at the minimum price she is willing to sell for: \$200,000. Dave drums up a bidding war and ends up selling Sandy's property for \$237,000. Because of the net listing, Dave is entitled to the difference between the net listing and sold price – \$37,000 – as a commission.

Net listings are the least common type of listing because of the high risk for conflicts of interest. Unlike exclusive right-to-sell listing agreements – which incentivize agents to list a seller's property at the highest price possible – net listings reward an agent for reducing listing prices. Because of this, an agent may offer negligent advice to a seller in order to maximize his or her commission. This leaves the agent susceptible to accusations of fraud or misconduct.

For example, an agent may encourage a seller to list his or her property at a price lower than market value so that the agent can purchase the property him/herself at a higher price in order to maximize his or her commission and simply resell the property.

Although California still allows net listings, most states have made them illegal.

Option Listing

An **opting listing** grants an agent the ability to purchase a seller's property. This makes the agent both the seller's agent and the seller's buyer.

An agent may exercise an option listing at anytime throughout the course of a listing. He or she does not have to make an offer in order to do so. However, in order to properly execute an option listing, an agent must:

- Inform the seller that he or she possesses a real estate license
- Inform the seller of his or her desire to purchase the property

- Purchase the property in his or her own name
- Fully disclose any other buyer offers that are received
- Disclose whether his or her goal is to purchase the property in order to resell it for a profit
- Disclose if his or her goal is to purchase the property to make a rental income
- Disclose the amount of profit that he or she will make on the transaction

As with net listings, option listings can create severe conflicts of interest. Although an agent is still bound by his or her fiduciary duty to a seller, the agent's desire to purchase the property may cause him or her to prioritize personal goals.

For example, an agent may intentionally fail to disclose other buyer offers in order to make a seller believe that his or her listing price is too high. The agent may subsequently encourage the seller to lower it and buy the property at an artificially low price.

For this reason, many brokers do not allow their agents to engage in option listings.

Short Sale

A **short sale** is a sale in which the net proceeds from selling a property fall short of the debts against the property. In this case, all lien holders must agree to accept less than the amount owed on the debt before the property can be sold.

A short sale presents an opportunity for a distressed homeowner (such as one behind on mortgage payments) to sell his or her home.

Listing a short sale is typically more difficult than a standard sale as an agent must balance the interests of the buyer, the seller, the agents, and the lender(s). However, this dual representation affords an agent the opportunity to make a higher commission, oftentimes 3-6% of the total sale.



In order to list a home as a short sale, a homeowner must qualify with one or all of the following:

- General hardship
- Income loss
- Behind on mortgage payments
- Upside down loan
- Illness

- Job Relocation
- Job Termination

General hardship must be documented through bank statements, paystubs, tax returns, profit and loss forms (for self-employed borrowers), and other financial documentation.

An agent convincing a homeowner to do a short sale is not difficult, especially if he or she is behind on mortgage payments. An agent's most difficult task is to convince a lender that the sale is in its benefit.

Lenders are in the business of making money and they avoid anything that may cause them a financial loss. When a homeowner/borrower becomes distressed, a lender typically has two options: foreclosure or a short sale. Foreclosures require a lender to hire a third party servicer, pay legal costs, and find and pay an agent. To avoid the hassle and additional fees that come with the foreclosure process, lenders may approve a short sale.

A short sale can rid both the lender and the homeowner of an unproductive partnership and help the lender avoid further losses. An agent must provide a lender with evidence that it will lose money with a foreclosure. This includes recently sold comparables that prove the property's worth in the current market.

Short sales involve much back-and-forth communication between the agent and the lending institution. The hardest aspect of listing a short sale for an agent is getting into contact with the proper department and representative.

Closing a Listing



The last step before representation is closing the listing. At this point, an agent should present a client with the listing agreement and a pen to sign it.

At this crucial step, an agent should be prepared to hear client concerns and/or objections about signing the listing. Buying or selling a home is a stressful and emotional decision and many clients will be hesitant or apprehensive about “pulling the trigger”.

If a client has reservations, an agent should ask what is holding the client back from listing the property. Typically, an agent just has to reassure the client about a previous concern to make him or her feel comfortable.

An agent should continue closing a client until he or she agrees to use the agent's services or rejects the listing outright. If a client rejects the listing outright, an agent should not waste more time and move on to another client.