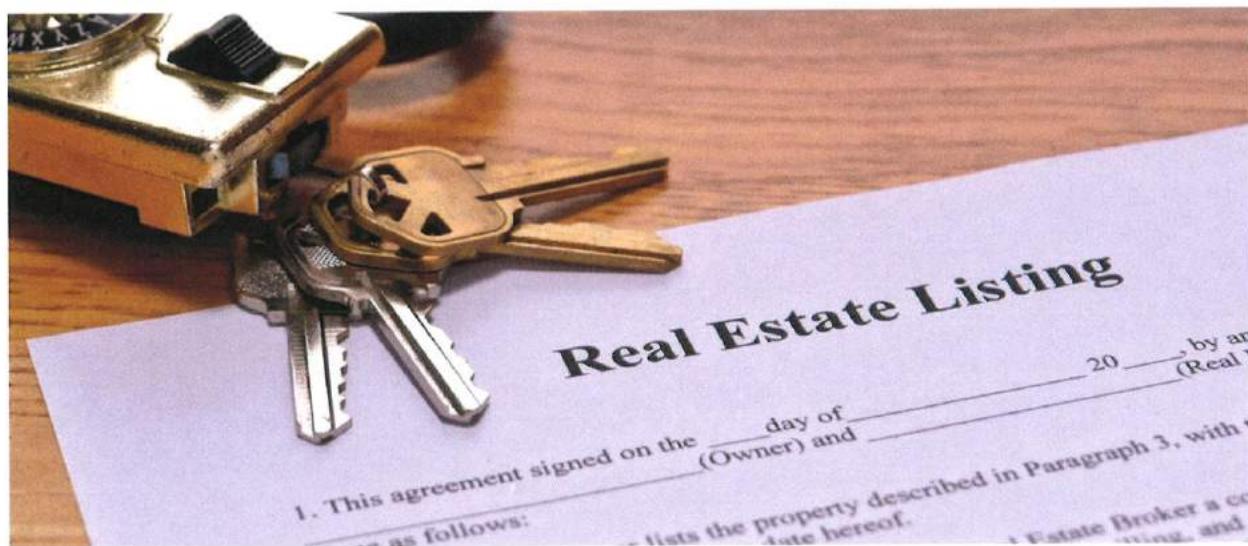


Chapter 7



Listing Agreements & Real Estate Contracts

Chapter 7 Goals:

- Understand what a listing is
- List the different types of listings
- Recognize the various ways in which licensees can be paid
- Understand the provisions found within a listing agreement and real estate contract
- Learn how a licensee can prove they were the procuring cause of a transaction

Chapter 7: Listing Agreements & Real Estate Contracts

This chapter explores two main types of contracts used in a real estate transaction: listing agreements and real property sales contracts.

Key Terms

advance costs	exclusive agency listing	net listing
advance fee	exclusive authorization listing	open listings
advance fee addendum	exclusive right to sell listing	option listing
burden of proof	good faith	privity of contract
buyer listing	hold harmless clause	procuring cause
contingency	interim occupancy agreement	real property sales contract
cooperating broker fee	listing	safety clause
agreement	listing agreement	seller's net
due diligence	loan broker listing agreement	

Listings

An Introduction

A **listing agreement** – also known simply as “a **listing**” – is a type of contract between a property owner and a real estate agent that contracts the agent’s services for the sale or purchase of real property. 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 assist in locating potential properties.

According to Civil Code Section 1624(5), listing agreements must be in writing to be enforceable. A verbal contract is not valid. A principal must also sign the listing. If he or she does not, he or she may be able to avoid liability in the event of a legal dispute.

Upon a listing’s execution, all parties in a listing agreement must be provided a copy of the listing within a reasonable amount of time.

If an agent and a principal wish to change an aspect of a listing agreement, they may either modify the existing listing or draft a new listing. If the desired changes are small and do not affect the other provisions within the agreement, it is advisable for the parties to simply modify the existing listing.

Among the specific provisions that listing agreements typically include are the agent’s commission structure and liability provisions.

Commission Structure

An agent earns a commission once a real estate transaction is complete. The commission structure must be clearly laid out in the listing agreement.

The seller usually pays the commission, although a buyer and seller can negotiate a split of the compensation or agree to let the buyer assume the full amount.

An agent's commission structure must be negotiable prior to the execution of a listing. No commission can be identified on a listing agreement until negotiations between an agent and a principal are complete.

Additionally, an agent's commission cannot be preprinted in listings of one to four unit properties. In fact, each listing is required to include the following statement in bold: "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 the seller and broker."

If an agent performs the requirements set forth in the agency and the wrongful actions of the principal prevent the sale of a property, the agent is still entitled to his or her commission.

Liability Provisions

A broker is liable for the performance of his or her agent. This includes when provisions within a listing lead to legal issues, and may even include instances where an agent acts without the principal's permission.

A **privity of contract** establishes that only the parties within an agreement can hold each other liable and/or sue each other. Parties outside of the listing agreement have no legal power. However, typical listing agreements possess a **hold harmless clause**, whereby both parties agree not to sue each other. This bars an agent or a principal from recovering for damages, losses, or other liability.

Case Review: *City of Turlock v. Paul M. Zagaris, Inc. (1989)*

The case, *Paul M. Zagaris Inc. v. City of Turlock* (1989) 209 Cal.3d 189., involved a broker who sued the city for a dispute over eminent domain.

A broker (Zagaris) introduced a buyer and a seller. They entered into a sales contract for the seller's property, a transaction on which Zagaris would earn a 6 percent commission. However, while in escrow, they were made aware of the City of Turlock's intention to acquire the property through eminent domain. Zagaris brought legal suit against the City of Turlock for the loss of his

commission.

Zagaris claimed that the government's actions deprived him of the benefit of his bargain. The court disagreed and ruled in favor of the City. California law does not protect a broker's right to compensation; a broker's commission is dependent entirely upon his or her performance within a contract. As no transaction closed in this case, Zagaris was not able to retain the commission.

Seller-Related Listings

Open Listing



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

Open listings typically entail a seller placing his or her property on a multiple listings service and allowing agents to produce potential buyers. Open listings are often used by sellers who have had a property on the market for a long period of time, or ones who simply want a property to be sold as fast as possible.

An open listing is not an official listing by standard definition. It does not include the name of an agent. It does not provide any definitive terms other than the property price and the commission that a seller is willing to pay if a property is sold. Agents are also not required to sign an agreement. In general, such listings operate on **good faith**, or the honest and sincere intention to work in a fair and open manner.

The advantages for a seller in an open listing include:

- the ability to widely promote his or her property
- the ability to sell his or her own property, thereby eliminating the need to pay an agent commission
- the ability to “terminate” (or withdraw) a listing at any time

However, it is unlawful for a seller to terminate a listing with the intent of completing a transaction with a buyer introduced to them by an agent. Sellers are legally required to pay a commission to any agent whose actions lead directly to a sale.

Open listings do have clear disadvantages. As an agent is not exclusively representing a seller, the agent may not be fully committed to assisting a seller. Agents are not required to use **due diligence**, which is a good faith effort to investigate, verify, or perform a specified act.

Under open listings whereby multiple agents are involved, there is also much room for dispute regarding which agent gets a 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 a 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.

In this case, the **burden of proof** falls on the agent. This means that the agent must provide documented proof that it was his or her actions (not those of a competing agent) which led directly to a property sale in order to receive a commission. For this reason, both agents and sellers are advised to keep clear records of all open house guests, as well as communications between parties. An agent is also advised to sign a listing agreement with a buyer in order to protect his or her right to a listing.

Case Review: *In re Estate of De Harte (1961)*

In the case, *In re Estate of De Harte* (1961) 196 Cal.2nd 452., an estate administrator filed suit against a broker for a breach of good faith duties.

An estate administrator hired a broker to sell an estate. Shortly after the estate was listed, the broker introduced the estate administrator to a buyer. The estate administrator approved the buyer's offer and sold the estate for \$9,600. However, only 17 days after the close of the sale, the estate buyer listed the property for sale at \$11,900. The estate administrator discovered that the buyer was the broker's mother. He filed suit against the broker for failing to act in good faith.

The Superior Court ruled in favor of the estate administrator. Ultimately, the sale was rescinded and the broker was required to return his commission.

Case Review: *Coldwell Banker & Co. v. Pepper Tree Office Center Associates* (1980)

The case, *Coldwell Banker & Co. v. Pepper Tree Office Center Associates* (1980) 106 Cal.3d 272., involved an action by a broker against his client.

An office building owner (Pepper Tree Office Center Associates) entered into an exclusive listing agreement with a broker (Coldwell Banker). Pepper Tree Office Center advertised for the lease of its units, including the submission of a one-page brochure and the forwarding of floor plans to the brokers of a prospective tenant. These actions ultimately led to the lease of three units. Coldwell Banker claimed it was due commission. However, Pepper Tree Office Center claimed that Coldwell Banker's actions were not a procuring cause for the units being leased. Therefore, the broker was not due a commission. Coldwell Banker sued.

The Superior Court held that Coldwell Banker's direct actions did not lead to the procurement of the tenants in the building. It ruled in favor of Pepper Tree Office Center.

Case Review: *R.J. Kuhl Corp. v. Sullivan* (1993)

In the case, *R.J. Kuhl Corp. v. Sullivan* (1993) 13 Cal.4th 1589., a broker sued a buyer over a breach of contract dispute.

A broker (R.J. Kuhl Corp.) found a property for a buyer (Sullivan). He set up a deal, but ultimately, the property was sold to a third party. That third party later approached Sullivan and gave him the option to purchase half of the property's interest. Sullivan agreed and entered into an agreement with the third party. When R.J. Kuhl Corp. was made aware of this, he sued Sullivan and the third party for breach of contract, interference with a contract, and conspiracy to alter an existing contract.

R.J. Kuhl Corp. claimed that he was entitled to his broker's commissions for the sale of the property. Sullivan opposed this, saying that his original agreement with R.J. Kuhl Corp. did not lead to the direct purchase of the property. The Superior Court ruled in favor of the broker. It held that as a result of going around R.J. Kuhl Corp. and not paying the commission, Sullivan had gained an unfair profit from the broker's services. Sullivan appealed, but the appellate court affirmed the lower court's ruling. Sullivan was held liable for R.J. Kuhl

Corp.'s fees.

Exclusive Listing

The vast majority of listings are exclusive listings. An **exclusive listing** is an agreement whereby the interests of a seller are represented exclusively by a single real estate agent. In this agreement, the agent must find a buyer for the seller. In return, the agent is entitled to an exclusive, negotiated commission upon the close of the transaction. An exclusive listing is also known as an **exclusive authorization listing**.

Exclusive listings incentivize the agent to sell a property for the highest price in the fastest timeframe possible. Consequently, they produce the highest likelihood of finding an appropriate buyer.

All exclusive listings must have a clear beginning and end date.

Listings cannot be for an indefinite period of time, or use vague language like “the listing will terminate within the months of January or February.” Rather, a listing should state a clear termination date.

The Civil Code states: “an agreement authorizing or employing an agent, broker, or any other person to purchase or sell real estate for a period longer than one year, or to procure, introduce, or find purchaser or seller of real estate is for a period of no longer than one year” (Section 1624 (4)). This means exclusive listings cannot exceed longer than a one year term.

Should no termination date exist in the listing, a seller may terminate the agreement at anytime with no advance warning to the agent. Such an omission may also subject an agent to disciplinary action, including potentially having his or her license suspended.

Unless an agent has violated the listing agreement, a seller cannot terminate the listing prior to its termination date without the listing agent’s consent. Additionally, sellers cannot cancel the listing agreement if they benefited from it.

As agents do not get paid until the close of a transaction, they are legally entitled to continue working until the agreed-upon termination date. Should the seller cancel a listing without reason, or sell the property without informing the agent, the agent will still be entitled to his or her commission.



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 _____ (City),
(County), California, _____ (Zip Code), Assessor's Parcel No. _____ ("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

(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 (_____) (_____)



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 "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)

Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

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 X "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 a 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		State	Zip
Telephone	Fax	E-mail			
Seller				Date	
Address		City		State	Zip
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.	E-mail	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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RESIDENTIAL LISTING AGREEMENT -EXCLUSIVE (RLA PAGE 5 OF 5)

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Case Review: *Nystrom v. First National Bank of Fresno* (1978)

The case, *Nystrom v. First National Bank of Fresno* (1978) 81 Cal.3d 769., involved a bank that refused to pay a broker with whom it had an exclusive agency agreement.

A bank (First National Bank of Fresno) had an exclusive agency agreement with a broker (Nystrom). A property was originally intended to be a standard sale, upon which Nystrom would receive commission. However, First National Bank of Fresno ultimately sold the property through a deed in lieu of foreclosure without notifying Nystrom. The bank then refused to pay Nystrom a commission. Nystrom sued for a breach of contract.

The Superior Court ruled in favor of First National Bank of Fresno. Nystrom appealed, and the Court of Appeals reversed the lower court's ruling. It ruled that although the acquisition of the property had occurred in a manner different than originally intended, the transaction had ultimately closed. Thus, the bank could not deny Nystrom his right to collect commissions.

Exclusive Right to Sell Listing

An **exclusive right to sell listing** allows one agent the exclusive right to represent a seller's interests with a guarantee that the agent will be paid a commission, regardless of who found the buyer. This means that even if a seller locates a buyer, the agent will still earn a commission.

Unsurprisingly, it is the most preferred type of listing agreement for agents.

Many exclusive right to sell listings contain safety clauses. A **safety clause** entitles an agent to his or her commission if a property is sold after the listing's termination date. This ensures that an agent is compensated in the event that a seller sells a property using the previous efforts and/or clients of a terminated agent.

For example, assume Jerry signs an exclusive right to sell listing agreement with a real estate agent named Tim. Tim tries, but is unable to sell Jerry's property. The listing expires. However, within three days of the listing's termination date, Jerry is able to sell his property to a buyer that was formerly introduced to him by Tim. As Tim introduced the buyer in the transaction, he is entitled to a commission.

In the event that a listing agreement terminates without a sale, a seller may choose to acquire a new agent. Some contracts contain clauses that negate a seller's obligation to his or her initial agent. However, if no such clause exists, the seller may be liable to

pay two commissions -- one to the first agent, and one to the second agent.

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. Therefore, 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.

Conversely, they are the least preferred agreements for real estate professionals. Unlike an open listing, an exclusive agent is required to uphold due diligence throughout the transaction. And yet unlike an exclusive right to sell listing, an agent in an exclusive agency listing is not guaranteed a commission.

Because of this, many agents refuse to accept exclusive agency listings.

Option Listing

An **opting listing** grants an agent the ability to purchase a seller's property. Put another way, it makes an 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. In order to properly execute an option listing, an agent must:

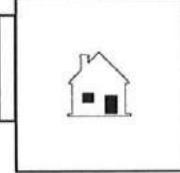
- inform the seller that he or she possesses a real estate license
- disclose his or her desire to purchase the property to the seller
- purchase the property in his or her own name
- fully disclose any other buyer offers that are received
- disclose if his or her goal is to purchase the property in order to resell it for a profit (including if he or she plans to renovate the property before doing so)
- 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

Ideally, an agent in an option listing should indicate his or her dual role in a written disclosure form signed by the seller. However, if a seller objects to an option listing, he or she may have the right to terminate the execution of a transaction.

Option listings can create severe conflicts of interest for agents. Although an agent is still bound by his or her fiduciary duty to the seller, the desire to purchase the seller's property may incentivize the agent to prioritize personal goals.

For example, an agent in an option listing may intentionally fail to disclose offers received by other potential buyers. An agent may do this to make a seller believe that his or her listing price is too high, and subsequently encourage the seller to lower it. The agent may then purchase the property at an artificially low price, and resell it for a profit.

Because of the risks of conflict of interest, many brokers do not allow their agents to engage in these types of transactions.

	STANDARD OPTION TO PURCHASE Irrevocable Right-to-Buy												
Prepared by: Agent _____ Broker _____		Phone _____ Email _____											
DATE: _____, 20_____, at _____, California. <i>Items left blank or unchecked are not applicable.</i>													
<p>1. OPTION MONEY: Optionor herewith receives from Optionee option money in the amount of \$_____ , evidenced by: cash, check, or _____, given in consideration for this option to purchase real property.</p> <p>2. REAL PROPERTY UNDER OPTION: Address _____ Legal description/Assessor's parcel number _____</p> <p>3. ADDITIONAL CONSIDERATION: As further consideration for this option, Optionee is to obtain at his expense and deliver to Optionor prior to expiration of this option the following checked items regarding the property:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Property survey report by licensed California surveyors</td> <td style="width: 50%;">Off-site improvement plans</td> </tr> <tr> <td>Architectural plans and specifications</td> <td>Soil engineer's report</td> </tr> <tr> <td>Zoning ordinance request</td> <td>Land use study</td> </tr> <tr> <td>On-site engineering plans</td> <td>Application for a conditional use permit</td> </tr> <tr> <td colspan="2">Application for a parcel map or waiver</td> </tr> </table> <p>4. OPTION PERIOD: Optionor hereby grants to Optionee the irrevocable option to purchase the Optionor's right, title and interest in the property on the terms stated, for a period commencing with the acceptance of this option and expiring _____, 20_____, or on termination of the optionee's leasehold interest in the property.</p> <p>5. EXERCISE OF OPTION: Optionee may exercise this option during the option period by: 5.1 Signing escrow instructions identical in provisions to those attached as Exhibit A and delivering the instructions to escrow [See ft Form 401]; 5.2 Depositing cash in escrow of \$_____ ; and 5.3 Delivering an escrow-certified copy of the signed escrow instructions to Optionor within the option period, in person or by both certified and regular mail.</p> <p>6. ESCROW CONTRACT: In the event this option is exercised, the transaction will be escrowed with _____. 6.1 Escrow will close within _____ days after exercise.</p> <p>7. DELIVERY OF TITLE: On Optionee's exercise of this option, Optionor will timely place all documents and instruments into escrow required of the Optionor as necessary for escrow to close as scheduled.</p> <p>8. BROKERAGE FEE: Optionor agrees to pay a brokerage fee of \$_____ , or _____ % of the selling price, IF: 8.1 This option is exercised; 8.2 Within one year after expiration of option period and any extension or renewal, Optionor enters into an agreement to option, sell, lease or exchange with Optionee, or their assigns or successors; or 8.3 Optionor wrongfully prevents the exercise of this option; 8.4 Payable to Broker(s) _____ 8.5 Optionor and Optionee acknowledge receipt of the Agency Law Disclosure. [See ft Form 305]</p> <p>9. SALE TERMS: Price of \$_____ payable as follows: 9.1 All cash. 9.2 Cash down payment in the amount of \$_____ . 9.3 Take title subject to, or Assume, an existing first trust deed note held by _____ with an unpaid principal balance of \$_____ , payable \$_____ monthly, including interest not exceeding _____ %, ARM, type _____ , plus a monthly tax/insurance impound payment of \$_____ . a. At closing, loan balance differences per beneficiary statement(s) to be adjusted into: cash, carryback note, or sales price. b. The impound account to be transferred: charged, or without charge, to Optionee. 9.4 Take title subject to, or Assume, an existing second trust deed note held by _____ with an unpaid principal balance of \$_____ , payable \$_____ monthly, including interest not exceeding _____ %, ARM, type _____ , due _____, 20_____. ----- PAGE ONE OF TWO -- FORM 161 -----</p>				Property survey report by licensed California surveyors	Off-site improvement plans	Architectural plans and specifications	Soil engineer's report	Zoning ordinance request	Land use study	On-site engineering plans	Application for a conditional use permit	Application for a parcel map or waiver	
Property survey report by licensed California surveyors	Off-site improvement plans												
Architectural plans and specifications	Soil engineer's report												
Zoning ordinance request	Land use study												
On-site engineering plans	Application for a conditional use permit												
Application for a parcel map or waiver													

PAGE TWO OF TWO — FORM 161

- 9.5 A note for the balance of the purchase price in the amount of \$ _____ to be executed by Optionee in favor of Optionor and secured by a trust deed on the property junior to the above referenced financing, payable \$ _____ monthly, or more, beginning one month after closing, including interest at _____ % per annum from closing, due _____ years after closing.
- This note and trust deed to contain provisions to be provided by Optionor for:
due-on-sale, prepayment penalty, late charges, _____
 - The attached Financial Disclosure Statement is an addendum to this agreement (mandatory on four-or-less residential units). [See **ft** Form 300]
 - Optionee to provide a Request for Notice of Default and Notice of Delinquency to senior encumbrancers. [See **ft** Form 412]
- 10. GENERAL PROVISIONS:**
- See attached addendum for additional provisions. [See **ft** Form 250]
 - Attached as addenda are the following checked disclosures mandated on four-or-less residential units:
 - Condition of Property Disclosure — Transfer Disclosure Statement (TDS) [See **ft** Form 304]
 - Natural Hazard Disclosure Statement [See **ft** Form 314]
 - Disclosure of Sexual Predator Database [See **ft** Form 319]
 - Hazard Disclosure Booklet, and related Optionor disclosures, containing Environmental Hazards, Lead-based Paint and Earthquake Safety [See **ft** Forms 313 and 315]
 - Documentation on any Homeowners' Association (HOA) involved. [See **ft** Form 309]
 - Notice of Supplemental Property Tax Bill [See **ft** Form 317]
 - Possession of the property to be delivered on:
close of escrow, or see attached Occupancy Agreement. [See **ft** Forms 271 and 272]
 - Both parties reserve their rights to assign, and agree to cooperate in effecting an Internal Revenue Code §1031 exchange prior to close of escrow, on either party's written notice.

11. EXPIRATION OF OPTION:

This offer to sell will be deemed expired if not accepted by exercise during the option period.

11.1 This option contract will automatically terminate by expiration on _____, 20_____.

OPTIONOR'S BROKER:

Broker's CalBRE #: _____

Agent's Name: _____

Agent's CalBRE #: _____

Signature: _____

Is the agent of: Optionor exclusively.

Both Optionor and Optionee.

Address: _____

Phone: _____

Cell: _____

Email: _____

OPTIONEE'S BROKER:

Broker's CalBRE #: _____

Agent's Name: _____

Agent's CalBRE #: _____

Signature: _____

Is the agent of: Optionee exclusively.

Both Optionor and Optionee.

Address: _____

Phone: _____

Cell: _____

Email: _____

I hereby grant this option and agree to the terms stated above.

Date: _____, 20_____

Optionor: _____

Signature: _____

Signature: _____

Address: _____

Phone: _____ Fax: _____

Email: _____

I hereby accept this option and agree to the terms stated above.

Date: _____, 20_____

Optionee: _____

Signature: _____

Signature: _____

Address: _____

Phone: _____ Fax: _____

Email: _____

Net Listings

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.

Before the execution of a sale, an agent must disclose their projected commission to the seller. Business and Professions Code 1076 (g) also states that a seller must be aware of all dynamics of the net listing.

For example, assume Kerry hires a real estate agent, Mark, to sell her property. Kerry would prefer not to pay a standard commission. She proposes a net listing. Mark, an experienced agent with extensive knowledge of the local market, agrees. Kerry then lists her property at the minimum price she is willing to sell for: \$200,000. Mark ends up selling Kerry's property for \$237,000. Because of the net listing, Mark is entitled to the difference between the net listing and sold price. Thus, Mark receives a commission of \$37,000 -- significantly higher than what he would have made on a standard listing.

If, however, a seller finds a buyer who wishes to purchase the home at the listed \$200,000, the agent receives no commission.

Like option listings, there is a high risk for conflicts of interest in net listings. Unlike standard listing agreements -- which incentivize agents to list a seller's property at the highest price possible -- net listings reward agents for reducing listing prices. Because of this, an agent may offer negligent advice to a seller in order to maximize his or her commission.

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.

Net listings more often than not benefit agents over property owners. For this reason, most states have made them illegal. However, California does still allow net listings.

Case Review: *Rattray v. Scudder (1946)*

The case, *Rattray v. Scudder* (1946) 28 Cal.2d 214., involved a real estate agent who intentionally misinformed a seller about buyer interest.

A seller (Rattray) listed his property with the help of a real estate agent (Scudder). During the transaction, Scudder purposefully neglected to inform Rattray of the buyer demand for his property, as well as the price that buyers were willing to pay. After supposedly not receiving any offers, Scudder convinced Rattray to reduce the property's listing price, at which point Scudder offered to purchase the property himself. Rattray sued.

The Superior Court claimed that Scudder had breached his fiduciary duty by not disclosing the other buyer offers, and was guilty of material misrepresentation for not informing the seller of all buyer offers. It ruled in favor of Rattray.

Cooperating Broker Agreements

In some situations, multiple agents may contribute to the execution of a real estate transaction. A **cooperating broker fee agreement** is a listing in which more than one broker agrees to represent a client for the purchase or sale of real property. Such an agreement indicates the duties of each party and how the commission will be split.

Loan Broker Listing Agreement

The vast majority of real estate purchases require some form of financing. Agents and brokers who assist clients in their real estate needs may also assist clients with their financing requirements. Because agents are aware of the needs of their transaction, they may be best equipped to assist clients with their financing needs.

A mortgage loan broker can dramatically reduce the time it takes to find suitable financing, and may even introduce borrowers to lenders that they may not have previously considered. In order to begin the process of representing clients financing needs, the client and broker will sign a **loan broker listing agreement**. This listing highlights the major components of the transaction, including the borrower's rights, each party's obligations, and the broker's commission structure.

Listing Fees & Seller's Net

Advance Fee

Specific real estate projects -- including expensive real property, commercial property, and tough-to-sell properties -- may require an agent to perform additional activities that go beyond the standard expectations of an agent. When these exceptional obligations

require additional time and money, an agent may charge an **advance fee**. An advance fee is also known as an **advance cost**. Such a fee is the cost it takes for an agent to advertise, market, or list the property.

An **advance fee addendum** indicates the additional costs associated with selling a property. Its purpose is to give the agent the necessary budget to sell the property as soon as possible for the highest price, as well as to ensure that the seller understands how money is being spent.

An addendum may include the cost of advertising, staging a property, and/or specific services, such as holding an extravagant open house. It may also compensate agents and their staff for additional time.

Agents and sellers can negotiate the terms of an advance fee addendum based on the specifics of the transaction. However, the Department of Real Estate (DRE) must approve the form prior to beginning the process. Furthermore, additional provisions and/or amendments to the addendum must be provided and signed off by the DRE. Should an agent fail to properly submit an addendum, the DRE has the right to impose disciplinary action against the agent.

Advance fees do not apply to the final commission of the agent/broker.

Advance fee payments must be kept in a trust account in order to protect the interests of the seller. Although an agent will keep control of the money in the trust, the seller remains the owner of the money. The agent is responsible for keeping track of all expenses and remaining funds. Sellers have the right to ask for quarterly statements and accounting spreadsheets to verify the accuracy of the account. In the event that funds remain at the close of the transaction, they must be returned to the seller.

Seller's Net

Most sellers are not aware of all of the costs associated with selling a property. These costs include: seller's points, escrow fees, title fees, prorations, and prepayment penalties. These unexpected financial "surprises" may cause friction between an agent and a seller, and may even result in a seller backing out of a sale, filing a complaint, or attempting to sue the agent.

To combat this, agents may fill out an estimated seller's net form. This form presents the expected costs associated with selling a particular property, and creates realistic expectations for how much a seller will receive -- or "net" -- upon the sale of a property.

Buyer-Related Listings

Buyer Listings

A **buyer listing** grants an agent the right to locate property for a buyer in return for a commission upon the close of a transaction.

Buyer listings must be made in writing. The agreement must also include the termination date and the commission structure in order to be enforceable.

Buyer listings are very common in the world of investment properties. Investors will typically contract with an agent in order to find exclusive property deals. The terms of a buyer listing are dependent on the goals of the buyer. Because an investor's goal is to make money, he or she will typically utilize buyer listings with a quick termination date. This gives him or her the flexibility to find other properties in the event that the agent could not find solid business opportunities.

Similar to the aforementioned exclusive listings for sellers, buyer listings can be exclusive.

An exclusive buyer listing ensures that an agent is paid a commission, regardless of whether the agent or the buyer found a property.

Real Property Sales Contract

A **real property sales contract** -- also known as a purchase agreement -- is the agreement executed between a seller and a buyer which legally transfers real property. It sets forth the duties and obligations of all parties involved.

Such an agreement must be made in writing. Contradictory agreements do not apply if the purchase agreement is intended to be the final agreement. Any amendments or changes to a purchase agreement must be in writing.

Like other contracts, a real property sales contract must include an offer, acceptance, consideration, competency of both parties, and legal goals. If any components of a valid contract are missing, the contract is not enforceable.

California Residential Purchase Agreement

The provisions included in a standard California Residential Purchase Agreement are summarized below.

The Basics

The contract indicates who the offer is from, the purchase price, the address of the subject property, and the escrow closing date.

A seller puts his or her property on the market with an initial listing price. A potential buyer can counteroffer that price during negotiations. The negotiated price that satisfies both the buyer and the seller is called the purchase price.

The address of the subject property must be stated on the contract so that there is no doubt as to the property being transferred.

The escrow closing is the final step in executing a real estate transaction. On the closing date, ownership of a particular property is transferred from the seller to the buyer. The given date may be approximate, but it must give some expectation of when the seller expects to close the transaction.

RESIDENTIAL REAL ESTATE PURCHASE AGREEMENT

Date of Prepared Agreement 20

TO _____ (SELLERS)

1. **REAL ESTATE DESCRIPTION.** The undersigned BUYERS hereby offer to purchase and the undersigned SELLERS by their acceptance agree to sell the real property situated in _____ County, Iowa, locally known as: _____ and legally described in the title document as: _____

together with any easements and appurtenant servient estates, but subject to any reasonable easements of record for public utilities or roads, any zoning restrictions, customary restrictions, customary restrictive covenants and mineral reservations of record, if any, herein referred to as the "Property," upon the following terms and conditions provided BUYERS, on possession, are permitted to use the Property for residential purposes.

If applicable, see HOMEOWNERS ASSOCIATION/CONDOMINIUM ASSOCIATION/COMMON INTEREST COMMUNITY ADDENDUM (HOA).

2. **PURCHASE PRICE.** The Purchase Price shall be \$_____ and the method of payment shall be as follows:
\$_____ with this offer as earnest money to be deposited upon acceptance of this offer, made payable to and held in trust by _____ In the event this Purchase Agreement is not acceptable to both BUYERS and SELLERS or all contingencies or sub-contingencies are not met in a timely manner as specified below, then said earnest money is to be returned to BUYERS. The balance of the purchase price shall be paid as indicated below. Select below all that apply, (A) through (E).

- A. **NEW MORTGAGE:** (CONV) (FHA) (VA) (Other) _____

This Purchase Agreement is contingent upon the BUYERS obtaining a written commitment for a first real estate mortgage for ____ % of the purchase price with interest on the promissory note secured thereby of not more than ____ % amortized over a term of not less than ____ years. BUYERS agree to pay all customary loan costs. BUYERS agree upon acceptance of this offer to make application within three (3) business days for such mortgage with a commercial mortgage lender and to exercise good faith efforts to obtain a mortgage commitment as above provided. Upon receiving written loan commitment, (supported by the lender's required appraisal), BUYERS shall release this contingency in writing. If BUYERS have not delivered a written financing contingency release containing the above terms, or terms acceptable to SELLERS on or before _____, 20_____, at _____ (A.M. P.M.) either SELLERS or BUYERS may declare this Purchase Agreement null and void and all payments made hereunder shall be returned. BUYERS shall pay the balance of the purchase price at the time of the closing by combination of BUYERS' personal funds and the net mortgage proceeds.

BUYERS have credit approval from _____ (lender), _____ (loan officer) subject to the terms and conditions of the attached approval letter. Copy of Approval is attached.

- B. **CASH:** BUYERS will pay the balance of the purchase price in cash at the time of closing. This Purchase Agreement is not contingent upon BUYERS obtaining such funds. BUYERS also agree to provide, within three (3) business days, verifiable evidence of the availability of the funds needed to purchase and close.

- C. **CONTRACT FOR DEED.** BUYER will assume SELLERS' loan or contract. See attached addendum.

- D. **OTHER FINANCING TERMS:** _____

E. **SALE OF BUYERS' PROPERTY:**

- This Agreement is contingent upon the sale and settlement of the BUYERS' property locally known as _____ on or before _____, 20_____. If settlement has not been made by this date, the SELLERS may rescind this Agreement by giving notice to BUYERS that unless sale and settlement of BUYERS' property is made within five (5) business days of such notice, then this Agreement shall be null and void. Unless SELLERS give such written notice, this Agreement shall remain valid until the sale of BUYERS' property.

1. SELLERS reserve the right to continue to offer the Property for sale. Should SELLERS receive another offer which they desire to accept, BUYERS shall have _____ hours from the delivery of written notice to waive the "contingency of sale." Notice from the BUYERS to the SELLERS, removing the contingency of sale, shall be timely delivered to the SELLERS along with written verification of BUYERS' financial ability to complete the purchase without the sale of the property referenced above.
 2. If BUYERS do timely remove such contingency, this Agreement will remain in full force and effect (but without being contingent on the sale of BUYERS' property). If BUYERS do not timely remove such contingency, SELLERS will immediately return to BUYERS all earnest money paid, this Agreement will be of no further force and effect, and neither party will have any further obligation to the other hereunder.
3. **CLOSING.** Closing shall be on _____, 20_____, or sooner by mutual agreement.

4. POSSESSION. If BUYERS timely perform all obligations, possession for the Property shall be delivered to BUYERS as follows:

- A. At the time of closing.
- B. On _____, 20_____, at _____ (A.M. P.M.)

If for any reason the closing is delayed, the BUYERS and SELLERS may make a separate agreement with adjustments as to the date of possession in the form of an amendment or interim occupancy agreement. Any unpaid balance, rents, interest or insurance for these purposes, shall be adjusted as of the date of possession and shall bear interest at the rate of _____ % per annum.

5. REAL ESTATE TAXES. The SELLERS shall be responsible for all real estate taxes that are attributable to the SELLER'S ownership of the property which shall include taxes that are liens for prior years and taxes that are due and payable for the fiscal year in which the closing occurs.

Subsequent taxes shall be provided for by one of the following methods:

- A. BUYERS shall be given a credit for all subsequent taxes prorated to the date of the closing. Subsequent taxes shall be calculated using the latest known applicable assessed value(s), roll back(s), exemption(s) and levy of record at the time of closing.
- B. There shall be no proration of subsequent taxes.

6. SPECIAL ASSESSMENTS. SELLERS shall pay in full all Special Assessments and all certified liens of record as of the date of closing. All Association fees, if any, shall also be paid currently by the SELLERS to date of closing. Any preliminary or deficiency assessments which cannot be discharged by payment at closing shall be paid through a written escrow account with sufficient funds to pay such liens when payable, with any unused funds to be returned to the SELLERS without further signatures of the BUYERS. All charges for solid waste, trash removal, sewage, utility bills and assessments for maintenance that are attributable to the SELLERS ownership shall be paid by the SELLERS.

7. FIXTURES. All property that integrally belongs to or is part of the Property, whether attached or detached, such as light fixtures, shades, rods, blinds, automatic garage door openers and transmitter units, all drapery rods and curtain rods, awnings, windows, storm doors, screens, plumbing fixtures, water heaters, water softeners (unless water softener is rental), automatic heating equipment, air conditioning equipment, wall-to-wall carpeting, mirrors attached to walls or doors, fireplace screen and grate, attached barbecue grills, weather vane, all built-in kitchen appliances, built-in items and electrical service cable, outside television towers and antenna, fencing, gates and landscaping shall be considered a part of Property and also including the following: _____

Each of the above included items are fixtures that integrally belong to or is a part of the Property. In the event any of the above items are characterized as personal property, such personal property items are not considered a part of the Property and shall be transferred with no monetary value, free and clear of all liens and encumbrances.

The following items shall be excluded: _____

8. DEED. Upon payment of the purchase price, SELLERS shall convey the Property to BUYERS or their assignees, by _____ Deed, free and clear of all liens, restrictions, and encumbrances except as provided in this Agreement. Any general warranties of title shall extend only to the time of acceptance of this offer, with special warranties as to acts of SELLERS continuing up to time of delivery of the deed.

9. TIME IS OF THE ESSENCE. Time is of the essence in this Purchase Agreement.

10. CONDITION OF PROPERTY.

- A. The Property as of the date of this Purchase Agreement including buildings, grounds, and all improvements will be preserved by the SELLERS in its present condition until possession, ordinary wear and tear excepted. The SELLERS warrant that the heating, electrical, plumbing, and air conditioning systems, well (if applicable) and all included appliances will whether subject to inspection set forth hereinafter or not, be in good working order and condition as of the date of delivery of possession. In determining whether or not the warranted systems are in good working condition and, for the purpose of inspecting the Property as outlined in Paragraph 10C (1) of this Purchase Agreement, working condition shall be defined as operating in a manner in which the item was designed to operate.

- B. **HOME WARRANTY:** A home warranty insurance policy with a duration of _____ year(s) is to be ordered and paid for by:
 SELLERS BUYERS N/A See OTHER PROVISIONS in Paragraph 25.

- C. **HOME INSPECTION:** The BUYERS must choose one of the following alternatives relative to the condition and quality of the Property:

- 1) By _____ (A.M. P.M.) on _____, 20_____, the BUYERS may, at their sole expense, have the Property inspected by a person or persons of their choice, including but not limited to a qualified home inspector, contractor(s), engineer(s), or other such professional(s), to determine if there are major deficiencies in the FOLLOWING MAJOR COMPONENTS of the Property: central heating system, central cooling system, plumbing system, well and well water (if applicable), electrical system, roof, walls, ceilings, floors, foundation and basement. SELLERS and BUYERS acknowledge that the property may have imperfect cosmetic conditions that do not affect the working condition of the item and are not considered major deficiencies, including, but not limited to, broken seals in windows; minor tears, worn spots, or discoloration of floor coverings, wallpaper, or window treatments; nail holes, scratches, dents, scrapes, or chips in ceilings, walls, floors; and/or surface cracks in driveways or patios. Failure to meet present construction standards and code requirements is not considered a deficiency in the Property unless it is new construction, or unless that failure produces a condition which creates an unreasonable danger or risk to the Property or to its occupants.

RESPONSE TO HOME INSPECTION FINDINGS: By the same date indicated in this Section 10C(1), BUYERS must notify the SELLERS in writing of any MAJOR deficiencies for which they are requesting remedies. The notification must be accompanied by a copy of a written inspection report from a qualified inspector identifying the deficiencies. SELLERS shall, within FIVE (5) calendar days after receipt of BUYERS' notification, notify the BUYERS in writing either that (1) SELLERS agree to remedy the deficiencies as requested by BUYERS, in which case this Purchase Agreement as so modified shall be binding on all parties, or (2) SELLERS do not agree to the remedy request in whole or in part and offer a counter proposal to BUYERS. Upon receipt of said counter proposal from SELLERS, the BUYERS shall have FIVE (5) days in which to accept the SELLERS' counter proposal by signing it, or to notify the SELLERS in writing that such steps are not acceptable, in which case, either SELLERS or BUYERS may declare this offer null and void, and any earnest money shall be returned to BUYERS. IN THE ABSENCE OF WRITTEN NOTICE OF ANY DEFICIENCY FROM BUYERS, OR, IF BUYERS FAIL TO RESPOND TO THE SELLERS COUNTER PROPOSAL, WITHIN THE TIME SPECIFIED HEREIN, THIS PROVISION SHALL BE DEEMED WAIVED BY PARTIES AND THIS PURCHASE AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT. IF THE SELLERS FAIL TO RESPOND TO THE BUYERS' REMEDY REQUEST WITHIN THE TIME SPECIFIED HEREIN, BUYERS MAY DECLARE THE OFFER NULL AND VOID AND ALL EARNEST MONEY SHALL BE RETURNED.

- 2) _____ BUYERS acknowledge that they have been advised of their right of property inspection and have declined to make said Initials inspection.

D. RADON INSPECTION: The BUYERS must choose one of the following alternatives relative to the presence of radon in the home:

- 1) By _____ (A.M. P.M.) on _____, 20_____, the Buyers may, at their sole expense, have the Property tested for the presence of radon gas. Such test shall be conducted by an Iowa Certified Radon Specialist. SELLER agrees to sign documents required for the test to be completed and agrees to cooperate with the specialist in carrying out the test. By the same date, BUYERS must notify SELLER in writing of any radon in excess of _____ pCi/L. The notification shall be accompanied by a copy of the written radon report. The cost of mitigation, if necessary, shall be negotiated within the time frames and remedies in paragraph 10C(1).
- 2) _____ BUYERS acknowledge that they have been advised of their right to conduct a radon test and have declined to order Initials said test.

E. TERMITE INSPECTION: The BUYERS must choose one of the following alternatives relative to wood destroying insects:

- 1) By _____ (A.M. P.M.) on _____, 20_____, BUYERS may, at BUYERS' expense, have the Property inspected for termites or other wood destroying insects by a licensed Pest Inspector. If active infestation or damage due to prior infestation is discovered, SELLERS shall have the option of either having the Property treated for infestation by a licensed Pest Exterminator and having any damage repaired to the BUYERS' satisfaction, or declaring this Purchase Agreement void. This provision shall not apply to fences, trees, shrubs, or out buildings other than garages. BUYERS may accept the Property in its existing condition without such treatment or repairs. IF BUYERS ARE OBTAINING VA FINANCING, THEN THE COST OF THE TERMITE INSPECTION SHALL BE BORNE BY THE SELLERS.
- 2) _____ BUYERS acknowledge that they have been advised of their right of a pest inspection and have declined to make said Initials unless required by lending institution at which time said inspection would be at BUYERS' expense and the BUYER will have the same rights as under paragraph 9E(1) if active infestation or damage due to prior infestation is discovered.

F. SEPTIC SYSTEM INSPECTION: The BUYERS must choose one of the following alternatives relative to a septic system inspection:

- 1) SELLERS represent and warrant to BUYERS that the Property is not served by a private sewage disposal system, and there are no known private sewage disposal systems on the Property.
- 2) The Property is served by a private sewage disposal system, or there is a private sewage disposal system on the Property. SELLERS and BUYERS agree to the provision selected in the attached Addendum for Inspection of Private Sewage Disposal System.
- 3) SELLERS and BUYERS agree that this transaction IS exempt from the time of transfer inspection requirements by reason that

G. WELL TEST: The BUYERS must choose one of the following alternatives relative to a well test:

- 1) SELLERS represent and warrant to BUYERS that the Property is not served by a well, and there are no known wells on the Property.
- 2) SELLERS, at SELLERS' expense, shall provide BUYERS, within _____ days after acceptance of this offer, a report issued by the county health department, or a qualified testing service, indicating the location of any well on the Property and that water from each well (1) is safe for its intended use and (2) is in sufficient quantity for its intended use. If BUYERS receive an unsatisfactory report, the basis for which cannot be resolved between BUYERS and SELLERS within _____ days of receipt thereof, then upon written notice from BUYERS to SELLERS, this agreement shall be null and void and all earnest money paid shall be returned to BUYERS.

- H. The BUYERS shall be permitted access to the Property prior to possession or closing, whichever is sooner, in order to determine that there have been no changes in the condition of the Property except those mutually agreed upon and that it is ready for BUYERS' possession. At the time of closing or possession, whichever occurs sooner, BUYERS will accept Property in its present condition without further warranties or guarantees by SELLERS concerning the condition of the Property. This, however, shall not relieve the SELLERS of any liability for any condition(s) that is (are) defined as latent defect(s) or any express written warranties contained in this Purchase Agreement or other written agreement between the parties; nor shall this paragraph relieve the Sellers of any liability for any implied warranty applicable under Iowa law."

11. **INSURANCE.** SELLERS shall bear the risk of loss or damage to the Property prior to closing or possession, whichever first occurs. SELLERS agree to maintain existing insurance and BUYERS may purchase additional insurance. In the event of substantial damage or destruction prior to closing, this Purchase Agreement shall be null and void, unless otherwise agreed by the parties. The Property shall be deemed substantially damaged or destroyed if it cannot be restored to its present condition on or before the closing date; provided, however, BUYERS shall have the option to complete the closing and receive insurance proceeds regardless of the extent of damages.
 12. **USE OF PURCHASE PRICE.** At time of settlement, funds of the purchase price may be used to pay taxes and other liens and to acquire outstanding interests, if any, of others.
 13. **ABSTRACT AND TITLE.** SELLERS, at their expense, shall promptly obtain an abstract of title to the Property continued through the date of acceptance of this offer, and deliver it to BUYERS for examination. It shall show merchantable title in SELLERS' names in conformity with this Purchase Agreement, Iowa law, and Title Standards of the Iowa State Bar Association. The abstract shall become the property of the BUYERS when the purchase price is paid in full. SELLERS shall pay the costs of any additional abstracting and title work due to any act or omission of SELLERS, including transfers by or the death of SELLERS or their assignees. If, at the time of closing there remains unresolved title objections, the parties agree to escrow from the sale proceeds a sufficient amount to protect the BUYERS' interests until said objections are corrected, allowing a reasonable time for the corrections of said objections; provided, however, that if the commercial mortgage lender of the BUYERS will not make the mortgage funds available with such escrow, the provisions for escrow for title defects shall not be applicable.
 14. **JOINT TENANCY IN PROCEEDS AND IN REAL ESTATE.** If SELLERS, immediately preceding acceptance of the offer, hold title to the Property in joint tenancy with full right of survivorship, and the joint tenancy is not later destroyed by operation of law or by acts of the SELLERS, then the proceeds of this sale, and continuing or recaptured rights of SELLERS in the Property, shall belong to SELLERS as joint tenants with full right of survivorship and not as tenants in common; and BUYERS, in the event of the death of either SELLER, agree to pay any balance of the price due SELLERS under this Purchase Agreement to the surviving SELLER and to accept a deed from the surviving SELLER consistent with paragraph 8.
- BUYERS HEREBY STATE THE DESIRE TO TAKE TITLE IN THE FOLLOWING MANNER:**
- Joint Tenants Tenants in Common As a single Person Other _____.
15. **JOINDER BY SELLER'S SPOUSE.** SELLER'S spouse, if not a title holder immediately preceding acceptance of this offer, executes this Purchase Agreement only for the purpose of relinquishing of all rights of dower, homestead and distributive share or in compliance with Section 561.13 of the Iowa Code and agrees to execute the deed or real estate contract for this purpose.
 16. **REMEDIES OF THE PARTIES.**
 - A. If BUYERS fail to timely perform this contract, SELLERS may forfeit it as provided in the Iowa Code, and all payments made shall be forfeited or, at SELLERS' option, upon Thirty (30) days written notice of intention to accelerate the payment of the entire balance because of such failure (during which thirty days such failure is not corrected) SELLERS may declare the entire balance immediately due and payable. Thereafter this contract may be foreclosed in equity and the Court may appoint a receiver.
 - B. If SELLERS fail to timely perform this contract, BUYERS have the right to have all payments made returned to them.
 - C. BUYERS and SELLERS also are entitled to utilize any and all other remedies or actions at law or in equity available to them and shall be entitled to obtain judgment for costs and attorney fees as permitted by law.
 17. **STATEMENT AS TO LIENS.** If BUYERS intend to assume or take subject to a lien on the Property, SELLERS shall furnish BUYERS with a written statement prior to closing from the holder of such lien, showing the correct balance due.
 18. **APPROVAL OF COURT.** If the Property is an asset of any estate, trust or conservatorship, this Purchase Agreement is contingent upon Court approval unless declared unnecessary by BUYERS' attorney. If necessary, the appropriate fiduciary shall promptly obtain Court approval and conveyance shall be made by a Court Officer's Deed.
 19. **CONTRACT BINDING ON SUCCESSORS IN INTEREST.** This contract shall apply to and bind the successors in interest of the parties.
 20. **CONSTRUCTION.** Words and phrases shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to context.
 21. **SURVEY AND SQUARE FOOTAGE REPRESENTATION.** The BUYERS may, within _____ days of acceptance of offer, have the Property surveyed at their expense. If the survey, certified by a Registered Land Surveyor, shows any encroachment on said property or if any improvements located on the subject property encroach on lands of others, such encroachments shall be treated as a title defect. Assuming a representation for square footage has been made, BUYERS understand and agree that said representation is only an approximation of the exact number of square feet the Property contains. The BUYERS have the right to obtain their own measurement of square footage.
 22. **REAL ESTATE AGENT OR BROKER.** Select one of the following:

Neither party has used the services of a real estate agent or broker in connection with this transaction. SELLERS agree to indemnify BUYERS and hold BUYERS harmless from any claim by any real estate agent or broker arising out of or related to this transaction between SELLERS and BUYERS.

BUYERS were represented by a real estate agent or broker in connection with this transaction.

23. **RESIDENTIAL PROPERTY SELLER DISCLOSURE STATEMENT.** Iowa law requires SELLERS of residential real estate property to deliver to the BUYER a written disclosure statement to reveal the condition of various important aspects of the property characteristics and structure(s). The Seller Disclosure statement **MUST** be delivered to the BUYER either (1) prior to the SELLER accepting a written offer from the BUYER, or (2) prior to the BUYER accepting a written offer from the SELLER.

- The Buyer(s) acknowledge receipt of the Residential Property Seller Disclosure Statement prior to executing this Purchase Agreement.
A copy of the Residential Property Seller Disclosure Statement is attached to the Purchase Agreement.
- Not Applicable

24. **NOTICE.** Any notice required under this Purchase Agreement shall be in writing and shall be deemed effective to BUYERS when physical delivery is received by BUYERS, and effective to SELLERS when physical delivery is received by SELLERS. Physical delivery may be either by personal delivery or upon the date of the posting of said notice posted by Certified Mail. As an alternative to physical delivery, any signed document or written notice may be delivered, as set forth in electronic form by facsimile or e-mail. The facsimile or e-mail delivery confirmation shall constitute notice of delivery. Documents with original signatures shall be provided.

SELLER Email Address: _____ SELLER Phone: _____

SELLER Mailing Address: _____ SELLER Alt. Phone: _____

BUYER Email Address: _____ BUYER Phone: _____

BUYER Mailing Address: _____ BUYER Alt. Phone: _____

25. **OTHER PROVISIONS.**

26. **TIME FOR ACCEPTANCE.** If this offer is not accepted by SELLERS on this date of _____, 20_____, at _____ (A.M. P.M.) it shall become void and all payments shall be repaid to the BUYERS.

*** THIS IS A LEGAL, BINDING CONTRACT. IF NOT UNDERSTOOD, SEEK COMPETENT LEGAL ADVICE ***

The undersigned have read and agreed to the terms and conditions of this Purchase Agreement.

OFFER DATE: _____, 20_____, at _____ (A.M. P.M.).

BUYER(PRINT)

BUYER(PRINT)

BUYER(SIGNATURE)

BUYER(SIGNATURE)

SELLERS' ACCEPTANCE. The undersigned SELLER(S) of the above property accepts the above offer and agrees to sell this property according to the terms offered on this date of: _____, 20_____, at _____ (A.M. P.M.).

SELLERS' REJECTION. The undersigned SELLER(S) of the above property rejects this BUYERS' written offer to purchase this property according to the terms offered on this date of: _____, 20_____, at _____ (A.M. P.M.).

SELLERS' COUNTER OFFER. The undersigned SELLER(S) of the above accepts the above offer subject to the terms and conditions as per the attached Counter Offer on this date of: _____, 20_____, at _____ (A.M. P.M.).

SELLER(PRINT)

SELLER(PRINT)

SELLER(SIGNATURE)

SELLER(SIGNATURE)

Costs

A purchase agreement is contingent on the financing aspects of a transaction. A valid contract must allocate the costs required to purchase real property, including the cost of inspections, reports, and retrofitting, as well as which party is responsible for escrow and title fees.

Buyer's costs are typically anywhere from one to six percent of the total purchase price. A buyer must sign an estimated buyer's cost sheet to ensure that he or she is aware of all costs involved prior to the execution of the contract. This also ensures that a buyer can actually finance the purchase of a property.

A purchase agreement must state details about the deposit; about whether a buyer will be submitting an all-cash offer or obtaining a loan; and about whether a loan will be obtained from a lending institution or directly from the seller.

A buyer's deposit is the money a buyer puts down with a purchase agreement in order to secure the right to buy a property. The size of the deposit depends on the property's purchase price and how quickly the seller plans to close. An additional cash deposit -- known as an increased deposit -- may also be made during the escrow period.

A purchase agreement indicates where a deposit will be held until the closing, usually in escrow by a third party. In the event that a buyer cancels the purchase of a property, the seller keeps his or her deposit.

A buyer's deposit is applied against the property's purchase price upon the close of the sale and becomes part of the down payment.

A down payment is the larger amount of money that a buyer must put down before he or she purchases a property. Down payments typically range from 5-20% of the total value of the property.

Other buyer's costs include:

- Appraisal fees
- Title insurance
- Credit report fees
- Escrow deposit
- Recording fee
- Underwriting fee
- Inspection costs
- Discount points
- Loan origination fee

Seller Disclosures

A seller must make certain disclosures about a property within a purchase agreement, such as:

- the material facts about the property
- any debts on the property

If a property owner is selling real property, it implies that he or she is the exclusive owner with the authority to sell it.

A seller is required to disclose all material facts of the property within the last five years of which he or she is aware. This is done in the form of the Transfer Disclosure Statement (discussed in Chapter 3).

The seller must also make the required statutory disclosures (i.e. lead-based paint hazard disclosures, natural and environmental hazards disclosure) and be in compliance with local, state, and federal anti-discrimination laws.

A buyer is entitled to conduct his or her own inspections of the property to verify its condition. This includes a general home inspection to more specific inspections (i.e. pests, lead paint hazard, mold, city coding).

A buyer also has the right to conduct a final inspection of the property within five days of the closing in order to verify that the property is in the same condition as when he or she first saw it. Any seller repairs must be completed prior to this final inspection, unless agreed to in writing. The buyer must give a copy of inspection reports to the seller, if requested.

A seller must disclose if there are any liens on the property and keep the property free and clear of liens during the transaction period. Unless stipulated in the sales contract, the seller must also keep property taxes, HOA fees, and assessments current prior to the sale.

Contingencies

A **contingency** refers to a condition that must be met in order to advance to the next step in a real estate transaction. This can be related to inspections, repairs, or financing.

A purchase agreement has a box which, if checked, indicates that an offer is contingent on another transaction. A common sales contract contingency is a home sale contingency. This stipulates that a buyer will purchase a seller's property as long as he or she is first able to sell his or her existing property. Most buyers do not have the necessary funds to buy more than one property at a time; therefore, they

must sell their existing home in order to have the capital to buy a new home.

If the box is not checked, the deal is not contingent upon the sale of any property owned by the buyer.

Another common contingency included in a purchase agreement relates to time, including the amount of time required by a seller to disclose certain information or to complete a certain action.

For example, a seller may agree to reduce his or her listing price from \$410,000 to \$405,000 if an all-cash offer is made before the end of the month.

Another contingency is an **interim occupancy agreement**. This requests that a buyer be able to move into a purchased property as a tenant prior to the official close of escrow and transfer of the property title.



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**CONTINGENCY FOR SALE OR PURCHASE
OF OTHER PROPERTY**
(C.A.R. Form COP, Revised 11/08)

This is an addendum to the California Residential Purchase Agreement, Counter Offer, Other _____ ("Agreement"), dated _____ on property known as _____ ("Seller's Property"), between _____ ("Buyer") and _____ ("Seller").

A. (If checked) SALE OF BUYER'S PROPERTY:

1. (a) The Agreement is contingent on the close of escrow of Buyer's property, described as: _____ ("Buyer's Property").
 - (b) If Buyer's Property does not close escrow by the earliest of: (i) the scheduled close of escrow of Seller's Property; (ii) the date specified in paragraph A3; or (iii) Other _____, then either Seller, after first giving Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), or Buyer may cancel the Agreement in writing.
2. (If checked) Buyer's Property is not now in escrow and (check boxes as applicable).
 - (a) is not yet listed for sale.
 - (b) is listed for sale with _____ company and is offered for sale in the _____ MLS, # _____.
 - (c) Buyer shall, within 17 (or _____) Days After Acceptance, provide Seller with Copies of the contract, escrow instructions and all related documents ("Escrow Evidence") for the sale of Buyer's Property showing that Buyer's Property has entered escrow.
3. (If checked) Buyer's Property is in escrow with _____ escrow holder, (escrow # _____) scheduled to close escrow on _____ (date). Buyer shall, within 5 Days After Acceptance, deliver to Seller Escrow Evidence that Buyer's Property is in escrow.
4. If Buyer fails to provide to Seller Escrow Evidence within the time specified in A2(c) or A3, Seller, after first giving Buyer a Notice to Buyer to Perform, may cancel the Agreement in writing.
5. If Buyer's Property is in or enters escrow, Buyer shall give Seller written notice if either party to that escrow gives notice to the other of intent to cancel. In such event, either Buyer or Seller may cancel the Agreement in writing.
6. After Acceptance, Seller shall have the right to continue to offer the Property for sale for Back-up Offers. If Seller accepts a written back-up offer:
 - (a) **Immediate Right to Notify Buyer to Remove Sale of Property Contingency:** Seller shall have the right to immediately give written notice to Buyer to, in writing: (i) remove this contingency; (ii) remove the loan contingency, if any; (iii) provide verification of sufficient funds to close escrow without the sale of Buyer's Property; and (iv) comply with the following additional requirement(s):

If Buyer fails to complete these actions within 72 (or _____) hours after receipt of such notice, Seller may then immediately cancel the Agreement in writing.
 - OR (b) (If checked) **Delayed Right to Notify Buyer:** Seller shall not invoke the notice provisions in paragraph A6(a): (i) within the first 17 (or _____) Days After Acceptance; or (ii) (if checked) during the term of the Agreement.

B. (If checked) SELLER'S PURCHASE OF REPLACEMENT PROPERTY:

1. The Agreement is contingent on Seller entering a contract to acquire replacement property.
2. Seller shall, within 17 (or _____) Days After Acceptance, remove this contingency or cancel the Agreement. If Seller does not remove this contingency in writing within that time, Buyer, after giving Seller a Notice to Seller to Perform (C.A.R. Form NSP), may cancel the Agreement in writing.
3. (a) Time periods in the Agreement for inspections, contingencies, covenants and other obligations shall begin: (i) as specified in the Agreement; (ii) (if checked) the day after Seller delivers to Buyer a written notice removing this contingency; or (iii) (if checked) Other _____.
 - (b) Buyer and Seller agree that Seller may, by providing Buyer written notice at the time Seller removes this contingency, extend the Close Of Escrow date for a maximum of _____ additional Days or until _____ (date).
4. Even after the expiration of the time specified in B2, Seller retains, until Buyer cancels pursuant to B2, the right to remove in writing this contingency or cancel the Agreement. Once Buyer receives Seller's written removal of this contingency, Buyer may not cancel pursuant to B2.

By signing below, Buyer and Seller each acknowledge that they have read, understand, accept and have received a copy of this Addendum.

Date _____ Date _____

Buyer _____ Seller _____

Buyer _____ Seller _____

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Reviewed by _____ Date _____



Cancellation Rights

Purchase agreements can be cancelled if both parties mutually agree to release each other. Release agreements should include essential information from the contract being cancelled and clearly indicate that those parties are relieved of their obligations and/or duties. In the case of mutual release, the prospective buyer has his or her deposit money returned to them.

If one party violates the purchase agreement, the other party may be able entitled to damages and/or penalties. If a seller violates the contract, the buyer can legally back out of the purchase.

Conversely, if the buyer violates a contract, the seller is entitled to keep the deposit as a form of liquidated damages. However, liquidated damages may not exceed three percent of the purchase price. Any amount exceeding the three percent mark must be returned to the buyer. Release of funds back to the buyer requires the seller to sign and release the funds.

Parties may agree to mediate any disputes that arise before resorting to legal action. If either party fails to mediate the situation prior to going to court, that party may be responsible for paying the other party's attorney and court fees.

Escrow Details

Details about escrow will be explored further in Chapter 9.

Agent & Broker Commission

An agent's commission structure is established in a separate listing agreement executed between an agent and his or her client. The details of the agreement must be included in the purchase contract.

Case Review: *Sabo v. Fasano (1984)*

The case, *Sabo v. Fasano* (1984) 154 Cal.3d 502., involved a seller who refused to sell his home based on an un-met contingency.

A seller (Fasano) was prepared to sell to a buyer (Sabo). However, the purchase agreement included a contingency that required Sabo to accept Fasano's offer within five days. Sabo waived contingencies and accepted the offer on the sixth day.

Upon Sabo's acceptance, the two opened escrow. At this point, Fasano refused

to sell. He argued that Sabo had violated the original purchase agreement by not accepting the offer until the sixth day. Sabo brought legal action against Fasano for specific performance.

The Superior Court stated that the acceptance deadline provision had been unfairly created for the sole benefit of Fasano. It contended that the opening of escrow amounted to a waiver of the Sabo's late acceptance of the agreement and ruled in favor of Sabo.

Case Review: *Paul v. Schoellkopf* (2005)

In the case, *Paul v. Schoellkopf* (2005) 128 Cal.4th 147., a seller sued a buyer over a contingency in the purchase agreement.

A seller (Paul) owned two adjacent properties: a house and a piece of undeveloped land. He sold the undeveloped land to a buyer (Schoellkopf), contingent on the fact that Schoellkopf only initiate construction upon Paul's approval of the architectural plans.

For years after the sale, Paul disputed Schoellkopf's development plans over his property's height and location. When Schoellkopf started development on his property anyway, Paul filed suit against him for breach of contract and specific performance. Schoellkopf countered with his own lawsuit, alleging a breach of the purchase agreement, good faith, and fair dealing. He sought declaratory relief and monetary damages.

The court ruled in favor of Schoellkopf. The ruling entitled Schoellkopf to \$75,000 for Paul's failure to install a fire hydrant required in the purchase contract; over \$30,000 for Schoellkopf's loss of use of his property; and over \$371,000 in legal fees. Paul appealed. The appellate court upheld all of the lower court's ruling, minus the legal fees.

Case Review: *Beverly Way Associates v. Barham* (1990)

The case, *Beverly Way Associates v. Barham* (1990) 226 Cal.3d 49., involved a plaintiff buyer who sued the defendant seller for specific performance for the seller's failure to sell the property after entering into a sales contract.

A buyer (Beverly Way Associates) entered into a sales contract with a seller (Barham). The agreement contained a contingency clause which granted

Beverly Way Associates the right to accept or deny a survey of the subject property. When Barham delivered the survey, Beverly Way Associates rejected it. They sent a letter stating “we reluctantly disapprove of the matters disclosed on the survey and relating to the property” and asked Barham how he wished to proceed with the sale. Barham never responded. Beverly Way Associates brought action against him for failing to perform the duties set forth in the contract.

The Superior Court contended that Beverly Way Associates’ rejection of the survey meant that the sales contract was no longer valid or enforceable. Therefore, Beverly Way Associates could not object to Barham’s decision not to sell the property. The court ruled in favor of Barham.

Closing

When the purchase agreement has been signed by both parties and all contingencies have been met, the buyer receives a grant deed conveying a property’s title to them. Titles and deeds will be discussed in detail in Chapter 8.

Records

A change in ownership requires a reassessment of a property’s value and taxes. Therefore, a new property owner is required to inform the county recorder’s office within 45 days of a property sale or transfer. If the new owner fails to do so, he or she may be subject to a fine of up to ten percent of the property taxes’ yearly value.

All documents must be saved for a minimum of three years after the close of the transaction. The broker should keep a copy of listings, deposits, rental agreements, and other vital real estate documents that affect the transaction.

Terminating a Purchase Agreement

In order to terminate a purchase agreement, there must be mutual agreement between principals, or one principal must fail to meet his or her obligations within the contract.

The best way to mutually cancel a residential purchase agreement is for both principals to sign a cancellation letter. A cancellation letter should include the name and signatures of all principals, the subject property address, and the date.