

Chapter 5



Agency, Fiduciary Duty & Listings

Chapter 5 Goals:

- Understand fiduciary duty
- Be aware of the fiduciary duties that a licensee owes a principal
- What a licensee must disclose to a principal
- Be aware of the various types of listings
- What is the Multiple Listing Service (MLS)
- Know the parties to a contract

Chapter 5: Agency, Fiduciary Duty, & Listings

Key Terms

accounting	equal-dignities rule	Multiple Listing Service (MLS)
agency	estoppel	net listing
agency agreement	exclusive agency listing	obedience
agency by estoppel	exclusive authorization and right-to-sell listing	open listing
agency by ratification	express agency	option listing
agency coupled with an interest	express authority	ostensible agency
agency disclosure form	fiduciary duty	pocket listing
assistant	full and accurate disclosure	principal
attorney in fact	general agent	procuring cause
bilateral contract	good faith	Real Estate Transfer Disclosure Statement
co-mingling	implied agency	safety clause
confidentiality	implied authority	secret profit
cooperating broker	integrity and honesty	special agent
cooperating split	listing agreement	subagent
dual agent	loyalty	tort
due care	material facts	unilateral contract
due diligence	multiple listing clause	

Agency Agreements

An agency relationship – known more commonly as an **agency** – is a business relationship whereby an agent represents a client's interests in the buying, selling, transferring, or renting of real property.

The various parties in an agency include a principal, an agent, and the broker with whom an agent is working. A client in a real estate transaction is known as a **principal**.

Historically, most real estate agents were hired to sell homes on behalf of sellers. However, as real estate inventory has decreased, there has been an increased need for agents to also help prospective buyers find suitable homes.

The terms of an agency relationship and an agent's authority are established in an **agency agreement**. Such agreements can be written or implied through one or both parties' actions.

The following are elements of a standard agency agreement:

- Names of parties

- Property address and description, ideally including parcel number and parameters
- Agent's compensation
- Expiration date. Agreements lasting longer than one year must be in writing.
- Terms and conditions of the agreement
- Signatures of all parties

Agent Compensation

An agent is entitled to compensation in a real estate transaction, be it the sale, purchase, or lease of a property.

Agent commissions are not predetermined or set by law. They vary for each transaction and must always be negotiable. A principal, agent, and broker are responsible for negotiating an agent/broker's commission.

An agent's commission is typically a percentage of a property's final sale price, although it can be a flat fee, net listing fee, or a fee structure specific to a particular transaction.

A **cooperating broker** is an agent/broker who assists a listing agent in a real estate transaction. For example: locating buyers for a property listed by a listing agent. In return for helping a listing agent, a cooperating broker is entitled to a portion of the listing agent's commission. The distribution of a commission between a listing agent and a cooperating broker is called **cooperating split**.

It is advised that both parties have a reasonable understanding of what to expect for compensation prior to a cooperating broker introducing a buyer.

Types of Agents

General Agent

A **general agent** represents a principal in a real property transaction over a sustained period of time. A general agent has a wide range of authority and is hired to perform multiple tasks.

For example, a general agent will draft real estate documentation, show properties, and close transactions between principals.

A general agent cannot make decisions without a principal's permission unless authorized, however. The **equal-dignities rule** is a legal doctrine that requires an agent to only perform the acts they have been authorized to do by the principal. If an agent surpasses the authority granted to him or her by a principal, the agent will be held liable.

Conversely, when an agent performs a task at the will of a principal, the principal is held liable for the agent's actions.

A general agent is the most common type of agent.

Special Agent

A **special agent** is an agent who is only authorized to perform specific tasks as required by the principal. Once those tasks are completed, the agency dynamic terminates.

For example, a principal may designate a mortgage broker to assist specifically with finding a mortgage loan. The mortgage broker would technically be a special agent.

A special agent has limited authority.

Attorney In Fact

An **attorney in fact** is an individual who is authorized to make financial decisions on behalf of another party.

In terms of a real estate, an attorney in fact is an agent who is authorized to perform business-related transactions on behalf of a principal. An attorney in fact has more authority than a general agent as he or she can act *as a principal*, rather than simply act *on behalf of* the principal.

For example, a general agent does not have the authority to convey a property title, but an attorney in fact does.

In order to make an agent into an attorney in fact, a principal must execute a power of attorney document.

Subagents & Assistants

The process of selling real estate involves juggling many tasks at once. In order to accomplish all of these tasks and successfully execute transactions, some agents will delegate duties to other agents or assistants.

Subagent

A **subagent** is an agent hired by the original agent to assist in a transaction.

An agent can only delegate activities that require a license – such as filling out purchase agreements and engaging in negotiations with a buyer – to other licensed professionals. An agent must inform a principal if he or she delegates duties that require a license to another party.

A subagent owes the same fiduciary duty to a principal as the original agent.

The original agent is responsible for overseeing a subagent's activities and preventing him or her from acting to the detriment of a principal. Failure to properly manage a subagent may result in the original agent being held liable for the subagent's actions.

Assistants

Certain tasks do not require a real estate license. Assistants or other non-licensed individuals can legally be delegated these tasks.

These tasks include:

- Computing
- Client database management
- Word processing
- Receipt of payments
- Creating marketing materials
- Meeting non-licensed principals to assist with activities such as inspections, appraisals, or maintenance work required for the subject property being bought or sold
- Company profit and loss
- Expenses

Unlicensed assistants do not have the authority to represent transactions.

An agent/broker is ultimately responsible for the actions of any assistants who work there.

Types of Agency Agreements

Express Agency

An **express agency** authorizes an agent to act on behalf of a principal. It is known as an express agency because it “expresses” the relationship between both parties.

An express agency is the most common agency type.

An express agency agreement must be in writing to be enforceable.

Express authority – also known as actual authority – refers to the authority granted to an agent to perform activities on behalf of a principal. Under an express agency agreement, an agent has the right to conduct any actions to close a transaction, as long as they are not unlawful or in violation of the agreement.

For example, a principal may grant an agent the right to purchase a property on his or her behalf, contingent on the fact that the loan utilized for the purchase is below 5%. If the loan retained by the agent is 5.7%, the agent does not have the authority to purchase the property.

In case of an emergency or a situation in which immediate action may be necessary, a principal may increase an agent’s authority.

Implied Agency

An **implied agency** refers to when an agent may reasonably assume to have legal permission from the principal to represent a transaction.

For example, if a property owner wants to sell their property and grants an agent the right to represent their house, the seller is implying the existence of an agency relationship, even if it is not in writing.

Every transaction is different and may require different tasks. Therefore, it is nearly impossible to clearly define every detail of an agent’s job in an agency agreement. **Implied authority** grants an agent the power to perform reasonably expected real estate duties without them being expressly stated in the agency agreement.

It also occurs when a principal’s words or actions lead an agent to believe that he or she has the authority to carry out a specific act.

Ostensible Agency

An **estoppel** occurs when one party asserts a claim that contradicts his or her previous actions or words and subsequently causes another party to make a decision based on those claims.

An **ostensible agency** – also known as an **agency by estoppel** or apparent agency – occurs when the actions and words of a principal and an agent convince reasonable third parties to believe that an agency relationship exists between them, an assumption which the third party uses to make a decision.

For example, say a seller wishes to sell his house. He allows an agent to look for buyers without a formal agency agreement in place. The agent finds a buyer and based on the agent's word that he represents the seller, the buyer borrows money to purchase the seller's home. The seller cannot subsequently refuse to sell to the buyer on the basis that the agent did not have the authority to seek out buyers.

Agency by Ratification

An **agency by ratification** occurs when an agent conducts unauthorized real estate activity on behalf of a principal and the principal subsequently accepts those activities. In other words, an agent claims to be a principal's agent when he or she is not, but the principal later "ratifies" the agent and his or her former activities.

The "principal" is technically not a principal until he or she accepts the agent's actions.

If a principal agrees to an agency by ratification, he or she accepts all of an agent's actions, not just a portion of them. Furthermore, if a principal is informed of the unauthorized actions of an agent and does not reject those actions, the principal enters into an agency by ratification by default.

Agency Coupled with an Interest

An **agency coupled with an interest** refers to an agency agreement in which the agent has a financial interest in a property beyond a standard commission. An agent may have possession or control over a principal's property, and/or may possess a legal right against interference by third parties.

For example, if a real estate agent lends a buyer \$20,000 towards a down payment on a home, that agent now has a financial interest in the transaction. Consequently, it would be an agency coupled with an interest.

Fiduciary Duty

Fiduciary duty refers to the set of standards that an agent is expected to uphold in the service of his or her principal.

An agent's fiduciary duty compels him or her to act in a manner that furthers a principal's goals and interests.

An intentional breach of fiduciary duty on the part of an agent may result in the loss of the agent's commission and/or real estate license. An exception to breaking fiduciary duty arises if the interests of a principal violate the agency agreement or the law.

The fiduciary duties of a real estate agent include:

- Full and Accurate Disclosure
- Due Care
- Confidentiality
- Loyalty
- Integrity & Honesty
- Accounting
- Obedience

Full and Accurate Disclosure

An agent must disclose all pertinent and significant information – or “material facts” – to a principal as it is presented in the transaction. A full and accurate disclosure ensures that a principal can make the most informed decision possible.

An agent's full and accurate disclosure responsibilities vary depending on whether a principal is a buyer or a seller:

Agent's Full and Accurate Disclosure Responsibilities	
Representing Seller	Representing Buyer
Disclose all agency relationships, including when the agent is acting as a dual agent.	Disclose all agency relationships, including when the agent is acting as a dual agent.
Disclose all material facts about a	Disclose all material facts about a

property that may alter the value of a seller's property or the seller's chances of selling the property.	property that may influence a buyer's chances of purchasing the property.
Disclose what potential buyers are saying about the listing/property.	Disclose information regarding a seller's urgency to sell a property.
Provide information about the identities of potential buyers, including names.	Disclose when a seller is willing to sell the property for less.
Inform seller of all buyer offers, including oral, incomplete, or backup offers. This also includes offers an agent thinks the principal will not accept and any offers made when a transaction is in escrow.	Provide information that could help a buyer purchase a property for a lower price.
Provide updated information about the status of negotiations.	Provide updated information about the status of negotiations.

A sizable percentage of legal disputes in agency relationships result from an agent failing to disclose vital information to a principal. Therefore, it is important for an agent to be as accurate and forthcoming with all aspects of a transaction as possible.

Material Facts

Material facts are defined as all known facts whose concealment would reasonably result in a different decision by a principal. Certain material facts may alter a property's value or a buyer's interest in buying a property.

Material facts include:

- Basic property information (i.e. square footage, age)
- Property history (i.e. death or murder on the premises)
- Property conditions
- Property defects (i.e. water damage, uneven flooring)
- Results of inspections (i.e. the presence of mold)
- All profits and fees that will be incurred in a transaction
- Additions, renovations, or other changes made to a property without a

permit

This also includes facts that should reasonably be known, or information that an agent would be expected to understand after a basic inspection. An agent must perform a basic property inspection as part of his or her fiduciary duty.

If a seller and a seller's agent are unaware of a property's condition, an agent should advise a buyer to hire a professional inspector to uncover more detailed information about a property. **Due diligence** is a good faith effort to investigate, verify, and/or perform a specific act to the best of an individual's ability.

Easton v. Strassburger (1984)

The legal case, *Easton v. Strassburger* (1984), firmly established the importance of an agent disclosing all material facts.

A buyer brought his real estate agent to court. The agent had noticed an uneven floor in a seller's property, but never relayed this information to the buyer. The buyer subsequently bought the property. Soon after, the buyer suffered huge losses due to the uneven flooring. The buyer claimed that the agent had not provided him with the material facts he needed to make a wise purchase.

The court agreed. It determined that if the agent had informed the buyer of the property's condition or encouraged the buyer to order an inspection, the buyer likely would not have purchased the property. The court reasoned that principals have a reasonable expectation to rely on an agent's expertise. Therefore, agents must disclose any information that could affect the value or desirability of a property, even if the information seems obvious.

Secret Profits

A **secret profit** refers to any form of compensation an agent gains in a real estate transaction outside of his or her commission. This includes referral fees, finder's fees, kickbacks, "sweetheart deals", bonus points, or other financial benefits.

An agent must disclose any secret profits to a principal, even if the agent believes the profit is unrelated to the principal. Failure to disclose a secret profit is illegal and may result in the suspension of an agent's license.

Agency Disclosures

Agents are required by law to disclose any applicable agency relationships to a principal. For example: if an agent is the buyer in a transaction or if the agent has a preexisting relationship with the buyer.

This is done so that a principal is aware of any potential conflicts of interest.

For example, it is illegal for a seller's agent not to disclose that a prospective buyer is his mother-in-law. This is because an agent's relationship with his mother-in-law may cause the agent to act in the mother-in-law's best interests, rather than in the principal's.

An **agency disclosure form** is a written document that indicates an agent's relationship to other brokers, agents, and principals in a transaction. It must be signed and dated by all parties in a transaction.

Dual Agent

A **dual agent** is an agent who represents the interests of both a buyer and a seller in a transaction. Dual agency must be disclosed and approved by both principals.

A dual agent has a legal obligation to represent the interests of both principals equally. An agent cannot disclose confidential information about either principal's position to the opposing principal without permission.

A single agent representing both a buyer and a seller can create a more streamlined process compared to when multiple agents are involved. Consequently, a dual agent may be able to close a transaction faster than a standard agent.

However, dual agency can pose certain risks and conflicts of interest. Balancing the interests of the two principals equally – attempting to get the highest offer for the seller while simultaneously attempting to obtain the lowest purchase price for the buyer – is difficult. A dual agent may inadvertently or purposefully provide preferential treatment to one principal to the detriment of the other.

An agent's desire to earn the highest commission and/or double commission may also affect how he or she represents the principals' interests.

Agents are therefore advised to avoid dual agency representations unless they are fully committed to impartiality between principals.

Jorgensen v. Beach 'n' Bay Realty, Inc. (1981)

In the case of *Jorgensen v. Beach 'n' Bay Realty, Inc.*, (1981), an agent was acting as a dual agent and representing both a seller and a buyer. The agent informed the seller of this fact. The agent subsequently advised the seller to reduce his property's listing price by 7% so that the agent's buyer could purchase it. The seller followed the agent's advice and the agent's buyer purchased the property.

A few months later, however, the buyer resold the property without any major renovations for a 13.5% profit. The agent represented the buyer in the transaction. The seller brought legal suit against the agent, claiming that the agent had induced him into reducing the property's purchase price for the buyer's gain. The court ruled that even though the agent disclosed his dual agency, the agent unfairly profited at the seller's expense. This was a violation of the agent's fiduciary duties.

Agent as Principal

When an agent represents his or her own interests alongside another principal, the agent is in the precarious position of balancing his or her fiduciary duty against maximizing his or her financial interests.

However, in California, it is neither illegal nor unethical for an agent to act as a principal while representing another principal's interests as long as the agent provides the other principal with a full and accurate disclosure.

The cases *Katz v. Department of Real Estate* (1979) and *Prichard v. Reitz* (1986) established that real estate licensees are subject to additional fiduciary duties when acting as both an agent and a principal.

Among these additional duties is the requirement that an agent prepares a Seller Financing Disclosure Statement for the other principal.



DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

(Listing Firm to Seller)
(As required by the Civil Code)
(C.A.R. Form AD, Revised 12/14)

(If checked) This form is being provided in connection with a transaction for a leasehold interest exceeding one year as per Civil Code section 2079.13(k) and (l).

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller.

To the Buyer and the Seller:

(a) Diligent exercise of reasonable skill and care in performance of the agent's duties.

(b) A duty of honest and fair dealing and good faith.

(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT

A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

(a) Diligent exercise of reasonable skill and care in performance of the agent's duties.

(b) A duty of honest and fair dealing and good faith.

(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

(a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.

(b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE BACK (OR A SEPARATE PAGE).

Buyer Seller Landlord Tenant _____ Date _____

Buyer Seller Landlord Tenant _____ Date _____

Agent _____ BRE Lic. # _____ Date _____

By _____ BRE Lic. # _____ Date _____

(Salesperson or Broker-Associate)

Agency Disclosure Compliance (Civil Code §2079.14):

- When the listing brokerage company also represents Buyer/Tenant: The Listing Agent shall have one AD form signed by Seller/Landlord and a different AD form signed by Buyer/Tenant.
- When Seller/Landlord and Buyer/Tenant are represented by different brokerage companies: (i) the Listing Agent shall have one AD form signed by Seller/Landlord and (ii) the Buyers/Tenant's Agent shall have one AD form signed by Buyer/Tenant and either that same or a different AD form presented to Seller/Landlord for signature prior to presentation of the offer. If the same form is used, Seller may sign here:

(SELLER/LANDLORD: DO NOT SIGN HERE)

Seller/Landlord _____ Date _____ Seller/Landlord _____ Date _____

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DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 1 OF 2)

Phone: _____ Fax: _____

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CIVIL CODE SECTIONS 2079.24 (2079.16 APPEARS ON THE FRONT)

2079.13 As used in Sections 2079.14 to 2079.24, inclusive, the following terms have the following meanings: (a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. (b) "Associate licensee" means a person who is licensed as a real estate broker or salesperson under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code and who is either licensed under a broker or has entered into a written contract with a broker to act as the broker's agent in connection with acts requiring a real estate license and to function under the broker's supervision in the capacity of an associate licensee. The agent in the real property transaction bears responsibility for his or her associate licensees who perform as agents of the agent. When an associate licensee owes duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions. (c) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee. (d) "Commercial real property" means all real property in the state, except single-family residential real property, dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, mobilehomes, as defined in Section 798.3, or recreational vehicles, as defined in Section 799.29. (e) "Dual agent" means an agent acting, either directly or through an associate licensee, as agent for both the seller and the buyer in a real property transaction. (f) "Listing agreement" means a contract between an owner of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer. (g) "Listing agent" means a person who has obtained a listing of real property to act as an agent for compensation. (h) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the listing agent. (i) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. (j) "Offer to purchase" means a written contract executed by a buyer acting through a selling agent that becomes the contract for the sale of the real property upon acceptance by the seller. (k) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property that constitutes or is improved with one to four dwelling units, any commercial real property, any leasehold in these types of property exceeding one year's duration, and mobilehomes, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. (l) "Real property transaction" means a transaction for the sale of real property in which an agent is employed by one or more of the principals to act in that transaction, and includes a listing or an offer to purchase. (m) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer, and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. (n) "Seller" means the transferor in a real property transaction, and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor. (o) "Selling agent" means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a buyer for a property for which no listing exists and presents an offer to purchase to the seller. (p) "Subagent" means a person to whom an agent delegates agency powers as provided in Article 5 (commencing with Section 2349) of Chapter 1 of Title 9. However, "subagent" does not include an associate licensee who is acting under the supervision of an agent in a real property transaction.

2079.14 Listing agents and selling agents shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and, except as provided in subdivision (c), shall obtain a signed acknowledgement of receipt from that seller or buyer, except as provided in this section or Section 2079.15, as follows: (a) The listing agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. (b) The selling agent shall provide the disclosure form to the seller as soon as practicable prior to presenting the seller with an offer to purchase, unless the selling agent previously provided the seller with a copy of the disclosure form pursuant to subdivision (a). (c) Where the selling agent does not deal on a face-to-face basis with the seller, the disclosure form prepared by the selling agent may be furnished to the seller (and acknowledgement of receipt obtained for the selling agent from the seller) by the listing agent, or the selling agent may deliver the disclosure form by certified mail addressed to the seller at his or her last known address, in which case no signed acknowledgement of receipt is required. (d) The selling agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase, except that if the offer to purchase is not prepared by the selling agent, the selling agent shall present the disclosure form to the buyer not later than the next business day after the selling agent receives the offer to purchase from the buyer.

2079.15 In any circumstance in which the seller or buyer refuses to sign an acknowledgement of receipt pursuant to Section 2079.14, the agent, or an associate licensee acting for an agent, shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.16 Reproduced on Page 1 of this AD form.

2079.17 (a) As soon as practicable, the selling agent shall disclose to the buyer and seller whether the selling agent is acting in the real property transaction exclusively as the buyer's agent, exclusively as the seller's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the selling agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. (b) As soon as practicable, the listing agent shall disclose to the seller whether the listing agent is acting in the real property transaction exclusively as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the listing agent prior to or coincident with the execution of that contract by the seller.

(c) The confirmation required by subdivisions (a) and (b) shall be in the following form.

(DO NOT COMPLETE. SAMPLE ONLY) is the agent of (check one): the seller exclusively; or both the buyer and seller.
(Name of Listing Agent)

(DO NOT COMPLETE. SAMPLE ONLY) is the agent of (check one): the buyer exclusively; or the seller exclusively; or
(Name of Selling Agent if not the same as the Listing Agent)

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14.

2079.18 No selling agent in a real property transaction may act as an agent for the buyer only, when the selling agent is also acting as the listing agent in the transaction.

2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21 A dual agent shall not disclose to the buyer that the seller is willing to sell the property at a price less than the listing price, without the express written consent of the seller. A dual agent shall not disclose to the seller that the buyer is willing to pay a price greater than the offering price, without the express written consent of the buyer. This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a listing agent from also being a selling agent, and the combination of these functions in one agent does not, of itself, make that agent a dual agent.

2079.23 A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

2079.24 Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees, or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.



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525 South Virgil Avenue, Los Angeles, California 90020

Reviewed by _____ Date _____



AD REVISED 12/14 (PAGE 2 OF 2)

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 2 OF 2)

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CALIFORNIA
ASSOCIATION
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DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

(Selling Firm to Buyer)
(As required by the Civil Code)
(C.A.R. Form AD, Revised 12/14)

(If checked) This form is being provided in connection with a transaction for a leasehold interest exceeding one year as per Civil Code section 2079.13(k) and (m).

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller.

To the Buyer and the Seller:

(a) Diligent exercise of reasonable skill and care in performance of the agent's duties.

(b) A duty of honest and fair dealing and good faith.

(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT

A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

(a) Diligent exercise of reasonable skill and care in performance of the agent's duties.

(b) A duty of honest and fair dealing and good faith.

(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

(a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.

(b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. **This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE BACK (OR A SEPARATE PAGE).**

Buyer Seller Landlord Tenant

Date

Buyer Seller Landlord Tenant

Date

Agent

Real Estate Broker (Firm)

By

BRE Lic. #

Date

(Salesperson or Broker-Associate)

Agency Disclosure Compliance (Civil Code §2079.14):

- When the listing brokerage company also represents Buyer/Tenant: The Listing Agent shall have one AD form signed by Seller/Landlord and a different AD form signed by Buyer/Tenant.
- When Seller/Landlord and Buyer/Tenant are represented by different brokerage companies: (i) the Listing Agent shall have one AD form signed by Seller/Landlord and (ii) the Buyer's/Tenant's Agent shall have one AD form signed by Buyer/Tenant and either that same or a different AD form presented to Seller/Landlord for signature prior to presentation of the offer. If the same form is used, Seller may sign here:

Seller/Landlord

Date

Seller/Landlord

Date

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DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 1 OF 2)

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CIVIL CODE SECTIONS 2079.24 (2079.16 APPEARS ON THE FRONT)

2079.13 As used in Sections 2079.14 to 2079.24, inclusive, the following terms have the following meanings: (a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. (b) "Associate licensee" means a person who is licensed as a real estate broker or salesperson under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code and who is either licensed under a broker or has entered into a written contract with a broker to act as the broker's agent in connection with acts requiring a real estate license and to function under the broker's supervision in the capacity of an associate licensee. The agent in the real property transaction bears responsibility for his or her associate licensees who perform as agents of the agent. When an associate licensee owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions. (c) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee. (d) "Commercial real property" means all real property in the state, except single-family residential real property, dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, mobilehomes, as defined in Section 798.3, or recreational vehicles, as defined in Section 799.29. (e) "Dual agent" means an agent acting, either directly or through an associate licensee, as agent for both the seller and the buyer in a real property transaction. (f) "Listing agreement" means a contract between an owner of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer. (g) "Listing agent" means a person who has obtained a listing of real property to act as an agent for compensation. (h) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the listing agent. (i) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. (j) "Offer to purchase" means a written contract executed by a buyer acting through a selling agent that becomes the contract for the sale of the real property upon acceptance by the seller. (k) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property that constitutes or is improved with one to four dwelling units, any commercial real property, any leasehold in these types of property exceeding one year's duration, and mobilehomes, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. (l) "Real property transaction" means a transaction for the sale of real property in which an agent is employed by one or more of the principals to act in that transaction, and includes a listing or an offer to purchase. (m) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer, and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. (n) "Seller" means the transferor in a real property transaction, and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor. (o) "Selling agent" means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a buyer for a property for which no listing exists and presents an offer to purchase to the seller. (p) "Subagent" means a person to whom an agent delegates agency powers as provided in Article 5 (commencing with Section 2349) of Chapter 1 of Title 9. However, "subagent" does not include an associate licensee who is acting under the supervision of an agent in a real property transaction.

2079.14 Listing agents and selling agents shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and, except as provided in subdivision (c), shall obtain a signed acknowledgement of receipt from that seller or buyer, except as provided in this section or Section 2079.15, as follows: (a) The listing agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. (b) The selling agent shall provide the disclosure form to the seller as soon as practicable prior to presenting the seller with an offer to purchase, unless the selling agent previously provided the seller with a copy of the disclosure form pursuant to subdivision (a). (c) Where the selling agent does not deal on a face-to-face basis with the seller, the disclosure form prepared by the selling agent may be furnished to the seller (and acknowledgement of receipt obtained for the selling agent from the seller) by the listing agent, or the selling agent may deliver the disclosure form by certified mail addressed to the seller at his or her last known address, in which case no signed acknowledgement of receipt is required. (d) The selling agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase, except that if the offer to purchase is not prepared by the selling agent, the selling agent shall present the disclosure form to the buyer not later than the next business day after the selling agent receives the offer to purchase from the buyer.

2079.15 In any circumstance in which the seller or buyer refuses to sign an acknowledgement of receipt pursuant to Section 2079.14, the agent, or an associate licensee acting for an agent, shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.16 Reproduced on Page 1 of this AD form.

2079.17 (a) As soon as practicable, the selling agent shall disclose to the buyer and seller whether the selling agent is acting in the real property transaction exclusively as the buyer's agent, exclusively as the seller's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the selling agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. (b) As soon as practicable, the listing agent shall disclose to the seller whether the listing agent is acting in the real property transaction exclusively as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the listing agent prior to or coincident with the execution of that contract by the seller.

(c) The confirmation required by subdivisions (a) and (b) shall be in the following form.

(DO NOT COMPLETE. SAMPLE ONLY) is the agent of (check one): the seller exclusively; or both the buyer and seller.

(Name of Listing Agent)

(DO NOT COMPLETE. SAMPLE ONLY) is the agent of (check one): the buyer exclusively; or the seller exclusively; or

(Name of Selling Agent if not the same as the Listing Agent)

both the buyer and seller.

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14.

2079.18 No selling agent in a real property transaction may act as an agent for the buyer only, when the selling agent is also acting as the listing agent in the transaction.

2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21 A dual agent shall not disclose to the buyer that the seller is willing to sell the property at a price less than the listing price, without the express written consent of the seller. A dual agent shall not disclose to the seller that the buyer is willing to pay a price greater than the offering price, without the express written consent of the buyer. This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a listing agent from also being a selling agent, and the combination of these functions in one agent does not, of itself, make that agent a dual agent.

2079.23 A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

2079.24 Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.



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DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 2 OF 2)

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Due Care

An agent is expected to perform all actions in a real estate transaction with due care. This means that an agent must uphold competence, respect, and sufficient knowledge.

Principals hire agents to provide expertise and accurate advice. A licensed agent is expected to have the necessary knowledge to inform a buyer of all reasonable implications and risks in a transaction.

An agent has a responsibility to offer counsel, advice, and recommendations when necessary. Although a principal has the right to employ any legal strategy he or she wishes, an agent must inform the principal when a decision will adversely affect his or her position in a transaction.

Legal precedents have established that agents owe increased due care to unsophisticated or first-time buyers as such buyers may not be aware of the consequences of their decisions. It is an agent's duty to help these buyers avoid detrimental situations.

Confidentiality

An agent has a duty to protect a principal's position in a transaction.

This involves keeping all conversations, documentation, and strategies that could reduce a principal's negotiating power strictly confidential.

For example, a seller's agent cannot disclose the minimum price at which a seller is willing to sell. Conversely, a buyer's agent cannot reveal the fact that a buyer is willing to pay more for a property than his or her initial offer suggests.

Loyalty

An agent must be loyal to a principal's interests throughout the course of an agreement. This involves an agent placing a principal's interests before a third party's or the agent's own interests.

A common breach in loyalty occurs when an agent convinces a principal to list his or her property at below market value and the agent subsequently purchases it. An agent does this in order to sell the property for a profit at its higher, more accurate price.

Integrity & Honesty

Integrity and honesty are at the cornerstone of an agent's fiduciary duty to their principal. This means that an agent must be truthful and operate in **good faith** on behalf of his or her principal.

For example, if an agent suggests additional services that would assist in a transaction – such as contracting services or a loan financing – the agent must disclose if he or she is being paid for referring that service to the principal.

An agent must also conduct him- or herself honestly with the other parties involved in a transaction, including other agents and principals.

Accounting

An agent has a duty to keep track of all expenses or financial documentation involved in closing a transaction. This includes advertising/marketing expenses and open house costs.

Real estate law requires an agent to deposit a principal's funds into a trust account no later than three business days after securing the funds. This trust account is typically an escrow account.

It is an agent's duty to document all money that comes in and out of the trust account.

An agent must also keep all funds being used for a real estate transaction separate from other accounts to avoid co-mingling. **Co-mingling** is the illegal act of mixing a principal's funds held in a trust with personal funds.

Obedience

A principal has the right to make any lawful decision he or she chooses in a real estate transaction. An agent is required to follow a principal's instructions in order to further the principal's goals, even if they go against the agent's advice.

However, an agent does not have to follow a principal's instructions if they are illegal or violate the rights of others.

For example, if a seller asks an agent to conceal material facts from third parties in a transaction, the agent must inform the seller that doing so is illegal.

Agent's Duty to Third Parties

Although the primary duty of an agent is to protect the interests of a principal, an agent must also act responsibly towards third parties.

An agent must disclose all material facts regarding a subject property to the other parties in a transaction, including any damages. An agent may also not prevent an inspection from occurring or alter an inspect report.

A **tort** refers to an action that violates the rights of an individual and/or the individual's property. It is illegal for an agent to intentionally deceive third parties or to fail to disclose vital information in order to further the goals of his or her principal. An agent can be held liable for a tort against a third party, even if the agent was acting upon the instructions of his or her principal.

For example, purposefully misrepresenting the condition of a property to a prospective buyer – whether through inaccurate overstatements or gross oversimplifications – is considered a tort.

Principal's Duty

While a principal does not owe an agent a fiduciary duty, the principal does have certain obligations within an agency relationship.

The main duty of a principal is to refrain from unreasonably interfering with an agent's ability to conduct the transaction. It is illegal for a principal to deal directly with a buyer when represented by an agent, as this could potentially ruin a transaction.

A principal has the duty to inform an agent of any damages or potential dangers on a property.

For example, a seller must inform an agent if a portion of a subject property is uninhabitable due to mold growth. Another example is if the neighborhood in which a subject property is located poses specific dangers, such as a high prevalence of wild animals.

A principal has a duty to pay a listing agent his or her commission as laid out in an agency agreement at the close of a transaction.

Real Estate Transfer Disclosure Statement

A seller must provide a buyer with a **Real Estate Transfer Disclosure Statement** prior

to the execution of a sale. This statement indicates all material facts about a property.



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**REAL ESTATE TRANSFER DISCLOSURE STATEMENT
(CALIFORNIA CIVIL CODE §1102, ET SEQ.)
(C.A.R. Form TDS, Revised 4/14)**

THIS DISCLOSURE STATEMENT CONCERN'S THE REAL PROPERTY SITUATED IN THE CITY OF _____, STATE OF CALIFORNIA,

DESCRIBED AS

THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH SECTION 1102 OF THE CIVIL CODE AS OF (date) . IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.

I. COORDINATION WITH OTHER DISCLOSURE FORMS

This Real Estate Transfer Disclosure Statement is made pursuant to Section 1102 of the Civil Code. Other statutes require disclosures, depending upon the details of the particular real estate transaction (for example: special study zone and purchase-money liens on residential property).

Substituted Disclosures: The following disclosures and other disclosures required by law, including the Natural Hazard Disclosure Report/Statement that may include airport annoyances, earthquake, fire, flood, or special assessment information, have or will be made in connection with this real estate transfer, and are intended to satisfy the disclosure obligations on this form, where the subject matter is the same:

- Inspection reports completed pursuant to the contract of sale or receipt for deposit.
- Additional inspection reports or disclosures:

II. SELLER'S INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

Seller is _____ is not occupying the Home.

A. The subject property has the items checked below: *

- Range
- Oven
- Microwave
- Dishwasher
- Trash Compactor
- Garbage Disposal
- Washer/Dryer Hookups
- Rain Gutters
- Burglar Alarms
- Carbon Monoxide Device(s)
- Smoke Detector(s)
- Fire Alarm
- TV Antenna
- Satellite Dish
- Intercom
- Central Heating
- Central Air Conditioning
- Evaporator Cooler(s)
- Exhaust Fan(s) in
- Gas Starter
- Other:

- Wall/Window Air Conditioning
- Sprinklers
- Public Sewer System
- Septic Tank
- Sump Pump
- Water Softener
- Patio/Decking
- Built-in Barbecue
- Gazebo
- Security Gate(s)
- Garage:
 - Attached
 - Not Attached
- Carport
- Automatic Garage Door Opener(s)
- Number Remote Controls
- Sauna
- Hot Tub/Spa:
- Locking Safety Cover

220 Volt Wiring in

Roof(s): Type:

- Pool:
 - Child Resistant Barrier
- Pool/Spa Heater:
 - Gas
 - Solar
 - Electric
- Water Heater:
 - Gas
 - Solar
 - Electric
- Water Supply:
 - City
 - Well
 - Private Utility or
 - Other
- Gas Supply:
 - Utility
 - Bottled (Tank)
- Window Screens
- Window Security Bars
- Quick Release Mechanism on Bedroom Windows
- Water-Conserving Plumbing Fixtures

Fireplace(s) In

Age: _____ (approx.)

Are there, to the best of your (Seller's) knowledge, any of the above that are not in operating condition? Yes No. If yes, then describe. (Attach additional sheets if necessary):

(*see note on page 2)

Buyer's Initials () ()

Seller's Initials () ()

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REAL ESTATE TRANSFER DISCLOSURE STATEMENT (TDS PAGE 1 OF 3)

Phone: _____ Fax: _____

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Property Address:

Date:

- B. Are you (Seller) aware of any significant defects/malfunctions in any of the following? Yes No. If yes, check appropriate space(s) below.

Interior Walls Ceilings Floors Exterior Walls Insulation Roof(s) Windows Doors Foundation Slab(s)
 Driveways Sidewalks Walls/Fences Electrical Systems Plumbing/Sewers/Septics Other Structural Components

(Describe: _____)

If any of the above is checked, explain. (Attach additional sheets if necessary.):

*Installation of a listed appliance, device, or amenity is not a precondition of sale or transfer of the dwelling. The carbon monoxide device, garage door opener, or child-resistant pool barrier may not be in compliance with the safety standards relating to, respectively, carbon monoxide device standards of Chapter 8 (commencing with Section 13260) of Part 2 of Division 12 of, automatic reversing device standards of Chapter 12.5 (commencing with Section 19890) of Part 3 of Division 13 of, or the pool safety standards of Article 2.5 (commencing with Section 115920) of Chapter 5 of Part 10 of Division 104 of, the Health and Safety Code. Window security bars may not have quick-release mechanisms in compliance with the 1995 edition of the California Building Standards Code. Section 1101.4 of the Civil Code requires all single-family residences built on or before January 1, 1994, to be equipped with water-conserving plumbing fixtures after January 1, 2017. Additionally, on and after January 1, 2014, a single-family residence built on or before January 1, 1994, that is altered or improved is required to be equipped with water-conserving plumbing fixtures as a condition of final approval. Fixtures in this dwelling may not comply with section 1101.4 of the Civil Code.

- C. Are you (Seller) aware of any of the following:

- | | |
|---|--|
| 1. Substances, materials, or products which may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, mold, fuel or chemical storage tanks, and contaminated soil or water on the subject property | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Features of the property shared in common with adjoining landowners, such as walls, fences, and driveways, whose use or responsibility for maintenance may have an effect on the subject property | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Any encroachments, easements or similar matters that may affect your interest in the subject property | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 4. Room additions, structural modifications, or other alterations or repairs made without necessary permits | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 5. Room additions, structural modifications, or other alterations or repairs not in compliance with building codes | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 6. Fill (compacted or otherwise) on the property or any portion thereof | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7. Any settling from any cause, or slippage, sliding, or other soil problems | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 8. Flooding, drainage or grading problems | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 9. Major damage to the property or any of the structures from fire, earthquake, floods, or landslides | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 10. Any zoning violations, nonconforming uses, violations of "setback" requirements | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 11. Neighborhood noise problems or other nuisances | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 12. CC&R's or other deed restrictions or obligations | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 13. Homeowners' Association which has any authority over the subject property | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 14. Any "common area" (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others) | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 15. Any notices of abatement or citations against the property | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 16. Any lawsuits by or against the Seller threatening to or affecting this real property, claims for damages by the Seller pursuant to Section 910 or 914 threatening to or affecting this real property, claims for breach of warranty pursuant to Section 900 threatening to or affecting this real property, or claims for breach of an enhanced protection agreement pursuant to Section 903 threatening to or affecting this real property, including any lawsuits or claims for damages pursuant to Section 910 or 914 alleging a defect or deficiency in this real property or "common areas" (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others) | <input type="checkbox"/> Yes <input type="checkbox"/> No |

If the answer to any of these is yes, explain. (Attach additional sheets if necessary.):

- D. 1. The Seller certifies that the property, as of the close of escrow, will be in compliance with Section 13113.8 of the Health and Safety Code by having operable smoke detector(s) which are approved, listed, and installed in accordance with the State Fire Marshal's regulations and applicable local standards.
 2. The Seller certifies that the property, as of the close of escrow, will be in compliance with Section 19211 of the Health and Safety Code by having the water heater tank(s) braced, anchored, or strapped in place in accordance with applicable law.

Buyer's Initials () ()

Seller's Initials () ()

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REAL ESTATE TRANSFER DISCLOSURE STATEMENT (TDS PAGE 2 OF 3)Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

Property Address: _____ Date: _____
 Seller certifies that the information herein is true and correct to the best of the Seller's knowledge as of the date signed by the Seller.
 Seller _____ Date _____

Seller _____ Date _____

III. AGENT'S INSPECTION DISCLOSURE
 (To be completed only if the Seller is represented by an agent in this transaction.)

THE UNDERSIGNED, BASED ON THE ABOVE INQUIRY OF THE SELLER(S) AS TO THE CONDITION OF THE PROPERTY AND BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY IN CONJUNCTION WITH THAT INQUIRY, STATES THE FOLLOWING:

- See attached Agent Visual Inspection Disclosure (AVID Form)
- Agent notes no items for disclosure.
- Agent notes the following items:

Agent (Broker Representing Seller) _____ By _____ Date _____
 (Please Print) _____ (Associate Licensee or Broker Signature) _____

IV. AGENT'S INSPECTION DISCLOSURE
 (To be completed only if the agent who has obtained the offer is other than the agent above.)

THE UNDERSIGNED, BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY, STATES THE FOLLOWING:

- See attached Agent Visual Inspection Disclosure (AVID Form)
- Agent notes no items for disclosure.
- Agent notes the following items:

Agent (Broker Obtaining the Offer) _____ By _____ Date _____
 (Please Print) _____ (Associate Licensee or Broker Signature) _____

V. BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Seller _____ Date _____ Buyer _____ Date _____
 Seller _____ Date _____ Buyer _____ Date _____

Agent (Broker Representing Seller) _____ By _____ Date _____
 (Please Print) _____ (Associate Licensee or Broker Signature) _____

Agent (Broker Obtaining the Offer) _____ By _____ Date _____
 (Please Print) _____ (Associate Licensee or Broker Signature) _____

SECTION 1102.3 OF THE CIVIL CODE PROVIDES A BUYER WITH THE RIGHT TO RESCIND A PURCHASE CONTRACT FOR AT LEAST THREE DAYS AFTER THE DELIVERY OF THIS DISCLOSURE IF DELIVERY OCCURS AFTER THE SIGNING OF AN OFFER TO PURCHASE. IF YOU WISH TO RESCIND THE CONTRACT, YOU MUST ACT WITHIN THE PRESCRIBED PERIOD.

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

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Reviewed by _____ Date _____

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REAL ESTATE TRANSFER DISCLOSURE STATEMENT (TDS PAGE 3 OF 3)

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Terminating an Agency Agreement

An agent or a principal may terminate an agency agreement at any time.

A principal can terminate an agency agreement if an agent has violated the terms of the agreement or did not implement the principal's instructions for a listing.

However, if a principal terminates an agency agreement in which an agent hasn't violated the terms of the agreement, the principal may be held liable for damages in the amount of the agent's commission.

An agency agreement can also be terminated in the following ways:

- *Expiration of agency agreement's term.*
- *Agency agreement's goals have been met.* For example, an agent has secured a buyer for a principal and closed the transaction.
- *Mutual agreement.* Both the agent and the principal agree to terminate the agreement prior to its expiration date.
- *Extinction of subject property.* A seller's property around which an agency agreement was created has been destroyed.
- *Death or incapacity of agent or principal.*
- *Agent renounces broker.* If an agent leaves the broker of record on the transaction, an agency agreement will terminate.
- *Inability for subject property to be transferred.* If a subject property cannot be sold due to bankruptcy or forfeiture, an agency agreement will terminate.

Listing Agreements



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

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

Most listings are bilateral contracts. A **bilateral contract** refers to when two parties promise to do something in return for something else. In the case of a listing agreement,

an agent promises to render real estate services and a principal promises to pay for those services.

Listings must be in writing and signed by both parties in order to be valid.

Multiple Listing Service (MLS)

A **multiple listing services (MLS)** is an online database of all current listings, expired listings, and sold properties. The MLS offers extensive details about these properties, including square footage, features, listing price, zoning history, and photos.

Agents, brokers, and other real estate professionals use the MLS to list properties, discover new properties, obtain comparables, and maintain communication with other agents.

Sellers are not required to have property listed on the MLS. An agent must get a signed statement from a seller that permits the agent to place a listing on the MLS. This statement is called a **multiple listing clause**. If a property is not listed on the MLS, the listing is considered a **pocket listing**.

Only MLS members can access the MLS. An agent must pay an annual fee in order to become an MLS member.

Types of Listing Agreements

Listing agreement types:

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

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 ultimately locates a buyer that results in a sale is entitled to the commission.

Unlike the majority of other listings, an open listing is considered a **unilateral contract**. This is an agreement whereby only one party is legally obligated to do

something. In the case of a listing agreement, a seller is required to pay an agent if he or she produces a buyer, but the agent is not required to render services.

Such listings typically entail a seller placing his or her property on the MLS and allowing agents to produce potential buyers. This allows a seller to promote his or her property as widely as possible without making a guarantee to a particular agent.

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

A seller may also terminate or withdraw a listing from the MLS at his or her own discretion.

Real estate professionals typically avoid open listings. As an agent is not exclusively representing a seller, he or she is not guaranteed to make money on the deal. Even if an agent works hard and produces a solid buyer with an offer, another agent may bring forth a better offer that the seller accepts.

Open listings can also leave room for dispute regarding which agent gets the commission. A **procuring cause** is a legal concept stipulating that an agent must prove that he or she initiated an uninterrupted chain of events that led directly to a sale in order to get paid. If there are multiple acceptable offers on a property, the agent who brought the buyer first will be entitled to the commission.

Example

Question: Seller Jim lists his property on Rochester Ave. He gives a new agent, Niki, the opportunity to list the property. However, as Niki is a new agent, Jim is hesitant about entering into an exclusive right-to-sell and authorization listing. Therefore, he lists his property as an open listing. Niki subsequently presents Jim with a buyer who is willing to make an offer for \$329,000. Soon after, another agent named Charles presents Jim with another buyer offering the exact same price. Jim wants to accept Charles' offer and insists that he does not have to pay Niki a commission. Is he right?

Answer: *No. Given that both buyer offers are the same and Niki brought her buyer to Jim before Charles did, Niki is entitled to the commission. Niki would only be unentitled to the commission if her buyer had made an offer below asking price or less than Charles' buyer's offer.*

Exclusive Authorization and Right-to-Sell Listing

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

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

If an agent introduces a buyer to the seller prior to the listing's expiration but the transaction closes after the listing's expiration, the agent will still be entitled to the commission.

Under this listing, an agent is still entitled to a full commission even if the seller or another agent finds a buyer that produces a sale. This right is protected by a **safety clause** in a listing agreement.

These protections make an exclusive authorization and right-to-sell listing the most popular listing among agents.

Example

If prospective buyer Sandra finds a property while driving past the property and makes an offer that the seller accepts, is the listing broker entitled to a commission, even if they did not directly contribute to the close of the sale?

Yes, regardless of who introduced the buyer, the listing broker is entitled to a commission if the property was listed as an exclusive right to sell listing.

The California Association of Realtors' maintains the standard exclusive authorization and right-to-sell form, called a Residential Listing Agreement. Its provisions are summarized below:

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

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

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

2. *Paragraph 2.* Indicates which items are included and excluded in the sale. A seller has the right to exclude any personal decor, fixtures, or miscellaneous items from a sale, as long as it is made in writing. For example, if a seller has a swing set in the backyard for his kids, he could indicate that the swing set is not included in the sale.
3. *Paragraph 3.* Indicates the listing price for the property and any additional terms of the transaction. Such terms may include loan obligations or cash considerations.
4. *Paragraph 4.* Indicates the agent/broker’s compensation. There is no set compensation or commission percentage that a seller must pay an agent for representation in a sale; this must be negotiated on a transaction-by-transaction basis.
 - a. Indicates the percentage of commission that will be paid to agent in the event the property sells.
 - i. Indicates that the agent/broker will be paid a commission if the property sells within the listing period, regardless of who originates the sale.
 - ii. Indicates that the agent/broker will be paid a commission in the event that the property sells within three days of the listing’s expiration. This clause only applies if the agent physically showed the property to the interested buyer prior to the expiration of the agreement. This ensures that an agent/broker receives a commission for his or her work, even if the transaction closes after the listing expired.
 - iii. Indicates that the agent/broker is entitled to a commission if the property is sold, leased, or rented during the duration of the agreement.
 - b. Indicates that if a party other than the seller prevents the completion of the sale, and the seller recovers damages as a result of a legal suit, arbitration, or settlement, then the agent/broker must still be paid the agreed-upon commission or

an amount that is equal to the lesser of one-half of the damages recovered after deducting title and escrow expenses.

- c. Indicates any additional agent/broker fees or expenses related to selling the home. For example, some real estate companies charge a documentation preparation fee for creating the listing in addition to a standard commission. An agent/broker must clearly express all additional charges in writing in the listing.
 - d. Indicates that the agent has the right to cooperate and divide commissions between other brokers who contribute to the transaction.
 - e. Indicates that the seller will assign all commissions to escrow. In the event that the property sells, the agent/broker's payment will be automatically paid.
 - f. Indicates that the seller has not entered into another listing agreement with a competing agent/broker. It guarantees that the listing agent/broker will receive his or her full commission unless a specific individual or entity is indicated.
5. *Paragraph 5.* Indicates that the seller, or person acting as the seller, has clear claim to the property's title and is able to execute a transaction on behalf of the property.
 6. *Paragraph 6.* Indicates that the listing and all terms of the transaction will be provided to the MLS and available to be seen by other agents/buyers, unless there are specific instructions to the contrary. A seller's desire not to have a property listed on the MLS must be stated in a separate contract or instruction sheet to the agent.
 7. *Paragraph 7.* Indicates that the seller is unaware of any financial information that may prevent the sale of the property. This includes a notice of default, bankruptcy, delinquent loan payments, delinquent taxes, or a government investigation. If any such changes to the seller's finances occur, the seller must disclose the information to the agent/broker.
 8. *Paragraph 8.* Indicates that the agent/broker will do his or her due diligence to procure a buyer to purchase the property. This includes ordering the necessary disclosures and reports to verify all property

data. The agent has the right to advertise the property, unless otherwise indicated.

It also indicates that the information provided by the seller about the property is accurate to the best of the seller's knowledge. The seller agrees to make a good faith effort to sell the property by making the property available for showings and holding meetings with the agent to discuss potential buyers.

The seller also agrees to not hold the agent/broker liable for providing inaccurate information that resulted from the seller's failure to provide reliable information.

9. *Paragraph 9.* Indicates that the agent/broker is authorized to accept deposits on behalf of the seller.
10. *Paragraph 10.* Indicates the type of agency relationship that exists between the seller and the agent/broker. It also states that an agent will represent the seller in any resulting transaction.
11. *Paragraph 11.* Indicates that the agent/broker is not responsible for any damages or theft of real or personal property during the listing period. The seller is responsible for taking precautions to prevent theft and vandalism.
12. *Paragraph 12.* Provides the seller with the option to provide or not provide a lockbox for the listing. This clause reaffirms that the agent is not responsible for any damages or theft that result from using a lockbox.
13. *Paragraph 13.* Provides the seller with the option to authorize the agent/broker to use a "For Sale" sign outside the property.
14. *Paragraph 14.* Indicates that the listing is being offered in compliance with all local, state, and federal fair housing laws.
15. *Paragraph 15.* In the event that legal proceedings occur, the non-prevailing party will be responsible for paying all attorney fees and associated legal costs.
16. *Paragraph 16.* Provides space for the seller and agent/broker to note any additional terms to the agreement.

17. *Paragraph 17.* Indicates that if an associate-licensee within the agent/broker's office enters into the listing agreement, the broker has the right to cancel the agreement within five days of its execution.
18. *Paragraph 18.* Indicates that the agreement is binding upon the seller's successors and thus, it can be assigned.
19. *Paragraph 19.* Provides instructions for dispute resolution.
 - a. Indicates that the seller and the agent/broker agree to mediate disputes outside of court.
 - b. Indicates that any disputes that cannot be resolved through mediation will be decided by neutral arbitration. The arbitrator must be a retired judge/justice or an attorney with at least five years experience in residential real estate law. By initialing the final paragraph, the agent/broker and seller waive their rights to have any disputes heard by a judge or jury in court.
20. *Paragraph 20.* The seller and the agent/broker agree that the listing agreement is the only valid agreement between them. It supersedes any other written or verbal agreements.
21. *Signatures.* The seller acknowledges that he or she has read the terms of the listing agreement, understands them, and accepts them.

Exclusive Agency Listing

An **exclusive agency listing** grants an agent the exclusive right to represent a seller's interests, while also granting the seller the right to sell his or her property on his or her own.

In other words, no other agent can represent a seller, but the seller can technically represent him/herself.

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.

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

Net Listing

In a **net listing**, an agent's commission is derived from the difference between the minimum net price and the ultimate sales price, rather than a percentage commission based off the final sale price.

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

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

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

Although California still allows net listings, most states have made them illegal. Net listings should rarely be used. If they are implemented, it should only be seasoned agents/brokers and sellers.

Option Listing

An **opting listing** grants an agent the ability to purchase a seller's property. This technically allows an agent to be both the principal and the agent on the same transaction.

In order to properly execute an option listing, an agent must:

- Inform the seller that he or she possesses a real estate license
- Inform the seller of his or her desire to purchase the property
- Purchase the property in his or her own name
- Fully disclose any other buyer offers that are received

- Disclose whether his or her goal is to purchase the property in order to resell it for a profit
- Disclose if his or her goal is to purchase the property to make a rental income
- Disclose the amount of profit that he or she will make on the transaction

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

Listing Agreements Review

Open Listing

- Non-exclusive listing
- Party who procures the sale is entitled to commission

Exclusive Authorization & Right to Sell Listing

- Exclusive listing
- No other broker authorized to represent the sale
- If property sells during the listing period the agent is entitled to commission regardless of the procurer of the sale

Exclusive Agency Listing

- No other broker has the right to the sale
- Owner may procure sale on their own without owing commission

Net Listing

- Agent commission dependent on difference between minimum listing price and sold price
- Commission not based on a percentage
- One agent authorized

Option Listing

- Only one broker authorized

- Broker has right to purchase property