

**Exclusive Right of Sale  
Listing Agreement  
Preparation Manual**

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## General Considerations for Completing Preprinted Agreements

**Adequacy of Contract:** Any preprinted contract form is appropriate only when its provisions adequately convey the intent of the parties. If extensive modifications are required to express the parties' intent, the parties should retain legal counsel to draft a custom agreement.

**Contract Formation:** A listing agreement is a contract for services. It is not required to be in writing in order for it to be enforceable. However, a written listing agreement must comply with Section 475.25(1)(r), Florida Statutes, which requires a definite expiration date, description of the property, price and terms, fee or commission, and a proper signature of the principal(s). As defined by Chapter 475, Florida Statutes, a "principal" is the party with whom a real estate licensee has entered into a single agent relationship. The listing agreement may not contain a provision requiring the person signing the listing to notify the broker of the intention to cancel the listing after the expiration date.

### Completing the Contract to Ensure Clarity:

- Fill in all blanks, using "N/A" or "-0-" as appropriate.
- Check at least one box where a choice is given.
- If a particular sentence or clause does not apply to the transaction, either cross it out or state in Additional Terms that the clause has been deleted.
- If additional information relating to a particular clause is inserted into an addendum, be sure to write in a reference to the clause number in the addendum. For example, "This sentence modifies Paragraph \_\_\_\_\_ of the Agreement."

### Specific Considerations for Completing the Exclusive Right of Sale Listing Agreement

**Use of Agreement:** This Agreement is specifically drafted for use in the sale of residential property. In this agreement, the Seller grants to the listing broker the exclusive right to sell the property, including the right to offer compensation to cooperating brokers. This Agreement is not intended to be used for the sale of commercial property, the sale of a business enterprise or opportunity, a deed transfer, or a tax exchange.

**Organization of Agreement:** The Agreement was designed with the following features:

- **Line Numbers.** Each line is numbered for easy reference. Plus, the lines that contain a blank or box are indicated by an asterisk next to the line number.
- **Acknowledgment of Receipt of Page.** Each party should initial to indicate that she/he received a copy of the page. An example of the acknowledgment line is show below:

Seller (\_\_\_\_) (\_\_\_\_) and Broker/Sales Associate (\_\_\_\_) (\_\_\_\_) acknowledge receipt of a copy of this page, which is Page 1 of 4.

- **Blanks and Boxes.** If any blank is inapplicable to the agreement, fill it in with "N/A" or "-0-" or some other appropriate filler. Do not leave any blank empty. All boxes appear to the left of the term to which the box applies.
- **Paragraphs.** Each paragraph has a topical heading to facilitate quick reference.

**Organization of Manual:** This manual examines Florida Realtors Exclusive Right of Sale Listing Agreement as follows:

- **Reprint of Paragraph.** At the beginning of each section, the applicable paragraph is reprinted with reference numbers in each blank.
- **Purpose.** This section briefly explains why the clause is included in the Agreement.
- **Blanks/Boxes.** This section describes how to complete Agreement blanks and boxes.
- **Explanation.** This section provides in-depth information regarding each clause.
- **Practice Tips.** These tips are practical pointers about handling situations that may arise.

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## Paragraph 1

1 This Exclusive Right of Sale Listing Agreement ("Agreement") is between  
2\* \_\_\_\_\_ (1) ("Seller")  
3\* and \_\_\_\_\_ (2) ("Broker").  
4 **1. Authority to Sell Property:** Seller gives Broker the EXCLUSIVE RIGHT TO SELL the real and personal property  
5 (collectively "Property") described below, at the price and terms described below, beginning  
6\* \_\_\_\_\_ (3) and terminating at 11:59 p.m. on \_\_\_\_\_ (4) ("Termination Date"). Upon  
7 full execution of a contract for sale and purchase of the Property, all rights and obligations of this Agreement will  
8 automatically extend through the date of the actual closing of the sales contract. Seller and Broker acknowledge  
9 that this Agreement does not guarantee a sale. This Property will be offered to any person without regard to race,  
10 color, religion, sex, handicap, familial status, national origin, or any other factor protected by federal, state, or local  
11 law. Seller certifies and represents that she/he/it is legally entitled to convey the Property and all improvements.

**Purpose:** To identify the parties and the term of the Agreement.

### Blanks:

- 1 Insert the full name of Seller(s).
- 2 Insert the full name of the brokerage firm.
- 3 Insert the date that the Agreement will begin.
- 4 Insert the date that the Agreement will terminate.

### Explanation:

**Individual(s).** Insert the name(s) as shown on the deed.

**Corporation.** Insert the complete corporate name including "Inc.," "Corp.," etc. Verify the name of the corporation with the Florida Department of State, Division of Corporations at <http://www.sunbiz.org>.

**Estate.** Insert the name of the estate's personal representative. For example, "John Doe as Personal Representative for the Estate of Joe Smith, deceased."

**Trust.** Insert the name of the trustee and the title "Trustee." For example, "John Doe, Trustee."

**Power of Attorney.** If a person has a signed, written power of attorney authorizing her/him to sell the property on behalf of another person (the "principal"), insert the name of the principal and the name of person acting as attorney in fact under the power of attorney. For example, "John Doe by Jane Smith, his attorney in fact."

**Definite Expiration Date.** Section 475.25(1)(r), Florida Statutes, requires a definite expiration date. The listing agreement may not contain a provision requiring the person signing the listing agreement to notify the broker of the intention to cancel the listing after such definite expiration date. This means the listing agreement may not contain an automatic renewal clause.

**Term of the Listing.** If a contract is executed before the expiration of the listing agreement, the listing agreement is automatically extended through the closing on the contract.

## Paragraph 2

12 **2. Description of Property:**  
13+ (a) **Street Address:** \_\_\_\_\_ (5)  
14 \_\_\_\_\_  
15+ **Legal Description:** \_\_\_\_\_ (6)  
16+ \_\_\_\_\_  See Attachment \_\_\_\_\_ (7)  
17+ (b) **Personal Property, including appliances:** \_\_\_\_\_ (8)  
18+ \_\_\_\_\_  See Attachment \_\_\_\_\_ (9)  
19 (c) **Occupancy:**  
20+ Property  is  is not currently occupied by a tenant. If occupied, the lease term expires \_\_\_\_\_ (10).

**Purpose:** To identify the Property included in the sale.

### Blanks:

- (5) Insert street address (and unit number, if any) of the Property. Remember to include city and zip code.
- (6) Insert the legal description of the Property.
- (7) Insert name of the Attachment, if any, that contains the legal description (i.e., deed, survey, or title policy).
- (8) List the personal property included in the sale.
- (9) Insert name of the Attachment, if any, that lists the personal property to be sold with the Property.
- (10) Check whether the Property is or is not currently occupied by a tenant. If occupied, insert date the lease expires.

### Explanation:

**Correct Legal Description.** Use the legal description found on the previous deed, an owner's title insurance policy, or a survey. Do not rely on the tax assessor's description or the description in the Multiple Listing System (the "MLS"), as they are often inaccurate or abbreviated.

**Platted Subdivision.** Include the county where located, lot and block, name of subdivision (with phase or unit, if applicable), plat book and page number of recorded plat, and tax folio number.

**Unplatted Property.** Include the county where located, legal description, and reference to section, township and range.

**Condominium.** Include the county where located, unit or parcel number, name of condominium, identification of any common elements (such as parking or storage space) included in the real property, tax folio number, record book and page number of Declaration of Condominium with all subsequent amendments, and record book and page number of any ground or recreational leases.

**Controversy Regarding Property Included in Sale.** Disputes often arise over whether or not a particular item was to be included in the purchase. Avoid this conflict by compiling an accurate list of all items included and excluded from the purchase.

**Personal Property.** Items that are not permanently attached to the real property must be specifically listed in the sale and purchase contract if the buyer wants them included as part of the purchase. Otherwise, Seller is entitled to keep her/his personal property.

**Fixtures.** Items that are permanently attached to the property are included in the purchase unless specifically excluded.

**Practice Tip.** Beware! Each party's opinion may differ on whether an item is a fixture or personal property. As a real estate licensee, you are not expected or recommended to determine whether a particular item is a fixture or personal property; however, you should be aware of the potential problem and of items that could be interpreted differently. This will give you the opportunity to clarify in the Agreement whether those items are to be included or excluded. An item that is listed in this Agreement as included or excluded from the sale must also be included or excluded in the sale and purchase contract. The terms of this Agreement with respect to personal property are binding only on Seller and Broker and not binding on buyer. Here are some commonly disputed items to look for: water softeners, pumps, mailboxes, window air conditioning units, satellite dishes, garage door openers, security alarms, weather vanes, and pool equipment, such as heaters and cleaning systems.

### Paragraph 3

- 21 **3. Price and Terms:** The property is offered for sale on the following terms or on other terms acceptable to **Seller**:  
22+ **(a) Price:** \$ 11
- 23+ **(b) Financing Terms:**  Cash  Conventional  VA  FHA  Other (specify) 12  
24+  **Seller Financing:** **Seller** will hold a purchase money mortgage in the amount of \$ 13  
25+ with the following terms: 14  
26+  **Assumption of Existing Mortgage:** Buyer may assume existing mortgage for \$ 15 plus  
27+ an assumption fee of \$ 16. The mortgage is for a term of 17 years beginning in  
28+ 18, at an interest rate of 19%  fixed  variable (describe) 20.  
29+ Lender approval of assumption  is required  is not required  unknown. **Notices to Seller:** (1) You may  
30 remain liable for an assumed mortgage for a number of years after the Property is sold. Check with your  
31 lender to determine the extent of your liability. **Seller** will ensure that all mortgage payments and required  
32 escrow deposits are current at the time of closing and will convey the escrow deposit to the buyer at closing.  
33 (2) Extensive regulations affect **Seller** financed transactions. It is beyond the scope of a real estate licensee's  
34 authority to determine whether the terms of your **Seller** financing agreement comply with all applicable laws or  
35 whether you must be registered and/or licensed as a loan originator before offering **Seller** financing. You are  
36 advised to consult with a legal or mortgage professional to make this determination.
- 37+ **(c) Seller Expenses:** **Seller** will pay mortgage discount or other closing costs not to exceed 21% of the  
38 purchase price and any other expenses **Seller** agrees to pay in connection with a transaction.

**Purpose:** To establish price, financing terms, and Seller expenses.

#### Blanks:

- 11 Insert listing price.
- 12 Indicate the types of financing Seller will accept.
- 13 Insert the amount of financing Seller will provide.
- 14 Insert terms of Seller financing.
- 15 Insert the approximate amount remaining to be paid on the mortgage as of the date of the Agreement.
- 16 Insert the amount of the assumption fee, if any.
- 17 Indicate the term (number of years) of the mortgage that exists on the Property.
- 18 Indicate the year the existing mortgage began.
- 19 Insert the interest rate of the existing mortgage.
- 20 If the interest is something other than fixed or variable or a combination of fixed and variable, indicate here.
- 21 Insert the maximum percentage of the purchase price that Seller agrees to pay towards mortgage discount or other closing costs.

#### Boxes:

- 3(b)** Line 23 check if the Property is offered for sale through cash, conventional, VA, FHA, or other financing.  
Line 24 check if Seller is offering Seller financing.  
Line 26 check if Buyer may assume the Seller's mortgage.  
Line 28 check the type of interest rate on the existing mortgage.  
Line 29 check whether approval of the assumption of the mortgage is or is not required by the lender.

#### Explanation:

**Purchase Money Mortgage.** This is a mortgage taken by a lender (either Seller or a third party) to finance buyer's purchase of the property. In many cases, buyer will request Seller financing because she/he is unable to obtain financing from an institutional lender because of a poor credit score. In other cases, buyer may request Seller financing simply to avoid closing costs, or Seller may want to provide financing for tax reasons.

**Mortgage Form.** In the case of Seller financing, the note and mortgage must be prepared by an attorney, who will incorporate terms consistent with those specified in the addendum to the sale and purchase contract.

**Assumable Mortgage.** This is a mortgage that may be taken over or acquired from a prior holder. Permission from the lender may or may not be required, depending on the terms of the mortgage. Seller may remain liable for an assumed mortgage for a number of years after the Property is sold. Seller should check with the lender to determine the extent of her/his liability.

**Requirements for Assumption.** The requirements for assumption are found in the mortgage document. If the mortgage has no provision relating to sale or assumption, it is assumable without any additional requirements, such as having to notify the lender. If it has an assumption clause or a “due-on-sale” clause (as do most form mortgages created after 1975), the lender has the right to control the assumption. Even loans promoted as “assumable non-qualifying” may have assumption conditions, such as completing transfer and insurance forms, escalating the interest rate, or paying a fee for assumption or transfer of the loan.

**Interest Rate.** Check the mortgage to determine whether there is a fixed or variable interest rate.

**Seller Expenses.** This is the maximum percentage of the purchase price that Seller is willing to pay toward closing costs or discount points. Often a dispute arises regarding whether closing costs include prepaids, taxes, and commissions. Instead of trying to state which closing costs the Seller contribution will be applied to, the better practice is to state a maximum percentage of the purchase price to be used for buyer’s total settlement charges at closing. Remember that the total settlement charges amount would not include items paid outside of closing.

**Practice Tip.** Do not rely on Seller’s statements regarding rates, payments, or conditions of assumption. Instead, verify the amount by requesting the information in writing from the lender. Inaccurate information could result in the transaction failing to close, the Seller being held civilly liable, and you being held liable for misrepresentation.

#### Paragraph 4

39 **4. Broker Obligations:** Broker agrees to make diligent and continued efforts to sell the Property until a sales  
40 contract is pending on the Property.

**Purpose:** To establish Broker’s obligations.

#### Paragraph 5

41 **5. Multiple Listing Service:** Placing the Property in a multiple listing service (the “MLS”) is beneficial to Seller  
42 because the Property will be exposed to a large number of potential buyers. As a MLS participant, Broker is  
43 obligated to timely deliver this listing to the MLS. This listing will be promptly published in the MLS unless Seller  
44 directs Broker otherwise in writing. Seller authorizes Broker to report to the MLS this listing information and price,  
45 terms, and financing information on any resulting sale for use by authorized Board / Association members and  
46 MLS participants and subscribers unless Seller directs Broker otherwise in writing.

**Purpose:** To notify Seller of Broker’s MLS requirement.

## Paragraph 6

- 47 **6. Broker Authority: Seller authorizes Broker to:**  
48 (a) Advertise the Property as **Broker** deems advisable including advertising the Property on the Internet unless  
49 limited in (6)(a)(i) or (6)(a)(ii) below.  
50 **(Seller opt-out) (Check one if applicable)**  
51\* (i)  Display the Property on the Internet except the street address.  
52\* (ii)  **Seller** does not authorize **Broker** to display the Property on the Internet.  
53 **Seller** understands and acknowledges that if **Seller** selects option (ii), consumers who search for listings  
54 on the Internet will not see information about the Property in response to their search.  
55\* 22 / \_\_\_\_\_ **Initials of Seller**  
56 (b) Place appropriate transaction signs on the Property, including "For Sale" signs and "Sold" signs (once **Seller**  
57 signs a sales contract) and use **Seller's** name in connection with marketing or advertising the Property.  
58 (c) Obtain information relating to the present mortgage(s) on the Property.  
59 (d) Provide objective comparative market analysis information to potential buyers.  
60\* (e) **(Check if applicable)**  Use a lock box system to show and access the Property. A lock box does not  
61 ensure the Property's security. **Seller** is advised to secure or remove valuables. **Seller** agrees that the lock  
62 box is for **Seller's** benefit and releases **Broker**, persons working through **Broker**, and **Broker's** local Realtor  
63 Board / Association from all liability and responsibility in connection with any damage or loss that occurs.  
64\*  Withhold verbal offers.  Withhold all offers once **Seller** accepts a sales contract for the Property.  
65 (f) Act as a transaction broker.  
66 (g) **Virtual Office Websites:** Some real estate brokerages offer real estate brokerage services online. These  
67 websites are referred to as Virtual Office Websites ("VOWs"). An automated estimate of market value or  
68 reviews and comments about a property may be displayed in conjunction with a property on some VOWs.  
69 Anyone who registers on a VOW may gain access to such automated valuations or comments and reviews  
70 about any property displayed on a VOW. Unless limited below, a VOW may display automated valuations or  
71 comments and reviews about this Property.  
72\*  **Seller** does not authorize an automated estimate of the market value of the listing (or a hyperlink to such  
73 estimate) to be displayed in immediate conjunction with the listing of this Property.  
74\*  **Seller** does not authorize third parties to write comments or reviews about the listing of the Property (or  
75 display a hyperlink to such comments or reviews) in immediate conjunction with the listing of this Property.

**Purpose:** To establish Broker's authority to perform certain acts.

### Blanks:

22 Seller should initial here if Seller selects option (ii).

### Boxes:

- 6(a) (i)** Line 51 check if the Property will be advertised on the Internet without the street address.  
**6(a) (ii)** Line 52 check if the Property will not be advertised on the Internet.  
**6(e)** Line 60 check if Seller agrees to use a lock box to show the Property.  
Line 64 check if Seller agrees for Broker to withhold verbal offers and/or all offers once Seller accepts a contract.  
**6(g)** Line 72 check if Seller does not want an automated estimate of value displayed with the Property.  
Line 74 check if Seller does not want comments or reviews about the Property displayed next to the Property.

### Explanation:

**Advertising the Property.** This clause is a result of a settlement agreement between the National Association of Realtors (NAR) and the U.S. Department of Justice regarding NAR's MLS policies and model rules. These rules were implemented in February 2009. This provision allows Broker to advertise the Property as Broker deems advisable without limitation unless one of the boxes in (6)(a) is checked. Seller can allow Broker to advertise the Property on the Internet without displaying the street address. In that case, Seller should check the box in (6)(a)(i). If Seller does not want the Property advertised on the Internet at all, then the (6)(a)(ii) box should be checked. Also, Seller should initial on line 55 to acknowledge that Seller understands that by selecting (6)(a)(ii), consumers who search for listings on the Internet will not see information about the Property.

**Withholding Offers.** Section 475.278, Florida Statutes, requires a single agent or transaction broker to present all offers and counter offers in a timely manner unless a party has previously directed the licensee otherwise in writing. If Broker is to withhold offers or counter offers from Seller, the boxes regarding withholding all verbal offers and all offers once Seller accepts a contract should be checked. The check boxes may serve as written direction from Seller to withhold offers and counter offers. Broker should highlight this provision to Seller if these boxes are checked to eliminate any future argument by Seller that Broker withheld offers without written direction. As an extra precaution, it may be wise to insert an additional clause in the listing agreement that requires Seller to acknowledge that all verbal offers and offers once a contract has been accepted will be withheld.

**Virtual Office Websites.** This provision is a result of a settlement agreement between NAR and the U.S. Department of Justice regarding NAR's MLS policies and rules on virtual office websites (VOWs). VOWs are websites where a brokerage conducts brokerage services, including contract negotiation and showing property online. If a brokerage has a VOW, Seller must be given the option of refusing to allow an automated valuation of the Property or review to be posted in conjunction with the listing of the Property. If Seller does not wish to have automated valuations or comments or reviews displayed with the Property, Seller should check either or both boxes in 6(g).

**Paragraph 7**

- 76 **7. Seller Obligations:** In consideration of **Broker's** obligations, **Seller** agrees to:
- 77 (a) Cooperate with **Broker** in carrying out the purpose of this Agreement, including referring immediately to
- 78 **Broker** all inquiries regarding the Property's transfer, whether by purchase or any other means of transfer.
- 79 (b) Provide **Broker** with keys to the Property and make the Property available for **Broker** to show during
- 80 reasonable times.
- 81 (c) Inform **Broker** before leasing, mortgaging, or otherwise encumbering the Property.
- 82 (d) Indemnify **Broker** and hold **Broker** harmless from losses, damages, costs, and expenses of any nature,
- 83 including attorney's fees, and from liability to any person, that **Broker** incurs because of (1) **Seller's**
- 84 negligence, representations, misrepresentations, actions, or inactions; (2) the use of a lock box; (3) the
- 85 existence of undisclosed material facts about the Property; or (4) a court or arbitration decision that a broker
- 86 who was not compensated in connection with a transaction is entitled to compensation from **Broker**. This
- 87 clause will survive **Broker's** performance and the transfer of title.
- 88 (e) Perform any act reasonably necessary to comply with FIRPTA (Section 1445 of the Internal Revenue Code).
- 89 (f) Make all legally required disclosures, including all facts that materially affect the Property's value and are not
- 90 readily observable or known by the buyer. **Seller** certifies and represents that **Seller** knows of no such
- 91 material facts (local government building code violations, unobservable defects, etc.) other than the following:
- 92\* \_\_\_\_\_
- 93 **Seller** will immediately inform **Broker** of any material facts that arise after signing this Agreement.
- 94 (g) Consult appropriate professionals for related legal, tax, property condition, environmental, foreign reporting
- 95 requirements, and other specialized advice.

**Purpose:** To establish Seller's obligations.

**Blanks:**

23 This blank is for Seller to disclose facts about the Property that materially affect value that are not readily observable.

**Explanation:**

**Seller Obligations.** This section outlines several obligations of Seller, including providing keys and access to the Property for showings, informing Broker prior to leasing or encumbering the Property, complying with FIRPTA requirements, consulting with appropriate professionals for legal, tax, property condition, and environmental advice, and disclosing all known facts that materially affect the value of the Property that are not readily observable or discoverable by buyer.

**Indemnification and Hold Harmless.** This section also contains an indemnification and hold harmless clause for damages, loss or costs incurred by Broker as a result of Seller's negligence or misrepresentation or failure to disclose facts that materially affect value which are not observable or known by buyer; as a result of the use of the lock box; and as a result of a court or arbitration decision where a broker was not compensated in connection with the transaction.

## Paragraph 8

- 96 **8. Compensation:** Seller will compensate Broker as specified below for procuring a buyer who is ready, willing,  
97 and able to purchase the Property or any interest in the Property on the terms of this Agreement or on any other  
98 terms acceptable to Seller. Seller will pay Broker as follows (plus applicable sales tax):
- 99\* (a) 24 % of the total purchase price plus \$ 25 OR \$ 26, no  
100 later than the date of closing specified in the sales contract. However, closing is not a prerequisite for Broker's  
101 fee being earned.
- 102\* (b) 27 (\$ or %) of the consideration paid for an option, at the time an option is created. If the option is  
103 exercised, Seller will pay Broker the Paragraph 8(a) fee, less the amount Broker received under this  
104 subparagraph.
- 105\* (c) 28 (\$ or %) of gross lease value as a leasing fee, on the date Seller enters into a lease or  
106 agreement to lease, whichever is earlier. This fee is not due if the Property is or becomes the subject of a  
107 contract granting an exclusive right to lease the Property.
- 108 (d) Broker's fee is due in the following circumstances: (1) If any interest in the Property is transferred, whether by  
109 sale, lease, exchange, governmental action, bankruptcy, or any other means of transfer, regardless of whether  
110 the buyer is secured by Seller, Broker, or any other person. (2) If Seller refuses or fails to sign an offer at the  
111 price and terms stated in this Agreement, defaults on an executed sales contract, or agrees with a buyer to  
112\* cancel an executed sales contract. (3) If, within 29 days after Termination Date ("Protection Period"),  
113 Seller transfers or contracts to transfer the Property or any interest in the Property to any prospects with whom  
114 Seller, Broker, or any real estate licensee communicated regarding the Property before Termination Date.  
115 However, no fee will be due Broker if the Property is relisted after Termination Date and sold through another  
116 broker.
- 117\* (e) **Retained Deposits:** As consideration for Broker's services, Broker is entitled to receive 30 % of all  
118 deposits that Seller retains as liquidated damages for a buyer's default in a transaction, not to exceed the  
119 Paragraph 8(a) fee.

**Purpose:** To outline the compensation structure of the Agreement.

### Blanks:

- 24 Insert the percentage of the total purchase that Seller is to pay Broker.
- 25 Insert the flat fee amount that Seller is to pay Broker in addition to the percentage amount.
- 26 Insert total dollar amount of the commission Seller is to pay Broker.
- 27 Insert a dollar amount or percentage amount Seller is to pay Broker if Seller enters into an option agreement with buyer.
- 28 Insert a dollar amount or percentage of gross lease value Seller will pay Broker if Seller enters into a lease or agreement to lease with a tenant.
- 29 Insert the number of days for the Protection Period.
- 30 Insert the percentage amount of the retained deposit that Broker is entitled to receive.

### Explanation:

**Commission: Percentage plus Flat Fee.** This Agreement provides for a commission that is a percentage of the purchase price plus a flat fee amount, if desired, or only a flat fee amount.

**Leasing Fee.** This section contains a clause that allows Broker to obtain a fee if Seller enters into a lease or agreement to lease the Property. However, the fee would not be due if Seller enters into an Exclusive Right to Lease agreement for the Property.

**Broker's Fee.** Broker's fee is due if Seller transfers the Property, if Seller does not sign or refuses to sign an offer at the price and terms of the listing agreement, if Seller defaults under a fully executed contract, or if Seller and buyer agree to cancel an executed contract. Broker's fee is also due if Seller transfers or contracts to transfer the Property (within the Protection Period) to anyone Seller, Broker, or any real estate licensee communicated with about the Property before the Termination Date. This means that if Seller sells or contracts to sell the Property during the Protection Period to anyone who saw or expressed interest in the Property during the term of the listing agreement, Broker's fee is due. However, no fee is due to the Broker if the Property is relisted with another broker after the Termination Date and sold through the other broker.

**Retained Deposits.** This clause deals with the percentage of the deposit that Broker is entitled to receive if Seller retains buyer's deposit due to buyer's default in the transaction. This amount will not exceed the Paragraph 8(a) fee.

### Paragraph 9

120 **9. Cooperation with and Compensation to Other Brokers: Notice to Seller:** The buyer's broker, even if  
121 compensated by **Seller** or **Broker**, may represent the interests of the buyer. **Broker's** office policy is to cooperate  
122 with all other brokers except when not in **Seller's** best interest and to offer compensation in the amount of  
123\*  31 % of the purchase price or \$ 32 to a single agent for the buyer;  33 % of the  
124\* purchase price or \$ 34 to a transaction broker for the buyer; and  35 % of the purchase  
125\* price or \$ 36 to a broker who has no brokerage relationship with the buyer.  
126\*  None of the above. (If this is checked, the Property cannot be placed in the MLS.)

**Purpose:** To disclose to Seller the amount of compensation being offered to cooperating brokers.

### Blanks:

- 31 Enter the percentage of the purchase price that is offered to single agents for the buyer.
- 32 Enter the dollar amount that is offered to single agents for the buyer.
- 33 Enter the percentage of the purchase price that is offered to a transaction broker.
- 34 Enter the dollar amount that is offered to a transaction broker.
- 35 Enter the percentage of the purchase price that is offered to a broker who has no brokerage relationship with the buyer.
- 36 Enter the dollar amount that is offered to a broker who has no brokerage relationship with the buyer.

### Boxes:

- Line 123 check if Broker is offering compensation to a single agent for buyer.
- Line 123 check if Broker is offering compensation to a transaction broker.
- Line 124 check if Broker is offering compensation to a broker who has no brokerage relationship with buyer.
- Line 126 check if Broker is not offering any compensation to cooperating brokers.

### Explanation:

**Cooperation with and Compensation to Other Brokers.** Article 1 of the Realtor<sup>®</sup> Code of Ethics requires Realtors<sup>®</sup>, when entering into listing agreements, to disclose to a seller the broker's policy regarding cooperation and the amount of any compensation offered to cooperating brokers. Though the disclosure is not required to be made in the listing agreement, this section is included to help brokers comply with this requirement. This section is sometimes confused with variable rate commission agreements, which are listing agreements where a seller pays one amount of commission if the listing broker's firm is the procuring cause of the sale and a different amount of commission if the sale is a result of the efforts of the Seller or cooperating broker. The amounts offered in the MLS should not reflect the listing broker's share of the commission but should reflect only the amount offered to the cooperating broker.

**Compensation Offered.** Broker may offer different amounts of compensation to buyer's agents. For example, Broker may offer 3% to single agents for buyer, 3% to transaction brokers, and 1% to brokers who have no brokerage relationship with buyer. Broker may also choose to offer the same amount of commission to all cooperating brokers regardless of the type of brokerage relationship involved. If Broker is not offering any compensation to cooperating brokers, the Property cannot be placed in the MLS.

### Paragraph 10

127 **10. Brokerage Relationship: Broker** will act as a transaction broker. **Broker** will deal honestly and fairly; will account  
128 for all funds; will use skill, care, and diligence in the transaction; will disclose all known facts that materially affect  
129 the value of the residential property which are not readily observable to the buyer; will present all offers and  
130 counteroffers in a timely manner unless directed otherwise in writing; and will have limited confidentiality with  
131 **Seller** unless waived in writing.

**Purpose:** To state the duties of the licensee, as outlined in Section 475.278, Florida Statutes.

**Explanation:**

**Brokerage Relationships.** Under Florida law, all licensees are presumed to be operating as transaction brokers unless a licensee establishes either a single agent or no brokerage relationship in writing with a customer. Since July 1, 2008, licensees, who act as transaction brokers, have not been required to give a transaction broker notice to their customers.

However, where Broker acts as a single agent, acts as a single agent with consent to transition to transaction broker, or has no brokerage relationship with Seller, Broker must insert the name of the brokerage firm into the appropriate notice and give the notice to Seller.

Broker should use the listing agreement that correlates with the type of brokerage relationship Broker has or wants to establish with Seller.

**Paragraph 11**

132 **11. Conditional Termination:** At Seller's request, Broker may agree to conditionally terminate this Agreement. If  
133 Broker agrees to conditional termination, Seller must sign a withdrawal agreement, reimburse Broker for all direct  
134\* expenses incurred in marketing the Property, and pay a cancellation fee of \$ 37 plus  
135 applicable sales tax. Broker may void the conditional termination, and Seller will pay the fee stated in Paragraph  
136 8(a) less the cancellation fee if Seller transfers or contracts to transfer the Property or any interest in the Property  
137 during the time period from the date of conditional termination to Termination Date and Protection Period, if  
138 applicable.

**Purpose:** To establish the terms of a conditional termination of the listing agreement.

**Blanks:**

37 Insert the amount of the cancellation fee.

**Explanation:**

**Conditional Termination.** This clause establishes the terms of a conditional termination. Broker may agree, but is not required, to conditionally terminate the Agreement. If Broker agrees to conditionally terminate the Agreement, Seller must pay the cancellation fee. However, if Seller transfers the Property, or contracts to transfer the Property, during the time period from the date of conditional termination to Termination Date and Protection Period, Broker may void the conditional termination; and Seller is obligated to pay the full commission stated in Paragraph (8)(a) of the Agreement, minus the cancellation fee paid. This means that the termination is conditioned on the fact that Seller does not sell or contract to sell the Property during the time period stated. Sometimes a dollar amount is not inserted in this blank or is -0-. This does not mean, however, that Seller may unilaterally cancel the listing agreement. If there is no cancellation fee, Seller merely does not pay a fee to Broker if Broker agrees to a conditional termination.

**Practice Tip.** If Broker agrees to conditionally terminate the Agreement, Broker should state in the cancellation that the listing agreement is conditionally terminated; otherwise, a dispute may arise over whether the Agreement was conditionally or unconditionally terminated. Withdrawing a listing from the MLS does not automatically terminate the listing agreement. It is good business practice for a termination, whether conditional or unconditional, to be in writing with the terms of the termination clearly stated.

**Paragraph 12**

139 **12. Dispute Resolution:** This Agreement will be construed under Florida law. All controversies, claims, and other  
140 matters in question between the parties arising out of or relating to this Agreement or the breach thereof will be  
141 settled by first attempting mediation under the rules of the American Mediation Association or other mediator  
142 agreed upon by the parties. If litigation arises out of this Agreement, the prevailing party will be entitled to recover  
143 reasonable attorney's fees and costs, unless the parties agree that disputes will be settled by arbitration as follows:  
144\* **Arbitration:** By initialing in the space provided, Seller (\_\_\_\_) (\_\_\_\_), Sales Associate (\_\_\_\_), and Broker (\_\_\_\_)  
145 agree that disputes not resolved by mediation will be settled by neutral binding arbitration in the county in which  
146 the Property is located in accordance with the rules of the American Arbitration Association or other arbitrator  
147 agreed upon by the parties. Each party to any arbitration (or litigation to enforce the arbitration provision of this  
148 Agreement or an arbitration award) will pay its own fees, costs, and expenses, including attorney's fees, and will  
149 equally split the arbitrator's fees and administrative fees of arbitration.

**Purpose:** To establish a method and procedure for resolving disputes.

## Parentheses

Seller and Broker should insert their initials only if both agree to settle their disputes through binding arbitration.

## Explanation:

**Mediation.** Mediation is the process by which a third person tries to negotiate a settlement of the dispute.

**Cost of Mediation.** The parties will equally split the cost of mediation.

**Who Can Be a Mediator.** Currently there is no licensure requirement. Anyone can facilitate mediation. A real estate licensee involved in the transaction may initially act as a mediator as part of the normal negotiation process. However, a neutral mediator should be obtained if the parties become deadlocked, if they appear to not work well with the licensee, or if the licensee wants to avoid the appearance of favoritism, especially if she/he is the agent of one of the parties.

**Arbitration.** This is the dispute resolution process by which the parties to a dispute choose an impartial person to hear their arguments and to issue a binding, enforceable decision. This process is intended to avoid the formalities, delay, and expense of litigation. Chapter 682, Florida Statutes, provides that arbitration decisions may be reviewed by a court in limited circumstances.

**Arbitrator.** The arbitration must be conducted in accordance with the rules of the American Arbitration Association (AAA) or those of another arbitrator mutually agreed upon by the parties.

**Costs of Arbitration.** Each party pays her/his own costs, fees, and expenses. However, all parties to the arbitration equally share the arbitrator's fee and arbitration administrative fees.

**Location of Arbitration.** Unless otherwise agreed, the arbitration must be held in the county where the real property is located.

**Specific Enforcement of Arbitration Agreement.** If any party files a lawsuit or otherwise refuses to arbitrate, the other party may ask the court to compel arbitration.

**Arbitrator's Power.** The arbitrator cannot rewrite the contract. She/he must review the evidence in light of the contract's terms and determine which side presents the most compelling evidence. The award must state findings of fact (those facts that the arbitrator found to be true or most likely to be true) as well as the contractual authority on which the award is based. The arbitrator also has the authority to resolve any issues related to discovery.

**Arbitration Award.** The award must be in line with the provisions of the contract. If a party fails to comply with the arbitrator's decision, the other party can file the decision with a court. The court's decision has the same legal effect as any judgment issued by a court.

**Litigation.** If both Seller and Broker do not initial this provision, any dispute not resolved by mediation must be litigated. The prevailing party to any litigation is entitled to attorney's fees, costs, and expenses.

## Paragraph 13

150 **13. Miscellaneous:** This Agreement is binding on **Seller's** and **Broker's** heirs, personal representatives,  
151 administrators, successors, and assigns. **Broker** may assign this Agreement to another listing office. This  
152 Agreement is the entire agreement between **Seller** and **Broker**. No prior or present agreements or representations  
153 will be binding on **Seller** or **Broker** unless included in this Agreement. Electronic signatures are acceptable and  
154 will be binding. Signatures, initials, and modifications communicated by facsimile will be considered as originals.  
155 The term "buyer" as used in this Agreement includes buyers, tenants, exchangors, optionees, and other categories  
156 of potential or actual transferees.

**Purpose:** To establish who is bound, to provide for assignment, to clarify the scope, to provide for electronic signatures and communications, and to define "buyer."

## Explanation:

**Death of a Party.** This Agreement will continue to be in effect even if Seller or Broker dies. The deceased party's estate will assume responsibility for performance.

**Assignment.** This Agreement may be assigned by Broker. The assignee (another broker) must perform under the Agreement as written and cannot change any provision without Seller's consent.

**Contract Terms Express the Agreement Between the Parties.** A court that is called upon to subsequently interpret the Agreement will not look beyond what is written in the "four corners" of the Agreement. If the parties verbally agreed to terms that are not written into the Agreement, the verbal terms may not be enforceable. Make sure each party's intent is clearly expressed in the Agreement, and put every negotiated item in the Agreement.

**Signatures and Initials.** Chapter 668, Florida Statutes, gives legal recognition to electronic signatures and contracts formed by electronic means. It is a good business practice for all parties to initial and date every change to the preprinted text of the Agreement to indicate their consent to the modification. Lengthy changes should be written in Paragraph 14 or in a separate addendum. The Modification to Listing Agreement form may also be used to modify the terms of this Agreement.

**Paragraph 14**

157\* **14. Additional Terms:** \_\_\_\_\_

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**Purpose:** To provide space for additional terms.

38 May be used to insert terms the parties want but are not covered in the preprinted Agreement.

**Explanation:**

**Additional Terms.** If any term is added, make sure it clearly expresses the intent of the parties. Under general contract interpretation rules, if a preprinted contract term conflicts with a handwritten or typed term, the handwritten or typed term will prevail because it presumably shows the last intent of the parties.