

# EXCLUSIVE AGENCY LISTING AGREEMENT



The undersigned Owner irrevocably GRANTS the undersigned Broker the EXCLUSIVE AGENCY, for a period commencing (date) \_\_\_\_\_, and terminating at midnight (date) \_\_\_\_\_, to sell or exchange the real property known as \_\_\_\_\_

Street Address \_\_\_\_\_ City/Zip \_\_\_\_\_  
Assessor's Parcel No. \_\_\_\_\_ ("Property").

**TERMS OF SALE:** The listing price will be: \$ \_\_\_\_\_ ( \_\_\_\_\_ dollars), payable on the following terms:

\_\_\_\_\_ or at \_\_\_\_\_ such other price and terms acceptable to Owner.

Owner agrees to transfer the following personal property, included in the above price, by a Bill of Sale in favor of buyer at close of escrow: \_\_\_\_\_

Owner reserves the right to personally sell the property during the listing period without incurring liability for any compensation to Broker, provided that the sale shall not be made to a person with whom Broker has negotiated during the term of this Listing, and provided that Broker, prior to any such sale, has not become entitled to compensation in accordance with the terms of this Agreement. In the event that Owner receives an offer, he/she shall immediately notify Broker in writing, specifying the name of the offeror and the purchase price to be paid. In the event that Broker does not advise Owner, in writing, **with seven (7) days**, that he/she has negotiated with the offeror, it shall be conclusively presumed that he/she has not. Upon Broker's receipt of the notice, the agency granted by this Listing shall terminate; provided, however, that in the event the sale is not made in accordance with the notice, the rights of Broker shall continue for the balance of the listing term.

**NOTICE: The amount or rate of real estate commissions is not fixed by law. They are set by each Broker individually and may be negotiable between the Seller and Broker.**

**1. COMPENSATION TO BROKER.** Owner agrees to pay Broker as compensation for services rendered a fee of \_\_\_\_\_ percent of the purchase price (or listing price if there is no purchase), plus \$ \_\_\_\_\_ for \_\_\_\_\_ provided that:

- a. Broker procures a buyer who offers to purchase the property during the above time period, or any written extension, on the terms specified or on any other terms acceptable to Owner.
- b. The property is sold, exchanged, or otherwise transferred during the above listing period, or any written extension, **through any other broker.**
- c. The property is withdrawn from sale, or transferred, conveyed, or leased without the consent of Broker, or made unmarketable by Owner's voluntary act during the above listing period.
- d. An agreement to sell or exchange the property is made by Owner **within ninety (90) days** after the termination of this Agreement to persons with whom Broker has had negotiations during the listing period; provided that the names of such persons are submitted in writing to the Owner prior to the Owner entering into a new listing agreement with another broker or **within five (5) days** after the termination of this Agreement, whichever occurs first. Presentation of a written offer during the term of the listing constitutes sufficient notice of such persons.

**2. AGENCY.** Broker is authorized to cooperate with other brokers in the marketing and sale or exchange of the property and may divide the above compensation with the other brokers in any manner acceptable to them. It is understood that Broker is acting as the agent for the Owner. It may also be appropriate for the Broker to act as agent for a prospective buyer, or a party to a proposed exchange. In such event, Broker will, as soon as practicable, disclose the proposed dual agency relationship to the Owner and obtain the Owner's consent as required by law. Owner has been provided with any required statutory disclosures regarding agency relationships.

**3. OWNER'S OBLIGATIONS AND WARRANTIES.**

- a. Owner agrees to make available to Broker and prospective buyers all data, records, and documents pertaining to the property.
- b. Owner agrees to allow Broker and cooperating brokers to show the property at reasonable times and upon reasonable notice.
- c. Owner agrees not to obstruct the Broker's performance in any way.
- d. In the event of a sale, Owner will promptly deposit in escrow all instruments necessary to complete the sale.
- e. In the event of a sale, Owner agrees to and does hereby irrevocably assign to Broker compensation as provided above from Owner's proceeds **at close of escrow**. If Owner receives liquidated or other damages upon default by Buyer, Owner agrees to pay Broker the lesser of the amounts provided for above or one half of the damages after deducting costs of collection, including reasonable attorney fees. The commission will also be payable upon any default by Owner, or the mutual rescission by Buyer and Owner which prevents completion of the purchase.
- f. In the event Owner has signed a REAL ESTATE TRANSFER DISCLOSURE STATEMENT or supplements, Broker is authorized to furnish copies to potential buyers.

Owner [ \_\_\_\_\_ ] [ \_\_\_\_\_ ] and Broker [ \_\_\_\_\_ ] [ \_\_\_\_\_ ] have read this page

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Property Address: \_\_\_\_\_

- g. Owner warrants the accuracy of the information furnished with respect to the property and agrees to hold the Broker harmless from any liability or damage arising out of incorrect or undisclosed information.
- h. Owner agrees to notify Broker **within seven (7) days** of any changes in rentals, expenses, or other material aspects of the property.
- i. Owner warrants that he or she is the owner of record of the property or has the written authority to execute this Agreement on behalf of the owner(s) of record.
- j. Owner warrants that he or she has not entered into any other brokerage agreement in force granting an exclusive agency to another broker

**4. OWNER'S INSTRUCTIONS AND AUTHORIZATIONS.**

- a. Owner instructs Broker to list the property with the local MULTIPLE LISTING SERVICE and comply with all the rules of that service, including reporting the terms of the sale to MLS if the rules so provide ..... (initial) Yes (\_\_\_/\_\_\_) No (\_\_\_/\_\_\_)
- b. Owner authorizes Broker to market the property on the INTERNET ..... (initial) Yes (\_\_\_/\_\_\_) No (\_\_\_/\_\_\_)
- c. Owner authorizes Broker to place a "FOR SALE" sign upon the property ..... (initial) Yes (\_\_\_/\_\_\_) No (\_\_\_/\_\_\_)
- d. Owner agrees to obtain at his or her expense a PRELIMINARY TITLE REPORT (initial) Yes (\_\_\_/\_\_\_) No (\_\_\_/\_\_\_)
- e. Owner agrees to obtain at his or her expense a STRUCTURAL PEST CONTROL REPORT ..... (initial) Yes (\_\_\_/\_\_\_) No (\_\_\_/\_\_\_)
- f. Owner agrees to provide at his or her expense a HOME PROTECTION PLAN for the buyer from \_\_\_\_\_, at a cost not to exceed \$ \_\_\_\_\_ (initial) Yes (\_\_\_/\_\_\_) No (\_\_\_/\_\_\_)
- g. Owner authorizes Broker to install a LOCK BOX upon the property ..... (initial) Yes (\_\_\_/\_\_\_) No (\_\_\_/\_\_\_)

**LOCK BOX INFORMATION:** A lock box is a depository for a key to the above premises and will provide access to the interior of the premises by participants of the Multiple Listing Service (MLS), their authorized licensees, and their prospective buyers. If the property is occupied by persons other than the Owner, it will be Owner's responsibility to obtain the occupants' written permission for use of the lock box. Neither listing or selling broker, nor MLS or the Association of REALTORS® is insured against, or is in any way responsible for, any theft, loss, vandalism or damage resulting from the use of a lock box. Owners are advised to verify their insurance coverage and, if necessary, obtain appropriate insurance.

- 5. **BROKER'S OBLIGATIONS.** Broker agrees to use due diligence in effecting a sale of the property in accordance with the custom and practice in the community regarding similarly situated properties.
- 6. **FAIR HOUSING.** Owner understands that state and federal laws prohibit discrimination in the sale, rental, appraisal, financing or advertising of housing on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, age, mental or physical disability.
- 7. **WITHHOLDING.** Owner agrees to provide such documentation that is needed to satisfy the requirements of the Foreign Investments and Real Property Tax Act (IRC § 1445) and California Revenue and Taxation Code § 18662 regarding tax withholding, and consents to the required withholding if they are not provided.
- 8. **ATTORNEY FEES.** in any action, arbitration or proceeding, to recover compensation as provided in this Agreement, the prevailing party will be entitled to recover reasonable attorney fees, expert witness fees, and costs to be determined by the court or arbitrator(s).
- 9. **ADDITIONAL TERMS AND CONDITIONS.**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**10. ENTIRE AGREEMENT.** This document contains the entire agreement of the parties and supersedes all prior agreements or representations with respect to the property which are not expressly set forth. All modifications must be in writing signed and dated by both parties. **Owner acknowledges that he or she has not relied on any statements of the real estate Agent or Broker which are not expressed in this Agreement.**

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Property Address: \_\_\_\_\_

**LIMITATION OF AGENCY:** Real estate brokers and agents are not qualified to give legal, tax, accounting, or insurance advice. For these questions, you should consult with your attorney, accountant, or insurance broker.

Owner acknowledges receipt of a copy of this Agreement.

Owner \_\_\_\_\_ Date \_\_\_\_\_

Owner \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_ Email \_\_\_\_\_

Broker \_\_\_\_\_

By (Agent) \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_ Email \_\_\_\_\_

DRAFT

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Rev. by _____
Date _____

