

# EXCLUSIVE RIGHT TO SELL PROPERTY LISTING AGREEMENT

(Explanation Guide – Rev 7/2024)

**NOTICE: This is a legally binding contract. If there are any terms of this document which you do not understand, consult an attorney before signing.**

Seller(s): \_\_\_\_\_ (“Seller”)  
Qualifying Broker: \_\_\_\_\_ (“Seller’s Broker” or “Broker”)  
If applicable, Agent: \_\_\_\_\_ Company: \_\_\_\_\_

Seller appoints Broker/Agent as Seller’s Agent with the exclusive right to sell, trade, convey, or exchange the below-described property (“Property”), on the following terms:

## 1. **Property Description** (Select at least one.)

- Street Address: \_\_\_\_\_  
City: \_\_\_\_\_ County: \_\_\_\_\_, AL Zip: \_\_\_\_\_
- Legal Description: \_\_\_\_\_  
DB/PB#: \_\_\_\_\_ PG# \_\_\_\_\_
- Metes/ Bounds (attach description or survey)

**Commented [JH1]:** This section identifies where the property is located by Street Address, Legal Description, or Metes & Bounds.

## 2. **Listing Period** – This Agreement will begin on \_\_\_\_\_ and end on \_\_\_\_\_ at 11:59 p.m. (“Listing Period”), unless extended in writing. (Notice: *Under Alabama Code § 34-27-36(a)(25), an end date is required.*) The Parties agree to extend the Agreement in writing if the Property is under contract but not yet closed on the end date. This Agreement may be terminated by either party in writing at any time.

**Commented [JH2]:** This section defines when the Agreement begins and ends and what circumstances would cause it to be extended.

## 3. **Terms of Sale** – Property will be offered for sale on the following terms, or on terms agreed upon in the Purchase Agreement.

- a) List Price: \$ \_\_\_\_\_  
*If the Sales Price is over \$300,000 and Seller is a non-resident of Alabama, as defined by Alabama Code § 40-18-86, and not otherwise exempt, Alabama law requires that the buyer withhold a certain percentage of the purchase price and pay those withheld funds to the Alabama Department of Revenue.*
- b) Acceptable financing types are (select all that apply):  Cash,  Conventional,  HELOC,  VA,  FHA,  Owner Finance, and/ or  Other: \_\_\_\_\_.
- c)  Property to be sold AS IS. (select if applicable)
- d) During the Listing Period, Seller agrees to i) maintain the Property in its current condition, including paying any debts incurred in maintaining the Property, ii) pay the mortgage and/or community association dues, and iii) in force sufficient hazard insurance.

**Commented [JH3]:** This section shows the list price and types of financing the Seller will allow. Indicates if the property is sold AS IS and identifies some Seller responsibilities during the Listing Period.

## 4. **Seller’s Broker Compensation**

- a) **Notice: Compensation rates/amounts are not set by law or REALTOR® Association rules. Compensation is set by each Broker individually and is negotiable between Seller and Seller’s Broker.**
- b) Seller agrees to pay Seller’s Broker:  \$ \_\_\_\_\_,  \_\_\_\_\_ % of the gross sales price, and  Other \_\_\_\_\_ (all 0 if left blank).

**Commented [JH4]:** This section states that compensation is negotiable and determines the amount agreed upon. Included are the circumstances for which compensation is due.

- c) As required by Alabama law, the compensation listed above, if any, is to be paid to Broker, not to Agent. Compensation is due at closing unless otherwise specified and is due the following circumstances:
- i. If a buyer purchases the Property during the Listing Period, whether the buyer is secured by Seller's Broker, Agent, Seller, or another person.
  - ii. If the Property is sold within \_\_\_ days (0 if left blank) after the Listing Period to a buyer who was shown the Property during the Listing Period.
  - iii. If Seller defaults under the terms of the Purchase Agreement and fails to close the sale through no fault of the buyer, in which case compensation is due immediately, at the option of Seller's Broker.
  - iv. Other (if written): \_\_\_\_\_.

**5. Optional Buyer's Broker Compensation**

- a) Seller may, *but is not required to*, offer compensation to Buyer's Broker. Such an offer is not required to list the Property in the MLS, and no offers will be included in the MLS listing. *Seller's written authorization is required prior to any offer being made.*
- b) Broker  is authorized OR  is not authorized to offer compensation to Buyer's Broker. If authorized, select one:
- i.  Payment will be made by Seller's Broker out of the compensation due to Seller's Broker under Paragraph 4; **OR**
  - ii.  Payment will be made in addition to the compensation due to Seller's Broker under Paragraph 4. Payment will be made by Seller's Broker after the funds are provided by Seller to Seller's Broker.
- c) If compensation offers are authorized, the Seller is to determine how much compensation to offer (*if applicable, select one*):
- i.  The same offer to any buyers' broker:  \$ \_\_\_\_\_,  \_\_\_\_\_ % of the gross sales price, and  Other \_\_\_\_\_ (all 0 if left blank).
  - ii.  Offer to be based on type of buyer brokerage service:
    - 1. Buyers' Agents:  \$ \_\_\_\_\_,  \_\_\_\_\_ % of the gross sales price, and  Other \_\_\_\_\_ (all 0 if left blank).
    - 2. Transaction Brokers:  \$ \_\_\_\_\_,  \_\_\_\_\_ % of the gross sales price, and  Other \_\_\_\_\_ (all 0 if left blank).
  - iii.  Offers to be made on a case-by-case basis. (A separate written authorization is required.)  
*Seller acknowledges that making offers based on a protected class is a violation of state and federal laws, including the Fair Housing Act, and that this Agreement is subject to a Non-Discrimination Clause, Paragraph 7.*

**Commented [JH5]:** This section discusses options for the Seller concerning whether or not Buyer Broker compensation will be offered. Should the Seller choose to offer Buyer Broker compensation, there are flexible steps to take to define how this happens.

The Seller must weigh the advantages and disadvantages of these options. For further help, see PROS AND CONS OF SELLER NOT COMPENSATING BUYER AGENT document.

**6. Optional Seller Concession**

Seller concessions are payments that a Seller agrees to contribute toward Buyer expenses. Costs that concessions may be applied to include, but are not limited to, costs of title, lender fees, repairs, inspections, surveys, closing attorney fees, and buyer broker compensation. Depending on MLS rules, a seller concession offer may be permitted in the MLS listing but must first be authorized in writing by Seller. Seller may not specify which expense(s) the Buyer is permitted to apply concession funds toward.

**Commented [JH6]:** This section gives the Seller additional opportunity to contribute toward Buyer expenses. This Seller Concession option could make your listing more attractive to potential Buyers based on their needs for purchasing your home. It is suggested that the Seller authorize a Seller Concession but do not indicate an amount.

Seller  does not authorize OR  authorizes a Seller Concession offer. If applicable and known, list Concession amount or rate: \_\_\_\_\_.

**7. Non-Discrimination**

Federal law, state law, the REALTOR® Code of Ethics, and this Agreement prohibit discrimination in the sale or lease of real property based on race, color, national origin, religion, familial status, disability, sex, sexual orientation, or gender identity. Failure by Broker, Agent, Company, or Seller to abide by this provision is cause to terminate this Agreement.

**Commented [JH7]:** It is unlawful to discriminate against any protected class and violation of this law will be cause to terminate this Agreement.

**8. Seller's Duties** – Seller agrees to:

a) cooperate in the sale of Property, including timely responding to communications from Broker/Agent, referring all inquiries about the Property to Broker/Agent promptly, allowing access to the Property, and furnishing Broker/Agent with keys to the Property; b) make Property available for showing to prospective buyers during reasonable hours with reasonable notice; c) timely review all offers presented by Broker/Agent; d) negotiate in good faith through the Broker to sell the property; e) act in good faith toward the completion of any contract entered into for the sale of the Property; f) carefully read all disclosures, reports, and contracts and comply with the duties and deadlines contained therein; g) pay for reports, investigations, or services provided by professionals which Seller hires; h) convey a merchantable title; i) prorate taxes, leases, and/or association fees through the date of conveyance of title; j) resolve all public improvements, assessments, and encumbrances unless otherwise agreed upon in writing; and h) abide by all terms of this Agreement.

**Commented [JH8]:** The National Association of Realtors encourages all Sellers to be fully involved and informed in the process of selling their home. This section defines the Seller responsibilities to work with the Seller's Agent toward a successful home sale and closing. A Seller's Duties checklist will be provided.

**9. Broker's/Agent's Duties to Seller** – Broker/Agent's sole duties to Seller are:

a) assist with marketing the Property; b) present all offers to purchase received by Broker/Agent; c) present all offers for sale authorized by Seller; d) assist, to the extent requested by Seller, in negotiating the terms of and filling out a pre-printed real estate sales contract; and e) follow all applicable laws in performing these duties, including the Real Estate Consumer's Agency and Disclosure Act (RECAD), Ala. Code § 34-27-80, et seq.

**Commented [JH9]:** This section defines the Seller's Agent responsibilities to work for the Seller toward a successful home sale and closing.

FOR MORE INFORMATION ON UNDERSTANDING THE HOMESELLING PROCESS AND THE REALTOR SERVICES OFFERED, SEE "SELLING YOUR HOME - WHAT YOU SHOULD KNOW."

**10. Limitations of Broker's/Agent's Responsibilities** – Seller understands/ agrees that Broker/Agent is **NOT**:

a) an expert on property condition, structural integrity, hazardous conditions, property boundaries, zoning, square footage, electrical and plumbing systems, flood zones, financial planning, taxes, mortgages, or other areas requiring special expertise. Seller should seek expert advice from independent professionals regarding any of these matters. Broker/Agent will not warrant the performance of any such professional and is not liable for any acts or omissions by any such professional.  
b) licensed to practice law and cannot give legal advice. Seller should obtain legal advice from a licensed attorney regarding any matter of concern regarding this Agreement or any documents the Seller may be presented for the sale of the Property.  
c) responsible for ensuring that Seller complies with the duties and deadlines contained in any purchase agreement entered into by Seller and that Seller shall be solely responsible for such performance; and  
d) responsible to monitor, supervise, or inspect any portion of construction or repairs to the Property.

**Commented [JH10]:** This section discusses the areas where Realtors are not allowed to give expert advice concerning property conditions, land and legal matters, and so forth. Sellers should seek expert advice from independent professionals regarding any of these matters.

**11. Marketing the Property** – Seller gives Broker/Agent the exclusive right to:

- a) Place a "For Sale" or other appropriate sign(s) on the Property  Yes  No
- b) Advertise as Broker/Agent deems best  Yes  No
- c) Publish the Property information in the MLS  Yes  No
- d) Place a lockbox on the Property\*  Yes  No

**Commented [JH11]:** This sections seeks to obtain Seller approval to market the property in various ways.

e) Allow use of Property information when necessary or desirable in marketing the Property  Yes  No

\*Lockboxes – If applicable, Seller hereby releases and holds harmless the MLS and all agents and brokers from all responsibility for situations beyond their control including loss, damage, and theft. A lock box is not intended or designed as a security device.

MLS Disclaimer – Seller instructs Broker/Agent to abide by all rules and regulations of the local and state Association/ Board of REALTORS® and the Valley MLS.

**12. Dual Agency and Conflict of Interest**

Under Alabama law, the Company/ Broker/Agent may legally represent both Seller and the buyer in the same transaction (called Limited Consensual Dual Agency) but may only do so with the written consent of both the buyer and Seller. Since Company/Broker/Agent represents both sides of the same transaction, there may be a limitation on the Company/ Broker/Agent's ability to represent either party fully and/or exclusively. Seller  will allow  will not allow Limited Consensual Dual Agency. If Seller and the buyer authorize Limited Consensual Dual Agency, Seller agrees to complete a Limited Consensual Dual Agency Agreement.

**Commented [JH12]:** Limited Consensual Dual Agency is allowed but only with written consent. There may be a limitation to representing either party fully and/or exclusively.

**13. Earnest Money**

Any earnest money provided in connection with a Purchase Agreement will be held in trust according to the terms of the Purchase Agreement. If such Purchase Agreement is accepted and signed by all parties but does not close, a mutual release signed by all parties to the Purchase Agreement will be required to disburse the earnest money. If a dispute over earnest money arises and an Alabama real estate licensee holds the funds, the licensee may (1) retain the funds until there is a written mutual release from all parties; (2) interplead the disputed funds into the appropriate court (in which case the licensee is entitled to deduct court costs, attorney fees, and similar expenses related to the interpleader from the earnest money); or (3) disburse the funds according to the non-appealable order of a court of competent jurisdiction. (See Alabama Real Estate License Law Rule: 790-X-3-.03.)

**Commented [JH13]:** Earnest money may be required under the terms of a purchase agreement to be deposited with an escrow agent. This section details the steps to take to retrieve the earnest money if the contract is terminated or what to do if there is a dispute over the earnest money.

**14. Improvements and Appurtenances**

The purchase price will include all dwellings, storage buildings, improvements, and appurtenances that are presently in and on the Property. Any of these items that are to be excluded from sale, or additional items that are to be included in the sale, must be agreed upon in the Purchase Agreement to be binding. The following is for planning purposes only:

Additional items to remain: \_\_\_\_\_.

These items are to be excluded from sale: \_\_\_\_\_.

**Commented [JH14]:** This section provides clarity for what is included in the purchase price. Items that are excluded and included must be agreed upon in the Purchase Agreement to be binding.

**15. Lead-Based Paint**

If Property is a residential dwelling, was it constructed prior to 1978?  Yes  No.

If yes, federal law requires a lead-based paint disclosure statement to be provided to prospective buyers.

**Commented [JH15]:** Here is the procedure to follow if the residential dwelling was constructed prior to 1978.

**16. Wood Infestation Report**

Under the terms of the Purchase Agreement, Seller may be required to furnish the buyer with a written Alabama Wood Infestation Report issued by a licensed pest control company. The Wood Infestation Report

**Commented [JH16]:** The terms of the Purchase Agreement will dictate the procedure for termite issues.

must be dated according to the terms of the Purchase Agreement. Seller  does  does not have a current termite contract in place for this Property. Seller  is  is not aware of any previous termite infestation or damage.

**17. Disclosure**

Seller authorizes Broker/Agent to disclose the following, as required by law: 1) known defects and conditions that affect health/ safety and are not known or readily observable to the buyer; 2) disclosures that must be provided when Broker/Agent has a fiduciary duty to the buyer; and 3) instances of specific inquiry by the buyer. Broker/Agent does not have the responsibility to discover latent defects.

*Property Disclosure* – Seller  will provide  will not provide a Property Condition Disclosure Statement. (NOTE: Neither Alabama law nor REALTOR® Association rules require a Property Condition Disclosure Statement.)

*Flood Plain* – Seller  is  is not aware whether the Property lies in a flood plain. Seller  does  does not presently have a flood insurance policy.

*Community Associations* – Property  is  is not subject to Homeowner (“HOA”)/ Condominium Association/ other similar association fees  unknown. If Property is subject to association fees, Seller agrees 1) to complete a Community Association Disclosure and 2) to pay any outstanding fees prior to or at closing.

**18. Agency/ Brokerage Services Disclosure**

As required by Alabama law, Broker/Agent has provided Seller with a Real Estate Brokerages Services Disclosure Form describing the alternative types of brokerage services available and the specific types of brokerage services that are available from Broker/ Agent.

**19. Seller’s Warranty of Authority and Accuracy; Seller’s Hold Harmless**

Seller warrants that (s)he has complete authority to sell Property and to convey title by deed. If the title to Property is not merchantable, Broker/Agent may terminate this Agreement. If Seller has an executed Purchase Agreement for Property but has not closed with the owner of title, Seller warrants that this assignment of equitable title has been approved by the holder of legal title to the Property, and any legal documents related to the Property (covenants, HOA documents, etc.) will not prevent transfer of title to another buyer.

Seller has reviewed this Agreement. All information relating to the Property was provided by Seller and is accurate and complete to the best of Seller’s knowledge. Seller agrees to defend, indemnify, and hold harmless Company/Broker/Agent and the above-named MLS against any claims (including court costs and attorney’s fees) or other damages or expenses relating to an actual or alleged inaccuracy or incompleteness of the information provided by the Seller. Seller agrees that Broker/Agent will not be responsible for damage to personal or real property due to vandalism, theft, freezing water pipes, or any other damages or loss, including but not limited to death or personal injuries sustained on the Property, attorney fees, and court costs. If Property is to be vacant, Seller agrees to obtain vacancy insurance.

**Commented [JH17]:** Even though Alabama is a Caveat Emptor state, this section allows the Seller to authorize the Broker/Agent to disclose the items herein as required by law.

**Commented [JH18]:** As required by Alabama law, the RECAD must accompany all real estate agreements necessary for Broker/Agent engagement. It describes the specific types of brokerage services that are available from the Broker/Agent.

**Commented [JH19]:** The Seller warrants that (s)he has complete authority to sell the Property, to convey title by deed, and that the information provided by the Seller pertaining to the property is accurate and complete.

## 20. Mediation and Arbitration/ Waiver of Trial by Jury

All claims relating to this Agreement shall be submitted to mediation with a mutually agreed upon mediator within forty-five (45) days of notice of the claim. In the event no mediated resolution is reached within sixty (60) days of the party's notice of the claim, all claims will be resolved by binding arbitration in Alabama. The parties shall work together in good faith to select one (1) mutually acceptable arbitrator, who is an Alabama licensed attorney in good standing with the State Bar of Alabama, to administer and conduct the arbitration. If the parties cannot mutually agree on an arbitrator, the arbitrator shall be selected as follows: Each party shall simultaneously exchange with the other party a list of three arbitrators acceptable to that party to administer and conduct the arbitration. If there is only one (1) arbitrator that is common to both lists, that arbitrator shall administer and conduct the arbitration. If there is more than one arbitrator that is common to both lists, the parties shall either mutually agree on which arbitrator shall be selected or flip a coin to select the arbitrator. If there is not initially a common arbitrator on the lists, the parties shall repeat the process by expanding their lists by two each time until there is a common name on the lists selected by the parties. The arbitration shall be conducted in accordance with the Alabama Supreme Court Commission on Dispute Resolution Guidelines for Arbitration Proceedings.

### **Each party acknowledges that (s)he is knowingly waiving the right to a trial by jury relating to all claims.**

All disputes concerning the arbitrability of any claim or the enforceability or scope of this provision will be subject to the same binding arbitration. The losing party will bear the cost of the arbitrator and any attorney's fees incurred in pursuing or defending the claim or dispute; provided the arbitrator will have the authority to equitably apportion and award costs as a part of this award to the extent authorized by applicable law. The arbitrator will follow the law applicable to any such claim. The determination of the arbitrator will be final, binding on the parties, non-appealable, and may be entered in any court of competent jurisdiction to enforce it. All claims shall be brought by a party in his or her individual capacity and not as a plaintiff or class member in any purported class or representative proceeding. The arbitrator may not consolidate more than one person's claims and may not otherwise preside over any form of a representative or class proceeding. The Parties acknowledge and agree that the transactions contemplated by and relating to this Agreement, which may include the use of materials or components which are obtained from out-of-state, and which otherwise include the use of interstate mails, roadways and commerce, involve interstate commerce, as that term is defined in the Federal Arbitration Act, 9 U.S.C. § 2. Notwithstanding anything to the contrary contained herein, this agreement to arbitrate shall not apply to: (1) any claim regarding the handling and disbursement of earnest money; and (2) any claim of Broker regarding the entitlement to or the non-payment of a real estate commission hereunder.

## 21. Sole Agreement

This is the sole agreement between the Parties. Any statements, representations, or promises not included in this Agreement or an attachment will be of no effect. Seller warrants that no prior agreement exists on the Property, whether a listing agreement, purchase agreement, or otherwise, that has not expired or been terminated. Any amendments must be in writing and signed by all Parties.

## 22. Additional Provisions

**Commented [JH20]:** These sections spell out the steps of action to settle any disputes that cannot be resolved between the Parties personally. The Parties agree to use mediation first and then arbitration rather than a trial by jury.

**Commented [JH21]:** Any statements, representations, or promises not included in this Agreement or an attachment will be of no effect. Any amendments to this Agreement must be in writing and signed by all Parties.