

GUIDELINES TO EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT (Standard Form 101)

The Exclusive Right to Sell Listing Agreement should be used by agents to set the contractual terms of agency for a seller-client seeking to sell residential property with a dwelling on it. If a seller is seeking to list vacant land intended for residential use, then Standard Form 103 should be used instead. Agents should cover the topics in this form carefully with Seller. Doing so will help ensure that material facts are both discovered and later disclosed in the listing. Should an agent discover that a material fact might exist on the property to be listed, the agent should do further investigation to determine whether the material fact exists and disclose it if it does.

Name of Seller and Firm – Fill in the complete legal name of each seller. Do not use shorthand names, abbreviations, or combine spouse's names. Fill in the complete name of the agent's firm, not the agent's name, since the agreement is between Seller (all the sellers) and Firm. If Seller is a corporation, limited liability company, trust, or other legal entity, the entity should be named as Seller and a duly authorized officer, manager, trustee, or other legal representative of the entity should sign this Agreement on the entity's behalf. *Dead people cannot own property.* If the Property is part of an estate, consult the Estate Property Flow Chart (Form 10-T) and consult with an attorney to determine who Seller is.

1. **Services Provided**: This section describes the exclusive services provided by the Firm. Importantly, it retains the obligation that Seller cooperate with Firm and that Firm can assign another agent at any time.
2. **Term of Agreement**: Insert the date the agency agreement will expire in the blank. The Real Estate Commission requires that any written agreement for brokerage services "provide for its existence for a definite period of time." Although there is no rule which limits the period of time that the agreement can be in effect, the period of time should be reasonable, taking into account the period of time within which the objective of the agreement—selling the Seller's property—can probably be accomplished. The Real Estate Commission rules also provide that an agreement for brokerage services cannot contain a provision that would require notice prior to termination. Although the form does not contain any such provision, agents are cautioned against inserting any "prior notice" or "automatic renewal" provision in the form.

If Seller is under contract when this agency agreement is set to expire, every effort should be made to extend the agency agreement to complete the transaction. If Seller refuses to extend, Firm still has a right to be paid so long as section 7 is satisfied. However, in order for an agent to have a clear right to assist Seller all the way to the end of the transaction, a written agency agreement should be in effect.

3. **Property**: Describe Seller's Property in as much detail as possible. A copy of the Seller's deed may be attached as an exhibit. Do not attempt to complete a metes and bound description as an exhibit. An attorney should be consulted if a metes and bounds description is necessary or if the information available is inadequate to clearly describe the Property.

This section has a box that can be checked to include additional parcels or lots. It is important to note, however, that additional parcels will be included in the definition of "Property" in this agency agreement. This means that multiple parcels must be sold at the same time and in the same transaction and for one price. If Firm is going to be paid on each parcel separately, or if each parcel will have different closing dates or other custom terms, then separate listing agreements should be used or a custom addendum should be attached to this form.

Agents should note that when it is time to write a purchase contract, it must similarly be adjusted to accommodate multiple parcels. Standard Form 2-T has an additional parcel checkbox like this form, which can be used if all parcels will be sold at the same time and for one price. An attorney-drafted custom addendum should be used if the transaction involves multiple parcels that have multiple purchase prices, differing closing dates, or other custom terms.

4. **Fixtures**: It is not necessary to cross out items that are listed in subsection (a) that are not on the Property. Any item that is leased or not owned by Seller must be identified in the blank space in subsection (b). Any fixture owned by Seller that will not convey must be identified in the blank space in subparagraph (c). If in doubt as to whether an item that Seller wishes to exclude from any sale is or is not a fixture, it is advisable to list the item to avoid a later dispute.

If Seller wishes to put conditions on such fixtures, for example if Seller will convey solar panels only if a buyer can assume the associated loan with the solar panels, then such conditions should be identified in section 20 of the form. *However*, more importantly, such conditions must be included later in the purchase contract by a custom addendum. Any conditions in this form will not be binding on a buyer, because this agency contract is only between Seller and Firm.



5. **Listing Price:** Insert the list price for the Property and indicate what terms – including the types of financing a buyer might seek – Seller is willing to accept by checking the appropriate box. *Not all properties qualify for every type of financing.* Agents should have detailed discussions with Seller about topics such as the solvency of any HOA, problems with the property’s foundation, and other major issues that may hinder the Property from qualifying for a USDA, FHA, VA, or even a conventional loan.

If FHA or VA financing may be sought, Seller should be made aware of the terms of the FHA/VA Financing Addendum and that appraisals by such lenders might be binding for a period of time in the future.

6. **Marketing:** Seller must initial either “Public Marketing” or “Office Exclusive” in subsection (a). If “Public Marketing” is selected, check all applicable boxes. Note that checking the “Open Houses” box permits Firm to hold open houses at such times as Firm and Seller may agree but does not require that open houses be held. The beginning of subsection (a) states that Seller “authorizes” Firm to conduct the marketing next to the boxes, but it does not state that Firm “must” do what is beside the boxes.

If “Coming Soon” Advertising is checked, also check whether a copy of any listing service restrictions and requirements pertaining to such advertising are or are not attached to the this form, and the date that the status of the listing will be changed to “active.”

With respect to the “General Advertising” box, if the Seller desires to limit or prohibit such advertising, the Seller must complete a separate form confirming the extent to which such advertising will be limited or prohibited. Standard Form 105 may be used for this purpose. As set out in Form 105, Seller should be clear that prohibiting automated estimates of the market value of the Property and third-party comments about the Property on broker IDX and VOW web sites will NOT prevent those from appearing on “third-party” web sites such as Zillow, Trulia, and Realtor.com.

In subsection (b), check the appropriate box to indicate whether Seller authorizes Firm to place lock or key boxes on the Property.

7. **Fees and Costs for the Services:** Prior versions of Form 101 contained a process where Firm charged a total listing fee to Seller and then shared part of that listing fee with cooperating agents, if authorized by Seller. The most recent version dramatically changes that process to conform better with MLS rules.

(b) – In this subsection, only specify Firm’s Fee, and do not include any amount intended for cooperative compensation. If there are multiple parcels that have different fees per parcel, then Firm should create a custom addendum. Otherwise, Firm’s Fee should include the total amount Firm expects to receive for the Property, as that term is defined in section 3, which can be one or several parcels. Any transaction fees, or other Firm fees, should also be included in this section.

(c) – In this subsection, only specify the amount of cooperative compensation, if any, that will be offered. The checkboxes in this subsection provide Firm and Seller the ability to offer and pay cooperative compensation the same way cooperative compensation is negotiated in Form 220 (Cooperative Compensation Agreement).

Subsections (d) and (e) specify when Firm’s Fee is earned and due and payable, but not cooperative compensation. Cooperative compensation must be paid as required in subsections (c)(i)-(ii).

(g) – If Seller expects to sell the Property as outlined in this subsection, Firm will likely need the assistance of an attorney for the purchase.

8. **Home Warranty:** Indicate whether the Seller will or will not agree to obtain and pay for a home warranty by checking the appropriate box. If the Seller will provide a home warranty, insert the maximum amount that the Seller will pay, and insert the amount of any fee that the home warranty company will pay to the Firm for its assistance in obtaining the home warranty in the blank. If the Seller will not pay for a home warranty at the time of listing, insert “N/A” in the blank.
9. **Pre-Marketing Home Inspection:** Check the appropriate box whether Seller will obtain a home inspection. It should be noted that the listing firm is advising Seller to obtain a home inspection in order to: (i) provide proper evaluation of the condition of the Property; (ii) to allow for efforts to enhance its marketability, including appropriate pricing; and (iii) to reduce concerns of prospective buyers. It is generally recommended that a buyer have their own inspection performed and buyer should not rely upon a seller’s inspection report. Any material facts in Seller’s inspection report must be disclosed by Firm.
10. **Earnest Money Deposit and Due Diligence Fee:** Check the boxes in this section as appropriate. Previous versions of Form 101 automatically split the Earnest Money in the case of a buyer breach. Now, it is a negotiable term with the checkboxes.

11. **Dual Agency:** This dual agency section is significantly shorter than the old version, but it contains the same principles and operates similarly to the old form. The beginning paragraph is meant to provide a consumer-accessible primer on dual agency, but agents should have a more in-depth discussion as necessary.

Choose only one of the first two initial lines, and, if dual agency is permitted, then initial only one of the next three initial lines.

The Real Estate Commission expects agents to agree to a specific form of dual agency when an agency agreement is signed. This section should not be treated like a Working With Real Estate Agents Disclosure form. This means for the second section of initial lines, Seller and Firm must decide whether Firm is going to practice simple dual agency with either one or two agents in Firm, or designated dual agency with two agents. If Seller and Firm agree to change dual agency later, Form 710 may be used or Seller can provide written direction.

12. **Disclosures and Representations:** This paragraph contains numerous representations by the Seller. The listing agent should carefully go over each one with Seller. The following are a few items to cover in particular:

(b) – Although not required, it is strongly recommended that Seller be given a sample copy of the Offer to Purchase and Contract form at the time the listing agreement is entered into, as well as a sample copy of the Professional Services Disclosure and Election form (Standard Form 760). The checkboxes should be checked to confirm that Seller has been given copies of these documents.

(c) – Check the applicable box disclosing how long Seller has owned the Property or whether Seller owns the Property at the time Seller executes the listing agreement. Seller's term of ownership may affect a buyer's ability to obtain mortgage financing. Some mortgage lenders require proof that the property is not being flipped from one purchaser at a lower price to another purchaser at a higher price within a short period of time.

(e) – If legal access to a public right-of-way is by private road or easement, check appropriate box whether there is a road maintenance agreement, and obtain a copy of the agreement or other information from Seller if such an agreement exists.

(f) – If there is a manufactured (mobile) home(s) on the Property that Seller intends to include as a part of the sale, insert the VIN(s) in the blank, if known, or, if unknown, insert other description of manufactured (mobile) home(s).

(g) – If applicable, insert the name, address, and telephone number of the president of the owners' association or the association manager and the owners' association website address, if any, in the blank space provided, for any owners' association regulating the Property.

(k) – The appropriate boxes should be checked based upon Seller's instructions. Information and flood maps are available at www.fema.gov. Information about the state of North Carolina's Floodplain Mapping Program is available online at www.ncfloodmaps.com.

(l) – The checkboxes should be completed based on Seller's knowledge of synthetic stucco.

(m) – Check the appropriate box in the first sentence. If there is termite bond on the Property, also check the appropriate box in the second sentence. If there is a termite bond on the Property and if the bond is transferrable, the transfer cost and vendor should be inserted in the blank.

(n) – A bankruptcy proceeding may, but does not necessarily, affect the ability of Seller to market and sell the Property without the permission of the bankruptcy trustee or the bankruptcy court. If Seller is in bankruptcy or is contemplating bankruptcy, it is strongly recommended that the Firm seek competent legal advice prior to taking the listing.

(p) – In assessing the liens affecting a property, be sure to cover each topic in this subsection in detail. UCC liens (such as HVAC, solar panels, or other fixture liens) can be hard to assess and will have a big impact on a purchase contract later.

(q) – Check appropriate box whether the Property is subject to any lease(s), and if so, obtain a copy of the lease agreement(s) or a written statement of the terms of any oral lease. Agents may also consider giving Seller a sample copy of Form 2A11-T (Additional Provisions Addendum) and explaining additional contract terms that may pertain to leases.

(r) – Check appropriate box whether an FHA appraisal has been performed on the Property within four months of the commencement date of the listing agreement. It is important to know if an FHA appraisal has been recently performed as it is binding for a period of time following the date of the appraisal for FHA financing.

(s) – Check the appropriate box whether there is or is not a fuel tank(s) on the Property. If there is a fuel tank(s) on the Property, fill in the blank as to whether the tank is currently in use and, if not, indicate whether it is closed and the method used to close the tank. Also, indicate the ownership, location, type of fuel, refilling schedule and name and contact information of the fuel provider for each tank. According to the Real Estate Commission, the existence of an underground fuel tank is a material fact that must be disclosed by a real estate agent who knows or reasonably should know of the tank's existence.

(u) – Any governmental compliance issues should be discussed in detail. Agents should keep in mind that NCR's standard form purchase agreements, Forms 2-T and 12-T, contain provisions that permit a buyer to potentially terminate the contract if violations of governmental compliance are not disclosed prior to the Seller's receiving an offer to purchase on those forms.

13. **Seller's Duties:** Though this section is short, it is an important one. Agents should cover each duty and make sure Seller can comply. If not, then Firm may need to examine whether entering into an agency agreement is appropriate with Seller.
14. **Surveillance; Photographs; and Video:** This section should be thoroughly discussed with Seller.
15. **Other Professional Advice:** This section should be thoroughly discussed with Seller.
16. **Seller Inspection Costs:** Inspection costs and professional fees incurred or ordered by Seller as part of selling the Property must be paid by Seller and not Firm. If Firm will pay for such costs, then they should be specifically identified and explained in section 20. NCR's standard purchase contracts obligate the buyer to pay inspection costs incurred as part of Due Diligence, which are separate from this obligation.
17. **Confidentiality:** Firm and Seller have separate duties when it comes to confidentiality. This is because the License Law and the Code of Ethics impose certain duties on Firm, but not on Seller.
18. **WIRE FRAUD WARNING:** This section should be thoroughly discussed with Seller.
19. **Additional Terms:** Any additional terms, or terms different than the pre-printed language of the form, should be explained here. Since Firm is a party to this contract, then Firm may draft contract terms to be inserted here or in an addendum without committing the unauthorized practice of law. That said, if there is complexity involved in the additional terms, then an attorney may be necessary.
20. **Merger; Termination; Modification; Assignment; Enforcement; Attorney's Fees; and Governing Law:** All changes, additions, or deletions made to the Agreement after the Effective Date must be in writing and signed by both Seller and Firm, including any mutual termination of this agency agreement. Standard Form 710 can be used to amend this agency agreement, and Standard Form 720 can be used to terminate it.
21. **NONDISCRIMINATION:** This section should be thoroughly discussed with Seller. Firm should in particular discuss the potential that some buyers may submit letters with their offers to entice a seller to choose their offer. They are usually personal letters to sellers expressing why they wish to purchase the seller's property. Such letters often contain personal information and reveal characteristics of the buyer which could be used, knowingly or through unconscious bias, as a basis for the seller's decision to accept or reject an offer that may violate State and Federal Fair Housing laws, or used to form the basis for a claim that the seller, and possibly the seller's agent, have violated Fair Housing laws. In order to avoid potential liability for unlawful discrimination as well as the appearance of impropriety, Seller should discuss with Firm how any such letters that may be submitted will be handled.

Signatures: All parties with an ownership interest must be named and sign as "Seller" (see "Names of Seller and Firm" on page 1). A married seller's spouse should join in the execution of the listing agreement and any purchase agreement, even if the spouse is not a record owner of the Property. The non-owner spouse holds a potential "marital life estate" and a right to dissent from the will under North Carolina law and must sign the deed in order for the owner-spouse to convey clear title. The signature of the non-owner spouse on the contract will obligate that spouse to join in signing the deed. If married sellers have executed and recorded a pre-nuptial agreement, post-nuptial agreement, or a free trader agreement, consult an attorney to determine who must sign.