

LISTING CONTRACT

© Copyright 2011, 2017 by Minnesota State Bar Association, Minneapolis, Minnesota. No copyright is claimed for statutory text. BEFORE YOU USE OR SIGN THIS CONTRACT, YOU SHOULD CONSULT WITH A LAWYER TO DETERMINE THAT THIS CONTRACT ADEQUATELY PROTECTS YOUR LEGAL RIGHTS. Minnesota State Bar Association disclaims any liability arising out of use of this form. **THIS LISTING CONTRACT ("CONTRACT") [ALSO KNOWN AS "LISTING AGREEMENT"] HAS SIGNIFICANT LEGAL IMPORTANCE AND SHOULD BE REVIEWED BY A REAL ESTATE LAWYER PRIOR TO SIGNING. MINNESOTA LAW PROHIBITS BROKERS AND SALESPERSONS FROM GIVING LEGAL ADVICE OR OPINIONS CONCERNING LEGAL RIGHTS OR OBLIGATIONS OR THE LEGAL EFFECTS OF THIS CONTRACT.**

SEE IMPORTANT MINNESOTA STATUTE CONCERNING LISTING AGREEMENTS ON PAGE 5.

DEFINITIONS. This Contract involves the Property (together with improvements) located at: _____

legally described as: _____ (Property).

"I" and "Me" mean: _____ (SELLER).

"You" means: (SALESPERSON) acting on behalf of: _____ (REAL ESTATE BROKER).

TERMS. You may offer the Property for sale until the date of expiration for a price of not less than \$_____ **CASH**, or **OTHER:** _____.

EXPIRATION. This Contract expires at 11:59 p.m. on _____, 2_____. Either You or I may cause this Contract to expire sooner by giving 21 days advance written notice to the other party of the earlier expiration date. Early expiration shall not affect rights under a valid purchase agreement and shall not affect any compensation to be earned as a result of any such purchase agreement transaction being successfully closed.

SELLER DUTIES. I will give You all government notices, and any additional information You request, relevant to the sale of the Property. I will cooperate with You in selling the Property. I will perform obligations agreed to in the purchase agreement. I will provide and pay for any inspections and reports required by any governmental authority. If You sell the Property, You may notify the Multiple Listing Service and its members of the price and terms of the sale. I authorize You to obtain information about any existing financing on the Property.

SALESPERSON / BROKER SERVICES AND DUTIES. You will offer the Property for sale. You will use your best efforts to advertise, market and show the Property at the best price and terms. You will represent my best interests at all times and place my interests above all others, especially your own. You will give Me your undivided loyalty, and owe to Me ALL the duties that an agent owes his or her principal under the common law of agency except as modified by the mandatory disclosure requirements found at Minnesota Statutes Sections 82.68 and 82.69. Your duties and liabilities under this Contract are greater than those set forth in Minnesota licensing statutes.

CAUTION: DUAL AGENCY WILL REDUCE SIGNIFICANTLY THE LEVEL OF SERVICES AND DUTIES LISTED ABOVE.

MARKETING. You will do the following [check all those applicable]:

- Place a picture advertisement in the local multiple listing services within _____ hours from the signing of this Contract until its expiration.
- Place _____ (# of) picture ads per month in _____.
- Conduct _____ (# of) real estate salespersons open houses per month.
- Conduct _____ (# of) public open houses per month.
- Perform additional marketing items as shown on Page 3 of this Contract.

You may list other properties during the term of this Contract.

COMPENSATION.

NOTICE: THE COMPENSATION FOR THE SALE, LEASE, RENTAL OR MANAGEMENT OF REAL PROPERTY SHALL BE DETERMINED BETWEEN EACH INDIVIDUAL BROKER AND THE BROKER'S CLIENT.

A. I will pay You compensation (subject to the conditions of this Contract) upon the successful closing of the sale of the Property as follows (choose 1, 2 or 3):

1. _____ A commission of _____% of the selling price, except as adjusted herein.
2. _____ \$_____ flat fee.
3. _____ Other: _____.

B. In the following circumstances your compensation will be adjusted:

1. You agree to pay not less than _____% of your compensation to a cooperating broker who finds a buyer who closes on the sale of the Property. I have the option of paying that broker at closing and reducing your compensation by that amount.
2. **DUAL AGENCY. IF YOU ARE A DUAL AGENT, YOUR LEVEL OF SERVICES AND DUTIES TO ME WILL BE REDUCED SIGNIFICANTLY.**

a. If You and another salesperson are DUAL AGENTS in this transaction, your compensation will be [choose one]:

- _____ % of the selling price (the Consumer Federation of America recommends 4-4.5%) OR
- \$_____ (for flat fee compensation contracts).

Initial each page: _____

- b. If You are a DUAL AGENT and there are no other salespersons in this transaction, your compensation will be [choose one]:
 _____ % of the selling price (the Consumer Federation of America recommends 2.5-3%) OR
 \$ _____ (for flat fee compensation contracts).
- 3. If You are NOT a DUAL AGENT and there are no other salespersons in this transaction, your compensation will be [choose one]:
 _____ % of the selling price (the Consumer Federation of America recommends 3-4%) OR
 \$ _____ (for flat fee compensation contracts).
- 4. If the sales price is \$ _____ or _____ % less than your recommended price of \$ _____, your compensation will be [choose one]:
 _____ % of the selling price OR
 \$ _____ (for flat fee compensation contracts).

REFERRAL AND OTHER FEES. You warrant and represent to Me and covenant that no fees, except as disclosed in this Contract, will be paid by You to, or received by You from, any broker, real estate salesperson, banker, closing services company, title insurance company, or any other person or entity, or pursuant to any controlled business arrangements **EXCEPT** [check as appropriate and complete for any exceptions]:

- 1. **NONE.**
- 2. \$ _____ or _____ % of the selling price, to be paid by You to (names and addresses): _____
- 3. \$ _____ or _____ % of the selling price, to be received by You from (names and addresses): _____

OVERRIDE CLAUSE AND PROTECTIVE LIST. I will pay your compensation after the expiration of this Contract without a sale if within _____ (not to exceed six months):

- 1. I successfully close a sale of the Property to a person who physically toured the Property with You; and
- 2. That person is properly on a protective list which You give Me within 72 hours after the expiration of this Contract; and
- 3. That person is not on my exclusion list.

However, this Override Clause will not be effective, and I will not be obligated to pay You compensation if I have executed another valid listing agreement pursuant to which I am obligated to pay a fee or commission to another licensee for the sale, lease, or exchange of the Property.

EXCLUSION LIST. I will not owe You any compensation if I sell the Property to any of the following:

- 1. My parents, children, siblings, grandparents, grandchildren, first cousins, aunts or uncles, nephews or nieces or any other relatives by operation of law.
- 2. Neighbors named here: _____
- 3. Employees of the companies named here: _____
- 4. Other persons named here: _____
- 5. Anyone who responds to my marketing efforts.

IF THIS PROVISION #5 IS DELETED, I MIGHT OWE YOU COMPENSATION EVEN IF I FIND THE BUYER.

- 6. Anyone who responds to marketing efforts of another real estate broker, who has a valid listing contract with me.
IF I HIRE MORE THAN ONE REAL ESTATE BROKER, BOTH LISTING CONTRACTS MUST CONTAIN THIS PROVISION #6 AND THIS LISTING CONTRACT FORM MUST BE USED. IF THIS PROVISION #6 IS DELETED, I SHOULD NOT SIGN ANOTHER LISTING CONTRACT DURING THE TERM OF THIS CONTRACT OR I MAY OWE MORE THAN ONE COMMISSION.

CLOSING SERVICES. I understand that You or your broker may own or be affiliated with a real estate closing agent. Identify any related or controlled real estate closing agents that might provide closing services on this sale. I understand that I must indicate in writing whether it is acceptable to have You arrange for closing services [check one]:

- I wish to have You arrange for the closing.
- I will arrange for the closing.

Identify all relationships with real estate closing agents: _____

I understand that I might not have to incur costs for closing services. I understand that I may hire a lawyer to provide my closing services. You will provide me with three competitive estimates (including an estimate from the Buyer's or Lender's closer, if any) for my costs of closing services, if any.

ENFORCEMENT. If You bring an action to enforce this Contract, You will not file a notice of lis pendens or cause any lien or other cloud to appear in the land records.

NONDISCRIMINATION. In the marketing and sale of the property, neither You nor I will discriminate on the basis of race, color, creed, religion, national origin, sex, sexual preference, marital status, status with regard to public assistance, disability, whether physical or mental, family status, or any other legally protected status.

SELLER STATUS.

- Citizen of the United States; _____ married.
- Partnership formed under the laws of: State of _____.
- Estate or Trust: identify: _____.
- Corporation formed under the laws: State of _____.
- Other business entity formed under the laws of: State of _____, type of entity: _____.
- Foreign person. Country of citizenship: _____.
- Business entity not formed under the laws of the United States. Country of business entity: _____.

Initial each page: _____

132
133
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DUAL AGENCY DISCLOSURE. I understand that I have the right to have you represent only me in this sale. I have no obligation to agree to a dual agency representation where you would also represent the buyer. I understand that Minnesota law does not require me to sign the Disclosure Statement in the box below or to make any decisions at this time about dual agency. I also understand that, "Dual agency requires the informed consent of all parties..." including me. (Minn. Stat. § 82.67, Subd. 3). If I do not sign the Disclosure Statement below, I am leaving the decision about dual agency to a later date when I may have information about my choices. I understand that leaving this unsigned will not prevent you from showing the property to your customers (prospective buyers).

DISCLOSURE STATEMENT. {The following statement is reprinted from Minnesota Statutes Section 82.66, Subd. 1(b)(9).}

If a buyer represented by broker wishes to buy the seller's property, a dual agency will be created. This means that broker will represent both the seller(s) and the buyer(s), and owe the same duties to the buyer(s) that broker owes to the seller(s). This conflict of interest will prohibit broker from advocating exclusively on the seller's behalf. Dual agency will limit the level of representation broker can provide. If a dual agency should arise, the seller(s) will need to agree that confidential information about price, terms, and motivation will still be kept confidential unless the seller(s) instruct broker in writing to disclose specific information about the seller(s). All other information will be shared. Broker cannot act as a dual agent unless both the seller(s) and the buyer(s) agree to it. By agreeing to a possible dual agency, the seller(s) will be giving up the right to exclusive representation in an in-house transaction. However, if the seller(s) should decide not to agree to a possible dual agency, and the seller(s) want broker to represent the seller(s), the seller(s) may give up the opportunity to sell the property to buyers represented by broker.

Seller's Instructions to Broker:

Having read and understood this information about dual agency, seller(s) now instructs broker as follows *[check one]*:

Seller(s) will agree to a dual agency representation and will consider offers made by buyers represented by broker.

Seller will not agree to a dual agency representation and will not consider offers made by buyers represented by broker.

Seller

Real Estate Company Name

Seller

By: _____

Salesperson

Date: _____

SELLER: IF YOU DO NOT UNDERSTAND THIS DUAL AGENCY DISCLOSURE, CONSULT WITH YOUR LAWYER BEFORE SIGNING THIS LISTING CONTRACT.

ADDITIONAL TERMS

185
186
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MARKETING PLAN

ACCEPTED BY: _____ **AT (TIME):** _____ : _____ (circle one) a.m. / p.m.
Seller **DATE :** _____ , 2 _____

ACCEPTED BY: _____ **AT (TIME):** _____ : _____ (circle one) a.m. / p.m.
Seller **DATE :** _____ , 2 _____

ACCEPTED BY: _____ **ON BEHALF OF:** _____
Salesperson **Real Estate Broker**
DATE : _____ , 2 _____

SELLER(S): _____
[Print Name(s)]
Address : _____

Phone: _____

REAL ESTATE BROKER: _____
[Print Name]
Agent: _____
Address : _____

Phone: _____

**MINNESOTA STATUTES CHAPTER 82.
REAL ESTATE BROKERS AND SALESPERSONS**

82.66, Subd. 1. Listing agreements.

(a) Requirement. Licensees shall obtain a signed listing agreement or other signed written authorization from the owner of real property or from another person authorized to offer the property for sale or lease before advertising to the general public that the real property is available for sale or lease. For the purposes of this section "advertising" includes placing a sign on the owner's property that indicates that the property is being offered for sale or lease.

(b) Contents. All listing agreements must be in writing and must include:

- (1) a definite expiration date;
- (2) a description of the real property involved;
- (3) the list price and any terms required by the seller;
- (4) the amount of any compensation or commission or the basis for computing the commission;
- (5) a clear statement explaining the events or conditions that will entitle a broker to a commission;
- (6) a clear statement explaining if the agreement may be canceled and the terms under which the agreement may be canceled.
- (7) information regarding an override clause, if applicable, including a statement to the effect that the override clause will not be effective unless the licensee supplies the seller with a protective list within 72 hours after the expiration of the listing agreement;
- (8) the following notice in not less than ten point boldface type immediately preceding any provision of the listing agreement relating to compensation of the licensee: "**NOTICE: THE COMPENSATION FOR THE SALE, LEASE, RENTAL, OR MANAGEMENT OF REAL PROPERTY SHALL BE DETERMINED BETWEEN EACH INDIVIDUAL BROKER AND THE BROKER'S CLIENT.**";
- (9) for residential property listings, the following "dual agency" disclosure statement:
[The statutory disclosure statement is contained on page 3 of this Listing Contract.]
- (10) a notice requiring the seller to indicate in writing whether it is acceptable to the seller to have the licensee arrange for closing services or whether the seller wishes to arrange for others to conduct the closing; and
- (11) for residential listings, a notice stating that after the expiration of the listing agreement, the seller will not be obligated to pay the licensee a fee or commission if the seller has executed another valid listing agreement pursuant to which the seller is obligated to pay a fee or commission to another licensee for the sale, lease, or exchange of the real property in question. This notice may be used in the listing agreement for any other type of real estate.

(c) Prohibited provisions. Except as otherwise provided in paragraph (d), clause (2), licensees shall not include in a listing agreement a holdover clause, automatic extension, or any similar provision, or an override clause the length of which is more than six months after the expiration of the listing agreement.

(d) Override clauses. (1) Licensees shall not seek to enforce an override clause unless a protective list has been furnished to the seller within 72 hours after the expiration of the listing agreement. (2) A listing agreement may contain an override clause of up to two years in length when used in conjunction with the purchase or sale of a business. The length of the override clause must be negotiable between the licensee and the seller of the business. The protective list provided in connection with the override clause must include the written acknowledgment of each party named on the protective list, that the business which is the subject of the listing agreement was presented to that party by the licensee.

(e) **Protective lists.** A broker or salesperson has the burden of demonstrating that each person on the protective list has, during the period of the listing agreement, either made an affirmative showing of interest in the property by responding to an advertisement or by contacting the broker or salesperson involved or has been physically shown the property by the broker or salesperson. For the purpose of this section, the mere mailing or other distribution by a licensee of literature setting forth information about the property in question does not, of itself, constitute an affirmative showing of interest in the property on the part of a subsequent purchaser. For listings of nonresidential real property which do not contain the notice described in paragraph (b), clause (11), the protective list must contain the following notice in boldface type: **"IF YOU RELIST WITH ANOTHER BROKER WITHIN THE OVERRIDE PERIOD AND THEN SELL YOUR PROPERTY TO ANYONE WHOSE NAME APPEARS ON THIS LIST, YOU COULD BE LIABLE FOR FULL COMMISSIONS TO BOTH BROKERS. IF THIS NOTICE IS NOT FULLY UNDERSTOOD, SEEK COMPETENT ADVICE."**