

Exclusive Seller Brokerage Agreement

This form was developed by the Real Estate Council of Alberta for use in residential real estate.

Seller: _____ **and** _____ **Seller's Brokerage:** _____

Name _____ Brokerage Name _____
 Name _____
 Address _____ Address _____ (postal code)
 Phone: _____ Fax: _____ Phone: _____ Fax: _____
 Email: _____ Email: _____

In consideration of the Brokerage listing the Seller's property (the Property) known as: _____

Plan: _____ Block: _____ Lot/Unit: _____

Other: _____ the Seller hereby gives the Brokerage the exclusive right to offer for sale the Property for the price of _____

Dollars (\$) _____) including GST, if applicable, and upon the following terms:

1. TERM OF AGREEMENT

1.1 This Agreement will commence at _____ a.m./p.m. on the _____ day of _____, 20____ and will expire at _____ a.m./p.m. on the _____ day of _____, 20_____.

2. GST

2.1 The Seller acknowledges and agrees that it is the sole responsibility of the Seller to seek expert advice (e.g. an accountant) regarding the applicability or payment of GST on the sale of the property. The Seller further acknowledges that neither the brokerage nor any of its representatives has made any representations or recommendations regarding the applicability or payment of GST on the sale of the property and agrees that they will not be held liable for same.

3. BROKERAGE'S MANDATE

- 3.1 **Obligations:** The Brokerage will:
- (a) obey the lawful instructions of the Seller;
 - (b) exercise reasonable care and skill in the performance of this Agreement;
 - (c) use best efforts to market the Property and to promote the interests of the Seller and, subject to clause 14, act only as the Seller's agent;
 - (d) subject to clause 14, be loyal to the Seller and act in the Seller's best interests at all times;
 - (e) make timely and full disclosure of all conflicts of interest that may arise between the Seller's interests and those of the Brokerage or buyers;
 - (f) at the earliest reasonable opportunity, advise any buyer interested in the Property that the Brokerage is the agent of the Seller;
 - (g) not appoint another brokerage to act on behalf of the Seller as a subagent without the Seller's prior written consent;
 - (h) assist the Seller in negotiating favorable terms and conditions with a buyer;
 - (i) assist the Seller in preparing and complying with a legally binding agreement of purchase and sale for the Property;
 - (j) disclose to buyers all material latent defects affecting the Property known to the Brokerage;
 - (k) hold all monies received by the Brokerage in trust in accordance with the provisions of the *Real Estate Act*;
 - (l) present, in a timely manner, all offers and counter-offers to and from the Seller, even when the Property is already the subject of an agreement of purchase and sale;
 - (m) disclose to the Seller, in a timely manner, all relevant facts affecting the transaction known to the Brokerage;
 - (n) keep the Seller fully informed regarding the marketing of the Property and any resulting transaction;

- (o) advise the Seller to obtain expert advice on matters of importance to the Seller;
- (p) comply with all provisions of the *Real Estate Act* and its regulations, and the rules and bylaws of the Real Estate Council of Alberta; and
- (q) provide a true copy of this Agreement to the Seller after all parties have signed.

3.2 **Other Services:** The Seller requests, and the Brokerage agrees to provide, the following services:

- (a) to list the Property with the listing service(s) of the _____; Yes No
- (b) to cooperate with brokerages working with buyers and to offer such brokerages a portion of the remuneration to which the Brokerage may be entitled under clause 6.1 in the amount of _____ Dollars (\$) _____ or _____ % of that Remuneration; Yes No
- (c) to obtain verification of mortgage, property and school taxes, improvement charges, tenancy information and other similar information with respect to the Property; Yes No
- (d) to advertise the Property; Yes No
- (e) to place a "for sale" sign on the Property; Yes No
- (f) to install a lock-box on the Property to provide access to authorized persons; Yes No
- (g) to show the Property at times acceptable to the Seller and, if any, the tenant(s); Yes No
- (h) to arrange "open house" showings of the Property; and, Yes No
- (i) the services listed below: _____

Seller's Initials

4. SELLER'S CONFIDENTIAL INFORMATION WILL BE PROTECTED

- 4.1 The Brokerage undertakes it will:
- (a) not use confidential information received from the Seller, or obtained as a result of providing services under this Agreement, for its own gain or the gain of its employees or to the prejudice of the Seller's interests; and,
 - (b) not disclose, any confidential information concerning the Seller to any other Brokerage or other person unless authorized by the Seller or required by law.

5. USE AND DISTRIBUTION OF SELLER'S INFORMATION

- 5.1 The Seller consents to the collection, use and disclosure of personal information by the Brokerage for the purpose of this Agreement and such other use as is consistent with listing and marketing of the Property including, but not limited to retaining and disclosing any listing and sales information, including price, which may be used by the Brokerage for any purpose relating to its business including conducting comparative analyses and disclosing such information to other persons such as appraisers and brokerages.
5.2 Subject to clause 3.2 (a), the Seller consents to placement of the listing and sales information by the Brokerage into the database of the appropriate listing service and acknowledges that the database of the listing service is the property of the listing service.
5.3 The Seller further acknowledges that the Brokerage and the listing service may:
(a) distribute the information to any persons authorized to use such service which may include other brokerages, government departments, appraisers, municipal organizations and others;
(b) compile, retain and publish any statistics including historical listing service data which may be used by the Brokerage and licensed listing service members to conduct comparative market analyses; and,
(c) make such other use of the information as the Brokerage and listing service(s) deems appropriate in connection with the listing, marketing and selling of real estate.

6. BROKERAGE'S FEE

6.1 Remuneration: The Seller will pay the Brokerage as remuneration:

_____ (plus GST);
Seller's Initials []

- (a) if, during the term of this Agreement, a legally enforceable agreement of purchase and sale, from whatever source obtained, is entered into between the Seller and a buyer (other than a buyer who has been specifically excluded in writing from this Agreement) and the sale is completed, or the Seller, without legal justification, fails to complete the sale; or
(b) if, within _____ days (the Hold-Over Period) of the expiration of this Agreement, a legally enforceable agreement of purchase and sale is entered into between the Seller and a buyer (other than a buyer who has been specifically excluded in writing from this Agreement) who was introduced to the Property or the Seller during the term of this Agreement, by whatever means or person and whether or not the Brokerage is the effective cause of such agreement of purchase and the sale is completed, or the Seller, without legal justification, fails to complete the sale; except this clause will not apply where the Seller has signed another seller brokerage agreement after the expiration of this Agreement and remuneration is payable to another brokerage according to the terms of that other seller brokerage agreement as a result of the sale; or
(c) if, during the term of this Agreement, an unconditional offer to purchase the Property upon the terms specified in this Agreement is presented to the Seller which the Seller refuses to accept.

6.2 Payment of Remuneration: The Seller will pay the remuneration owing to the Brokerage no later than the _____ business day after the sale is completed unless the Seller and the Brokerage otherwise agree in writing. Any holdbacks or conditions accepted by the Seller or the Seller's lawyer will not delay payment of the remuneration to the Brokerage.

6.3 Alternative Remuneration: The Seller will pay the Brokerage alternative remuneration in the amounts specified below:

- (a) if, during the term of this Agreement or Hold-Over Period, a legally enforceable agreement of purchase and sale is entered into between the Seller and a buyer and the buyer, without legal justification, fails to complete the sale, the Seller will pay the Brokerage, from forfeited deposits, if any, _____ % of such amount or the remuneration specified in clause 6.1, whichever is the less, upon the forfeiture of such deposits; or
(b) if, during the term of this Agreement, the Seller should withdraw the

Property from the market, the Seller will reimburse the Brokerage for all reasonable expenses incurred in the performance of this Agreement prior to the date on which the Seller notifies the Brokerage in writing of the Seller's decision, provided that such reimbursement will not prejudice any other claim to remuneration to which the Brokerage may become entitled under clause 6 of this Agreement.

6.4 Deduction of Remuneration from Deposit and Proceeds of Sale:

- (a) The Seller authorizes the Brokerage, upon completion of the sale, to deduct the remuneration owed to the Brokerage from the deposit, if any, held by the Brokerage and will pay any balance of remuneration owed in accordance with clause 6.1.
(b) The Seller irrevocably and unconditionally instructs any lawyer acting on behalf of the Seller to deduct from the deposit and proceeds of sale, or moneys forfeited by or recovered from the buyer, any remuneration or alternative remuneration that remains owing to the Brokerage after it has exercised its right, if any, under clause 6.4(a) and to pay such remuneration or alternative remuneration to the Brokerage.

6.5 Limitation on Other Remuneration: The Brokerage agrees not to accept any other remuneration, whatever its form (including finder's fees, referral fees and gifts) and from whatever source (including the buyer, a mortgage lender, another brokerage or contractor), directly or indirectly related to its agency under this Agreement unless, before accepting such remuneration, the Brokerage has:

- (a) fully disclosed in writing to the Seller all relevant facts relating to the offer of remuneration including the maximum amount to be received; and,
(b) obtained the Seller's written consent to the Brokerage receiving such remuneration.

7. DUTIES OF THE SELLER

7.1 The Seller will:

- (a) make its best efforts to insure the Property and its contents against loss or damage due to perils that are normally insured against for similar properties. The seller will make best efforts to ensure that such insurance will be effective even when the Property is vacant;
(b) make reasonable efforts to communicate and cooperate with the Brokerage in a timely manner;
(c) provide the Brokerage with all the information necessary for the listing and marketing of the property; and,
(d) immediately advise the Brokerage of any material change in the physical condition or status of the Property or in the information provided by the Seller.

7.2 The Seller will immediately advise the Brokerage:

- (a) during the term of this Agreement, of all inquiries by interested buyers or their representatives received by the Seller;
(b) during the term of this Agreement, of all offers to purchase from interested buyers or their representatives and will deliver such offers to the Brokerage;
(c) during the Hold-Over Period, of any offers to purchase the Property accepted by the Seller from a buyer introduced to the Seller during the term of this Agreement; and
(d) during the Hold-Over Period, of any offers or counter-offers regarding the Property made and accepted by a Seller accepted by a buyer introduced to the Seller during the term of the Agreement.

8. SELLER'S WARRANTY

8.1 The Seller warrants the following:

- (a) the Seller has the authority to sell the property and enter into this Agreement; [] Yes [] No
Seller's Initials []
(b) the seller has a right to sell the unattached goods listed herein, if any; _____
(c) the goods attached to the land and buildings and the included unattached goods listed herein are free and clear of financial encumbrances;
(d) the Seller has disclosed to the Brokerage all third party claims and interests in the Property known to the Seller;
(e) the Property is not currently the subject of any seller brokerage Agreement; and,
(f) all information provided to the Brokerage is accurate to the best of the Seller's knowledge.

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- 8.2 The Seller warrants that to the best of the Seller's knowledge, the following are truthful and accurate:
(a) the current use of the land and buildings complies with the existing municipal land use bylaw;
(b) the buildings and other improvements on the land are not placed partly or wholly on any easement or utility right-of-way and are entirely on the land and do not encroach upon neighboring lands, except where an encroachment agreement is in place;
(c) the location of buildings and other improvements on the land complies with all relevant municipal bylaws, regulations or relaxations granted by the appropriate municipality prior to the sale being completed, or the buildings and other improvements on the land are "non-conforming buildings" as that term is defined in the Municipal Government Act of Alberta;
(d) the Seller is not a non-resident of Canada for the purposes of the Income Tax Act of Canada; and,
(e) where applicable, the Seller has complied with the bylaws of the condominium corporation.

9. INDEMNIFICATION

9.1 The Seller will hold harmless and indemnify the Brokerage for any claims that may arise from its reasonable and good faith reliance on representations made, or information provided, by the Seller.

10. ADDITIONAL TERMS

- 10.1 The Seller agrees that:
(a) the Brokerage may represent other sellers and, subject to clause 14, buyers;
(b) the Brokerage cannot disclose to the Seller confidential information obtained through any other agency relationship to which the Brokerage is or has been a party;
(c) the Brokerage will not be obligated to seek additional offers to purchase while the Property is subject to an unconditional agreement of purchase and sale;
(d) if the Property is owned by a limited company, a sale of shares representing a controlling interest in the limited company, will constitute a sale for the purposes of this Agreement; and,
(e) this Agreement will be governed by the laws of the Province of Alberta and the Seller and the Brokerage will submit to the jurisdiction of the Courts of the Province of Alberta for the resolution of any disputes that may arise out of this Agreement.
10.2 Sellers are required by common law to disclose defects that are hidden, not visible or discoverable through a reasonable inspection of the Property and that render the Property dangerous or potentially dangerous to the occupants or unfit for habitation. Sellers may also be required to disclose government and local authority notices, lack of development permits and hidden defects that would involve great expense to remedy.

Are you aware of such defects in the Property? [] Yes [] No
Sellers Initials []

Have you received any government or local authority notices? [] Yes [] No
Sellers Initials []

Are you aware of any lack of permits for any development on the property? [] Yes [] No
Sellers Initials []

Are you aware of any hidden defect that would involve great expense to remedy? [] Yes [] No
Sellers Initials []

10.3 If just one individual is the registered owner of the Property, then the following questions must be answered. Note: "Legally married" pursuant to the Dower Act includes a separated couple not yet legally divorced but does not include a couple in a common law relationship.

Are you legally married? [] Yes [] No
Sellers Initials []

If yes, have either you or your spouse resided on the Property at any time since your marriage? [] Yes [] No

Sellers Initials []

If the answer to both questions is "yes", then pursuant to the Dower Act, a "Dower Consent and Acknowledgement" (sworn before a Commissioner of Oaths) must be completed and attached to this Agreement.

10.4 []
[]
[]
[]

11. ENDING THIS AGREEMENT

- 11.1 Without prejudice to the acquired rights of the Seller or the Brokerage, this Agreement will terminate:
(a) on the expiration of the term of this Agreement as specified in clause 1;
(b) on an earlier date than that specified in clause 1 if mutually agreed to by the Seller and the Brokerage in writing;
(c) on a completed sale of the Property;
(d) on the suspension or cancellation of the Brokerage's license to trade in real estate;
(e) on the bankruptcy or insolvency of the Brokerage or if it is in receivership.
11.2 Where a party to this Agreement has materially breached this Agreement, the other party may, at its option, end this Agreement by notice in writing to the party in breach.

12. BROKERAGE'S DUTIES ON ENDING OF AGREEMENT

- 12.1 When this Agreement ends, the Brokerage will immediately:
(a) remove the Property as an active listing on any listing service;
(b) cease all marketing activities on behalf of the Seller;
(c) remove all signs and any lock-box from the Property; and
(d) return documents and other materials provided by the Seller.

13. BROKERAGE'S CONTINUING DUTIES

13.1 Ending this Agreement for whatever reason does not relieve the Brokerage of its duties to account for all monies received by the Brokerage and confidentiality to the Seller.

14. CHANGE IN REPRESENTATIVE CAPACITY OF THE BROKERAGE

- 14.1 If the Brokerage is also the agent of a buyer who wishes to view the Seller's property, the Brokerage will:
(a) disclose this fact to both the buyer and the Seller; and,
(b) unless instructed otherwise by the Seller, facilitate the viewing of the Property by that buyer and make available the marketing information that is available to all potential buyers; however, the mere viewing of the property will not mean that the buyer is interested in the Property for the purposes of clause 14.2 below.
14.2 If the Brokerage is also the agent of a buyer who becomes interested in the Property, the Brokerage will:
(a) immediately advise the Seller and the buyer of all relevant facts and of the implications of concurrent representation;
(b) give the Seller and the buyer an opportunity to seek independent advice;
(c) obtain the written informed consent of the buyer to the Brokerage continuing to provide services to the Seller and the buyer in a Transaction Brokerage relationship on the terms and conditions specified in the Common Law Transaction Brokerage Agreement and in the Agency Relationships Guide published by the Real Estate Council of Alberta prior to writing the offer; and
(d) obtain the written informed consent of the Seller to the Brokerage continuing to provide services to the Seller and the buyer in a Transaction Brokerage relationship on the terms and conditions specified in the Common Law Transaction Brokerage Agreement and in the Agency Relationships Guide published by the Real Estate Council of Alberta prior to presenting the buyer's offer to the Seller.

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14.3 Should the Brokerage decide not to enter into a Common Law Transaction Brokerage Agreement or should either the Seller or buyer refuse to consent to Transaction Brokerage, the Brokerage will continue to represent the party, be it the Seller or the buyer, with whom it first entered into an agency relationship and offer to treat the other party as a customer or to refer the other party to another Brokerage.

15. DEFINITIONS

- 15.1 For the purposes of this Agreement:
(a) "buyer" means a person acquiring or attempting to acquire an interest in real estate by purchase;
(b) "purchase" includes an exchange, option, lease or other acquisition of an interest in real estate;
(c) "sale" includes an exchange, option, lease or other disposition of an interest in real estate;
(d) "seller" means a person disposing or attempting to dispose of an interest in real estate by sale;
(e) "concurrent representation" means a situation in which a brokerage or an industry member represents two or more parties to a trade whose interests are seen to be in conflict; and,
(f) "sale is complete" when the purchase price is paid to the Seller or the Seller's lawyer and is releasable.

16. THIS AGREEMENT

16.1 This Agreement includes, if signed or initialed by the Seller and attached to this Agreement, the following documents:

- 16.2 No amendment to the terms of this Agreement shall be effective unless it is in writing and signed by the Seller and the Brokerage.
16.3 If there is conflict or discrepancy between any provision added to this Agreement and any provision in the standard portion hereof, the added provision will supersede the standard provision to the extent of such conflict or discrepancy.
16.4 This Agreement will constitute the entire agreement between the Seller and Brokerage and there are no representations, warranties, collateral agreements or conditions which affect this Agreement other than as expressed herein.
16.5 This Agreement will be read with all changes of number required by the context.

17. SELLER'S ACKNOWLEDGEMENT

- 17.1 The Seller, having received and read this Agreement and the Agency Relationships Guide, and having been given the opportunity to request further information concerning this Agreement and the representation relationships described in the guide, acknowledges this Agreement accurately sets out the terms agreed to by the Seller and the Brokerage.
17.2 This Agreement may be signed by the parties and transmitted by fax. This procedure will be as effective as if the parties had signed and delivered an original copy.

SIGNED AND DATED
this _____ day of _____, 20_____.

Signature of Seller _____

Print Name of Seller _____

Signature of Witness _____

Print Name of Witness _____

Signature of Seller _____

Print Name of Seller _____

Signature of Witness _____

Print Name of Witness _____

Signature of Brokerage Representative _____

Print Name _____

Signature of Witness _____

Print Name of Witness _____