

Exclusive Seller Designated 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 _____
Phone: _____ Fax: _____ (postal code) Phone: _____ Fax: _____ (postal code)
Email: _____ Email: _____

This Agreement is entered into by the Seller and the Brokerage on the basis of the following facts:

- (a) the Seller wishes to retain the services of the Brokerage and benefit from agency representation in the sale of their property;
- (b) the Brokerage may also represent buyers who are interested in purchasing the Seller's property;
- (c) concurrent representation by the Brokerage of both the Seller and buyers interested in the Seller's property, prevents the Brokerage from discharging the agency and fiduciary obligations it owes to each of the Seller and these buyers;
- (d) concurrent representation is permitted by law only with the fully informed and voluntary consent of the Seller;
- (e) the Seller has received and read the *Agency Relationships Guide* published by the Real Estate Council of Alberta and this Agreement, and has been given an opportunity to seek further information and independent advice concerning representation by a designated agent and the other relationships discussed therein;
- (f) the Brokerage is prepared to designate separate agents to act as the sole agent for and in the best interests of the Seller, on the one hand, and of any buyer interested in the Property who is also represented by the Brokerage, on the other hand; and,
- (g) the Brokerage has in place policies and procedures to protect the confidential information of the Seller and to ensure a designated agent does not communicate any information prejudicial to the interests of the Seller to other members of the Brokerage, including other designated agents.

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. APPOINTMENT OF DESIGNATED AGENT

- 3.1 The Brokerage designates _____ (the Designated Agent(s)) to serve as sole agent for the Seller and, subject to clause 18, will designate other members of the Brokerage to serve as sole agents of any buyers also represented by the Brokerage who are interested in the Property.
- 3.2 If, for any reason, the Designated Agent ceases to be registered with the Brokerage, the Brokerage will designate another member of the Brokerage to serve as the sole agent for the Seller.
- 3.3 The Brokerage will not appoint another brokerage to act on behalf of the Seller as a subagent without the Seller's prior written consent.

4. AGENCY RELATIONSHIP AND BROKERAGE'S RESPONSIBILITY

4.1 The Seller agrees an agency relationship will exist only with the Designated Agent and not with the Brokerage.

4.2 The Seller agrees the Brokerage's responsibilities will be limited to:

- (a) providing a true copy of this Agreement to the Seller after all parties have signed;
- (b) treating the interests of the Seller and buyers interested in the property represented by the Brokerage in an even-handed, objective and impartial manner;
- (c) ensuring compliance by the Designated Agent with the Brokerage's policies and procedures governing designated agents;
- (d) supervising the Designated Agent and support staff to ensure the Designated Agent fulfills their mandate under this Agreement; and,
- (e) holding all monies received by the Brokerage in trust in accordance with the provisions of the *Real Estate Act*.

5. BROKERAGE'S AND THE DESIGNATED AGENT'S UNDERTAKING

5.1 The Brokerage and the Designated Agent undertake that they have not, and will not, disclose any confidential information concerning the Seller to any other member of the Brokerage or other person unless authorized by the Seller or required by law.

6. NO ATTRIBUTION OF KNOWLEDGE

6.1 The Designated Agent's knowledge will not be attributed to the Brokerage or to its designated agents representing buyers.

7. DESIGNATED AGENT'S MANDATE

- 7.1 **Obligations:** The Designated Agent 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 18, act only as the Seller's agent;

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- (d) subject to clause 18, 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, Designated Agent or buyers;
(f) at the earliest reasonable opportunity, advise any buyer interested in the Property that the Designated Agent 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 favourable 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 Designated Agent;
(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 Designated Agent;
(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.

7.2 Other Services: The Seller requests, and the Designated Agent 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 10.1 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 _____

8. SELLER'S CONFIDENTIAL INFORMATION WILL BE PROTECTED

8.1 The Brokerage and Designated Agent undertake they will not use confidential information received from the Seller, or obtained as a result of providing services under this Agreement, for their own gain or the gain of their employees or to the prejudice of the Seller's interests.

9. USE AND DISTRIBUTION OF SELLER'S INFORMATION

9.1 The Seller consents to the collection, use and disclosure of personal information by the Brokerage and Designated Agent 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 or Designated Agent for any purpose relating to its business including conducting comparative analyses and disclosing such information to other persons such as appraisers and brokerages.

9.2 Subject to clause 7.2(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.

- 9.3 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.

10. BROKERAGE'S FEE

10.1 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.

10.2 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.

10.3 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

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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 10.1, 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 10 of this Agreement.

10.4 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 10.3.
- (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 10.4(a) and to pay such remuneration or alternative remuneration to the Brokerage.

10.5 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.

11. DUTIES OF THE SELLER

11.1 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 Designated Agent in a timely manner;
- (c) provide the Designated Agent with all the information necessary to market the property; and,
- (d) immediately advise the Designated Agent of any material change in the physical condition or status of the Property or the information provided to the Designated Agent.

11.2 The Seller will immediately advise the Designated Agent:

- (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 Designated Agent;
- (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.

12. SELLER'S WARRANTY

12.1 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 Designated Agent 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 Designated Agent is accurate to the best of the Seller's knowledge.

12.2 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.

13. INDEMNIFICATION

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

14. ADDITIONAL TERMS

14.1 The Seller agrees that:

- (a) the Designated Agent may represent other sellers and, subject to clause 18, buyers;
- (b) the Brokerage and Designated Agent cannot disclose to the Seller confidential information obtained through any other agency relationship to which the Brokerage or Designated Agent is or has been a party;
- (c) the Designated Agent 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, the Brokerage and the Designated Agent 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.

14.2 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.

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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

14.3 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.

14.4 _____

15. ENDING THIS AGREEMENT

15.1 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.

15.2 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.

16. BROKERAGE'S DUTIES ON ENDING OF AGREEMENT

16.1 Immediately on the termination of this Agreement, the Brokerage and Designated Agent will:

- (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.

17. BROKERAGE'S CONTINUING DUTIES

17.1 Ending this Agreement for whatever reason does not relieve the Brokerage and Designated Agent of their duties to account for all monies received by the Brokerage and confidentiality to the Seller.

18. CHANGE IN REPRESENTATIVE CAPACITY OF THE DESIGNATED AGENT

18.1 If the Designated Agent is the agent of a buyer and the buyer wishes to view the Seller's Property, the Designated Agent 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 18.2 below.

18.2 If the Designated Agent is also the agent of a buyer who becomes interested in the Property, the Designated Agent 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 Designated Agency 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 Designated Agency 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.

18.3 Should the Designated Agent or the Brokerage decide not to enter into a Designated Agency Transaction Brokerage Agreement or should either the Seller or buyer refuse to consent to Transaction Brokerage, the Designated Agent will continue to represent the party, be it the Seller or the buyer, with whom it first entered into an agency relationship and the Brokerage will offer to designate another member of the Brokerage to represent the other party as sole agent, to treat the other party as a customer, or to refer the other party to another brokerage.

19. DEFINITIONS

19.1 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.

20. THIS AGREEMENT

20.1 This Agreement includes, if signed by the Seller and attached to this Agreement, the following documents: _____

20.2 No change to the terms of this Agreement shall be effective unless it is in writing and signed by the Seller and the Brokerage.

20.3 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.

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20.4 This Agreement will constitute the entire agreement between the Seller, the Brokerage and the Designated Agent and there are no representations, warranties, collateral agreements or conditions which affect this Agreement other than as expressed herein.

20.5 This Agreement will be read with all changes of number required by the context.

21. SELLER'S ACKNOWLEDGEMENT

21.1 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, the Brokerage and the Designated Agent.

21.2 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 _____

Signature of Designated Agent

Print Name _____

Signature of Witness _____

Print Name of Witness _____