

Listing Contract

Exclusive Right to Sell Real Property

BROKER: USRealty.com (Hereinafter referred to as "Broker")

SELLERS: _____ (Hereinafter referred to as Seller")

1. "PROPERTY:?"

2. LISTING PRICE: \$ _____ . Seller is solely responsible for determining the appropriate listing price of Property.

3. CONTRACT TERM: This Contract will be effective for a period of six (6) months beginning on the same calendar day the Contract is signed by Seller ("Effective Date"). Seller may cancel this contract by following the terms of Paragraph 18. Otherwise, this Contract shall expire on the calendar day which is six (6) months from the Effective Date.

4. PURPOSE OF THIS CONTRACT: Seller is hiring and hereby authorizes Broker to submit the property (with its full address information) once in the appropriate Multiple Listing Service ("MLS") and www.realtor.com. Seller acknowledges and understands that Broker will be making an offer of compensation to cooperating brokers (and agents) through said MLS listing, as elected and authorized by the Seller in Paragraph 5, to other brokers to find a buyer. Broker is acting as a Seller's Agent ONLY to complete these previously mentioned duties. Seller shall conduct any negotiations directly with or through any buyer and/or buyer's agent (if buyer is represented). Seller waives any requirements for any such negotiations to be conducted exclusively through Broker. Other websites mentioned on Broker's website as included are unaffiliated companies that may change their policies at any time, in which case Seller agrees no refund would be due Seller if the listing does not appear or does not appear correctly on other websites.

5. BROKER FEE: Seller has paid Broker an upfront fee for the above mentioned services ("Broker Fee"). If a cooperating broker procures a buyer for Seller's property, Seller understands and agrees that Seller will be required to pay Broker _____ of the sale price at settlement or close of escrow ("Co-Broke"). Broker will instruct the escrow company to pass through the entire Co-Broke to the cooperating broker who procured the buyer. Other brokers will be paid this commission acting only as a buyer's agent, as outlined in the Agency Representation Disclosure Form. This Contract will automatically be extended to the settlement or close of escrow date if the property is under contract ("Sales Agreement") on the expiration date of this Contract. If the buyer is not procured by a cooperating broker, the Broker Fee shall be limited to the previously paid upfront Broker Fee, which shall be deemed earned upon listing entry in the appropriate Multiple Listing Service.

6. BROKER COMMUNICATIONS AND ELECTRONIC SIGNATURES: Seller authorizes all Broker communications to Seller to be via e-mail to this e-mail address: _____ . If this preceding box is left blank, Broker will use Seller email on file. Seller will provide another email address if experiencing email receipt problems. Seller is responsible for ensuring their email settings do not filter legitimate emails. If there is a second owner of record for this property, and this Contract is being electronically signed, the second owner will ratify the Contract at the following email address: _____ . This 2nd email address is only for ratification purposes of this Contract, and will not be used for communications from Broker. Broker and Seller agree that an Electronic Signature of any document executed through Broker's website ratification system, including but not limited to this Contract and addendums or amendments to this Contract, will be binding on both Broker and Seller and will be treated for all

intents and purposes as if it was physically signed. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. The terms used in this Listing Agreement, including but not limited to Electronic Signature, should be construed in accordance with the Uniform Electronic Transaction Act as adopted by the State of Arkansas (*Ark. Code Ann. §§ 25-32-101, et seq.*). Seller hereby consents to the use of third party electronic signature capture service providers as chosen by Broker. Forms not executed through Broker's website ratification system may not be electronically signed, unless an exception is granted at Broker's discretion.

7. HANDLING OF REALTOR.COM LEADS: Realtor.com does not permit Broker to display Seller's contact information on Realtor.com, and instead displays Broker's phone number. Broker's phone system will either play Seller's phone number to the caller or, for the published item fee, forward the phone call to Seller's phone number.

8. CONFLICT OF INTEREST: Broker will promptly notify Seller if there is a conflict of interest.

9. PUBLICATION OF SALE PRICE: Seller is aware that newspapers may publish the final sale price after settlement. Broker has permission to advertise the sales price.

10. DUTY TO DISCLOSE: SELLER WILL DISCLOSE ANY AND ALL KNOWN MATERIAL DEFECTS OR ENVIRONMENTAL HAZARDS to any and all actual or prospective buyers prior to entering into any Sales Agreement or as soon as such information is discovered by, or becomes known to, Seller, including the existence of lead based paint inside or upon the property if built before 1978. Seller will fully and accurately complete and sign a Residential Property Disclosure and Disclaimer Statement and provide buyer with a copy of such before entering into a Sales Agreement or as soon as practicable thereafter. Except to the extent prohibited by law, the duties set forth in this paragraph 10 extend to Sellers who are exempt from any real estate seller disclosure laws in the state of Arkansas. A material defect is a problem or condition that:

- Is a possible danger to those living on the Property,
- Has or may have an effect on Seller's ability to complete the sale of the Property on the terms and conditions agreed upon between Seller and buyer, or
- Has a significant, adverse effect on the value of the Property.

If Seller is accused of failing to disclose any known material defects, conditions and/or environmental hazards;

- Seller will not hold Broker or Licensee responsible in any way
- Seller will protect, and pay for any costs to defend, Broker and Licensee from any claims, lawsuits, and actions that result.
- Seller will, upon demand, promptly reimburse Broker for any and all of Broker's or Licensee's costs that result from such failure to disclose known material defects and/or environmental hazards, including but not limited to any attorney's fees, court costs, and any judgments, damages, penalties, fines, payments or settlements (money Broker or Licensee pays to end a lawsuit or claim).

The Residential Lead-Based Paint Hazard Reduction Act says that any seller of property built before 1978 must give the buyer an EPA pamphlet entitled Protect Your Family From Lead in the Home. Seller assumes full responsibility for providing this to buyers.

11. ESCROW MONIES: Seller is advised to have an attorney, title company, or the selling broker hold any escrow monies, subject to all Arkansas laws & regulations. Broker will not provide escrow services.

12. NOTICE TO PERSONS OFFERING TO SELL OR RENT HOUSING: Federal and state laws make it illegal for Seller, Broker, or anyone to use RACE, COLOR, RELIGION, or RELIGIOUS CREED, SEX, DISABILITY (physical or mental), FAMILIAL STATUS (children under 18 years of age), AGE (40 or older), NATIONAL ORIGIN, USE OR HANDLING/TRAINING OF SUPPORT OR GUIDE ANIMALS, or the FACT OF RELATIONSHIP OR ASSOCIATION TO AN INDIVIDUAL KNOWN TO HAVE A DISABILITY as reasons for refusing to sell, show, or rent properties, loan money, or set deposit amounts, or as reasons for any decision relating to the sale of property. Seller also acknowledges that many jurisdictions have stricter laws that extend protection to political beliefs, income, sexual orientation, affectional orientation, and other factors. Seller agrees to investigate and comply with all laws regarding discrimination.

13. REPORTING TIMELINESS AND ACCURACY: Seller accepts full responsibility and liability for the accuracy and timeliness of data submitted to Broker. Seller will notify Broker within 24 hours of any changes or corrections. Seller understands that in many cases corrections are required, and Seller will allow Broker the necessary reasonable time to make MLS corrections after Seller notification. Seller allows listing data in violation of MLS rules to be changed at Broker's discretion. Seller will notify Broker in writing if they do not receive the email with the MLS proof on the day of listing activation, and will hold Broker harmless for problems in the MLS proof or Realtor.com not discovered until a later date. The listing normally takes a few hours to a few days to appear on Realtor.com. Seller assumes the responsibility for checking Realtor.com for listing display. Seller allows and understands that Realtor.com listing problems require a longer period of time to correct than MLS listing problems. Seller will reply within 24 hours to all inquiries regarding the listing. Broker may have to temporarily withdraw the listing when Seller does not reply within 48 hours, in which case a \$25.00 service fee to Broker will apply to reactivate the listing. Broker may cancel the listing without refund when Seller does not report to Broker acceptance of a sales agreement within 24 hours. Broker will mark the listing as settled in the MLS after the settlement date given by Seller. If the settlement date changes and Seller does not notify Broker before Broker marks the listing as settled in the MLS, Seller agrees to pay a \$25.00 processing fee. At settlement, Seller will fax or e-mail a copy of the signed HUD1 statement or the equivalent to Broker's office. Seller's credit card will be charged \$50.00 if the signed HUD1 sheet is not delivered to Broker the day of settlement. This fee will be reduced to \$25.00 if the HUD1 is delivered to Broker in days following the settlement. Seller will provide proof of HUD1 fax or email to reverse this fee if the delivery is in dispute. Seller's credit card information will be kept on file. Seller's credit card will be charged for any MLS fines incurred, if Seller was at fault by not meeting the requirements of this Paragraph. MLS fines typically range from \$25.00 to \$500.00.

The Real Estate Settlement and Procedures Act (RESPA) requires all fees to be reported on the HUD1 form at settlement. Seller is responsible for having the upfront Broker Fee recorded on the HUD1 sheet as "Paid Outside of Closing, or 'POC'".

14. BROKER NOT RESPONSIBLE FOR DAMAGES: Seller agrees that Broker and Broker's salespersons are not responsible for any damage to the Property or any loss or theft of personal goods from the property, unless such damage, loss or theft is directly caused by Broker or Broker's salespersons.

15. DOCUMENT PREPARATION: Broker will provide assistance with document preparation to Seller. Broker will only use simple, standardized, real estate forms approved by an Arkansas attorney in connection with simple real estate transactions which arise in the usual course of Broker's business and only in connection with real estate transactions actually handled by Broker. Broker will not use or participate in the preparation of any documents that do not meet the above-referenced standard. Seller acknowledges and agrees that assistance with the preparation of any documents, as stated above, will be provided without additional charge only by e-mail communications, in the format of question and answer. If Seller should seek additional consultation or assistance *via* telephone or by any other means than e-mail, Seller agrees to pay Broker \$25.00 per every 15 minutes of time spent providing consultation and/or assistance.

16. ADDITIONAL FEES: If Broker is required to sign any documents outside of the simple, standardized, real estate forms part of the transaction, Seller agrees to pay Broker \$25.00 per every 15 minutes of time spent for review, signing, or otherwise spent addressing Seller's request(s). All communications, offers, and negotiations received by Broker will be sent to Seller's registered email address. The additional fee of \$25.00 per every 15 minutes of time spent applies if Seller requires forwarding of communications by means other than e-mail. Seller shall provide Broker with a copy of the agreement of sale. Seller will pay Broker a \$50.00 fee if Seller withholds the agreement of sale from Broker. Seller may elect to purchase optional, additional assistance from Broker, as available on Broker's website.

17. NO OTHER BROKER CONTRACTS: Seller will not list this property with another broker during this Contract's term, unless Seller first cancels this Contract under the terms of Paragraph 18.

18. CANCELLATION: Seller may cancel this contract at any time, under the following conditions. 1) Seller cancellation request must be in writing with all Sellers' signatures. 2) Seller may not cancel this Contract when an offer has been presented and the Seller has not replied in writing to the party making the offer. 3) Seller may not cancel this Contract if the Property is under contract (Sales Agreement). Seller must first reject any offers and/or be released from a Sales Agreement before the listing is canceled. The intent of this Paragraph is to prevent claims from cooperating brokers for a due commission not being paid. If Seller requires Broker's signature and/or letterhead confirming cancellation, Seller agrees to pay a \$25.00 processing fee.

19. DISPUTE RESOLUTION: Broker and Seller agree that any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by binding arbitration. The place of arbitration shall be held in Little Rock, Pulaski County, Arkansas or in a location agreeable to the Broker and Seller by an arbitrator mutually selected by the Broker and Seller. If Broker and Seller cannot mutually agree on the selection of an arbitrator, the arbitrator shall be chosen by the Circuit Court sitting in Pulaski County, Arkansas. Arkansas law shall govern this Contract. Judgment on the award rendered by the arbitrator may be entered in any court having competent jurisdiction thereof.

20. OTHER TERMS:

- The parties agree that, in the event of any failure, defect, or malfunction of the MLS listing, the only remedy available to Seller shall be a prorated refund for unperformed services from the fees paid by Seller.
- This Agreement shall be binding on and inure to the benefit of the successors and assigns of the respective parties to this Agreement.
- The parties agree that Broker will not be liable for any consequential damages of any nature caused to the business or property of Seller by any failure, defect, or malfunction of Seller's listing or product purchased from Broker.
- If any term or provision of this agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.
- This Agreement shall be governed by and construed in accordance with the laws of the State of Arkansas.
- Seller authorizes any Seller fees to Broker mentioned in this Contract to be charged to Seller's credit card, if applicable. Seller also agrees reasonable collections fees will be added to any unpaid and late balances.

21. THIRD PARTY DISPUTES (SELLER'S DUTY TO DEFEND): In the event an aggrieved party files an arbitration claim, lawsuit, or otherwise against or in any way involving the Broker as a party regarding the sale of the Property, specifically including claims seeking payment of a commission or damages in connection with the sale or attempted sale of the Property, Seller agrees to indemnify, defend, and hold Broker harmless from, and aid Broker in defense of any such claim or lawsuit (herein "Duty to Defend"). Seller further acknowledges, authorizes, and agrees that, upon commencement of any such claim, Broker may immediately charge a \$700.00 fee to Seller's credit card on file to cover the Broker's time required to respond to any such claim, lawsuit, or otherwise, regardless of its merits. Seller acknowledges that said fee is nonrefundable and is earned when charged to Seller's credit card on file. This charge is not and should not be construed as a limitation on Seller's Duty to Defend. If Seller fails, for any reason, to fulfill its Duty to Defend, Broker may seek indemnity, contribution, and/or reimbursement from Seller for all costs incurred as a result of the claim or lawsuit, including attorney's fees as well as recovery of all costs of collection thereof, including but not limited to attorney's fees, collection agency fees, court costs, and expenses, less the \$700.00 fee previously paid by Seller.

22. MLS COPYRIGHT: The MLS listing proof sent by Broker to Seller is copyrighted by the MLS. Seller agrees that this listing proof is solely for data accuracy purposes, and will not distribute the file in any way to anyone. Seller will be responsible for any MLS fines resulting from distributing the MLS listing proof. If Seller desires a highlight sheet, Broker recommends that Seller use their Realtor.com listing for this purpose. Seller will not provide or instruct Broker to publish any photos taken by a 3rd party and not owned by Seller without written permission from the copyright owner. Seller will be responsible for any photo copyright damages.

23. BROKER'S FIDUCIARY DUTY

Broker discloses and hereby incorporates Arkansas law (*Ark. Code Ann. § 17-42-316*) regarding Broker's fiduciary duty to Seller as follows:

- (1) In accepting employment by the Seller(s), Broker pledges a primary duty of absolute fidelity to protect and promote the interests of the Seller(s);
- (2) The Broker's duty includes without limitation the obligation to :
 - (A) Use reasonable efforts to further the interest of the Seller;
 - (B) Exercise reasonable skill and care in representing the client and carrying out the responsibilities of the agency relationship;
 - (C) Perform the terms of the written agency agreement;
 - (D) Follow lawful instructions on the Seller unless doing so would expose the licensee to liability from another party to a contract, lease or rental agreement;
 - (E) Perform all duties specified in this section in a manner that demonstrates loyalty to the interests of the Seller.
 - (F) Comply with all requirements of this section and other applicable statutes, rules, and regulations;
 - (G) Disclose to the Seller material facts of the transaction that the licensee is aware of or should be aware of in the exercise of reasonable skill and care and that are not confidential information under a contract or prior agency or dual agency relationship;
 - (H) Advise the Seller to obtain expert advice concerning material matters when necessary or appropriate;
 - (I) Account in a timely manner for all moneys and property received in which the Seller has or may have an interest;
 - (J) Keep confidential all confidential information; and
 - (K) Refrain from disclosing confidential information to a licensee who is not an agent of the Seller; and
- (3) The aforementioned duties required of the Broker under this section **may not be waived by the Seller.**

24. SELLING AGENCY RELATIONSHIP

Broker discloses and hereby incorporates Arkansas law (*Ark. Code Ann. § 17-42-317*) regarding Broker's obligations when representing a seller or lessor in an agency relationship as follows:

- (1) To use reasonable efforts to obtain a purchase or lease offer at a price and with terms acceptable to the seller or lessor;
- (2) Unless requested by the seller or lessor, the Broker is not obligated to seek additional offers if the property is subject to a contract of sale, lease, or letter of intent to lease;
- (3) Accept delivery of and present an offer to the seller or lessor in a timely manner, regardless of whether or not the property is subject to a contract of sale, lease or letter of intent to lease;
- (4) Within the scope of knowledge required for licensure, but without violating the limits of the Broker's authority: Answer the seller's or lessor's questions regarding the steps the seller or lessor must take to fulfill the terms of a contract; and Provide information to the seller or lessor regarding offers or counteroffers of which the licensee has actual knowledge;
- (5) Assist the seller or lessor in developing, communicating, and presenting offers or counteroffers.

- (6) The Broker does not breach a duty or an obligation to a seller or lessor with whom the Broker has an agency relationship by showing alternative properties to a prospective buyer or by acting as an agent or subagent for other sellers or lessor.
- (7) The Broker cannot to perform any act or service that constitutes the practice of law.

Seller may waive the duties required of the Broker under Ark. Code Ann. § 17-42-317. Should Seller seek to waive the aforementioned, Seller shall complete the **Waiver of Agency Duties Seller Form** attached to this contract and incorporated herein.

25. PHOTOS: Seller will not supply or instruct Broker to load any photos that were previously uploaded to the MLS by another company, even if Seller owns the copyright to such photos, unless Seller has the written permission from the broker who previously published the photos in MLS. Seller agrees Broker is not responsible to check past listings for photo compliance. Any claims in this regard will be handled as a dispute according to the terms of Paragraph 19 of this Contract.

26. THIS CONTRACT and all attachment supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter of this contract, and contains all of the covenants and agreements between the parties with respect to the subject matter. Each party to this contract acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, that are not set forth in this contract, and that no agreement, statement, or promise not contained in this contract shall be valid or binding. The broker's fee and duration of this contract have been determined as a result of negotiations between Broker and Seller. Broker has the right to reject any property for submission at Broker's discretion, and refund Broker Fee to Seller. If Seller has legal questions, Seller is advised to consult an attorney. All owners of record agree to these terms.

Seller's Signature _____ Date: ___/___/___

Seller's Signature _____ Date: ___/___/___

Broker Signature: _____ Date: ___/___/___

**WAIVER OF AGENCY DUTIES
SELLER FORM**

LICENSEE NAME: _____ LIC #: _____

SELLER-CLIENT NAME: _____

FIDUCIARY DUTIES REQUIRED BY ALL LICENSEES

The following duties may not be waived.

- In accepting employment by a seller-client, a licensee pledges a primary duty of absolute fidelity to protect and promote the interest of the seller-client or seller-clients.
- Using reasonable efforts to further the interest of the seller-client;
- Exercising reasonable skill and care in representing the seller-client and carrying out the responsibilities of the agency relationship;
- Performing the terms of the written agency agreement;
- Following lawful instructions of the seller-client unless doing so would expose the licensee to liability from another party to a contract, lease or rental agreement;
- Performing all duties specified in this section in a manner that demonstrates loyalty to the interest of the seller-client;
- Complying with all requirements of this section and other applicable statutes, rules and regulations;
- Disclosing to the seller-client material facts of the transaction that the licensee is aware of or should be aware of in the exercise of reasonable skill and care and that are not confidential information under a current or prior agency or dual agency relationship;
- Advising the seller-client to obtain expert advice concerning material matters when necessary or appropriate;
- Accounting in a timely manner for all moneys and property received in which the seller-client has or may have an interest;
- Keeping confidential all confidential information;
- Refraining from disclosing confidential information to a licensee who is not an agent of the seller-client.

AGENCY DUTIES ABLE TO BE WAIVED

Please initial beside each duty that is being waived.

- _____ Using reasonable efforts to obtain a purchase or lease offer at a price and with terms acceptable to the seller or lessor
- _____ Accepting delivery of and presenting an offer to the seller or lessor in a timely manner, regardless of whether or not the property is subject to a contract of sale, lease or letter of intent to lease
- _____ Answering the seller's or lessor's questions regarding the steps the seller or lessor must take to fulfill the terms of a contract
- _____ Providing information to the seller or lessor regarding offers or counteroffers of which the licensee has actual knowledge
- _____ Assisting the seller or lessor in developing, communicating, and presenting offers or counteroffers

Agreement to Waive

By signing below, I agree that the real estate licensee who represents me will not perform the duties that are initialed above. I also understand that in a proposed real estate transaction, no other real estate licensee will perform the waived duties, and I realize that I may need to hire other professionals such as an attorney.

Signature of SELLER-CLIENT

Date

Signature of BROKER

Date