

# Listing Contract

## Exclusive Right to Sell Real Property

**Notice: The amount or rate of real estate commissions is not fixed by law. They are set by each broker individually and may be negotiable between the seller and broker.**

**BROKER: HOUSEPAD LLP** (Hereinafter referred to as "Broker")

**SELLERS:**  (Hereinafter referred to as "Seller")

**1. PROPERTY:**

**2. LISTED PRICE:** \$ . Seller is solely responsible for determining the appropriate listing price.

**3. CONTRACT TERM:** This Contract will be effective for a period of 6 months beginning from the date this contract is signed by Seller. Seller may cancel this contract by following the terms of Paragraph 19. The agreement will automatically terminate at the expiration of a 6 month listing period.

**4. PURPOSE OF THIS CONTRACT:** Seller is hiring Broker to submit the property (with its full address information) to the appropriate Multi List Service (MLS), and the MLS will send the listing to the website *www.realtor.com*. Broker will be making an offer of compensation, as authorized by the Seller in paragraph 5, to other brokers to find a buyer. Broker is acting as a Seller Agent ONLY to complete these previously mentioned duties. 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 listing does not appear or does not appear correctly on other such websites.

**5. BROKER FEE:** After Broker enters the listing on the MLS, Broker will charge Seller's credit card the nonrefundable fee referenced on the Housepad.com order receipt, for the completed services. This receipt is part of this Contract and was negotiated and selected by Seller on Broker's website. If Seller ordered this listing through another company, the other company will collect listing payment from Seller and pay Broker. If a cooperating broker procures the buyer, Seller will pay Broker  of the sale price at settlement. Broker will instruct the title company to pass through the entire selected percentage to the other broker who procures the buyer. Other brokers may be paid this commission regardless of their agency relationship, including buyer agency. This Contract will automatically be extended to the settlement date if the property is under contract (Sales Agreement) on the expiration date. **If the buyer is not procured by a third party broker, the Broker Fee shall be limited to the previously paid upfront fee, considered earned upon listing entry in the Multi List.**

**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 e-mail 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 Pennsylvania. 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. REALTOR.COM:** 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 option fee, forward the phone call to Seller's phone number. Seller has read on Broker's website about, and understands the difference between basic and showcase listings on Realtor.com. Seller will order the appropriate option if they require showcase features.

## **8. SELLER REPRESENTATIONS:**

A. Seller represents that, unless otherwise specified in writing, Seller is unaware of: (i) any Notice of Default recorded against the Property; (ii) any delinquent amounts due under any loan secured by, or other obligation affecting, the Property; (iii) any bankruptcy, insolvency or similar proceeding affecting the Property; (iv) any litigation, arbitration, administrative action, government investigation or other pending or threatened action that affects or may affect the Property or Seller's ability to transfer it; and (v) any current, pending or proposed special assessments affecting the Property. Seller shall promptly notify Broker in writing if Seller becomes aware of any of these items during the Listing Period or any extension thereof.

B. (1) Seller represents that Seller has not previously entered into a listing Agreement with another broker regarding the Property, unless specified as follows:

(2) Seller warrants that Seller has no obligation to pay compensation to any other broker regarding the Property:

(3) Seller agrees to indemnify, defend and hold Broker harmless from all claims, disputes, litigation, judgments and attorney fees arising from any incorrect information supplied by Seller, or from any material facts that Seller knows but fails to disclose.

**9. MULTIPLE LISTING SERVICE:** All terms of the transaction, including financing, if applicable, will be provided to the selected MLS for publication, dissemination and use by persons and entities on terms approved by the MLS. Seller authorizes Broker to comply with all applicable MLS rules. MLS rules allow MLS data to be made available by the MLS to additional Internet sites unless Broker gives the MLS instructions to the contrary. MLS rules generally provide that residential real property and vacant lot listings be submitted to the MLS within 48 hours or some other period of time after all necessary signatures have been obtained on the listing agreement.

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

**11. 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.

## **12. SELLER DISCLOSURES TO POTENTIAL BUYERS:**

A) Seller will disclose any material defects or environmental hazards to buyers on the Broker-provided Transfer Disclosure Statement, Supplemental Statutory and Contractual Disclosure Statement, Environmental Hazards Disclosure, and any other applicable disclosure. This also includes Sellers who are exempt from the Real Estate Seller Disclosure Law. In context of California Civil Code Section 2079, Broker has not been hired "to find or obtain a buyer or is a broker who acts in cooperation with that broker to find and obtain a buyer". Seller retains these duties, in addition to the visual inspection duties of the law, and is only hiring Broker for the limited services mentioned in Paragraph 4. A material defect is a problem or condition that is a possible danger to those living on the Property, or has a significant, adverse effect on the value of the Property.

B) If the Seller is accused of failing to disclose known material defects and/or environmental hazards;

1) Seller will not hold Broker or Licensee responsible in any way

2) Seller will protect Broker and Licensee from any claims, lawsuits, and actions that result.

3) Seller will pay all of Broker's or Licensee's costs that result. This includes attorney's fees and court ordered payments or settlements (money Broker or Licensee pays to end a lawsuit or claim).

C) 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*. According to the Mello-Roos Act of 1982, Seller must make a good faith effort to obtain from the district a disclosure notice concerning any special tax and must give the notice to a prospective buyer. Seller assumes full responsibility for providing this to buyers. Seller acknowledges and will disclose to prospective buyers that Broker has not inspected the property.

D. Seller acknowledges and will disclose in writing to prospective buyers that:

- 1) Broker has not inspected and will not inspect the property,
- 2) Broker makes no representations whatever concerning the property
- 3) Seller advises any prospective buyer to conduct his or her own inspections of the property, and to hire a licensed home inspector to inspect all aspects of the property to verify its condition before escrow closes. Seller will obtain buyer's acknowledgment of these disclosures in writing.

**13. DEPOSIT MONEY:** Seller is advised to have an attorney, title company, or the selling broker hold the escrow moneys, subject to all California laws & regulations. Usually the later two groups will provide this service free of charge. Broker will not accept or hold escrow moneys.

**14. 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.

**15. 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 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 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 if the signed HUD1 sheet is not delivered to Broker the day of settlement. This fee will be reduced to \$25 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 to \$1000.

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' ".

**16. BROKER NOT RESPONSIBLE FOR DAMAGES:** Broker is not responsible for loss of or damage to personal or real property, or person, whether attributable to use of a keysafe/lockbox, a showing of the Property, or otherwise. Third parties, including, but not limited to, appraisers, inspectors, brokers and prospective buyers, may have access to, and take videos and photographs of, the interior of the Property. Seller agrees: (i) to take reasonable precautions to safeguard and protect valuables that might be accessible during showings of the Property; and (ii) to obtain insurance to protect against these risks. Broker does not maintain insurance to protect Seller.

**17. DOCUMENT PREPARATION:** Broker will provide assistance with document preparation to Seller. Seller agrees that this assistance will be provided without additional charge only by e-mail communications, in the format of question and answer. Seller agrees to pay Broker \$25 per 15 minutes for any documents Broker must review and/or sign, and the same rate for any time spent by Broker on the phone regarding this listing or transaction. All communications, offers, and negotiations received by Broker will be sent to Seller's registered email address. Additional fees apply for forwarding of communications by other means. Seller will provide Broker with a copy of the agreement of sale. Seller will pay Broker a \$50 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.

**18. 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 19.

**19. 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 processing fee.

## **20. AGENCY RELATIONSHIPS:**

A. Disclosure: If the Property includes residential property with one-to-four dwelling units, Seller shall receive a  Disclosure Regarding Agency Relationships  form prior to entering into this Agreement.

B. Other Sellers: Seller understands that Broker may have or obtain listings on other properties, and that potential buyers may consider, make offers on, or purchase through Broker, property the same as or similar to Seller's Property. Seller consents to Broker's representation of sellers and buyers of other properties before, during and after the end of this Agreement.

C. Confirmation: If the Property includes residential property with one-to-four dwelling units, Broker shall confirm the agency relationship described above, or as modified, in writing, prior to or concurrent with Seller's execution of a purchase agreement

**21. EQUAL HOUSING OPPORTUNITY:** The Property is offered in compliance with federal, state and local anti-discrimination laws.

**22. ATTORNEY FEES:** In any action, proceeding or arbitration between Seller and Broker regarding the obligation to pay compensation under this Agreement, the prevailing Seller or Broker shall be entitled to reasonable attorney fees and costs from the non-prevailing party.

**23. SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon Seller and Seller's successors and assigns.

## **24. DISPUTE RESOLUTION:**

**A. MEDIATION:** Seller and Broker agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to or court action. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this paragraph applies, any party commences an action without first attempting to resolve the matter through mediation, or refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action.

**B. FORUM FOR DISPUTES:** (1) Seller and Broker agree that any dispute or claim in law or equity arising between them regarding the obligation to pay compensation under this Agreement, which is not settled through mediation, shall be decided by a court of competent jurisdiction in Berks County, Pennsylvania, which shall render an award in accordance with substantive California Law.

**25. THIRD PARTY DISPUTES (SELLER'S DUTY TO DEFEND):** In the event an aggrieved party files an arbitration claim or lawsuit against or in any way involving Broker that seeks payment of a commission or money 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 ("Duty to Defend"). Seller further agrees that, upon commencement of such an arbitration claim or lawsuit, Broker may immediately charge \$700.00 on Seller's credit card on file with Broker in anticipation of

Broker's legal and administrative fees in responding to such a claim or lawsuit, regardless of its merits. This charge is nonrefundable. 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 previously paid by Seller pursuant to this paragraph.

**26. 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 anyway 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.

**27. 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 25 of this Contract.

**28. 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.
- 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.

**29. ENTIRE AGREEMENT:** All prior discussions, negotiations and agreements between the parties concerning the subject matter of this Agreement are superseded by this Agreement which constitutes the entire contract and a complete and exclusive expression of their agreement, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. This Agreement and any supplement, addendum or modification, including any photocopy or facsimile, may be executed in counterparts

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:

