

# Listing Contract - Exclusive Right to Sell

This is a legally binding contract; if not understood seek advice from an attorney.

**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 17. 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) in the appropriate Multi List Service and *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. 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 such websites.

**5. BROKER FEE:** Seller has paid Broker a upfront fee for the above mentioned services. 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 another broker who procures the buyer, regardless of their broker relationship. 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 cooperating 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 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 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. 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. SELLER WILL REVEAL KNOWN MATERIAL DEFECTS OR ENVIRONMENTAL HAZARDS** to buyers on the Oklahoma Property Disclosure Statement, including Lead Based paint if property built before 1978. If Seller has never lived in the Property AND has no knowledge of any defect the Oklahoma Property Disclaimer Statement may be used. 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.

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

- Seller will not hold Broker or Licensee responsible in any way
- Seller will protect Broker and Licensee from any claims, lawsuits, and actions that result.
- 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).

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. DEPOSIT MONEY:** Seller is advised to have an attorney, title company, or the selling broker hold the escrow monies, subject to all Oklahoma laws & regulations. Seller may elect to have Broker hold the escrow account, with Seller paying an upfront fee of \$200 to Broker for this service.

**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 does not have a contractual relationship with Gateway MLS, but Broker does. 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 charged to Broker by Gateway MLS, if Seller was at fault by not meeting the requirements of this Paragraph. MLS fines typically range from \$25 to

\$1000, although the MLS is not limited in what fines they may assess Broker.

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. 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 pay Broker a \$60 fee for each closing cost estimate provided by Broker to Seller. 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. Broker is not an attorney and does not provide legal services.

**16. 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 17.

**17. 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.

**18. ARBITRATION:** As concluded by the parties to this agreement on the advice of their counsel, and as evidenced by the signatures of the parties and of their respective attorneys, any controversy between the parties to this agreement involving the construction or application of any of the terms, covenants, or conditions of this agreement shall, on the written request of one party served on the other, be submitted to arbitration, and such arbitration shall comply with and be governed by the provisions of the Pennsylvania General Arbitration Act.

**19. 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.

**20. 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. Seller may not submit property photos to Broker which are owned by another broker without that broker's written permission.

**21. 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.

**22. 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 Pennsylvania.
- In accordance with Oklahoma state law, Seller elects to waive the following duties of Broker: pricing assistance, printing brochures, print advertising, answering of buyers' agents questions, scheduling showings, showing the property, obtaining showing feedback, receiving all written offers and counteroffers, reducing offers or counteroffers to a written form upon request of any party to the transaction, presenting timely all offers and counteroffers, telephone consultation, sales agreement forms, buyer financing assistance, title related assistance, tax or mortgage payoff assistance, inspections assistance, legal services, and closing assistance. The other broker assisting the buyer is not required to perform these duties, as they are the responsibility of Seller.
- Seller gives Broker the right to submit this agreement to the Gateway MLS.
- 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.

**23. THIS CONTRACT** 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.

**All owners of record agree to these terms.**

*Seller's Signature* \_\_\_\_\_ *Date:* \_\_\_\_\_

*Seller's Signature* \_\_\_\_\_ *Date:* \_\_\_\_\_

Broker Signature: 

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