

AREA EXPLANATORY FORM

ESRA

Common
Law



Agreement Number _____

EXCLUSIVE SELLER REPRESENTATION AGREEMENT

An Agreement to Exclusively Represent a Seller

(For Use in Common Law Brokerages)

Between
THE BROKERAGE (WE) and **THE SELLER (YOU)**

Name _____ Name _____

Name _____ Name _____

1. THE PROPERTY

1.1 The land and buildings at (municipal address): _____

including the following goods not attached to the land and buildings: _____

and all goods attached to the land and buildings, **except**: _____

Legal Description (to be used for non-condominium and non-country residential properties only):

Plan _____ Block _____ Lot _____

Legal descriptions for condominium and country residential properties must be put in a property specific schedule. Indicate the applicable schedule below, complete and attach it. Other schedules may be required. Additional schedules must be listed in clause 16.1.

☐ **Condominium Property Schedule**

☐ **Country Residential Property Schedule**

1.2 You authorize us to offer the property for sale for \$ _____, including GST, if applicable. You must determine whether the sale of the property is subject to GST by getting independent advice. You acknowledge that neither we nor our representatives are giving an opinion about GST applying to the sale of the property and you agree that we and our representatives will not be responsible for the payment of GST.

1.3 The proposed possession date is _____.

2. OUR AGENCY RELATIONSHIP

2.1 You give us the exclusive right to offer the property for sale and you appoint us as your exclusive agent to represent you in selling the property. This agreement creates a sole agency relationship with the brokerage under common law, as the Real Estate Council of Alberta's *Consumer Relationships Guide* (Guide) explains. That means you cannot appoint anyone else as your agent during this agreement. However, we may represent buyers and other sellers.

2.2 This agreement begins on _____, 20____ at _____ .m.

It ends on _____, 20____ at _____ .m.

3. OUR RESPONSIBILITIES

3.1 We must meet our agency responsibilities to you in a timely manner.

3.2 In addition to the responsibilities described in the Guide, we must also:

(a) market the property, until the property is sold under this agreement, or this agreement ends.

(b) keep you informed of our marketing activities and any resulting transaction.

(c) tell any buyer interested in the property that we are your agent.

(d) tell buyers of all material latent defects affecting the property that we are aware of.

(e) help you negotiate favourable terms and conditions with a buyer.

(f) help you to prepare and comply with a contract to sell the property.

(g) present all offers and counter-offers to and from you, even when you have accepted a purchase contract. However, we need not seek additional offers while there is an unconditional purchase contract.

(h) tell you relevant facts about the transaction.

(i) hold money we receive in trust, as the *Real Estate Act* requires.

(j) give you a copy of this agreement as soon as possible after signing.



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4. MLS® SYSTEM AND OUR OTHER SERVICES

- 4.1 We will advertise and market the property using the MLS® System. The MLS® System is a web-based service that allows seller representatives to list properties for sale and share information about those properties. All listings on the MLS® System must: (a) be for a minimum duration of 60 days; (b) provide compensation for cooperating brokers for the sale of the property; and (c) not exclude any licensed industry member from acting as a cooperating broker.
- 4.2 You request and we agree to provide the following other services:

5. YOUR RESPONSIBILITIES

- 5.1 During this agreement you must:
- (a) provide us with a real property report showing the current state of improvements on the property according to the Alberta Land Surveyors' Manual of Standard Practice, with evidence of municipal compliance or non-conformance, within ten days of signing this agreement, unless the property is a conventional condominium. Not having this real property report may result in problems on closing or rescission of the purchase contract.
 - (b) insure the property and its contents against loss or damage due to causes normally insured against for similar properties, even if your property is vacant.
 - (c) communicate and cooperate with us.
 - (d) tell us if the property's condition, status or title changes.
 - (e) tell us about inquiries you make or receive about the sale of the property.
 - (f) determine whether the sale of the property is subject to GST.
 - (g) determine and tell us if you will have enough money left over after the sale of your property to cover payment of your mortgage balance (including any payout penalties) and any other obligations you must pay out with the sale money.
- 5.2 During this agreement and _____ days after this agreement ends, you must give us copies of any offers you make or receive for the sale of the property.

6. YOUR WARRANTIES AND REPRESENTATIONS

- 6.1 You warrant:
- (a) you have authority to sell the property as described, including attached and unattached goods.
 - (b) no one else has a legal right to the attached and unattached goods.
 - (c) you have told us about all third party rights to the property that you know about.
 - (d) all information you give us is true to the best of your knowledge.
- 6.2 You warrant, to the best of your knowledge, the following are true:
- (a) the land and buildings are currently being used according to municipal bylaws.
 - (b) the buildings and land improvements are entirely on the land and not on any easement, right-of-way, or neighbouring lands (unless there is a registered agreement on title).
 - (c) the location of the buildings or improvements meet municipal bylaws or regulations **or** the buildings and improvements are "non-conforming buildings" as defined in the *Municipal Government Act* (Alberta).
 - (d) the land and buildings are currently being used according to, and the location of the buildings and land improvements meet, the restrictive covenants on title (if any).
 - (e) you are not a non-resident of Canada under the *Income Tax Act* (Canada).

7. DOWER CONSENT

- 7.1 The following questions must be answered if you are the only registered owner of the property:
- (a) Are you legally married? (includes a separated couple not yet legally divorced but does not include a couple in a common law relationship) ☐ Yes ☐ No
 - (b) Have you or your spouse resided on the property at any time since your marriage? ☐ Yes ☐ No
- If you answered **yes** to both questions, your spouse will have to complete the Dower Consent and Acknowledgment and sign this agreement.

8. CONFLICTS OF INTEREST

- 8.1 It is not a conflict of interest if we simply show the property to a buyer we also represent.
- 8.2 A conflict of interest occurs when we act as the sole agent for both you and the buyer. In that case, we must tell you there is a conflict and tell you and the buyer your options.
- 8.3 If there is a conflict, you and the buyer may agree to have us act as a transaction facilitator. In that case, we work for both sides to bring about a purchase and sale and do not act as sole agent for either of you.
- 8.4 If we, you or the buyer decide not to have us facilitate the transaction, we will act as the sole agent of the side which first signed a representation agreement with us, unless we all agree otherwise in writing.



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8.5 If we do not continue to act as your sole agent, you may choose another brokerage, ask us to refer you to another brokerage, or have a customer relationship with us. If you are a customer, our responsibilities are limited to those outlined in the Guide.

9. OUR FEE AND LIMITS ON PAYMENTS

9.1 Our fee is _____

(plus GST) and is due when the sale of the property is complete.

9.2 We will offer _____

(plus GST) from our fee to the buyer's brokerage.

9.3 You must pay our fee if:

- (a) while this agreement is in effect, you enter into a legally binding contract to sell the property, whether through us or not. You must pay us even if you don't complete the sale, unless you have a legal reason for not completing it.
- (b) in the _____ days after this agreement ends, you enter into a legally binding contract to sell the property where the buyer was introduced to the property during the term of this agreement. You must pay us even if you don't complete the sale, unless you have a legal reason for not completing it.

9.4 You authorize us to use any deposit we hold under the purchase contract or this agreement towards money you owe us under this agreement. If the deposit does not cover our fee and any other money owing to us under this agreement, you must pay us the outstanding balance by _____ days:

- (a) after the sale is completed, or
- (b) from when this agreement ends.

9.5 You must instruct your lawyer to deduct from the deposit and proceeds of sale, or money forfeited by or recovered from the buyer, the amount that you owe us under this agreement.

9.6 You do not pay our fee if you:

- (a) sell the property to a buyer excluded in writing from this agreement.
- (b) sign a seller representation agreement with another brokerage that begins after this agreement ends.

9.7 If you change your mind about selling the property, you must tell us in writing. You must reimburse us for our reasonable expenses up to the time you tell us. Reasonable expenses will include: _____

If you pay these reasonable expenses, it does not remove your responsibility to pay other amounts you may owe us under this agreement.

9.8 If the buyer does not complete a legally binding contract to buy the property and has no legal reason for not completing it, the buyer may forfeit the deposit. If the buyer forfeits the deposit you will pay us our fee or 50% of the forfeited deposit, whichever is less.

9.9 You agree that all of your interest in the land, buildings and attached goods may be encumbered for our benefit to secure payment of all money that you owe us under this agreement. We and you agree that we are entitled to encumber the land, buildings, and attached goods under the *Land Titles Act* (Alberta).

9.10 If we have to enforce any of our rights under this agreement and we are successful, you will pay us our reasonable enforcement costs including lawyer and client fees.

9.11 We must not accept any other fees including finder's fees, referral fees, bonuses or gifts directly or indirectly related to this agreement, unless we first tell you in writing everything relevant about the payment and you consent in writing to the payment.

10. PERSONAL AND CONFIDENTIAL INFORMATION

10.1 You give your consent to us to collect, maintain, use and disclose your personal information for this agreement and for all uses consistent with listing and marketing the property in any medium, including electronic media.

10.2 We may:

- (a) include listing and sales information in databases of appropriate listing services, which we do not operate or control.
- (b) keep and disclose listing, sales, and price information, which we or our brokerage representative may use for any business purpose, including making comparative analyses and sharing information with appraisers and other brokerages.

10.3 You acknowledge that we, our real estate board and the listing service may:

- (a) disclose the listing, sales and price information to others authorized to use the listing service, like other brokers, appraisers, government departments, municipal organizations, and others.
- (b) use historical listing service data to gather, keep, and publish statistics which we may use to conduct comparative market analyses.
- (c) use the listing, sales and price information as we and the listing service consider appropriate for listing, marketing, and selling real estate.

10.4 Any further or additional use of the listing, sales and price information will require your consent.

10.5 We will not:

- (a) give out any of your confidential information without your consent, unless required by law.
- (b) use confidential information received from you or that we get as a result of performing under this agreement for any other purpose than those in this agreement unless you agree in writing.
- (c) give you any confidential information we have because of a past or present agency relationship with someone else.



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11. ONGOING OBLIGATIONS

- 11.1 Your responsibility to give us copies of any offers you make or receive for the sale of the property and your obligation to pay our fee continue after this agreement ends.
- 11.2 Our duty to keep your information confidential continues after this agreement ends.

12. INDEMNIFICATION

- 12.1 You agree that you will indemnify us and our brokerage representatives against all claims and legal actions that may arise because we reasonably and in good faith relied on information you gave us. This means that you will have to pay us in full for the outcome of these claims and legal actions and any related expenses including legal fees.

13. PROPERTY INFORMATION, NOTICES AND PERMITS

- 13.1 You are required by law to disclose material latent defects. These are known defects in the property that are not discoverable through a reasonable inspection and that may make the property dangerous or potentially dangerous to occupants or unfit for habitation. You may also be required to disclose defects that would be expensive to fix, government and local authority notices and lack of development permits.

- | | | |
|---|------------------------------|-----------------------------|
| (a) Are you aware of material latent defects in the property? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (b) Do you know of any defects that would be expensive to fix? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (c) Have you received any government or local authority notices? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (d) Do you know of any lack of permits for any development on the property? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

If **yes** to any of the above, complete the Defect Disclosure Instruction Schedule.

14. ADDITIONAL TERMS (IF ANY)

15. EARLY END TO THIS AGREEMENT

- 15.1 Despite the end date listed at the beginning of this agreement, the agreement ends immediately if any of these things happen:
- (a) you complete a sale of the property.
 - (b) we and you agree in writing to an earlier end date.
 - (c) our licence to trade in real estate is suspended or cancelled.
 - (d) we are bankrupt, insolvent, or we are in receivership.
 - (e) you materially breach this agreement and we give you written notice to end it, or we materially breach this agreement and you give us written notice to end it.
 - (f) you give us written notice to end this agreement because our board membership status changes to the extent that we cannot fulfill our obligations under this agreement.

If the agreement ends for any of these reasons, our rights and your rights under this agreement will not be affected.

16. OTHER DETAILS ABOUT THIS AGREEMENT

- 16.1 Documents attached to this agreement only form part of this agreement if we and you sign or initial them. In addition to the property schedule selected in 1.1, this agreement includes these attached documents:

- 16.2 Any future changes to this agreement must be in writing and signed by both of us to be effective.
- 16.3 Words with a singular meaning may be read as plural when required by the context.
- 16.4 If any clauses added to this agreement conflict with standard clauses in this agreement, the added clauses apply.
- 16.5 This agreement is the entire agreement between us and you. Anything we discussed with you, or that you told us, is not part of this agreement unless it is in this agreement.
- 16.6 This agreement is for the benefit of and will be binding on the heirs, administrators, executors, successors and assigns of you and us.
- 16.7 The laws of the Province of Alberta govern this agreement.
- 16.8 A sale is complete when all money has been paid to you or your lawyer and is releasable.

17. SELLER ACKNOWLEDGMENT

- 17.1 You acknowledge that:
- (a) you have read this agreement.
 - (b) you have received and read the Guide.
 - (c) this agreement creates a sole agency relationship with us, as the Guide describes.
 - (d) you had the opportunity to get independent advice from a lawyer, tax adviser, lender, appraiser, surveyor, structural engineer, property inspector or such other professional service provider as you require before signing this agreement.
 - (e) this agreement accurately sets out what we and you agree to.

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18. CONTACT INFORMATION

18.1 The following contact information must be used for all written communications between us and you. If this contact information changes, we and you must tell each other in writing within two days of the change.

SELLER:

Name _____

Address _____
(postal code)

Phone: _____ Fax: _____

Email: _____

Name _____

Address _____
(postal code)

Phone: _____ Fax: _____

Email: _____

BROKERAGE:

Name _____

Address _____
(postal code)

Phone: _____ Fax: _____

Email: _____

BROKERAGE REPRESENTATIVE:

Name _____

Address: c/o the Brokerage

Phone: _____ Fax: _____

Email: _____

18.2 We and you may communicate and deliver documents and information to each other in person, by mail, or electronically. We and you acknowledge there are risks with each of these methods and we have explained these risks to you.

18.3 We and you agree that for our communication an electronic signature will have the same function as an ink signature and that any documents or information exchanged between us will be considered delivered when they are sent.

SIGNATURES:

SIGNED AND DATED on _____, 20____.

Signature of Seller _____

Signature of Seller _____

Print Name of Seller _____

Print Name of Seller _____

Signature of Witness _____

Signature of Witness _____

Print Name of Witness _____

Print Name of Witness _____

Signature of Brokerage Representative _____

Print Name of Brokerage Representative _____

Seller: Initial here to show you have received a copy of this Agreement _____

Initials Dated at _____, m. on _____, 20____.

Disclaimer: AREA's Explanatory Forms are intended to assist Alberta REALTORS® in developing client relationships. They should not be relied upon for legal advice. REALTORS® are responsible to ensure their activities comply with the Real Estate Act and Rules, their local board rules and the policies of their brokerage.

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