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Agency listing agreement

Listing agreements are employment contracts between the sellers of real estate and real estate brokers for the professional services of the broker. The listing agreement creates an agency and fiduciary relationship between the seller and the broker, with the seller being the principal and the broker as his agent. The broker usually has salespeople working for her to provide the services, consisting mainly of finding buyers for the property. However, the salespeople work for the broker and not the seller. Only the broker represents the seller.Most states require that listing agreements be in writing and are usually based on standardized forms.Types of Listing Agreements There are several types of listing agreements that vary according to the exclusivity of the agreement.The exclusive-right-to-sell listing allows only the broker and her agents to represent the seller. With this listing, the broker is entitled to a commission even if the seller sells his property on his own without using the services of the broker. Because the broker is more certain of payment with this type of agreement, she will generally work harder in representing the principal.In an exclusive-agency listing, only 1 broker has the right to represent the seller, but the seller has the right to sell his property without the broker and without paying a commission.There is no exclusivity to an open listing — any number of brokers or agents can represent the seller. The commission is paid to whomever finds a buyer for the property. If the seller sells it on his own, then he does not have to pay a commission.The listing agreement may have a multiple listing clause, which allows the broker to list the property on the Multiple Listing Service (MLS), which is both an association of brokers and a database of real estate properties provided by the brokers participating in the multiple listing service. Only properties that a broker has an exclusive right to sell or is the exclusive agent can be listed on the MLS. All brokers have the right to sell any property on the MLS regardless of who listed it. The listing broker is the broker who signed an exclusive-right-to-sell or an exclusive-agency listing, whereas the selling broker is the broker who finds a buyer for the property. Brokers who belong to the Multiple Listing Service agree to split the commission between the listing and selling broker.Brokers who are members of the MLS must list any newly acquired properties in the MLS within a specific time, typically 5 days. Brokers also use the MLS database to do a competitive market analysis as a means to determine the best price range to offer the property.There are 2 other forms of listings that, due to potential conflicts of interest, are illegal in many states or that are generally frowned upon — the net listing and the option listing.A net listing specifies that the seller will receive a predetermined amount of money from the sale of the property with the rest going to the broker. The broker can offer the property for any amount above the net going to the seller. However, because the broker often suggests the selling price to the seller, this can create a conflict of interest, since the broker will be motivated to get the seller to accept a lower selling price so that his own profit can be maximized.An option listing gives the broker the right, but not the obligation, to purchase the property within a specified time, after which the option expires. Since this, like a net listing, creates a conflict of interest, the broker must get the seller's consent in writing for the option, and must tell the seller his profit.Termination of Listing AgreementsAs contracts, listing agreements can be terminated in the same way that any contract can be terminated:when the contract is fulfilled;if the property is destroyed or involuntarily changed, such as by a zoning change;if the owner is stripped of the legal title of the property, such as through a foreclosure;by mutual agreement between the seller and the broker;if either the seller or broker dies or becomes incapacitated; orif either party breaches the contract, in which case, the other party can sue for damages.Common breaches of contract include abandonment, when the listing broker does little to try to sell the property, or the seller does not go through with the sale when a buyer is found who is willing to pay the asking price.Almost all listing agreements have expiration dates, when the agreement is terminated if there is no sale by then. If the broker offers a contract without an expiration date, in most states, the broker's real estate license can be suspended or revoked.Some contracts have automatic extension clauses, that automatically extends the listing period by a specified amount, such as 30 days, as long as there is no sale. Automatic extension clauses create a contract with no real expiration date, and are not in the seller's best interest, since the broker is not motivated to sell the property within a reasonable time. Hence, in many states, extension clauses are illegal, and most standardized real estate forms do not have the clauses.Listing contracts may also have a broker protection clause, which entitles the broker to a commission if the property is sold to a buyer who was introduced by the broker within a specified time after the listing agreement expired. The time period for broker protection clauses is frequently the same length as the time period for the listing agreement.The Listing Contract Besides specifying the seller-agent relationship, and the duties of both, the listing contract will have details of the property itself.One of the most important details of the property is the listing price, which is set by the seller, often based on the advice of the broker. There are 2 main methods of setting a listing price: a competitive market analysis and a formal appraisal. A competitive market analysis determines the price range of a property by comparing the property to recently sold properties of the same type of construction, location, and other factors. A formal appraisal uses a professional real estate appraiser to determine the market value of the property, which is the probable price that a buyer, in an arm's-length transaction, would pay. A formal appraisal is often required when the property is unique, making it difficult to find comparable properties that were sold recently.While the seller is not restricted to any price determined by a competitive market analysis or even a formal appraisal, the broker will have little interest in trying to sell a property with a price significantly higher. A price set too high will be difficult or impossible to sell before the listing agreement expires, and brokers, like most people, don't want to work for nothing.The listing agreement specifies in detail what the broker is authorized to do to sell the property. This includes:being able to show the property at reasonable times and with reasonable notice,whether the broker can use her agents in selling the property,whether the property can be listed in the Multiple Listing Service,whether the broker can accept earnest money on behalf of the seller, andwhether the property can be advertised.The listing contract will also have:the names of the property owners;the name of the brokerage, the broker, and any listing agents;the amount of the broker's commission and when it will be paid;the address and description of the property, including the lot size and number and size of the rooms;a list of personal property that will be included in the sale and a list of real property that will be removed prior to the sale;evidence of ownership; anda list of all encumbrances, specifying which liens will be paid by the seller and which will be assumed by the buyer.The listing agreement will also have tentative dates for the closing and the buyer's possession, as well as the details of the closing, such as the title and escrow company that will be used for the closing, and which party will handle specific aspects of the closing, such as completing the settlement documents, filing the required forms, and disbursing the funds.The listing agreement will also have certain warranties by the owner, such as that the real estate will be in the same condition when sold as when it was presented; that specified repairs or alterations were made, and that the real estate complies with zoning and building codes.Buyer Agency AgreementsA buyer agency agreement is — like a listing agreement — an employment contract, but the broker represents the buyer — the principal — as his agent and fiduciary. Either the buyer or the seller may pay the buyer's agent when the buyer buys property. The fee can be a flat fee, an hourly rate, or a commission equal to a percentage of the purchase price of the property. Frequently, the buyer's agent and the listing broker split the commission. However, the agent may want a retainer to compensate for expenses when the agreement is signed.Before signing the buyer agreement, the buyer's agent should explain the options available to the buyer, and the agent must get detailed financial information about the buyer and the type of property that he is looking for. The method and amount of the compensation will also be negotiated. There are 3 types of buyer agreements that mirror the 3 types of listing agreements that define the exclusivity of the agreement:The exclusive buyer agency agreement (aka exclusive right to represent) binds the buyer to the broker, and the buyer must pay the broker if he buys property during the term of the agreement, even if the buyer locates and arranges to buy the property.The exclusive-agency buyer agency agreement makes the broker the exclusive agent of the buyer, but the buyer does not have to pay a commission to the broker if the buyer finds the property and arranges to purchase it himself.An open buyer agency agreement gives no exclusivity to any agent and allows the buyer to have any number of agents representing her, and she may find the property on her own. Only the agent that finds the property that the buyer purchases is entitled to payment. Most people begin looking for a house in early spring, so naturally, there will be more competition for available houses and potentially more offers for houses listed in the spring.when buyers see more competition,they become more competitive — and faster — in their offers. So it is only natural that studies, such as this study by Zillow, find that the best time to list is in the early spring. Not only do houses sell for higher prices, but they also sell faster. Additionally, most people will view a listing when it is first listed, so it is usually better to list right before the start of the weekend, since that's when many people have the time to go out to check houses.

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