

GUIDELINES FOR COMPLETING THE EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT (AUCTION SALES)
(Standard Form 601)

INTRODUCTION: These guidelines are provided to assist an agent who is completing the Exclusive Right to Sell Listing Agreement (Auction Sales) form on behalf of the firm with which the agent is affiliated. The rules of the North Carolina Real Estate Commission require agreements for brokerage services in real estate transactions to be in writing, among other things. These guidelines include general comments about completion of the form as well as suggestions and explanations regarding several provisions. However, situations will frequently arise that are not covered by these guidelines. Agents should always remember that the firm's broker-in-charge should be consulted if there is uncertainty regarding the proper completion of the form.

USE OF FORM: See NOTE at the top of the form. The only way an individual real estate broker may *by himself or herself* auction or offer to auction real estate for others is by obtaining an individual auctioneer's license (examination required). Otherwise, individual real estate brokers as well as real estate brokerage firms may auction or offer to auction real property for others only by obtaining an auction firm license (no examination required) *and* employing a licensed auctioneer to cry the sale. For more information on proper licensing and to obtain an auctioneer's or auction firm license, contact the North Carolina Auctioneer Licensing Board.

The form is produced by the North Carolina Association of REALTORS® for use by its members, only as printed, and may be used in a variety of real estate auction sales transactions.

GENERAL INSTRUCTIONS:

1. Type this form if possible; otherwise print or write legibly in ink.
2. Fill in all blank spaces. If any space is not used, enter "N/A" or "None" as appropriate.
3. Be precise. Avoid the use of abbreviations, acronyms, jargon, and other terminology that may not be clearly understood.
4. Every change, addition or deletion to the agreement must be initialed and should be dated by both seller and agent.
5. Both seller and agent should initial those pages where indicated at the bottom in the spaces provided.
6. Advise the seller to consult an attorney if they have any question about the legal consequences of the agreement or any particular provision.

NAMES OF SELLER AND FIRM: Fill in the complete name of each owner of the Property. If husband and wife, then show the names of both (John A. Doe and wife, Mary B. Doe). Do not use "Mr. and Mrs. John A. Doe." Fill in the complete name of the agent's firm, NOT the agent's name, since the agreement is between the seller and the agent's firm.

In the majority of the situations, immediately upon death of the owner, the heirs or devisees under the will become the owner of the interest in the Property belonging to the deceased. All such heirs or devisees and their spouses should be named as Seller along with the executor or administrator (personal representative). **BEFORE INSERTING THE SELLER'S NAME, YOU SHOULD OBTAIN COMPETENT LEGAL ADVICE FROM AN NC ATTORNEY.**

1. TERM OF AGREEMENT: The rules of the NC Real Estate Commission require that any written agreement for brokerage services "shall provide for its existence for a definite period of time." Therefore, specific dates must be inserted in the first two blanks in this section. Do not insert "until sold" or similar language. Although there is no rule which limits the period of time that the agreement can be in effect, the period of time should be reasonable, taking into account the period of time within which the objective of the agreement-sale of the real property described in the agreement-can probably be accomplished. The Real Estate Commission rules also provide that an agreement for brokerage services cannot contain a provision that would require notice prior to termination. Although the form does not contain any such provision, agents are cautioned against inserting any "prior notice" or "automatic renewal" provision in the form. Insert the location where the auction will take place and the location's physical street address. For example, if the auction will be held on site, then insert "the Property" in the first blank and the street address of the Property in the second blank. If the auction will be held off site, then insert the name of the off site location and its street address. Insert the desired auction date and time.

2. REAL PROPERTY: Fill in City, County and Street Address and Zip Code. If any are not applicable, indicate by "None." Include a description sufficient to identify and distinguish the Property from all other property. For example, insert the lot #, block #, name of subdivision and the book # and page # for the Plat/Map Book or Deed Book as recorded in the Register of Deeds office and the county (or counties). Check the appropriate box to indicate whether the Property is all or a portion of the land described in the deed reference. If the full legal description for the Property is not available at the time of listing, it is important that you obtain it as soon as possible for use in a sales contract. Check the appropriate box to indicate whether the transaction includes timber rights and/or mineral rights. If the transaction involves the sale of multiple parcels, then check the "Multiple Parcels" box and attach a Multi-Parcel Addendum (Form 602) setting forth a description as above for each parcel. *Be sure to indicate on the Exhibit whether timber rights and/or mineral rights are included for each parcel.*



CAUTION: In any City or County that has a Subdivision Ordinance, it is a misdemeanor under the General Statutes of North Carolina to sell or transfer a lot in a subdivision prior to subdivision approval. It is also a misdemeanor to subdivide property in a manner not permitted by the Subdivision Ordinance.

3. FIXTURES. If the Seller wishes to *exclude* from the sale any items that are presently on the Property that may usually be considered to be real property ("fixtures"), list such items. (EXAMPLES: Storage shed; mailboxes; wall/door mirrors; etc.) NOTE: Care should be taken to ascertain that any fixtures *included* in the sale are owned by the Seller and are not merely rented or leased. (EXAMPLE: Water treatment/conditioner equipment; gas tank).

4. PERSONAL PROPERTY: List all items of personal property that are to be included *in the sale of the Property*. (EXAMPLES: Curtains, draperies, etc.; free standing appliances such as a refrigerator or range; fireplace tools; window air conditioner; etc.) NOTE: Care should be taken to ascertain that any personal property in the sale is owned by the Seller and is not merely rented or leased.

5. AUCTION SALE/PRE-AUCTION SALE:

(b) Absolute Auction or Auction With Reserve.

Check the appropriate box to indicate whether a single parcel or multiple parcels is/are the subject of the Agreement. If a single parcel is the subject of the Agreement, check ONE box to indicate whether the Property will be sold at auction absolute, with reserve, absolute/with reserve combination, or to be determined at a later time. If with reserve, then insert the reserve price. Insert the amount of the no sale fee, if desired. If the transaction involves the sale of multiple parcels, then check the "Multiple Parcels" box and attach a Multi-Parcel Addendum (Form 602) setting forth the terms of auction for each parcel.

(c) Live, Sealed Bid, And/Or Online Auction.

Check the appropriate box to indicate whether a single parcel or multiple parcels is/are the subject of the Agreement. If a single parcel is the subject of the Agreement, check all applicable boxes to indicate whether any auction will be conducted live, online, and/or by sealed bid. If the transaction involves the sale of multiple parcels, then check the "Multiple Parcels" box and describe the manner in which the auction will be conducted in an attached Multi-Parcel Addendum (Form 602).

6. MARKETING FEE; ONLINE AUCTION HOSTING FEE: If a marketing fee and/or an Online Auction hosting fee is to be collected from seller, then insert the amount in the blank and check the appropriate box to indicate when it is payable. A marketing fee or an Online Auction hosting fee collected pursuant to this agreement is not trust money, because a firm is not receiving those funds as an agent for another, but rather on its own behalf. Therefore, do NOT place a marketing fee or an Online Auction hosting fee collected upon execution of the agreement in a brokerage trust account, as to do so would constitute commingling.

7. COMMISSIONS:

Subparagraph (a). Choose the method of determining the auction sales commission.

Subparagraph (b). Check the appropriate box to indicate whether the seller authorizes you to charge a live auction buyer's premium or an Online Auction buyer's premium. If so, then insert the amount of any applicable buyer's premium and check the appropriate box to indicate who is entitled to the buyer's premium - the firm or the seller. In either case, the form provides that the seller will collect the buyer's premium.

Subparagraph (c). Insert the method of determining agent's compensation where the Property is sold other than at auction.

Subparagraph (d)(iii). In the first blank, insert (in days) the duration of the Protection Period. In the second blank, insert (in days) the amount of time the firm has, following the expiration of the listing agreement, to deliver the names of prospects to the seller. The form provides that a sale during the Protection Period to a registered prospect entitles the firm to a listing commission equal to the amount set forth in Section 7(c), that is, the amount the firm would have received for a sale of the Property other than at auction, *except where the seller has listed the Property with another real estate broker. In that case, the listing commission is equal to a percentage of the commission set forth in Section 7 (c) (see the third blank).* For example, assume that Section 7 (c) provides for a commission of 10% on the gross sales price of the Property. The firm wishes to receive one-quarter of that commission in the event of a sale to a registered prospect during the protection period where the seller has listed the Property with another broker. So, insert 25% in the third blank, that is, 25% of 10% of the gross sales price. **The amount, format or rate of real estate commission is not fixed by law, but is set by each firm individually and may be negotiable between seller and agent.**

8. FIRM AGENCY RELATIONSHIPS AND COOPERATION WITH/COMPENSATION TO OTHER FIRMS: The first sentence relates to the agent's duty under the rules of the North Carolina Real Estate Commission to give the seller a copy of the "Working with Real Estate Agents Disclosure" prescribed by the Commission and review it with the seller at first substantial contact directly with the seller. While this duty does not apply in an auction sales transaction, since the agreement contemplates the potential for a sale other than at auction, it is set forth here.

In auction sales, listing agents almost invariably work for the seller at all times. Therefore, the second sentence provides that in an auction sale, the firm will act *only* as an agent for the seller. **In an auction sale, dual and designated agency is prohibited by the terms of this agreement.** If your firm uses this form for listings, then your firm's buyer agency agreements should exclude sales at auction where your firm represents the sellers.

For a sale other than at auction, while a firm is not required to offer dual agency to its clients, it may choose to do so. Therefore, if the firm offers dual agency, the seller should check the appropriate box to indicate whether the seller authorizes the firm to engage in dual agency if a buyer that the firm represents becomes interested in the listing. If the seller authorizes dual agency, you should at this point go over the terms of the Dual Agency Addendum (NCAR Form 603) with the seller in order to help insure that the seller's decision to authorize dual agency is an informed one. If, after going over the Dual Agency Addendum with the seller, the seller desires to authorize the firm to act as a dual agent in the sale of the property other than at auction, it is *critical* that the Dual Agency Addendum be signed by both the seller and the firm and attached to the Exclusive Right to Sell Listing Agreement, as the Addendum sets forth the terms under which dual agency may be practiced.

The next section of the form assists the agent in discharging the ethical obligation imposed by Standard of Practice 1-12 of the *Code of Ethics* of the National Association of REALTORS®, which provides that when entering into listing contracts, REALTORS® must advise sellers of the REALTOR®'s company policies regarding cooperation and the amount(s) of any compensation that will be offered to subagents and buyer agents. Check the boxes for the seller to authorize cooperation and compensation. The next paragraph deals with cooperating agents and confirmation of their agency status, which is required by both the rules of the North Carolina Real Estate Commission and the *Code of Ethics*.

9. SELLER REPRESENTATIONS: This paragraph contains numerous representations by the Seller. The listing agent should carefully go over each of these representations with the Seller. Note that the representations in subparagraphs (g) through (n) are made to the best of Seller's knowledge.

Subparagraph (a). The appropriate box in BOTH sets of boxes (one set in the first sentence of this subparagraph and the other in the second sentence) should be checked based upon Seller's instructions. A definition of the term "Special Flood Hazard Area" can be obtained from the website of the Federal Emergency Management Agency at www.fema.gov. Information about the state of North Carolina's Floodplain Mapping Program is available online at www.ncfloodmaps.com.

Subparagraph (b). The blank should be completed if the Seller is aware that the Property was previously clad partly or entirely with synthetic stucco.

Subparagraph (c). If there is an owners' association, and if the Seller must provide the Residential Property and Owner's Association Disclosure Statement, complete subparagraph (c)(i) by inserting the name, address and telephone number of the president of the owners' association or the association manager and the owners' association website address, if any, in the blank spaces provided. If the Seller is NOT required to provide the Residential Property and Owner's Association Disclosure Statement, complete subparagraph (c)(ii) by checking the appropriate box to indicate if there is an owners' association, and if there is, the Seller should complete an Owners' Association Disclosure Addendum (Form 2A12-T) to attach to any contract for the sale of the Property.

Subparagraph (d). Check the appropriate box in the first sentence. If there is termite bond on the Property, also check the appropriate box in the second sentence. If there is a termite bond on the Property and if the bond is transferrable, the transfer cost should be inserted in the first blank in the third sentence and the name of the bonding company inserted in the second blank in the third sentence.

Subparagraph (e). Check the applicable box disclosing how long the Seller has owned the Property or whether the Seller owns the Property at the time Seller executes the listing agreement. Seller's term of ownership may affect a buyer's ability to obtain mortgage financing. Some mortgage lenders require proof that the property is not being *flipped* from one purchaser at a lower price to another purchaser at a higher price within a short period of time.

Subparagraph (f). Although not required, it is strongly recommended that the Seller be given a sample copy of the Real Property Auction Purchase and Sale Contract (form 620-T) at the time the listing agreement is entered into. The check box should be checked to confirm that the Seller has been given copies of this document.

Subparagraph (g). Check the appropriate box to indicate whether the Property is subject to one or more deeds of trust or mortgages. If the Property is subject to one or more deeds of trust or mortgages, each such deed of trust or mortgage should be described by filling in the appropriate blanks.

- Subparagraph (g)(2) through (g)(7). Seller is making five different representations in subparagraphs (g)(2) through (g)(6). These representations are to the best of Seller's knowledge. Information about any representation which is not accurate should be inserted in the blank in subparagraph (g)(7).
- In subparagraphs (g)(2) and (g)(3), the Seller is representing that Seller is current and not in default on any loans identified in subparagraph (g)(1).
- In subparagraph (g)(4), the Seller is representing that there are no liens on the Property *and* that the Seller isn't aware of any situation that may result in a lien being filed during the listing agreement. "Lien" is described in the NC Real Estate

Commission's North Carolina Real Estate Manual as “[a] charge, hold, or claim that one person has upon the property of another as a security for the payment of a debt.” Examples of liens include IRS tax liens for unpaid federal income taxes, owner association liens for unpaid dues, and materialmen's liens for unpaid labor or materials for improvements to property.

- In subparagraph (g)(5), the Seller is representing that there are no judgments affecting the Property *and* that the Seller isn't aware of any situation that may result in such a judgment being filed during the listing agreement. “Judgment” is defined in the NC Real Estate Commission's North Carolina Real Estate Manual as “[t]he decision...of a court of law...A properly docketed judgment declaring that one individual is indebted to another individual creates a lien on any real property owned by the judgment debtor.”
- In subparagraph (g)(6), the Seller is representing that there are no UCC fixture filings affecting the Property *and* that the Seller isn't aware of any situation that may result in a fixture filing during the listing agreement. “Fixture filing” is defined in Article 9 of the Uniform Commercial Code as “the filing of a financing statement covering goods that are or are to become fixtures.” For example, a fixture filing may be made by a company installing an HVAC system in a house when the owner will pay for the system over time. If the owner fails to make payments, the fixture filing would give the installing company specific rights with respect to the HVAC system.

Subparagraph (h). Check the appropriate boxes. A bankruptcy proceeding may, but does not necessarily, affect the ability of the Seller to market and sell the Property without the permission of the bankruptcy trustee and/or the bankruptcy court. If the Seller is in bankruptcy or is contemplating bankruptcy, it is strongly recommended that the Firm seek competent legal advice prior to taking the listing.

Subparagraph (i). If legal access to a public right-of-way is by private road/easement, check appropriate box whether there is a road maintenance agreement, and obtain a copy of the agreement and/or other information from Seller if such an agreement exists.

Subparagraph (j). Check appropriate box whether the Property is subject to any lease(s), and if so, obtain a copy of the lease agreement(s) or a written statement of the terms of any oral lease.

Subparagraph (k). Check appropriate box whether an FHA appraisal has been performed on the Property within four months of the commencement date of the listing agreement. It is important to know if an FHA appraisal has been recently performed as it is binding for a period of time following the date of the appraisal for FHA financing.

Subparagraph (l). If Seller is aware of any pending or approved special assessment, describe the assessment in the blank.

Subparagraph (m). If there is a manufactured (mobile) home(s) on the Property that Seller intends to include as a part of the sale of the Property, insert the VIN(s) in the first blank, if known, or, if unknown, insert other description of manufactured (mobile) home(s) in “Other Description” blank.

Subparagraph (n). Check the appropriate box whether there is/is not a fuel tank(s) on the Property. If there is a fuel tank(s) on the Property, check the appropriate box regarding the ownership, location, type of fuel, and name of the tank lessor if applicable. (NOTE: According to the NC Real Estate Commission, the existence of an underground fuel tank is a material fact that must be disclosed by a real estate agent who knows or reasonably should know of the tank's existence.)

10. SELLER'S DUTIES:

Subparagraph (a). Check the appropriate box to indicate the type of deed to be delivered by seller at closing. If other than a General Warranty Deed, set forth the type of deed. For example, Quit-Claim Deed.

Subparagraph (b). Check the appropriate box(es) to indicate the expenses for which the seller is responsible.

Subparagraph (d). Insert the number of days the seller has in which to notify you that the Property has been encumbered *following the date of the agreement*. Encumbrances include liens (such as mortgages and taxes), attachments, leases, easements, rights of way and other restrictions on use.

Subparagraph (l). If the transaction is subject to the N. C. Residential Property Disclosure Act, then check this box and have the seller complete the mandatory N. C. Residential Property Disclosure Statement. If the transaction is exempt from the N. C. Residential Property Disclosure Act, do *not* check this box. Exemptions from the N. C. Residential Property Disclosure Act include (1) Court Ordered Transfer; (2) Borrower to Lender Transfer; (3) Fiduciary Transfer; (4) Co-owner to Co-owner Transfer; (5) Within Family Transfer; (6) Spouse to Spouse Divorce Decree Transfer; (7) Tax Sale; (8) Governmental Transfer; (9) First Sale of Dwelling Never Inhabited; (10) Lease with Option to Purchase (where lessee occupies or intends to occupy the dwelling); (11) Buyer and Seller Agreement; or (12) Property to be transferred consists of less than 1 or more than 4 residential units. *See North Carolina General Statutes Section 47E-2 for a complete description of exemptions.*

Subparagraph (m). If the transaction is subject to the N. C. Residential Property Disclosure Act, then check this box and have the seller complete the North Carolina Mineral and Oil and Gas Rights Mandatory Disclosure Statement. If the transaction is exempt from the N. C. Residential Property Disclosure Act, do *not* check this box. Note that exemption #s (9) and (11) listed above do NOT apply to the obligation to provide a Mineral and Oil and Gas Rights Mandatory Disclosure Statement.

Subparagraph (n). If the Property is improved residential property built prior to 1978, then check this box and have the seller complete a Lead-Based Paint or Lead-Based Paint Hazard Disclosure.

12. MARKETING:

Commencement of Marketing. If the authorization to commence marketing will commence on a date later than the Effective Date of the Agreement, check the box and insert the date that the Seller authorizes the commencement of marketing.

Marketing Authorization. Check all applicable boxes. Note that checking the "Open Houses" box *permits* the Firm to hold open houses at such times as the Firm and the Seller may agree but does not require that open houses be held. Also note that if the "Advertising Other Than On The Internet" box is checked, it does *not* constitute a blanket authorization to *other* firms to advertise the Property in non-Internet media. Other firms may engage in such advertising only to the extent that the Firm may permit. With respect to the "Internet Advertising" box, if the Seller desires to limit or prohibit such advertising, the Seller must complete a separate form confirming the extent to which such advertising will be limited or prohibited. NCAR Form #105 may be used for this purpose. As set out in Form #105, Sellers should be clear that prohibiting automated estimates of the market value of the Property and third-party comments about the Property on broker IDX and VOW web sites will NOT prevent those from appearing on "third-party" web sites such as Zillow, Trulia and Realtor.com.

16. INDEMNIFICATION: This provision contractually obligates the seller to make good on any losses or damage the agent incurs for providing information, furnished by the seller, to a buyer or a third party and for the seller providing that information to a buyer or a third party. **CAUTION: This provision does *not* relieve an agent of the possibility of disciplinary proceedings being brought against the agent before the North Carolina Real Estate Commission, such as for failing to take reasonable steps to assure that the information is correct prior to the agent providing it to prospective buyers and others.**

19. ADDITIONAL TERMS AND CONDITIONS: Identify each additional provision as (a), (b), etc. If any additional provision conflicts with another provision of the Agreement, clarify which provision is to govern. NOTE: Since the brokerage firm is a party to the agreement, the drafting of additional provisions would not constitute the unauthorized practice of law. However, in order to insure that the contractual relationship between the firm and the seller is clear and unambiguous, great care should be taken in drafting.

SIGNATURES: Obtain the signatures of all owners of the Property. This is important because where the Property is owned by a husband and wife as tenants by the entirety, you will not have a valid listing contract without the signatures of both parties, which means you cannot market the property. Where the property is owned by two or more parties as joint tenants or tenants in common, and one of the parties does not sign the listing agreement, then that party has not agreed to sell his or her interest and cannot be compelled to cooperate if an offer is received. Only the interests of the joint tenants or tenants in common who signed the listing agreement are technically listed with you for sale. If you produce a ready, willing and able buyer for the Property, without the cooperation of all owners, the sellers who signed the listing agreement will be unable to deliver fee simple marketable and insurable title to the entire Property (see Section 10(a) of the listing agreement). In that case, while you may be able to enforce the listing agreement against the sellers who signed it and collect a commission from them, no sale of the entire Property will occur.