

Type **ER**

**EXCLUSIVE RIGHT TO SELL/RENT
(LISTING CONTRACT LEGAL LANGUAGE)**

Legal I.D.

THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OR THE TAX CONSEQUENCES THEREOF. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT YOUR ATTORNEY OR TAX ADVISOR.

1. **EXCLUSIVE RIGHT TO SELL AND RENT.** In consideration of the acceptance by the undersigned licensed Arizona real estate broker ("Broker") of the terms of this Listing Contract ("Listing") and Broker's promise to endeavor to effect a sale or rental sale rental of the property described below ("Premises"), I or we, as owner(s) ("Owner"), employ and grant Broker the exclusive and irrevocable right commencing on _____, _____, and expiring at 11:59 p.m. _____, _____, to sell, rent, exchange, or option the Premises described in Paragraph 2.

2. **THE PREMISES.**

Street Address _____ City/Town _____ County _____

SCHOOL PURPOSES ONLY - SAMPLE DOCUMENT FOR CLASSROOM INSTRUCTION

Legal Description _____ Assessor # _____

3. **PRICE.** The listing price shall be: Sale \$ _____ Rental \$ _____ per month, plus all applicable lease or rental (transaction privilege) taxes, to be paid as described in the Owner's Profile Sheet ("Data Entry Form"), or such other price and terms as are accepted by Owner.

4. **ACCESS AND LOCKBOX.** Owner acknowledges that a lockbox and any other keys left with or available to Broker will permit access to the Premises by Broker or any other broker, with or without potential purchasers or tenants ("Prospects"), even when Owner or occupant are absent. Owner further acknowledges that, from time to time, unauthorized persons may have gained access to properties using lockboxes. Owner acknowledges that neither the Arizona Regional Multiple Listing Service ("ARMLS"), nor any Board or Association of REALTORS®, nor any broker, is insuring Owner or occupant against theft, loss or vandalism resulting from any such access. Owner is responsible for taking such steps as may be necessary to secure and protect the Premises during any time that a lockbox is being used and obtaining appropriate insurance.

(Owner's Initials) Owner does does not authorize Broker to install and use, on the Premises, a lockbox containing the key to the Premises. If the Premises is occupied by someone other than Owner, Owner will provide to the Broker the occupant's written permission for the installation of the lockbox and the publication and dissemination of the occupant's name and telephone number.

5. **AGENCY RELATIONSHIPS.** Owner understands that Broker is Owner's agent with respect to this Listing. Owner understands that a Prospect may also wish to be represented by Broker in connection with the purchase or rental of the Premises. In that event, Broker would be serving as the agent for both Owner and the Prospect. Since Owner does not wish to limit the range of Prospects at this time, Owner agrees to work with Broker to resolve any potential agency conflicts that may arise. Owner initially authorizes Broker to cooperate with other brokers in any manner whatsoever.

6. **COMPENSATION TO BROKER.** Owner agrees to compensate Broker as follows:

a. **RETAINER.** Broker acknowledges receipt of a non-refundable retainer fee of _____ payable to Broker for initial consultation, research and other services.

b. **COMMISSIONS.** If Broker produces a ready, willing and able purchaser or tenant in accordance with this Listing, or if a sale, rental, option or exchange of the Premises is made by Owner or through any other broker, or otherwise, during the term of this Listing, for services rendered, Owner agrees to pay Broker a commission of: Sale: _____ Rental: _____

With respect to any holdovers or renewals of rental, regardless of whether this Listing has expired, Owner agrees to pay a commission of _____ . The same amount of sale or rental commission shall be due and payable to Broker if, without the consent of Broker, the Premises is withdrawn from this Listing, otherwise withdrawn from sale or rental or rented, transferred, or conveyed by Owner.

c. **OTHER BROKERS.** Owner authorizes Broker to divide all such compensation with other brokers in any manner acceptable to Broker.

d. **PAYMENT FROM ESCROW OR RENT.** Owner instructs the escrow company, if any, to pay all such compensation to Broker in cash as a condition to closing or upon cancellation of the escrow, and irrevocably assigns to Broker, to the extent necessary, money payable to Owner at the closing or cancellation of escrow. Broker is authorized to deduct compensation from any rent or other monies received on behalf of Owner.

e. **PURCHASE BY TENANT.** If during the terms of any rental of the Premises, including any renewals or holdovers, or within _____ days after its termination, any tenant, or his heirs, executors, or assigns shall buy the Premises from Owner, the sale commission described in Paragraph 6(b) shall be deemed earned by and payable to Broker.

f. **AFTER EXPIRATION.** After the expiration of this Listing, the same commissions, as appropriate, shall be payable if a sale, rental, exchange, or option is made by Owner to any person to whom the Premises has been shown or with whom Owner or any broker has negotiated concerning the Premises during the term of this Listing, (1) within _____ days after the expiration of this Listing, unless the Premises has been listed on an exclusive basis with another broker, or (2) during the pendency, including the closing, of any purchase contract or escrow relating to the Premises that was executed or opened during the term of this Listing, or (3) as contemplated by Paragraph 6(e).

g. **FAILURE TO COMPLETE.** If completion of a sale or rental is prevented by default of Owner, or with the consent of Owner, the entire sale or rental commission, as appropriate, shall be paid to Broker by Owner. If any earnest deposit is forfeited for any other reason, Owner shall pay a brokerage fee equal to the lesser of one-half of the earnest deposit or the full amount of the commission.

h. **NO LIMITATION.** Nothing in this Listing shall be construed as limiting applicable provisions of law relating to when commissions are earned or payable.

7. **USE OF INFORMATION.** The information on the Data Entry Form and any photographs of the Premises will be provided to ARMLS to be published and disseminated, in whole or in part, in printed or electronic form, including via the Internet, to ARMLS participants and the general public, even after the cancellation or expiration of the Listing. Broker is authorized to report the sale, exchange, option or rental of the Premises, and its price, terms and financing, for dissemination through ARMLS or otherwise to authorized ARMLS participants and to the public and for use by companies engaged in selling information for various purposes, including but not limited to, appraisals or evaluations of tax assessments.

8. **ROLE OF BROKER.** Owner acknowledges that Broker is not responsible for the custody or condition of the Premises or for its management, maintenance, upkeep or repair.
9. **DOCUMENTS.** In connection with any sale or rental of the Premises, Owner consents to the use of the standard form of purchase or rental contract used by Broker and all other standard documents used by Broker and the escrow and title companies.
10. **COOPERATION BY OWNER.** Owner agrees to make available to Broker and Prospects all data, records and documents pertaining to the Premises. Owner authorizes Broker, and any other broker authorized by Broker to preview and show the Premises at reasonable times and upon reasonable notice, to take and publish photographs of the Premises and to conduct virtual tours, and agrees to commit no act which might tend to obstruct Broker's performance hereunder. If the Premises is occupied by someone other than Owner, Owner will provide to Broker the occupant's written consent to cooperate in connection with the showing of the Premises. Owner shall not communicate directly with any Prospect or other broker during the term of this Listing and shall refer all Prospects and other brokers to Broker during the term hereof.
11. **INSURANCE.** Owner acknowledges that Owner's or occupant's property could be damaged or stolen or persons visiting the Premises could be injured. Owner shall be responsible for obtaining appropriate insurance to cover such possible events.
12. **SIGN.** Broker is authorized to place Broker's appropriate signs on the Premises until the later of any close of escrow by a purchaser or occupancy by a tenant.
13. **GENERAL WARRANTIES BY OWNER.** Owner represents and warrants:
 - a. **CAPACITY.** Owner has the legal capacity, full power and authority to enter into this Listing, deliver marketable title to the Premises and consummate the transactions contemplated hereby on Owner's own behalf or on behalf of the party Owner represents, as appropriate.
 - b. **ADVERSE INFORMATION.** Owner has disclosed to Broker all material latent defects and information concerning the Premises known to Owner, including all material information relating to: Connection to a public sewer system, septic tank or other sanitation system; the existence of any tax, judgment or other type of lien; past or present infestation by or treatment for wood-destroying pests or organisms; and past or present repair of the Premises for damage resulting from wood-destroying pests or organisms. During the term of this Listing, Owner agrees to continue disclosing to Broker all additional information of the type required by the preceding sentence promptly after Owner becomes aware of any such information.
 - c. **CORRECT INFORMATION.** All information concerning the Premises in this Listing, including the Data Entry Form relating to the Premises, or otherwise provided by Owner to Broker or to any Prospect is, or will be at the time provided, and shall be at close of escrow or occupancy by a tenant, true, correct and complete. Owner agrees to notify Broker promptly if there is any material change in such information until the latest to occur of the expiration of this Listing, any close of escrow or occupancy by a tenant.
14. **UTILITIES.** During the term of this Listing, Owner shall maintain continuous service to the Premises of all utilities which are currently connected to the property.
15. **RELIEF OF LIABILITY.** Broker is hereby relieved of any and all liability and responsibility for everything stated in Paragraphs 11, 13, 14, 21, 22 and 28.
16. **INDEMNIFICATION.** Owner agrees to indemnify and hold Broker, all Boards or Associations of REALTORS®, ARMLS and all other brokers harmless against any and all claims, liability, damage or loss arising from any misrepresentation, breach of warranty or breach of a promise by Owner in this Listing, any incorrect information supplied by Owner, any facts concerning the Premises not disclosed by Owner, including any facts known to Owner relating to adverse conditions or latent defects and any injury or damage to persons or property in connection with the marketing or showing of the Premises.
17. **OTHER OWNERS AND PROSPECTS.** Owner understands that other owners may make offers to sell or rent or may sell, rent, exchange or option properties similar to the Premises through Broker. Owner consents to any agency representation by Broker of such other owners before, during and after the expiration of this Listing and understands that the Premises probably will not be presented or shown to every Prospect encountered by Broker.
18. **ATTORNEYS' FEES.** In any action or proceeding to enforce any provision of this Listing, or for damages sustained by reason of its breach, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees, as set by the court or arbitrator and not by a jury, and all other related expenses, such as expert witness fees, fees paid to investigators and court costs. Additionally, if any broker reasonably hires an attorney to enforce the collection of any commission payable pursuant to this Listing, and is successful in collecting some or all of such commission without commencing any action or proceeding, Owner agrees to pay such Broker's reasonable attorneys' fees and costs and Owner also agrees to pay interest at the legal rate on all compensation and other amounts owed or due to Broker from the time due until paid in full.
19. **DEPOSITS.** Owner authorizes brokers to accept earnest deposits on behalf of Owner and to issue receipts for such earnest deposits.
20. **RECOMMENDATIONS.** If Broker recommends a builder, contractor, escrow company, title company, pest control service, appraiser, lender, home inspection company or home warranty company or any other person or entity to Owner for any purpose, such recommendation shall be independently investigated and evaluated by Owner, who hereby acknowledges that any decision to enter into any contractual arrangement with any such person or entity recommended by Broker will be based solely upon such independent investigation and evaluation. Owner understands that said contractual arrangement may result in a commission or fee to Broker.
21. **FIRPTA.** If applicable, Owner agrees to complete, sign and deliver to the escrow company a certificate indicating whether Owner is a foreign person or non-resident alien pursuant to the Foreign Investment in Real Property Tax Act (FIRPTA).
22. **LEAD-BASED PAINT.** If any Premises structure was built before 1978, Owner shall provide a Disclosure of Lead-Based Paint and Lead-Based Paint Hazards as required by the U.S. Department of Housing and Urban Development.
23. **SUBSEQUENT PURCHASE OFFERS.** Broker acknowledges that Owner has the right to accept subsequent offers until the close of escrow in the case of a sale or until occupancy by a tenant in the case of a rental. Owner understands that any subsequent offers accepted by Owner must be backup offers, namely, contingent on the cancellation or other nullification of any contracts arising upon the acceptance of earlier offers. Within 72 hours (excluding weekends and postal holidays) of the execution of a purchase contract by Owner and purchaser, Broker shall change the status of the Listing from "active" to "sale pending" in the Multiple Listing Service computer system unless Owner instructs Broker in writing to continue to market the Premises, in which case, the Listing will be changed from "active" to "Active with Contingency".

- 24. **EQUAL HOUSING OPPORTUNITY.** The Premises will be presented in compliance with federal, state and local fair housing laws and regulations.
- 25. **TIME OF ESSENCE.** Time is of the essence in the performance of the obligations contained in this Listing.
- 26. **COUNTERPARTS AND FACSIMILE.** This Listing may be executed in any number of counterparts by the parties hereto. All counterparts so executed shall constitute one Listing binding upon all parties hereto, notwithstanding that all parties do not sign the same counterpart. A facsimile copy of the Listing which indicates that the Listing was fully executed shall be treated as an original Listing.
- 27. **CONSTRUCTION OF LANGUAGE AND GOVERNING LAW.** The language of this Listing shall be construed according to its fair meaning and not strictly for or against either party. Words used in the masculine, feminine or neuter shall apply to either gender or the neuter, as appropriate. All singular and plural words shall be interpreted to refer to the number consistent with circumstances and context. Whenever the words "include", "includes" or "including" are used in this Listing, they shall be deemed to be followed by the words "without limitation". If this Listing is used for a rental, exchange, or option instead of a sale of the Premises, all language in this Listing relating to the sale of Premises shall be construed to apply as appropriate, to a rental, exchange, or option. For example, Owner shall be deemed to be Exchanger, Optionor, or Landlord respectively. This Listing shall be governed by the laws of the State of Arizona.
- 28. **TAXES AND REGISTRATION.** Owner acknowledges that a rental property must be registered with the County Assessor's Office and may be subject to a tax on gross receipts and a special rental classification for property taxes. Owner agrees to obtain appropriate licenses and pay fees and taxes when due. Owner agrees to indemnify and hold Broker harmless for any such tax liability, including penalties and interest.
- 29. **ADDITIONAL TERMS.**

SCHOOL PURPOSES ONLY - SAMPLE DOCUMENT FOR CLASSROOM INSTRUCTION

- 30. **ENTIRE AGREEMENT.** This Listing including the Data Entry Sheet, plus any attached exhibits and any addenda or supplements signed by Owner and Broker, shall constitute the entire agreement between Owner and Broker and supersede any other written or oral agreements between Owner and Broker. It is the intention of the parties that this Listing shall be a legally binding contract once it has been signed by Owner and Broker even though none, or only some, of the pages have been initialed by Owner. This Listing can be modified only by a writing signed by Owner and Broker.

THE TERMS AND CONDITIONS IN THIS LISTING PLUS ALL INFORMATION ON THE DATA ENTRY FORM ARE INCORPORATED HEREIN BY REFERENCE. COMMISSIONS PAYABLE FOR THE SALE, RENTAL OR MANAGEMENT OF PROPERTY ARE NOT SET BY ANY BOARD OR ASSOCIATION OF REALTORS® OR MULTIPLE LISTING SERVICE OR IN ANY MANNER OTHER THAN BY NEGOTIATION BETWEEN THE BROKER AND THE OWNER. BY SIGNING BELOW, OWNER ACKNOWLEDGES THAT HE HAS READ, UNDERSTANDS AND ACCEPTS ALL TERMS AND PROVISIONS CONTAINED HEREIN AND THAT HE HAS RECEIVED A COPY OF THIS LISTING.

Print Name of Owner		Print Name of Owner	
Street	City/Town	State	Zip
Phone	Fax	Owner's e-mail Address	
Owner's Signature	Mo/Da/Yr	Owner's Signature	Mo/Da/Yr

In consideration of Owner's representations and promises in this Listing, Broker agrees to endeavor to effect a sale, rental, exchange, or option in accordance with this Listing and further agrees to provide this Listing for publication by a local Board or Association of REALTORS® and dissemination to the users of ARMLS.

Firm Name (Broker)	Office Phone	
By: _____		
Agent's Signature	Mo/Da/Yr	Agent's Fax

Copyright© September 2004 by Arizona Regional Multiple Listing Service, Inc. For Use with Data Entry Forms 1, 2, 3

For Broker's office use only:
 Broker's File/Lot No. _____ Manager's/Broker's Initials: _____ Date: _____