

**GUIDELINES FOR COMPLETING THE EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT (AUCTION SALES)  
(Standard Form 601; Copyright 7/2003)**

**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.

**1. EXCLUSIVE RIGHT TO SELL:** 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 "See attached Exhibit" box and attach an Exhibit 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. USDA FARM SERVICE AGENCY.** If you check the first box, then identify the allotments, for example, tobacco, soybeans, cotton, wheat, corn, etc. For information on allotments that apply to the Property, contact the local Farm Service Agency.

**4. FIXTURES.** If the Seller wishes to *exclude* from the sale any items that are presently on the Property and are listed in the fixtures clause, or to *exclude* any items that are presently on the Property that may usually be considered to be real property (“fixtures”) and are NOT listed in the fixtures clause, list such items. (EXAMPLES: Storage shed; mailboxes; wall/door mirrors; etc.) It is not necessary to cross out items that are listed in the fixtures clause but are not present on the Property. 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).

**5. 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.

**6. BROKER AGENCY RELATIONSHIPS AND COOPERATION:** 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" brochure 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 #901) 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*.

**7. AUCTION:** Do not check both the first and second boxes. Check the appropriate box to indicate whether the Property will be sold at auction without reserve *or* with reserve. 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 “See attached Exhibit” box and attach an Exhibit setting forth the terms of auction for each parcel.

**8. 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 buyer’s premium. If so, then insert the amount of the 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 8(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 8(c) (see the third blank). For example, assume that Section 8(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.**

**9. MARKETING FEE:** If a marketing 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 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 collected upon execution of the agreement in a brokerage trust account, as to do so would constitute commingling.

**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 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.

CAUTION: Real estate licensees are required by law to disclose to potential purchasers all material facts pertaining to a property about which the licensee knows or reasonably should know (see Section 11 of the Agreement). Therefore, if the seller chooses "No Representation" for the Synthetic Stucco Disclosure, this does *not* relieve the agent of the duty to disclose to prospective buyers that the Property is now or has been previously clad in synthetic stucco, if the agent knows or reasonably should know it.

**11. BROKER'S DUTIES:** Check the appropriate boxes to indicate the types of advertising and marketing permitted by seller. If your firm participates in Internet Data Exchange (IDX) as part of an MLS, then check the fourth box to include the listing under IDX.

**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.