

Please be advised that the following sample contract form is for informational use only and are not intended for use by NYSAR members as a substitute for forms provided by a local REALTOR board or association. Licensees who wish to utilize such forms in their real estate practice should have them reviewed and approved by an attorney prior to use.

NEW YORK STATE ASSOCIATION OF REALTORS®, Inc.  
EXCLUSIVE RIGHT TO SELL CONTRACT  
THIS IS A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD,  
WE RECOMMEND CONSULTING AN ATTORNEY BEFORE SIGNING.

LOCATION \_\_\_\_\_, CITY (TOWN) OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_, STATE OF NEW YORK MAP \_\_\_\_\_  
OWNER \_\_\_\_\_ PHONE \_\_\_\_\_  
ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_, STATE \_\_\_\_\_, ZIP \_\_\_\_\_  
[PROPERTY DATA FORM HERE]  
LISTING AGENT \_\_\_\_\_ AGT. NO. \_\_\_\_\_  
BROKER \_\_\_\_\_ BRK. NO \_\_\_\_\_ PHONE \_\_\_\_\_

**1. GRANT OF EXCLUSIVE RIGHT TO SELL/TERM OF LISTING**

In consideration of \_\_\_\_\_ (hereinafter referred to as BROKER) submitting the above described property to the \_\_\_\_\_ Multiple Listing Service (hereinafter referred to as MLS) and in further consideration of said BROKER undertaking to find a purchaser for said property, the undersigned OWNER (the word OWNER refers to each and all parties who have ownership interest in the property and the undersigned represent(s) they are the sole and exclusive owners and are fully authorized to enter into this agreement) hereby grants to said BROKER the sole and exclusive right to sell the property located at \_\_\_\_\_ for \$ \_\_\_\_\_, from \_\_\_\_\_ until \_\_\_\_\_ and to make an offer of cooperation and compensation to all members of the MLS and any other cooperating agent authorized under law to receive a commission, as set forth below in 2 and 3.

The OWNER hereby authorizes the BROKER to submit this listing to the MLS within 48 hours following the signing of this Exclusive Right to Sell Contract for circulation to all members of the service.

**2. SUBAGENCY**

\_\_\_\_\_ By initialing the line preceding this paragraph, OWNER hereby authorizes the BROKER to make an offer of subagency to all participants in the MLS. OWNER is further aware that OWNER could be liable for the misrepresentations, if any, of agents and subagents. If OWNER incurs a loss, as a result of misrepresentation of the agent and subagents, OWNER may be entitled to bring legal action against the responsible agent and subagents for reimbursement of such loss.

**3. BROKER AGENCY**

\_\_\_\_\_ By initialing the line preceding this paragraph, OWNER hereby authorizes the BROKER to make an offer of broker agency to all participants in the MLS. As a general rule,

Owner Initials \_\_\_\_\_

Broker Initials \_\_\_\_\_

those agents owe fiduciary duties to your agent and to you. However, unlike subagency, you are not vicariously liable for their conduct.

#### 4. BUYER AGENCY

\_\_\_\_\_ By initialing the line preceding this paragraph, OWNER hereby authorizes BROKER to cooperate with agents who represent buyers with the understanding that such buyers' agents will be representing only the interests of the prospective buyers.

#### 5. FAIR HOUSING

It is agreed that this property is listed in full compliance with local, state and federal fair housing laws against discrimination on the basis of race, color, religion, sex, national origin, handicap, age, marital status and/or familial status, or other prohibited factors.

#### 6. BROKER'S OBLIGATIONS

In accordance with the provisions of this agreement, the BROKER (a) will undertake to find a purchaser for said property, upon terms and conditions acceptable to the OWNER, (b) will provide the OWNER with a current market analysis ("CMA") of the value of comparative properties, (c) will prepare and make available a "fact sheet" regarding the property in accordance with the OWNER'S property condition disclosure statement, (d) will make available to prospective purchasers upon request information regarding the availability of inspections and financing alternatives (e) will report to the OWNER regarding expressions of interest in the property, (f) will assist in preparing a purchase offer with an attorney approval clause, (g) will follow up with purchaser and/or purchaser's designee once a contract is negotiated and (h) will update the OWNER regarding fulfillment of contract contingencies.

#### 7. OWNER'S AUTHORIZATIONS AND OBLIGATION

a. The OWNER understands that in order to facilitate the sale of said property, the OWNER hereby authorizes the BROKER to make and use photographs of said property, grants the BROKER exclusive "FOR SALE" sign privilege on said property, consents that said property may be shown at any reasonable hour, and agrees to refer any and all inquiries concerning said property to BROKER.

b. The OWNER authorizes the use of a lockbox, and accepts any responsibility for any damage or loss arising from the use of the lockbox. The OWNER understands that by providing the BROKER with a key and/or lockbox to the property does not in anyway make the BROKER the custodian of said property or responsible therefor.

c. The OWNER authorizes the (listing/selling) BROKER to submit all offers to the OWNER.

d. The OWNER (will/will not) provide a Property Condition Disclosure Statement which may be furnished to potential purchasers and to real estate licensees. OWNER may be held liable for the accuracy of any disclosure and may be liable to provide a credit of \$500.00 to the buyer if a Property Condition Disclosure Statement is not timely provided.

Owner Initials \_\_\_\_\_

Broker Initials \_\_\_\_\_

e. The OWNER has received a copy of the "Disclosure Regarding Real Estate Agency Relationships."

#### 8. MARKETING ACTIVITY

The OWNER grants to the BROKER full discretion to determine the appropriate marketing approach for the property. BROKER will undertake to find a ready, willing and able purchaser and in order to do so will engage in marketing activity which may include advertising, showing of listed premises and/or the conduct of open houses.

#### 9. PURCHASER'S MORTGAGE

The OWNER agrees to accept a sales agreement contingent, for a reasonable period of time, on the purchaser's ability to finance the purchase price by any of the prevailing methods of mortgage financing. Any other type of mortgage loan or financing must be approved by the OWNER.

#### 10. INSPECTION CONTINGENCIES

The OWNER agrees to accept a purchase offer contingent, for a reasonable period of time, on the Purchaser's ability to obtain inspections regarding unknown circumstances which could affect the habitability of the property.

#### 11. BOARD AND MULTIPLE LISTING SERVICE ARE NOT AGENTS

The OWNER understands and agrees that the \_\_\_\_\_ BOARD and MLS are not the OWNER'S agents and that none of the terms of this agreement shall make them the OWNER'S agents.

#### 12. RENTAL OF PROPERTY

Should the OWNER desire to rent the property during the period of this agreement, the BROKER is hereby granted the sole and exclusive right to rent the property, exclusive "FOR RENT" sign privilege and the OWNER agrees to pay the BROKER a rental commission of \_\_\_\_\_. The applicable commission for the first year of the lease is due and will be paid (check) \_\_\_ upon execution of the lease \_\_\_ upon date of occupancy. The commission for each and any subsequent year of the lease, or renewal thereof, is due and will be paid at the outset of each year.

#### 13. APPLICATION OF DEPOSITS

The OWNER hereby authorizes the LISTING BROKER to accept and hold all money paid or deposited as a binder on this property in an escrow account until closing, cancellation of the purchase contract or notification of written mutual consent of the parties, whichever is sooner. The OWNER authorizes the BROKER to apply and pay any deposits or other money received as part of the purchase price towards the brokerage fee which is due under this agreement. In the event of a claim of default by the SELLER or the PURCHASER, or in the event of a claim to the deposit by both the SELLER and the PURCHASER, the deposit(s) shall be held by the BROKER in escrow pending a final resolution of its proper disposition or the written mutual consent of the parties. In the event a purchase contract subsequently provides that any deposits are to be held by another escrow agent (for example the seller's attorney), the LISTING

Owner Initials \_\_\_\_\_

Broker Initials \_\_\_\_\_

BROKER is authorized and directed to transfer deposits in accordance with the written agreement of the SELLER and PURCHASER.

14. BROKERAGE FEE: AMOUNT, WHEN DUE AND PAYABLE

OWNER agrees the brokerage fee will be due and payable to BROKER:

(A) if, prior to the expiration of this listing contract, a purchaser for the property is secured by the OWNER or by any other person at the sales price and terms contained in this contract or for any other sales price and terms acceptable to OWNER or the OWNER agrees to sell, transfer or exchange the property, or

(B) if, within \_\_\_\_ months after the expiration of the term of this listing contract, the OWNER agrees to sell, transfer or exchange said property to or with any person to whom the property has been shown during the term of this listing, as if BROKER had arranged the transaction. If during the term of said protection period, a valid exclusive right to sell agreement is entered into with another licensed real estate broker, any payments made thereunder may be credited against the sums otherwise due and owing pursuant to this agreement.

15. AMOUNT OF BROKERAGE FEE (initial one of the following)

\_\_\_\_ OWNER agrees that the brokerage fee will be \_\_\_\_% of the gross selling price or \$\_\_\_\_\_ whichever is the greater amount. (In the event of transfer or exchange, "fair market value" rather than "gross selling price" shall apply).  
The commission offered by the BROKER to subagents shall be \_\_\_\_% of the gross selling price or \$\_\_\_\_\_, whichever is the greater amount. The commission offered by the BROKER to buyers' agents shall be \_\_\_\_% of the gross selling price or \$\_\_\_\_\_, whichever is the greater amount.

\_\_\_\_ OWNER agrees that the brokerage fee will be \_\_\_\_% of the gross selling price minus any seller concessions or \$\_\_\_\_\_ whichever is the greater amount. (In the event of transfer or exchange, "fair market value" rather than "gross selling price" shall apply).  
The commission offered by the BROKER to subagents shall be \_\_\_\_% of the gross selling price or \$\_\_\_\_\_, whichever is the greater amount. The commission offered by the BROKER to buyers' agents shall be \_\_\_\_% of the gross selling price or \$\_\_\_\_\_, whichever is the greater amount.

16. ONE COMMISSION

In authorizing subagency, broker agency and/or buyer agency as described above, OWNER will not be liable for more than one (1) commission totaling \_\_\_\_% of the gross selling price or \$\_\_\_\_\_, whichever is the greater amount.

17. SUBSEQUENT PURCHASE OFFERS

Upon the OWNER'S acceptance of a purchase offer that does not stipulate the property is to remain on the market, BROKER is directed to:

Please initial (only one)

(A) Discontinue marketing efforts, publish the transaction as a "sale pending" through the MLS and refuse submission of all subsequent purchase offers. \_\_\_\_\_

Owner Initials \_\_\_\_\_

Broker Initials \_\_\_\_\_

(B) Discontinue marketing efforts, publish the transaction as "sale pending" through the MLS and submit "backup" offers only. \_\_\_\_\_

OWNER SHOULD CONSULT AN ATTORNEY REGARDING ANY SUBSEQUENT OFFERS BECAUSE A BINDING CONTRACT FOR THE PROPERTY MAY ALREADY EXIST AND BROKERAGE COMMISSION CLAIMS MAY BE INVOLVED.

#### 18. HOME EQUITY THEFT PREVENTION ACT

OWNER Please initial (only one)

\_\_\_\_\_ I am not more than two (2) months in arrears of my obligation to make mortgage payments on the property nor have I been notified that the property is subject to a foreclosure proceeding or tax sale. If during the term of this agreement I become more than two months in arrears of my obligation to make mortgage payments or I am notified the property is subject to a foreclosure proceeding or tax sale, I will notify the BROKER of the same within 48 hours.

\_\_\_\_\_ I am more than two (2) months in arrears of my obligation to make mortgage payments on the property

\_\_\_\_\_ I have been notified that the property is subject to a foreclosure proceeding or tax sale.

#### 19. TERMINATION

I understand that if I terminate the BROKER'S authority prior to the expiration of its term, the BROKER shall retain its contract rights (including but not limited to recovery of its commission, advertising expenses and/or any other damages) incurred by reason of my early termination of this agreement.

#### 20. COMMISSION ESCROW LAW

**AT THE TIME OF CLOSING, YOU MAY BE REQUIRED TO DEPOSIT THE BROKER'S COMMISSION WITH THE COUNTY CLERK IN THE EVENT THAT YOU DO NOT PAY THE BROKER HIS OR HER COMMISSION AS SET FORTH HEREIN. YOUR OBLIGATION TO DEPOSIT THE BROKER'S COMMISSION WITH THE COUNTY CLERK MAY BE WAIVED BY THE BROKER.**

#### 21. ARBITRATION

If, for any reason, the BROKER is not paid the compensation set forth herein on the due date, and the broker has not followed the provisions of the Commission Escrow Law as set forth in paragraph 21, the OWNER shall establish an escrow account with a party mutually agreeable to BROKER and OWNER and shall place into said escrow an amount equal to the compensation set forth herein. These monies shall be held in escrow until the parties rights to the escrow monies have been determined (i) by the mutual agreement of the parties, (ii) by order of a court of competent jurisdiction, or (iii) by some other process to which the parties agree to in writing. All claims, disputes or other matters in question arising out of or relating to this agreement shall be determined by arbitration before an arbitrator in the County of \_\_\_\_\_, State of New York, pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The award rendered by the arbitrator shall be final and judgment may be rendered upon it in accordance with applicable law in a court of competent jurisdiction.

Owner Initials \_\_\_\_\_

Broker Initials \_\_\_\_\_

In any action, proceeding or arbitration to enforce any provision of this agreement, or for damages caused by default, the prevailing party shall be entitled to reasonable attorney's fees, costs and related expenses, such as expert witness fees and fees paid to investigators. In the event the BROKER hires an attorney to enforce the collection of any brokerage commission due hereunder and is successful in collecting all or any portion thereof with or without commencing an action, proceeding or arbitration, OWNER agrees to pay such attorney's fees costs and related expenses.

**22. ENTIRE AGREEMENT**

The OWNER has read and understands this agreement and does hereby acknowledge receipt of a copy thereof. This agreement is the entire agreement between the parties and may not be changed except in writing signed by both parties. This agreement shall be binding upon the parties hereto, their respective heirs, successors, assigns.

**EXPLANATION:**

An "exclusive right to sell" listing means that if you, the owner of the property, find a buyer for your house, or if another broker finds a buyer, you must pay the agreed commission to the present broker. An "exclusive agency" listing means that if you, the owner of the property find a buyer, you will not have to pay a commission to the broker. However, if another broker finds a buyer, you will owe a commission to both the selling broker and your present broker.

Owners Initials\_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
OWNER

\_\_\_\_\_  
SS#

Accepted:  
\_\_\_\_\_

\_\_\_\_\_  
BROKER

Rev 03/2010

Owner Initials\_\_\_\_\_

Broker Initials\_\_\_\_\_