

Agency In Tennessee

(A 2-Hour Course)

Course Manual

**Brought to you by the
Tennessee Real Estate Educational Foundation
and the
Tennessee Association of REALTORS®**

Let's Test Your Agency I.Q.

Your company's agency policy may be more restrictive than Tennessee law and/or the REALTOR Code of Ethics. Please, however, choose the best answer to each of the following, based solely on Tennessee law and the Code of Ethics.

1. Buyer agency is established when:
 - a. An agent shows a property.
 - b. When all parties sign the Buyer Representation Agreement.
 - c. When the purchaser calls the office, and the agent gives out information.
 - d. A purchaser signs the Purchase and Sales Agreement.
2. Under Tennessee Agency Law, when must a licensee first disclose their agency status?
 - a. At the initial appointment.
 - b. After showing a minimum of three properties.
 - c. Before providing any real estate services.
 - d. Before preparation of an offer.
3. In a traditional "seller's agency" firm, the owner of a property is represented by
 - a. The broker
 - b. The affiliate that met with the owner
 - c. The other affiliates with the firm, even though they've never met the owner
 - d. All of the above
 - e. None of the above
4. In order to be an Agent for the Seller, which of the following must be executed?
 - a. Purchase Agreement
 - b. Exclusive Right to Sell Listing Agreement
 - c. Buyer Representation Agreement
 - d. Confirmation of Agency Status
5. Which of the following situations would require a personal interest disclosure?
 - a. You represent your cousin Mike in making an offer for a house on 123 Elm Street.
 - b. You are working with your Father as an agent and receive an offer on his condo.
 - c. You represent your stepmother in a transaction and make an offer on a warehouse on 450 Main Street.
 - d. A and B only.
 - e. A, B, and C.
6. A licensee may be paid by:
 - a. A seller
 - b. A buyer
 - c. Her principal broker
 - d. All of the above

7. You have been showing a buyer houses for months. You finally show the buyer his dream home, and he asks you to write an offer. You produce a Confirmation of Agency Status form indicating that you will be the designated agent for the buyer, and the buyer signs this form. Now you will be considered a:
 - a. Buyer's agent
 - b. Designated buyer's agent
 - c. Facilitator
 - d. None of the above
8. A licensee's agency status when providing real estate service is controlled by:
 - a. State law.
 - b. His company agency policy.
 - c. The wishes of his customer/client.
 - d. All of the above.
9. If you have the Confirmation of Agency form signed by all parties, you do not need any other documentation to establish agency.
True or False
10. When writing a contract for your buyer client on a property listed by your company, it may be necessary for you to check more than one agency status on the Confirmation of Agency Status.
True or False
11. Your office practices Designated Agency. The files for each agent's listings must be maintained separately to ensure confidentiality.
True or False
12. Licensees need a Buyer Representation Agreement prior to showing any property to a prospective buyer.
True or False
13. Dates on a Confirmation of Agency Status form, indicating your status as an agent for the buyer or Designated Agent for the Buyer, must not be dated before the date on the representation agreement.
True or False
14. Bill and Jane are agents with the same firm. Bill lists the Smith's property as agent for seller. Bill then has a fiduciary responsibility to the Smiths. Jane also has a fiduciary responsibility to the Smiths.
True or False
15. A facilitator may assist but may not advise either the buyer or the seller.
True or False

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16. A licensee must become a facilitator in order to write an offer for an unrepresented buyer if he was initially a designated seller's agent.
True or False
17. A licensee's actions on behalf of a prospective buyer may inadvertently create an agency relationship with that buyer.
True or False
18. With a signed preauthorization from the seller to drop to a facilitator, it is necessary to discuss agency again with the seller if you do change your status during the transaction.
True or False
19. Every office is required by law to have a company policy regarding agency.
True or False
20. When one licensee in a firm serves as Designated Agent for the Buyer, and another licensee in the same firm is Designated Agent for the Seller, and neither of these agents is the managing broker of the firm, the managing broker of the firm is therefore a Disclosed Dual Agent.
True or False
21. The personal interest disclosure is required for transactions involving _____ property, but not for transactions involving _____ property.
22. In Tennessee, an agency relationship with a buyer can only be created by _____.

TENNESSEE'S AGENCY LAW SECTION BY SECTION

Creating an Agency Relationship

62-13-401. Creation.

A real estate licensee may provide real estate services to any party in a prospective transaction, with or without an agency relationship to one (1) or more parties to the transaction. Until such time as a licensee enters into a specific written agreement to establish an agency relationship with one (1) or more parties to a transaction, such licensee shall be considered a facilitator and shall not be considered an agent or advocate of any party to the transaction. An agency or subagency relationship shall not be assumed, implied or created without a written bilateral agreement that establishes the terms and conditions of such agency or subagency relationship. The negotiation and execution of either an exclusive agency listing agreement or an exclusive right to sell listing agreement with a prospective seller shall establish an agency relationship with the seller.

[Acts 1995, ch. 246, § 3; 1996, ch. 772, § 4; 2006, ch. 738, § 1.]

COMMENT: Before 1996, a real estate licensee could create an agency relationship *accidentally*, by saying or doing something that led a buyer or seller to believe that the licensee represented them. Now, to prevent an “accidental” or implied – or a relationship created without the consent of both agent and client – **Tennessee law provides that such a relationship cannot be created or implied by word or action alone, but *only by a specific written agency agreement*.** A disclosure or confirmation form alone is not an agreement.

In some states, a real estate licensee may still become an agent of a buyer simply by his/her conduct or by something that he or she says ...even accidentally. **Again, this is NOT the case in Tennessee.** An actual written agency contract between a buyer or seller and the licensee is required in order for the licensee to become that consumer’s agent.

With sellers, an Exclusive Right to Sell Listing agreement or an Exclusive Agency Listing agreement automatically establishes an agency relationship with the seller. [As noted previously, other types of listing agreements such as open listings may also establish an agency relationship with the seller.]

With buyers, an Exclusive or Non-Exclusive Representation agreement must be signed by both the licensee and the buyer in order for an agency relationship to be established. If a licensee signs a disclosure form – such as a Confirmation of Agency Status – indicating that he/she is a buyer’s agent, **BUT** the licensee has not yet negotiated a buyer representation agreement with the buyer, ***then the licensee has just misrepresented his/her status*** ...in violation of both Tennessee license law and the REALTOR® Code of Ethics.

The licensee’s commission may also be better protected when working with a buyer under an actual buyer agency agreement that spells out the commission arrangements.

If NO Agency Agreement Is Signed...

62-13-102 (9) “Facilitator” means any licensee:

(A) Who assists one (1) or more parties to a transaction who has not entered into a specific written agency agreement representing one (1) or more of the parties; or
(B) Whose specific written agency agreement provides that if the licensee or someone associated with the licensee also represents another party to the same transaction, such licensee shall be deemed to be a facilitator and not a dual agent; provided, that notice of assumption of facilitator status is provided to the buyer and seller immediately upon such assumption of facilitator status, to be confirmed in writing prior to execution of the contract. A facilitator may advise either or both of the parties to a transaction but cannot be considered a representative or advocate of either party. “Transaction broker” may be used synonymously with, or in lieu of, “facilitator” as used in any disclosures, forms or agreements under this chapter;...

COMMENT: “Facilitator” is every licensee’s status *by default*, in the absence of any written bilateral agency agreement between the licensee and a consumer. “Facilitator” or “transaction broker” is the status for any licensee acting as neither agent of the buyer nor agent of the seller in a transaction. Simply put, **a Facilitator is a non-agent.**

This facilitator status doesn’t obligate or bind the licensee to represent either party. Remember, however, that a licensee’s statement that he/she is a facilitator means that *the licensee has no agency relationship with EITHER party in the transaction.* [One cannot be an agent for the seller, for example, while simultaneously telling the buyer that he/she is a facilitator!]

The Nature of the Agency Relationship

62-13-402. Limited agency.

(a) If a real estate licensee is engaged as an agent, such real estate licensee serves as a limited agent retained to provide real estate services to a client. Such licensee shall function as an intermediary in negotiations between the parties to a transaction unless such parties negotiate directly.

(b) A real estate licensee shall owe all parties to a transaction the duties enumerated in § 62-13-403. A licensee shall owe to such licensee's client the duties enumerated in § 62-13-404.

(c) Notwithstanding any provision of law to the contrary, the duties enumerated in §§ 62-13-403 and 62-13-404 shall supersede any fiduciary or common law duties owed by a licensee to such licensee's client on January 1, 1996.

[Acts 1995, ch. 246, § 4.]

COMMENT: There are really two purposes behind this section. First, it defines the agency relationship in real estate transactions as a "limited agency." It's not a boundless authorization for the real estate licensee to operate on behalf of a consumer, as a power of attorney might be.

The second purpose of this section is to emphasize that the duties to consumers and clients in Tennessee's agency law take precedence over the more general list of duties that have been taught for several decades as part of the "common law" of agency.

A Licensee's Duties To ALL Consumers (*with or without an agency relationship*)

62-13-403. Duty owed to all parties.

A licensee who provides real estate services in a real estate transaction shall owe all parties to such transaction the following duties, except as provided otherwise by § 62-13-405, in addition to other duties specifically set forth in this chapter or the rules of the commission:

(1) Diligently exercise reasonable skill and care in providing services to all parties to the transaction;

(2) Disclose to each party to the transaction any adverse facts of which licensee has actual notice or knowledge;

(3) Maintain for each party to a transaction the confidentiality of any information obtained by a licensee prior to disclosure to all parties of a written agency or subagency agreement entered into by the licensee to represent either or both of the parties in a transaction. This duty of confidentiality extends to any information which the party would reasonably expect to be held in confidence, except for information which the party has authorized for disclosure, information required to be disclosed under this part, and information otherwise required to be disclosed pursuant to this chapter. This duty survives both the subsequent establishment of an agency relationship and the closing of the transaction;

(4) Provide services to each party to the transaction with honesty and good faith;

(5) Disclose to each party to the transaction timely and accurate information regarding market conditions that might affect such transaction only when such information is available through public records and when such information is requested by a party.

(6) Timely account for trust fund deposits and all other property received from any party to the transaction; and

(7)(A) Not engage in self-dealing nor act on behalf of licensee's immediate family, or on behalf of any other individual, organization or business entity in which the licensee has a personal interest without prior disclosure of such interest and the timely written consent of all parties to the transaction; and

(B) Not recommend to any party to the transaction the use of services of another individual, organization or business entity in which the licensee has an interest or from whom the licensee may receive a referral fee or other compensation for the referral, other than referrals to other licensees to provide real estate services under the Tennessee Real Estate Broker License Act of 1973, without timely disclosing to the party who receives the referral, the licensee's interest in such referral or the fact that a referral fee may be received.

[Acts 1995, ch. 246, § 5; 1996, ch. 772, §§ 5, 6.]

COMMENT: To clarify every licensee's responsibilities in a transaction, Tennessee law provides a clear list of duties by every licensee to any consumer with whom they are working ...*regardless of any agency relationships*. Tennessee's agency law supersedes the "common law

of agency.” Rather than dealing with a list of (non-real-estate-specific) “fiduciary duties” that changes dramatically whenever an agency relationship is created or changed, both licensees and consumers can now look to one clear set of real-estate-specific guidelines.

The “adverse facts” that must be disclosed to all consumers are defined in Tennessee law as “conditions or occurrences generally recognized by competent licensees that have negative impact on the value of the real estate, significantly reduce the structural integrity of improvements to real property or present a significant health risk to occupants of the property.”

Confidentiality is another important aspect of Tennessee agency law. The list of duties to all consumers in Tennessee law includes every licensee’s duty to **safeguard any confidential information from a consumer with whom the licensee is working, conveyed prior to that licensee’s disclosure of an agency relationship** ...to create a healthy “balance” between the client’s right to know and a customer’s expectations that a confidential information will be kept confidential.

The law strikes a fair balance between the client’s right to be fully informed of everything by his/her agent and the consumer’s expectation (being less informed about agency law) that confidential information that has been shared with that licensee – even if that licensee subsequently discloses that he or she is the agent of the other party in a transaction – will be kept confidential. Anything of a sensitive nature that a consumer tells or reveals to a licensee, prior to the licensee telling that consumer that the licensee is someone else’s agent, must still be held in confidence!

A Licensee's Duties To His/Her Client (*once an agency relationship has been established*)

62-13-404. Duty owed to licensee's client.

Any licensee who acts as an agent in a transaction regulated by the Tennessee Real Estate Broker License Act of 1973 owes to such licensee's client in that transaction the following duties, to:

(1) Obey all lawful instructions of the client when such instructions are within the scope of the agency agreement between licensee and licensee's client;

(2) Be loyal to the interests of the client. A licensee must place the interests of the client before all others in negotiation of a transaction and in other activities, except where such loyalty duty would violate licensee's duties to a customer under § 62-13-402 or a licensee's duties to another client in a dual agency; and

(3) (A) Unless the following duties are specifically and individually waived, in writing by a client, a licensee shall assist the client by:

(i) Scheduling all property showings on behalf of the client;

(ii) Receiving all offers and counter offers and forwarding them promptly to the client;

(iii) Answering any questions that the client may have in negotiation of a successful purchase agreement within the scope of the licensee's expertise; and

(iv) Advising the client as to whatever forms, procedures and steps are needed after execution of the purchase agreement for a successful closing of the transaction.

(B) Upon waiver of any of the duties in subdivision (3)(A), a consumer shall be advised in writing by the consumer's agent that the consumer may not expect or seek assistance from any other licensees in the transaction for the performance of the duties in subdivision (3)(A).

[Acts 1995, ch. 246, § 6; 1996, ch. 772, § 7; 2006, ch. 738, § 2.]

COMMENT: A somewhat shorter list of duties to *clients* is prescribed if an agency relationship has been established. Understand, however, that the duties to all consumers *take precedence over* the duties to one's client, if a conflict exists between the two.

Section 62-13-404 was amended in 2006 to include items (3)(A) and (3)(B) because of the need to specify what real estate services a consumer should reasonably expect from the licensee with whom they are working.

Disclosing Agency (or Facilitator) Status

62-13-405. Written disclosure.

(a) If a licensee personally assists a prospective buyer or seller in the purchase or sale of a property, and such buyer or seller is not represented by this or any other licensee, the licensee shall verbally disclose to such buyer or seller the licensee's facilitator, agent, subagent or designated agent status in the transaction before any real estate services are provided. Known adverse facts about a property must also be disclosed under the Tennessee Residential Property Disclosure Act, title 66, chapter 5, part 2, but licensees shall not be obligated to discover or disclose latent defects in a property or to advise on matters outside the scope of their real estate license.

(b) The disclosure of agency status pursuant to subsection (a) must be confirmed in writing with an unrepresented buyer prior to the preparation of an offer to purchase. The disclosure of agency status must be confirmed in writing with an unrepresented seller prior to execution of a listing agreement or presentation of an offer to purchase, whichever comes first. Following delivery of the written disclosure, the licensee shall obtain a signed receipt for such disclosure from the party to whom it was provided. The signed receipt shall contain a statement acknowledging that the buyer or seller, as applicable, was informed that any complaints alleging a violation or violations of § 62-13-312 must be filed within the applicable statute of limitations for the violation set out in § 62-13-313(e). The acknowledgment shall also include the address and telephone number of the commission.

(c) The disclosure of agency or facilitator status, as provided in subdivision (a), shall not be construed as, or be considered a substitute for, a written agreement to establish an agency relationship between the broker and a party to a transaction as referenced in § 62-13-406.

(d) Upon initial contact with any other licensee involved in the same prospective transaction, the licensee shall immediately disclose such licensee's role in the transaction, including any agency relationship, to this other licensee. If the licensee's role changes at any subsequent date, such licensee shall immediately notify any other licensees and any parties to the transaction relative to such change in status.

(e) Real estate transactions involving the transfer or lease of commercial properties, the transfer of property by public auction, the transfer of residential properties of more than four (4) units, or the lease or rental of residential properties shall not be subject to the disclosure requirements of §§ 62-13-403, 62-13-404 and this section. [Acts 1995, ch. 246, § 7; 1996, ch. 772, §§ 8-11; 2006, ch. 776, § 3.]

COMMENT: Many licensees assume that, because the disclosure doesn't have to be confirmed until the time of contract, that the disclosure can be safely delayed until then. This is incorrect!

In Tennessee, BEFORE providing any real estate brokerage services to a consumer (e.g., showing property), every licensee must disclose his/her agency or facilitator status in the transaction to that consumer.

This first disclosure of agency status before any services are provided can be either verbal or written ...***but it MUST be made prior to providing any real estate services! It must then be confirmed in writing prior to preparation of an offer.*** This early disclosure is much more in keeping with the REALTOR® Code of Ethics requirement, and it should reduce the number of arbitrations and procuring cause disputes that result from late disclosures.

Note also that the disclosure of agency status does not simply refer to the disclosures that licensees make to consumers. The law also requires disclosure of agency status to other licensees in the same prospective transaction.

This section of agency law also requires prompt disclosure of any and every change in agency status. The Tennessee Real Estate Commission has also said that **any such change in status must be documented when it occurs**, so that a Commission auditor can verify that in fact the change was disclosed.

Designated Agency

62-13-406. Designated broker – Managing broker.

(a) A licensee entering into a written agreement to represent any party in the buying, selling, exchanging, renting or leasing of real estate may be appointed as the designated and individual agent of this party by the licensee's managing broker, to the exclusion of all other licensees employed by or affiliated with such managing broker. A managing-broker providing services under the provisions of the Tennessee Real Estate Broker License Act of 1973 shall not be considered a dual agent if any individual licensee so appointed as designated agent in a transaction, by specific appointment or by written company policy, does not represent interests of any other party to the same transaction.

(b) The use of a designated agency does not abolish or diminish the managing broker's contractual rights to any listing or advertising agreement between the firm and a property owner, nor does this section lessen the managing broker's responsibilities to ensure that all licensees affiliated with or employed by such broker conduct business in accordance with appropriate laws, rules and regulations.

(c) There shall be no imputation of knowledge or information among or between clients, managing broker and any designated agent(s) in a designated agency situation. [Acts 1995, ch. 246, § 8.]

COMMENT: With “designated agency” a managing broker may designate – by written office policy or by specific instruction – an individual licensee to be the individual agent of a seller or buyer client, to the exclusion of all other licensees in the same firm ...to preserve the consumer's right to an agent/advocate even with in-house sales.

This feature of the agency law is, for many, one of its most positive benefits. Much of the industry has never fully understood the fact that, under the common law of agency, the office (not the individual) is considered the agent, making ALL licensees in that office agents of any buyer-client or seller-client of anybody in the office! Dual agency is therefore created and has to be disclosed to all parties even when a transaction involves two different licensees with the same firm.

A firm's use of designated agency can greatly reduce occurrences of dual agency, disclosed or undisclosed. **Use of this option, nevertheless, should probably be accompanied by an office policy that prescribes, for example, what kinds of information may or may not be shared among sales associates.**

Limitations on Consumer Liability

62-13-407. Liability.

A client or other party to whom a real estate licensee provides services as an agent, subagent or facilitator shall not be liable for damages for the misrepresentations of the licensee arising out of such licensee's services unless the client or party knew, or had reason to know, of the misrepresentation. This section shall not limit the liability of a licensee's managing broker for the misrepresentations of the managing broker's licensees.

[Acts 1995, ch. 246, § 9; 1996, ch. 772, § 12.]

COMMENT: A client's liability for his/her agent is limited to those statements or actions (by the agent) for which the client/consumer may be directly responsible as well as any misrepresentations by an agent that the client knew about but did not correct.

This provision removes most of the drawbacks of an agency relationship for the consumer entering into an agency agreement with a licensee. A consumer does not have to accept unlimited liability or greater exposure if they become a real estate licensee's client. This provision may also "control" a broker's liability for the unintended actions or statements of any subagents, if subagency is even offered.

Tennessee Law versus Common Law

62-13-408. Application.

This part shall supersede common law to the extent common law is inconsistent with the provisions of this part.

[Acts 1995, ch. 246, § 10.]

COMMENT: Expanding upon the same idea in section 62-13-402(c), this conclusion of the agency law underscores the point that Tennessee law supersedes the common law of agency, taking precedence over common law if a conflict exists between this legislation and common law (especially since “common law” has not always been consistent when applied to real estate relationships).

EXCLUSIVE BUYER REPRESENTATION AGREEMENT (Designated Agency)

1 **Broker/Firm:** _____

2 **Address of Firm:** _____

3 **Buyer:** _____

4 **1. TERM.**

5 For and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt
6 and sufficiency of which is hereby acknowledged, this Agreement is entered into on this _____ day of
7 _____, 20__ ("Effective Date") by and between the undersigned

8 _____ ("Client" or "Buyer") and Firm/Broker of
9 _____ ("Broker"), Broker shall act as Client's
10 exclusive agent to locate property for Client's purchase, lease, exchange or option (collectively "Purchase") during the
11 term of this agreement, and to advocate the Client's best interests in the negotiation of terms and conditions of any such
12 Purchase. This Buyer Representation Agreement ("Agreement") begins on the Effective Date and terminates at 11:59 p.m.
13 local time on _____, _____, or at the closing (or in the case of a lease, the date of possession) of
14 any Purchase under this Agreement, if such occurs earlier. If a contract to purchase, exchange, or lease is signed before
15 this Agreement expires, the term hereof shall continue until final disposition of the Purchase and Sales Agreement,
16 exchange agreement, or lease agreement.

17 **2. TYPE OF PROPERTY SOUGHT BY CLIENT.**

18 **A. General Description, Size and Location:** _____

20 **B. Price Range & Terms:** _____

21 **C. Sources to be Searched for Property:** _____

23 **D. Other Terms/Conditions:** _____

24 **E. Properties Specifically Exempted from this Agreement:** _____

26 **3. CLIENT DUTIES.**

27 Buyer agrees:

28 **A.** To Purchase property exclusively through Broker during the term of this Agreement;

29 **B.** To furnish Broker on a timely basis with any necessary personal and/or financial information to ensure Client's ability
30 to Purchase;

31 **C.** That Client is not under an exclusive right to buy contract or exclusive buyer representation agreement with any other
32 agent at this time;

33 **D. Termination.** Should the Broker consent to release this Representation Agreement prior to the expiration of the term
34 of this Agreement or any extensions, Buyer agrees to pay all costs incurred by Broker or other amount as agreed to by
35 the parties as a cancellation fee, in addition to any other sums that may be due to Broker.

36 **E. Carry-Over Clause.** Should the Buyer contract to buy or exchange, or contract to lease a property within _____
37 days after the expiration of this Agreement with any Seller/Landlord (or anyone acting on Seller's/Landlord's behalf)
38 who has been introduced to Buyer, directly or indirectly, during the term hereof, as extended, the Buyer agrees to pay
39 the compensation as set forth below. This carry-over clause shall not apply if the Buyer is subject to a buyer's
40 representation agreement with another licensed real estate broker at the time of such contract.

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F. That Client has reviewed this Agreement and agrees with the terms herein.

4. COMPENSATION.

BROKER COMPENSATION IS NOT SET BY LAW AND COMPENSATION RATES ARE FULLY NEGOTIABLE.

- A. **Compensation for Broker's Services:** Broker shall be compensated an amount of \$ _____ or _____% based on the total sale price in consideration of Broker's services as described herein.
- B. **Compensation from Seller:** Buyer authorizes Broker to negotiate with the Seller and/or the Seller's agent for this fee, the payment of which shall be fully disclosed to Buyer.
- C. **Difference:** In the event that the amount of any cooperating compensation paid by Seller or Seller's broker is less than the amount listed herein, Buyer agrees to pay Broker the difference at closing.
- D. **Compensation if Buyer Leases:** In the event that Buyer leases a property in lieu of purchase, the Buyer agrees to pay Broker a total of \$ _____ in compensation unless otherwise stated herein.
- E. **Cap on Compensation:** If Broker is an MLS participant, Broker shall not receive compensation from any source that exceeds the amount listed herein.
- F. **VA Buyer:** In the event the buyer broker compensation herein is considered a non-allowable pursuant to VA guidelines and thus cannot be paid by Buyer, this obligation is waived by Broker.
- G. Broker's fee is earned at the signing by both parties of an agreement to purchase, lease, exchange or the exercise of an option for any property(ies) as described above and is due at the closing of any such transaction or upon possession of property unless otherwise stated herein. In the event that Buyer defaults on performance of a valid contract for sale, lease, exchange or exercised option, Broker's fee shall be due on the date of default. Buyer agrees to pay all reasonable attorney's fees together with any court costs and expenses which real estate firm incurs in enforcing any of Buyer's obligations to pay compensation under this Agreement. The parties hereby agree that all remedies are fair and equitable and neither party shall assert the lack of mutuality of remedies as a defense in the event of a dispute.
- H. The payment of any fee by Seller shall not make Broker either the Agent or Subagent of the Seller.
- I. If Client utilizes the services of another real estate broker or deals solely with a Seller's Agent or the Seller directly at any time during the effective period of this Agreement and/or any extensions thereof and then enters into an agreement with a seller/owner to Purchase any property(ies) described above, the Buyer still owes a commission to the Broker provided herein.

5. AGENCY.

A. Definitions

1. **Broker.** In this Agreement, the term "Broker" shall mean a licensed Tennessee real estate broker or brokerage firm and where the context would indicate, the Broker's affiliated licensees, including but not limited to the Designated Agent.
2. **Designated Agent for the Buyer.** The individual licensee that has been assigned by the Managing Broker and is working as an agent for the Buyer in this consumer's prospective transaction, to the exclusion of all other licensees in the company. Even if someone else in the licensee's company represents a Seller of a prospective property, the Designated Agent for the Buyer shall continue to work as an advocate for the best interests of the Buyer. An agency relationship, by law, can only be established by a written agency agreement.
3. **Facilitator/Transaction Broker (not an agent for either party).** The licensee is not working as an agent for either party in this consumer's prospective transaction. A Facilitator may advise either or both of the parties to a transaction but cannot be considered a representative or advocate of either party. By law, any licensee or company who has not entered into a written agency agreement with either party in the transaction is considered a Facilitator or Transaction Broker until such time as an agency agreement is established.
4. **Dual agency.** The licensee has agreements to provide services as an agent to more than one (1) party in a specific transaction and in which the interests of such parties are adverse. This agency status may only be employed upon full disclosure to each party and with each party's informed consent.
5. **Adverse Facts.** "Adverse Facts" means conditions or occurrences generally recognized by competent licensees that have a negative impact on the value of the real estate, significantly reduce the structural integrity of improvements to real property or present a significant health risk to occupants of the property.
6. **Confidentiality.** By law, every licensee is obligated to protect some information as confidential. This includes any information revealed by a consumer which may be helpful to the other party IF it was revealed by the

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consumer BEFORE the licensee disclosed any agency relationship with that other party. AFTER the licensee discloses that licensee has an agency relationship with another party, any such information which the consumer THEN reveals must be passed on by the licensee to that other party. Buyer understands that there is a possibility that sellers or sellers' representatives may not treat the existence, terms, or conditions of offers as confidential unless confidentiality is required by law, regulation, or by any confidentiality agreement between the parties.

B. Duties owed to all Parties to a Transaction.

Pursuant to the Tennessee Real Estate Broker License Act, every Real Estate Licensee owes the following duties to every Buyer and Seller, Tenant and Landlord (collectively "Buyers" and "Sellers") unless otherwise provided by law:

1. To diligently exercise reasonable skill and care in providing services to all parties to the transaction;
2. To disclose to each party to the transaction any Adverse Facts of which Licensee has actual notice or knowledge;
3. To maintain for each party in a transaction the confidentiality of any information obtained by a Licensee prior to disclosure to all parties of a written agency agreement entered into by the Licensee to represent either or both parties in the transaction. This duty of confidentiality extends to any information that the party would reasonably expect to be held in confidence, except for information which the party has authorized for disclosure or information required by law to be disclosed;
4. To provide services to each party to the transaction with honesty and good faith;
5. To disclose to each party to the transaction timely and accurate information regarding market conditions that might affect such transaction only when such information is available through public records and when such information is requested by a party;
6. To give timely account for earnest money deposits and all other property received from any party to a transaction; and
7.
 - A. To refrain from engaging in self-dealing or acting on behalf of Licensee's immediate family, or on behalf of any other individual, organization or business entity in which Licensee has a personal interest without prior disclosure of such personal interest and the timely written consent of all parties to the transaction; and
 - B. To refrain from recommending to any party to the transaction the use of services of another individual, organization or business entity in which the Licensee has an interest or from whom the Licensee may receive a referral fee or other compensation for the referrals, other than referrals to other Licensees to provide real estate services, without timely disclosing to the party who receives the referral, the Licensee's interest in such referral or the fact that a referral fee may be received.

C. Duties Owed to Client.

In addition to the above, the Licensee has the following duties to Client if the Licensee has become an agent or Designated Agent in a transaction:

1. Obey all lawful instructions of the Client when such instructions are within the scope of this agency agreement between the Licensee and the Buyer/Client;
2. Be loyal to the interests of the Client. A Licensee must place the interests of the Client before all others in negotiation of a transaction and in other activities, except where such loyalty duty would violate Licensee's duties to a customer in the transaction; and
3. Unless the following duties are specifically and individually waived in writing by a Client, Licensee shall assist the Client by:
 - A. Scheduling all property showings on behalf of the Client;
 - B. Receiving all offers and counter offers and forwarding them promptly to the Client;
 - C. Answering any questions that the Client may have in negotiation of a successful purchase within the scope of the Licensee's expertise; and
 - D. Advising the Client as to whatever forms, procedures and steps are needed after execution of the purchase agreement for a successful closing of the transaction.

Upon Waiver of any of the above duties listed under subsection 4.C.3., the Client may not expect or seek assistance from any other licensees in the transaction for the performance of said duties.

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D. Agent Disclosure. Pursuant to Tennessee Real Estate Commission Rule 1260-2-.36, Broker must disclose certain things to Client prior to the execution of this Agreement. Client hereby agrees that Broker has disclosed the following and that this Agreement constitutes written confirmation of same:

During the effective period of this Agreement:

1. Client should not contact listing agents directly and should make all arrangements to view and inspect property through Broker;
2. In the event Client comes into contact with a Seller's Agent(s) (for example, at an open house viewing), Client shall immediately inform the Seller's Agent(s) that Client is represented by Broker; and
3. If Client purchases property(ies) covered by this Agreement through another real estate licensee or a Seller's Agent(s) or directly from a Seller, Client understands that Client still owes a commission to the Broker as set forth in this Agreement.

E. Buyer's Authorizations.

1. **Appointment of Designated Agent.** Buyer hereby authorizes Managing Broker to appoint the Selling Licensee as Designated Agent for the Buyer, to the exclusion of any other licensees associated with Broker. A Designated Agent for the Buyer can and shall continue to advocate Buyer's interests in a transaction even if a Designated Agent for the Seller (other than the Licensee listed below) is also associated with Broker. The Managing Broker hereby appoints _____ to be the Designated Agent for the Buyer in this transaction.
2. **Appointment of Subsequent Designated Agent.** Buyer hereby authorizes the Managing Broker, if necessary, to appoint a licensee, other than the Licensee named above, as Designated Agent for the Buyer, to the exclusion of any other licensees associated with Broker. This shall be accomplished through an amendment to this Agreement, if necessary.
3. **Default to Facilitator in the event that both parties are represented by the same Designated Agent.** The Designated Agent shall default to Facilitator status for all showings or transactions *involving the same Designated Agent for both the Buyer and a prospective Seller*, immediately notifying (verbally) the Buyer and the Seller of the need to default to this Facilitator status to be confirmed in writing prior to the execution of the contract. Upon any default to Facilitator status, the former Designated Agent must assume a neutral position and shall not be an advocate for either the Buyer or any prospective Seller.
4. **Resumption of Agency Status.** In the event that the Designated Agent defaults to a Facilitator status, this Facilitator status shall only be temporary. The Facilitator status shall only last until any transaction or contemplated transaction in which the parties are all assisted by the same Facilitator is resolved (either because the transaction is closed or the transaction or contemplated transaction is terminated or not accepted and no further negotiations occur between the parties). At that time, the Agent shall immediately revert back to Designated Agency status for the Buyer.

6. CONFIDENTIALITY.

Information which the Buyer authorizes Broker and Broker's affiliated Licensees to disclose which might otherwise be confidential: _____

7. EARNEST MONEY/TRUST MONEY.

Broker is authorized to accept a deposit of earnest money/trust money to be applied to the purchase price for a property. Such deposit is to be held by Broker in an escrow or trustee account or forwarded to party authorized to hold said funds as set forth in an executed contract for purchase, lease, exchange or option agreement until disbursed in accordance with the terms of said agreement.

8. LIMITATIONS ON BROKER'S AUTHORITY AND RESPONSIBILITY.

Buyer acknowledges and agrees that Broker and Designated Agent:

A. May show the same properties to other prospective buyers;

B. Is not an expert with regard to matters that could be revealed through a survey, title search, or inspection; the insurability of the property or cost to insure the property; for the condition of the property, any portion thereof, or any item therein; for any geological issues present on the property; for any issues arising out of the failure to inspect property prior to entering into an agreement to Purchase property and/or closing on property; for the necessity or cost of any repairs to property; hazardous or toxic materials; square footage; acreage; the availability and cost of utilities,

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septic or community amenities; conditions existing off a property which may affect said property; proposed or pending condemnation actions involving the property; uses and zoning of a property, whether permitted or proposed; for applicable boundaries of school districts or other school information; termites and wood destroying organisms; building products and construction techniques; the tax or legal consequences of a contemplated transaction; matters relating to financing; for the appraised or future value of a property; etc. Buyer acknowledges that Broker is not an expert with respect to the above matters and is hereby advised to seek independent expert advice on any of these or other matters which are of concern to Buyer;

C. Shall owe no duties to Buyer nor have any authority to act on behalf of Buyer other than what is set forth in this Agreement and the duties contained in the Tennessee Real Estate License Act of 1973, as amended, and the Tennessee Real Estate Commission Rules; and

D. May make all disclosures required by law and/or the National Association of Realtors® Code of Ethics.

E. **Hereby advises Buyer of the possibility that some properties may utilize security devices that record physical movements or audio conversations. Therefore, Buyers should limit making comments concerning the value, features, or condition while viewing any property.**

9. SANCTIONED FOREIGN BUSINESSES, GOVERNMENTS, AND NONRESIDENT ALIENS.

Buyer is hereby notified that Pursuant to Tenn. Code Ann. §66-2-301, et seq., a prohibited foreign party or prohibited foreign-party controlled business shall not acquire by grant, purchase, devise, descent, or otherwise an interest in agricultural land. A prohibited foreign-party business shall not acquire by grant, purchase, devise, descent, or otherwise an interest in non-agricultural land in this state. Tenn. Code Ann. §66-2-308 does include certain exceptions to this part.

Buyer warrants Buyer has reviewed Tenn. Code Ann. Title 66, Chapter 2, Part 3 and is not prohibited from purchasing agricultural or non-agricultural land in Tennessee pursuant to the statute.

10. EXPERT ASSISTANCE.

While Broker and the Licensees associated with Broker have considerable general knowledge of the real estate industry and real estate practices, they are not experts in matters of law, tax, financing, square footage, home inspections, wood destroying organisms, surveying, structural conditions, geological issues, hazardous materials, engineering, etc. Client acknowledges Broker's advice to seek professional assistance and advice in these and other areas of professional expertise as needed. If Broker or licensees associated with Broker provide names or sources to Client for such advice or assistance, those services and / or products are not warranted or guaranteed by the Broker or the Licensees associated with Broker.

11. OTHER PROVISIONS.

A. **Binding Effect, Entire Agreement, Modification, and Assignment.** This Agreement shall be for the benefit of, and be binding upon, the parties hereto, their heirs, successors, legal representatives and permitted assigns. This Agreement may only be assigned with the written consent of both parties. This Agreement constitutes the sole and entire agreement between the parties hereto and no modification of this Agreement shall be binding unless signed by all parties or assigns to this Agreement. No representation, promise, or inducement not included in this Agreement shall be binding upon any party hereto. Any assignee shall fulfill all the terms and conditions of this Agreement.

B. **Governing Law and Venue.** This Agreement is intended as a contract for buyer's agency representation and shall be governed by and interpreted in accordance with the laws and in the courts of the state of Tennessee.

C. **Terminology.** As the context may require in this Agreement: (1) the singular shall mean the plural and vice versa; (2) all pronouns shall mean and include the person, entity, firm or corporation to which they relate; (3) the masculine shall mean the feminine and vice versa; and (4) the term day(s) used throughout this Agreement shall be deemed to be calendar day(s) ending at 11:59 p.m. local time unless otherwise specified in this Agreement. Local time shall be determined by the location of the Firm.

D. **Severability.** If any portion or provision of this Agreement is held or adjudicated to be invalid or unenforceable for any reason, each such portion or provision shall be severed from the remaining portions or provisions of this Agreement, and the remaining portions or provisions shall be unaffected and remain in full force and effect.

E. **Fair Housing.** Broker and Designated Agent shall provide services without regard to race, color, creed, religion, sex, handicap, familial status, national origin, sexual orientation or gender identity. A request to observe discriminatory practices in the sale, lease, exchange, or option of property shall not be granted.

12. LEGAL DOCUMENTS. THIS IS AN IMPORTANT LEGAL DOCUMENT CREATING VALUABLE RIGHTS AND OBLIGATIONS. IF YOU HAVE QUESTIONS ABOUT IT, YOU SHOULD REVIEW IT WITH YOUR ATTORNEY.

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NEITHER THE BROKER NOR ANY AGENT OR FACILITATOR IS AUTHORIZED OR QUALIFIED TO GIVE YOU ANY ADVICE CONCERNING THE ADVISABILITY OR LEGAL EFFECT OF ITS PROVISIONS. BY SIGNING THIS DOCUMENT, YOU ARE CERTIFYING THAT YOU HAVE READ AND ACCEPT THESE TERMS AND ACKNOWLEDGE RECEIPT OF THIS AGREEMENT.

13. **EXHIBITS AND ADDENDA.** All exhibits and/or addenda attached hereto, listed below, or referenced herein are made a part of this Agreement.

14. **SPECIAL STIPULATIONS.** The following Special Stipulations, if conflicting with any preceding section, shall control:

The party(ies) below have signed and acknowledge receipt of a copy.

BY: Broker or Licensee Authorized by Broker

BROKER/FIRM

_____ at _____ o'clock ☐ am/ ☐ pm
Date

Address

Phone: _____

Print/Type Name

The party(ies) below have signed and acknowledge receipt of a copy.

BUYER

BUYER

Print/Type Name

Print/Type Name

_____ at _____ o'clock ☐ am/ ☐ pm
Date

_____ at _____ o'clock ☐ am/ ☐ pm
Date

Address

Address

Phone: _____ (H) _____ (Cell)
_____ (W) Email: _____

Phone: _____ (H) _____ (Cell)
_____ (W) Email: _____

NOTE: This form is provided by Tennessee REALTORS® to its members for their use in real estate transactions and is to be used as is. By downloading and/or using this form, you agree and covenant not to alter, amend, or edit said form or its contents except as where provided in the blank fields, and agree and acknowledge that any such alteration, amendment or edit of said form is done at your own risk. Use of the Tennessee REALTORS® logo in conjunction with any form other than standardized forms created by Tennessee REALTORS® is strictly prohibited. This form is subject to periodic revision and it is the responsibility of the member to use the most recent available form.

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EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT (Designated Agency)

BROKER (listing company): _____

ADDRESS OF COMPANY: _____

OWNER/SELLER ("Seller" or "Client"): _____

ADDRESS OF OWNER/SELLER: _____

In consideration of Broker's Agreement to find a ready, willing, and able Buyer and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned Seller hereby grants Broker the Exclusive Right to Sell the hereinafter described Property in accordance with the following terms and conditions:

1. PROPERTY ADDRESS/LEGAL DESCRIPTION:

_____ (Address)
_____ (City), Tennessee, _____ (Zip), as recorded in
_____ County Register of Deeds Office, _____ deed book(s), _____
page(s), and/or _____ instrument number. and further described as:

together with all fixtures, landscaping, improvements, and appurtenances, all being hereinafter collectively referred to as the "Property".

A. **Included** as part of the Property (if present): all attached light fixtures and bulbs including ceiling fans; permanently attached plate-glass mirrors; heating, cooling, and plumbing fixtures and equipment; all doors, storm doors and windows; all window treatments (e.g. shutters, blinds, shades, curtains, draperies) and hardware; all wall-to-wall carpet; range; all built-in kitchen appliances; all bathroom fixtures and bathroom mirrors; all gas logs, fireplace doors and attached screens; all security system components and controls; garage door opener and all (at least ____) remote controls; any wired electric vehicle wall charging stations; swimming pool and its equipment; awnings; permanently installed outdoor cooking grills; all landscaping and all outdoor lighting; mailbox(es); attached basketball goals and backboards; TV mounting brackets (inclusive of wall mount and TV brackets but excluding flat screen TVs); antennae and satellite dishes (excluding components); central vacuum systems and attachments; and all available keys, key fobs, access codes, master codes or other methods necessary for access to the Property, including mailboxes and/or amenities.

B. Other items that remain with the Property at no additional cost to Buyer:

C. Items that shall **NOT** remain with the Property:

D. **Leased Items:** Leased items that remain with the Property are (e.g. security systems, water softener systems, etc.):

If leases are not assumable, it shall be Seller's responsibility to pay balance.

2. THE LISTING PRICE: \$ _____ (_____ Dollars)

3. TERM: This Agreement shall be valid from the date this Agreement is fully executed by all parties (the "Effective Date") through _____, 20 _____ ("Listing Expiration Date"). If a contract to purchase, exchange, or lease is signed before this Agreement expires, the term hereof shall continue until final disposition of Purchase and Sales Agreement, exchange agreement, or lease agreement.

Marketing of Property Commencement Date: Seller directs Broker to commence marketing of the Property for sale to the general public on the Effective Date

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OR

☐ on the _____ day of _____, 20____.

Carry-Over Clause. Should the Seller contract to sell or exchange, or contract to lease the Property within _____ days after the Listing Expiration Date of this Agreement to any Buyer/Tenant (or anyone acting on Buyer's/Tenant's behalf) who has been introduced to the Property, directly or indirectly, during the term hereof, as extended, the Seller agrees to pay the compensation as set forth below. This includes but is not limited to any introduction or exposure to Property by advertisements or postings appearing in any medium which originated as a result of listing the Property with Broker. This carry-over clause shall not apply if the Property is listed with another licensed real estate broker at the time of such contract.

4. POSSESSION OF PROPERTY to be delivered: _____

5. TERMS of sale acceptable to Seller (such as FHA, VA, Conventional, etc.): _____

6. SELLER CONCESSIONS: Seller is hereby notified that a buyer may request certain concessions in any offer to purchase. These concessions may include items such as home warranty, repairs, money toward buyer's closing expenses, buyer broker compensation, etc. All such concessions are purely negotiable within a purchase and sale agreement.

7. COMPENSATION: BROKER COMPENSATION IS NOT SET BY LAW AND COMPENSATION RATES ARE FULLY NEGOTIABLE.

Compensation to Broker for Sale: A total of \$ _____, or _____% compensation based on the total sales price which shall be paid by Seller to Broker in readily available funds on the date of closing of Property as evidenced by delivery of warranty deed and payment of purchase price which includes, but is not limited to, payment of purchase price in full, execution of a 1031 exchange, execution of a deed of trust, or execution of a promissory note (the "Closing"). In any exchange of the Property, Seller consents to Broker receiving compensation from both parties based upon the value of both properties.

Cooperating Compensation: Broker is authorized to offer a cooperative compensation in the amount of \$ _____ or _____% of Selling Price/monthly rental amount to a Selling Agent or Facilitator (an agent who is representing the interests of and/or is working with the Buyer/Tenant) who is the procuring cause of the transaction. **This amount shall be taken from the amount agreed to be paid to Listing Broker.**

Compensation to Broker for Lease: In the event that the Property is leased during the term of this Agreement, Seller agrees to pay a total of \$ _____, or _____% compensation based upon the monthly rental amount which shall be paid by Seller to Broker in readily available funds within five business days of rent being due under the terms of said lease. Said compensation shall be paid by Seller to Broker and shall continue for the duration of the lease agreement with compensation being paid to Broker within five business days of rent being due under the terms of the lease. This obligation to pay said compensation shall survive the natural termination of this Agreement. In the event that the Property is sold during the term of any lease agreement reached under this Agreement or any carry-over period described herein, Seller agrees to pay Broker at the time of Closing any remaining compensation based upon future rental payments and/or any compensation that may be due under the terms of this Listing Agreement.

In the event that a ready, willing, and able Buyer (or Tenant) is produced and a contract results, the Seller is obligated to compensate Broker in the event that Seller unlawfully fails to close or to fulfill lease terms by Seller's breach of the Purchase and Sale Agreement or lease agreement. In the event this occurs, Seller agrees to compensate Broker in an amount equal to the compensation which would have been due and owing Broker had the transaction closed or the lease been fulfilled. Such compensation shall be payable without demand. Should the Broker consent to release the Listing prior to the expiration of the term of this Agreement or any extensions, Seller agrees to pay all costs incurred by Broker to market Property or other amount as agreed to by the parties as a cancellation fee, in addition to any other sums that may be due to Broker. Seller agrees to pay all reasonable attorney's fees together with any court costs and expenses which real estate firm incurs in enforcing any of Seller's obligations to pay compensation under this Listing Agreement. The parties hereby agree that all remedies are fair and equitable and neither party shall assert the lack of mutuality of remedies as a defense in the event of a dispute.

8. RESPONSIBILITIES AND RIGHTS OF THE PARTIES.

Broker is hereby granted the authority to advertise this listing on the Internet. Broker is additionally permitted to file this listing with any Multiple Listing Service (MLS) or similar service(s) of which Broker is a member. Seller understands and agrees that by placing the listing on the MLS or these similar services, the listing may be included in a searchable database provided by the MLS or similar service which can be viewed on other agents' websites. Seller also agrees that the listing may also appear on publicly accessible websites sponsored by and/or affiliated with the MLS, the local association of Realtors®, or similar listing services and those who lawfully receive listing information from said entities. Broker shall provide timely notice to MLS of status changes and shall use best efforts to produce a Buyer. Broker is

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authorized to communicate any offer of cooperating compensation to prospective Selling Agents or Facilitators and may divide compensation with other real estate licensees for cooperation in connection with the sale or lease of the Property. Seller shall assist Broker in any reasonable way in selling Property and shall refer to Broker all inquiries regarding this Property during the term of the Agreement, and any extensions or renewals thereof, and authorizes Broker to provide final sales information to the MLS for the purpose of compiling comparable sales data reports.

Broker is authorized to place a real estate sign and lock box on the Property and to remove all other real estate signs; to disseminate the Tennessee Residential Property Condition Disclosure, Disclaimer, Exemption, or Tennessee Residential Property Disclosure form and the Multiple Listing Profile Sheet as well as the Lead-Based Paint Disclosure form (if required by law and if such information is not otherwise disseminated); to exhibit said Property to any prospective Buyer; and to have interior/exterior photographs/videos taken, and/or audio recorded for the creation of any advertising materials of said Property to be used and distributed in promoting the sale and to use same to advertise the Property on the Internet or other broadcast media; and to do such advertising as Broker deems appropriate. In the event that Seller provides photographs, videos or other copyrightable materials to Broker, Seller grants Brokers a nonrevocable license to such material and the authority to grant license to Broker's MLS for storage; reproduction, compiling and distribution of said material. Seller shall allow the Property to be shown at all reasonable hours and otherwise cooperate with Broker.

Seller agrees that Broker is authorized to receive on behalf of Seller all notices, offers, and other documents incidental to the offering and sale of the Property which is covered by this Agreement. Seller agrees that such receipt by Broker may be deemed to be receipt by Seller if such documents so provide or if the law so requires. Seller agrees to keep Broker informed of Seller's whereabouts in order for Broker to promptly forward all such notices, offers and other information to Seller. In response to inquiries from Buyers or cooperating brokers, Broker shall follow Seller's lawful instructions on the disclosure of the existence of any offer and/or disclosure of terms and conditions of any offer. (Code of Ethics Standard of Practice 1-15)

In the event a Buyer is found for said Property during the period above set out, on the terms and at the price specified herein, or for a price and upon terms agreeable to Seller, Seller further agrees to convey said Property by warranty deed to such Buyer, free from all assessments, liens and encumbrances, but subject to all restrictions of record, if any. Property is offered without regard to race, creed, color, religion, sex, handicap, familial status or national origin. A request from Seller to observe discriminatory requirements in the sale or lease of the Property shall not be granted since it is a violation of the law.

9. FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA") DISCLOSURE.

Seller is hereby notified to consult with Seller's own closing attorney and tax professional concerning the applicability of the Foreign Investment in Real Property Tax Act ("FIRPTA") which may require tax withholding to be collected from Seller at the Closing of any sale of the Property. Examples of this may include if Seller can be classified as one of the following:

Non United States citizen;

Non resident alien; or

Foreign corporation, partnership, trust, or estate

It is Seller's Responsibility to seek independent tax advice prior to any Closing Date regarding such tax matters.

10. HOLD HARMLESS AND LIMITATIONS ON BROKER'S AUTHORITY AND RESPONSIBILITY.

Seller agrees to carefully review the information on the Multiple Listing Profile Sheet and to complete either the Tennessee Residential Property Condition Disclosure, Disclaimer, Exemption, or Tennessee Residential Property Disclosure form and to sign said documents. Seller also agrees to complete the Lead-Based Paint Disclosure if required by law and said information has not otherwise been disclosed in writing. Seller has not advised Broker and/or Broker's affiliated Licensees (hereinafter "Agents") of any defects in the Property or the improvements located thereon, except as shall be noted on the Multiple Listing Profile Sheet and the Tennessee Residential Property Condition Disclosure, Disclaimer, Exemption, or Tennessee Residential Property Disclosure form signed by the Seller. Seller is not aware of any other defect or environmental factor which would affect the value of or structural integrity of improvements on the Property or the health of future occupants. Seller agrees that Seller shall be solely responsible for any misrepresentations or mistakes on the listing data wherein Seller has supplied such information on the attached Multiple Listing Profile Sheet, Tennessee Residential Property Condition Disclosure, Disclaimer, Exemption, or Tennessee Residential Property Disclosure form; the Lead-Based Paint Disclosure (if required by law). Seller further agrees to hold Agents and firm harmless and indemnify them from any claim, demand, action, liability or proceedings resulting from any omission, alleged omission or misrepresentation by Seller on said forms and/or for any material fact that is known or should be known by Seller concerning the Property and that is not disclosed to Agents and to provide for defense costs including reasonable attorney's

fee for Agents and firm in such an event. Seller is not aware of any other defect, environmental factors or adverse facts (as defined in Tenn. Code Ann § 62-13-102) concerning the Property.

Seller is responsible for compliance with state or federal law regarding usage of video or audio recording devices while marketing or showing the property. Seller should seek legal advice regarding their rights or limitations related to their actions.

Seller authorizes Broker and/or Broker's affiliated Licensees to conduct showings or "Open Houses" of the Property. Seller additionally authorizes Broker and/or Broker's affiliated Licensees and any duly authorized key holder key entry access to the Property. Seller also authorizes Broker and/or Broker's affiliated Licensees to place a lock box on said Property for the purpose of conducting or allowing cooperating brokers to conduct key-entry showings of this Property. Seller represents that adequate insurance will be kept in force to protect Seller in the event of any damage, losses or claims arising from entry to Property by persons through the above use of the key and agrees to hold Broker, its licensees, salespersons and employees harmless from any loss, theft, or damage incurred as a result of showings, Open Houses or other authorized entry thereof.

Seller acknowledges and agrees that Broker:

- A. May show other properties to prospective buyers who are interested in Seller's Property;
- B. Is not an expert with regard to matters that could be revealed through a survey, title search, or inspection; for the condition of the Property, any portion thereof, or any item therein; for any geological issues present on the Property; for the necessity or cost of any repairs to Property; hazardous or toxic materials; square footage; acreage; the availability and cost of utilities, septic, or community amenities; conditions existing off the Property that may affect the Property; uses and zoning of Property, whether permitted or proposed; for applicable boundaries of school districts or other school information; proposed or pending condemnation actions involving the Property; the appraised or future value of the Property; termites and wood destroying organisms; building products and construction techniques; the tax or legal consequences of a contemplated transaction; or matters relating to financing, etc. Seller acknowledges that Broker is not an expert with respect to the above matters and is hereby advised to seek independent expert advice on any of these matters which are of concern to Seller;
- C. Shall owe no duties to Seller nor have any authority to act on behalf of Seller other than what is set forth in this Agreement and the duties contained in the Tennessee Real Estate License Act of 1973, as amended, and the Tennessee Real Estate Commission Rules; and
- D. May make all disclosures required by law and/or the National Association of Realtors® Code of Ethics.

11. EXPERT ASSISTANCE

While Broker has considerable general knowledge of the real estate industry and real estate practices, Broker is not an expert in the matters of law, square footage, acreage, home inspections, geological issues, wood destroying organisms, taxation, financing, surveying, structural conditions, hazardous materials, engineering, etc. Client acknowledges Broker's advice to seek professional assistance and advice as needed in these and other areas of professional expertise. If Broker provides names or sources for such advice or assistance, Broker does not warrant or guarantee the services and/or products obtained by Client.

12. AGENCY

A. Definitions.

- 1. **Broker.** In this Agreement, the term "Broker" shall mean a licensed Tennessee real estate broker or brokerage firm and where the context would indicate, the Broker's affiliated licensees.
- 2. **Designated Agent for the Seller.** The individual licensee that has been assigned by the Managing Broker and is working as an agent for the Seller or Property Owner in this consumer's prospective transaction, to the exclusion of all other licensees in the company. Even if someone else in the licensee's company represents a possible Buyer for this Seller's Property, the Designated Agent for the Seller shall continue to work as an advocate for the best interests of the Seller or Property Owner. An agency relationship of this type cannot, by law, be established without a written agency agreement.
- 3. **Facilitator/Transaction Broker (not an agent for either party).** The licensee is not working as an agent for either party in this consumer's prospective transaction. A Facilitator may advise either or both of the parties to a transaction but cannot be considered a representative or advocate of either party. "Transaction Broker" may be used synonymously with, or in lieu of, "Facilitator" as used in any disclosures, forms or agreements. [By law, any Licensee or company who has not entered into a written agency agreement with either party in the transaction is considered a Facilitator or Transaction Broker until such time as an agency agreement is established.]

- 205 4. **Dual agency.** The licensee has agreements to provide services as an agent to more than one (1) party in a specific
206 transaction and in which the interests of such parties are adverse. This agency status may only be employed upon
207 full disclosure to each party and with each party's informed consent.
- 208 5. **Adverse Facts.** "Adverse Facts" means conditions or occurrences generally recognized by competent licensees
209 that have a negative impact on the value of the real estate, significantly reduce the structural integrity of
210 improvements to real property or present a significant health risk to occupants of the property.
- 211 6. **Confidentiality.** By law, every licensee is obligated to protect some information as confidential. This includes
212 any information revealed by a consumer which may be helpful to the other party IF it was revealed by the
213 consumer BEFORE the licensee disclosed any agency relationship with that other party. AFTER the licensee
214 discloses that licensee has an agency relationship with another party, any such information which the consumer
215 THEN reveals must be passed on by the licensee to that other party.

216 **B. Duties owed to all Parties to a Transaction.**

217 **Pursuant to the Tennessee Real Estate Broker License Act, every Real Estate Licensee owes the following duties**
218 **to every Buyer and Seller, Tenant and Landlord (collectively "Buyers" and "Sellers") unless otherwise**
219 **provided by law:**

- 220 1. To diligently exercise reasonable skill and care in providing services to all parties to the transaction.
- 221 2. To disclose to each party to the transaction any Adverse Facts of which licensee has actual notice or knowledge.
- 222 3. To maintain for each party in a transaction the confidentiality of any information obtained by a licensee prior to
223 disclosure to all parties of a written agency agreement entered into by the licensee to represent either or both
224 parties in the transaction. This duty of confidentiality extends to any information which the party would
225 reasonably expect to be held in confidence, except for information which the party has authorized for disclosure
226 or information required by law to be disclosed. This duty survives both the subsequent establishment of an agency
227 relationship and the closing of the transaction.
- 228 4. To provide services to each party to the transaction with honesty and good faith.
- 229 5. To disclose to each party to the transaction timely and accurate information regarding market conditions that
230 might affect such transaction only when such information is available through public records and when such
231 information is requested by a party.
- 232 6. To timely account for earnest money deposits and all other property received from any party to a transaction and
- 233 7. A. To refrain from engaging in self-dealing or acting on behalf of licensee's immediate family, or on behalf of
234 any other individual, organization or business entity in which licensee has a personal interest without prior
235 disclosure of such personal interest and the timely written consent of all parties to the transaction, and
- 236 B. To refrain from recommending to any party to the transaction the use of services of another individual,
237 organization or business entity in which the licensee has an interest or from whom the licensee may receive
238 a referral fee or other compensation for the referral, other than referrals to other licensees to provide real
239 estate services, without timely disclosure to the party who receives the referral, the licensee's interest in such
240 referral or the fact that a referral fee may be received.

241 **C. Duties owed to Client.**

242 **In addition to the above, the licensee has the following duties to Client if the licensee has become an**
243 **Agent or Designated Agent in a transaction, pursuant to the Tennessee Real Estate Broker License Act:**

- 244 1. Obey all lawful instructions of the client when such instructions are within the scope of the agency agreement
245 between the licensee and licensee's client;
- 246 2. Be loyal to the interests of the client. Licensee must place the interests of the client before all others in negotiation
247 of a transaction and in other activities, except where such loyalty/duty would violate licensee's duties to a
248 customer in the transaction; and
- 249 3. Unless the following duties are specifically and individually waived in writing by a client, licensee shall assist
250 the client by:
- 251 A. Scheduling all Property showings on behalf of the client;
- 252 B. Receiving all offers and counter offers and forwarding them promptly to the client;
- 253 C. Answering any questions that the client may have in negotiation of a successful purchase agreement
254 within the scope of the licensee's expertise; and

D. Advising the client as to whatever forms, procedures and steps are needed after execution of the purchase agreement for a successful closing of the transaction.

Upon waiver of any of the duties contained in section 11.C.3., a consumer must be advised in writing by such consumer's agent that the consumer may not expect or seek assistance from any other licensees in the transaction for the performance of said duties.

D. Seller's Authorizations.

1. **Appointment of Designated Agent.** Seller hereby authorizes Managing Broker to appoint the Listing Licensee as Designated Agent for the Seller, to the exclusion of any other licensees associated with Broker. A Designated Agent for the Seller can and shall continue to advocate Seller's interests in a transaction even if a Designated Agent for the Buyer (other than the licensee below) is also associated with Broker. The Managing Broker hereby appoints _____ to be the Designated Agent to the Seller in this transaction.
2. **Appointment of Subsequent Designated Agent.** Seller hereby authorizes the Managing Broker, if necessary, to appoint a licensee, other than the licensee named above, as Designated Agent for the Seller, to the exclusion of any other licensees associated with Broker. This shall be accomplished through an amendment to this Agreement, if necessary.
3. **Default to Facilitator in the event both parties are represented by the same Designated Agent.** The Designated Agent shall default to Facilitator status for all showings or transactions *involving the same Designated Agent for both the Seller and a prospective buyer*, immediately notifying (verbally) the Buyer and the Seller of the need to default to this Facilitator status to be confirmed in writing prior to the execution of the contract. Upon any default to Facilitator status, the former Designated Agent must assume a neutral position and shall not be an advocate for either the Seller or any prospective buyers.
4. **Resumption of Agency Status.** In the event that the Designated Agent defaults to a Facilitator status, this Facilitator status shall only be temporary. The Facilitator status shall only last until any transaction or contemplated transaction in which the parties are all assisted by the same Facilitator is resolved (either because the transaction is closed or the transaction or contemplated transaction between these parties is terminated or not accepted and no further negotiations occur between the parties). At that time, the agent shall immediately revert to Designated Agency status for the Seller again.

13. **EARNEST MONEY/TRUST MONEY.** Broker is authorized to accept from Buyer a deposit as earnest money/trust money to be applied to the purchase price for the Property. Such deposit is to be held by Broker in an escrow or trustee account or forwarded to party authorized to hold said funds as set forth in an executed contract for the purchase, lease, exchange, or option agreement until disbursed in accordance with the terms of said agreement.

14. **TITLE.** Seller warrants Seller is vested with good marketable title to the Property with full authority to execute this Agreement and to sell the Property. Seller shall convey the Property by a good and sufficient general warranty deed.

15. HOME PROTECTION PLAN.

☐ Seller agrees to provide a limited Home Protection Plan at a cost of \$_____ to be funded at closing.

Plan company: _____

OR

☐ Home Protection waived.

16. OTHER PROVISIONS.

A. **Binding Effect, Entire Agreement, Modification, and Assignment.** This Agreement shall be for the benefit of, and be binding upon, the parties hereto, their heirs, successors, legal representatives and permitted assigns. This Agreement may only be assigned with the written consent of both parties. This Agreement constitutes the sole and entire agreement between the parties hereto and no modification of this Agreement shall be binding unless signed by all parties or assigns to this Agreement. No representation, promise, or inducement not included in this Agreement shall be binding upon any party hereto. Any assignee shall fulfill all the terms and conditions of this Agreement.

B. **Governing Law and Venue.** This Agreement is intended as a contract for the listing of real property and shall be governed by and interpreted in accordance with the laws and in the courts of the State of Tennessee.

C. **Terminology.** As the context may require in this Agreement: (1) the singular shall mean the plural and vice versa; (2) all pronouns shall mean and include the person, entity, firm or corporation to which they relate; (3) the masculine shall mean the feminine and vice versa; and (4) the term day(s) used throughout this Agreement shall be deemed to be calendar day(s) ending at 11:59 p.m. local time unless otherwise specified in this Agreement. Local time shall be determined by the location of Property.

- 308 **D. Severability.** If any portion or provision of this Agreement is held or adjudicated to be invalid or unenforceable for
309 any reason, each such portion or provision shall be severed from the remaining portions or provisions of this
310 Agreement, and the remaining portions or provisions shall be unaffected and remain in full force and effect.
- 311 **E. Fair Housing.** Broker and Broker's affiliated Licensees shall provide services without regard to race, color, creed,
312 religion, sex, handicap, familial status, national origin, sexual orientation or gender identity. A request to observe
313 discriminatory practices in the sale, lease, exchange, or option of property will not be granted.

314 **17. LEGAL DOCUMENTS.** THIS IS AN IMPORTANT LEGAL DOCUMENT CREATING VALUABLE RIGHTS
315 AND OBLIGATIONS. IF YOU HAVE QUESTIONS ABOUT IT, YOU SHOULD REVIEW IT WITH YOUR
316 ATTORNEY. NEITHER THE BROKER NOR ANY AGENT OR FACILITATOR IS AUTHORIZED OR
317 QUALIFIED TO GIVE YOU ANY ADVICE ABOUT THE ADVISABILITY OR LEGAL EFFECT OF ITS
318 PROVISIONS. BY SIGNING THIS DOCUMENT, YOU ARE CERTIFYING THAT YOU HAVE READ AND
319 ACCEPT THESE TERMS AND ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT.

320 **18. CONFIDENTIALITY.** Information which Seller authorizes Broker and Broker's affiliated Licensees to disclose which
321 might otherwise be confidential:
322 _____
323 _____
324 _____

325 **19. EXHIBITS AND ADDENDA.** All exhibits and/or addenda attached hereto, listed below, or referenced herein are
326 made a part of this Agreement.
327 _____
328 _____
329 _____
330 _____

331 **20. SPECIAL STIPULATIONS.** The following Special Stipulations, if conflicting with any preceding section, shall
332 control:
333 _____
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336 _____
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363 _____

NOTE: Any provisions of this Agreement which are preceded by a "□" must be marked if a part of this Agreement.

The party(ies) below have signed and acknowledge receipt of a copy.

BY: Broker or Licensee Authorized by Broker

BROKER/FIRM

_____ at _____ o'clock □ am/ □ pm

Date

Address

Print/Type Name

Phone: _____

Email: _____

The party(ies) below have signed and acknowledge receipt of a copy.

SELLER/OWNER

SELLER/OWNER

Print/Type Name

Print/Type Name

_____ at _____ o'clock □ am/ □ pm

Date

_____ at _____ o'clock □ am/ □ pm

Date

Address

Address

Phone: _____ (H) _____ (Cell)

Phone: _____ (H) _____ (Cell)

_____ (W) Email: _____

_____ (W) Email: _____

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Version 01/01/2025

BUYER'S TOURING AGREEMENT

1 **1. Acknowledgements.** Whereas _____, ("Buyer"), desires to view properties with the
2 assistance of _____, a licensed real estate firm (hereinafter "Broker") acting as a facilitator and
3 does not wish to enter into an agency agreement at this time, the parties do hereby enter into this Agreement on
4 _____, 20____ ("Effective Date").

5 **2. Term.** In consideration of the services and efforts of Broker, Buyer enters into this Agreement granting Broker the right and
6 privilege to show properties to Buyer and submit offers, negotiate contract terms and otherwise provide assistance to Buyer from
7 _____ to _____ (hereinafter the "Authorization Period").

8 **3. Compensation.** ***BROKER COMPENSATION IS NOT SET BY LAW AND COMPENSATION RATES ARE FULLY***
9 ***NEGOTIABLE.*** Should Buyer enter into an enforceable Purchase and Sale Agreement during the Authorization Period, Buyer
10 acknowledges that in such event, Broker shall have been the procuring cause of such sale and Broker shall be compensated an
11 amount of \$_____ or _____% based on the total sale price in consideration of Broker's services as described herein.

12 **Compensation from Seller:** Buyer authorizes Broker to negotiate with the Seller and/or the Seller's agent for this fee, the payment
13 of which shall be fully disclosed to Buyer.

14 **Difference:** In the event that the amount of any cooperating compensation paid by Seller or Seller's broker is less than the
15 amount listed herein, Buyer agrees to pay Broker the difference at Closing.

16 **Compensation if Buyer Leases:** In the event that Buyer leases a property in lieu of purchase, the Buyer agrees to pay Broker a
17 total of \$_____ in compensation unless otherwise stated herein.

18 **Cap on Compensation:** If Broker is an MLS participant, Broker shall not receive compensation from any source that exceeds the
19 amount listed above.

20 **VA Buyer:** In the event the buyer broker compensation herein is considered a non-allowable pursuant to VA guidelines and thus
21 cannot be paid by Buyer, this obligation is waived by Broker.

22
23 Broker's fee is earned at the signing by both parties of an agreement to purchase, lease, exchange or the exercise of an option for
24 any property(ies) as described above and is due at the closing of any such transaction or upon possession of property unless
25 otherwise stated herein. In the event that Buyer defaults on performance of a valid contract for sale, lease, exchange or exercised
26 option, Broker's fee shall be due on the date of default. Buyer agrees to pay all reasonable attorney's fees together with any court
27 costs and expenses which real estate firm incurs in enforcing any of Buyer's obligations to pay compensation under this Agreement.
28 The parties hereby agree that all remedies are fair and equitable and neither party shall assert the lack of mutuality of remedies as
29 a defense in the event of a dispute. The payment of any fee by Seller shall not make Broker either the Agent or Subagent of the
30 Seller. If Buyer utilizes the services of another real estate broker or deals solely with a Seller's Agent or the Seller directly at any
31 time during the effective period of this Agreement and/or any extensions thereof and then enters into an agreement with a
32 seller/owner to Purchase any property(ies) described above, the Buyer still owes a commission to the Broker provided herein.

33 **4. Termination.** Should the Broker consent to release this Agreement prior to the expiration of the term of this Agreement or any
34 extensions, Buyer agrees to pay all costs incurred by Broker or other amount as agreed to by the parties as a cancellation fee, in
35 addition to any other sums that may be due to Broker.

36 **5. Carry-Over Clause.** Should the Buyer contract to buy or exchange, or contract to lease a property within _____ days after
37 the expiration of this Agreement with any Seller/Landlord (or anyone acting on Seller's/Landlord's behalf) who has been
38 introduced to Buyer, directly or indirectly, during the term hereof, as extended, the Buyer agrees to pay the compensation as set
39 forth above. This carry-over clause shall not apply if the Buyer is subject to a buyer's representation agreement with another
40 licensed real estate broker at the time of such contract.

41 **6. Facilitator Status.** Pursuant to Tenn. Code Ann. §62-13-401, a real estate licensee may provide real estate services to any party
42 in a prospective transaction, with or without an agency relationship to one (1) or more parties to the transaction. Until such time as
43 a licensee enters into a specific written agreement to establish an agency relationship with one (1) or more parties to a transaction,
44 the licensee shall be considered a facilitator and shall not be considered an agent or advocate of any party to the transaction. An
45 agency or subagency relationship shall not be assumed, implied or created without a written bilateral agreement that establishes
46 the terms and conditions of the agency or subagency relationship.

47 This Agreement does not create nor establish terms and conditions of an agency or subagency relationship, but rather, is limited to
48 Buyer's desire to view properties in exchange for compensation to Broker as set forth above. It is acknowledged by all parties that
49 Broker is acting as a facilitator in any transaction involving Buyer unless otherwise agreed in a written agency agreement.

50 **7. Buyer Warranties.** Buyer warrants that Buyer is not under an exclusive buyer representation agreement with any other agent.
51 Buyer is hereby notified that pursuant to Tenn. Code Ann. §66-2-301, et seq., a prohibited foreign party or prohibited foreign-party
52 controlled business shall not acquire by grant, purchase, devise, descent, or otherwise an interest in agricultural land. A prohibited

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foreign-party business shall not acquire by grant, purchase, devise, descent, or otherwise an interest in non-agricultural land in this state. Tenn. Code Ann. §66-2-308 does include certain exceptions to the part. Buyer warrants Buyer has reviewed Tenn. Code Ann. Title 66, Chapter 2, Part 3 and is not prohibited from purchasing agricultural or non-agricultural land in Tennessee pursuant to the statute.

8. Expert Assistance. While Broker and the Licensees associated with Broker have considerable general knowledge of the real estate industry and real estate practices, they are not experts in matters of law, tax, financing, square footage, home inspections, wood destroying organisms, surveying, structural conditions, geological issues, hazardous materials, engineering, etc. Buyer acknowledges Broker's advice to seek professional assistance and advice in these and other areas of professional expertise as needed. If Broker or licensees associated with Broker provide names or sources to Buyer for such advice or assistance, those services and / or products are not warranted or guaranteed by the Broker or the Licensees associated with Broker.

9. Recording Devices. Broker hereby advises Buyer of the possibility that some properties may utilize security devices that record physical movements or audio conversations. Therefore, Buyers should limit making comments concerning the value, features, or condition while viewing any property.

10. Other Provisions.

A. Binding Effect, Entire Agreement, Modification, and Assignment. This Agreement shall be for the benefit of, and be binding upon, the parties hereto, their heirs, successors, legal representatives and assigns. This Agreement constitutes the sole and entire agreement between the parties hereto and no modification of this Agreement shall be binding unless signed by all parties or assigns to this Agreement. No representation, promise, or inducement not included in this Agreement shall be binding upon any party hereto. Any assignee shall fulfill all the terms and conditions of this Agreement.

B. Governing Law and Venue. This Agreement is intended as a contract to show real property and shall be governed by and interpreted in accordance with the laws and in the courts of the State of Tennessee.

C. Equal Housing. Any property will be shown and sold without regard to race, creed, color, sex, religion, handicap, familial status, or national origin.

D. Severability. If any portion or provision of this Agreement is held or adjudicated to be invalid or unenforceable for any reason, each such portion or provision shall be severed from the remaining portions or provisions of this Agreement, and the remaining portions or provisions shall be unaffected and remain in full force and effect.

E. Default. Buyer agrees to pay all reasonable attorney's fees together with any court costs and expenses which Broker incurs in enforcing any of Buyer's obligations to pay compensation under this Agreement to View Property. The parties hereby agree that all remedies are fair and equitable and neither party will assert the lack of mutuality of remedies as a defense in the event of a dispute.

F. Time of Essence. Time is of the essence in this Agreement.

G. Method of Execution. The parties agree that signatures and initials transmitted by facsimile, other photocopy transmittal, or by transmittal of digital signature as defined by the applicable State or Federal law will be acceptable and may be treated as originals and that the final Purchase and Sale Agreement containing all signatures and initials may be executed partially by original signature and partially on facsimile, other photocopy documents, or by digital signature as defined by the applicable State or Federal law.

11. Special Stipulations

_____ BUYER	_____ Date	_____ BUYER	_____ Date
_____ Real Estate Licensee	_____ Date	_____ Real Estate Company	_____ Date

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