

# **Listing Contract - Exclusive Right to Sell and/or Lease Commercial Property**

**(PAR Form XLSC)**

## **Guidelines for Preparation & Use**

Updated July 2022



**Pennsylvania  
Association of  
Realtors®**

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## Note to PAR Form Users

As stated in the title, this document is only a *guideline* for the proper use of PAR Form XLSC. The suggestions presented here should be used in conjunction with, and as a supplement to, your professional education; they are not meant as a substitute for proper professional education.

Any purchase of real estate is a complicated transaction, and no set of instructions, no matter how complete, could possibly cover all the issues and nuances that appear in any individual transaction. Seek guidance from your Broker and/or your legal counsel if you have any questions regarding the proper manner of filling out any contract during the course of a transaction.

To make these Guidelines more useful there are numerous “extras” added to the main text. Many of the “Note” or “Practice Tip” items you will see are based, in part, on the experiences of PAR members, staff and legal counsel, and are designed to point out some of the more practical items to consider when filling out the contract.

## General Notes on Usage

Pennsylvania Association of Realtors® Standard Forms are developed by the PAR Standard Forms Committee for use in a wide variety of transactions and market areas. To provide maximum flexibility to the parties, many provisions contain blank spaces that can be filled in as appropriate.

Except where restricted by law, the pre-printed language that is not agreeable to the parties can be crossed out and/or modified, with the parties dating and initialing the change in the margins. As a general rule, text added by the parties that changes pre-printed text, or pre-printed text altered by the parties, will prevail over pre-printed language should a dispute arise.

Always seek guidance from your Broker and/or your legal counsel if you have any questions about the proper use of any PAR form in a transaction.

This Contract has been drafted using the term “owner” as opposed to “seller,” “lessor” or “landlord.” The word “owner” will address both corporate entities and individuals, as well as covering all types of transactions. Your client can switch objectives during the term of the Contract without you having to revise it.

## Exclusive Agency

This form establishes that you are working with the property owner as an exclusive agent, whether they are looking to sell or lease a property. Form XLSC is designed to be a binding agreement for both the Broker and the Owner. Neither party has an automatic right to terminate and walk away from the contract unless both sides negotiate that sort of term in writing.

## Parties

**BROKER (COMPANY):** Starting on the first line, insert the name and contact information of the Broker including the mailing address, telephone number, and fax number.

**Practice Tip:** When filling out this form, keep in mind that only the legal name and address of Pennsylvania licensed real estate offices should appear on these lines. Don't use office nicknames or home addresses if they are not approved by and registered with the State Real Estate Commission.

**LICENSEE(s) (NAME):** Starting on the first line, insert the name or names of the Licensee(s) who will be working with the Owner, as well as their telephone numbers, fax number, and email address.

**Note:** All contracts are between the owner and the broker, not the individual licensee. Even though the Licensee's name is on the contract, he or she is not a party to the contract. When moving from one broker to another, remember that individual licensees do not have a right to "carry" clients with them. This is an issue that must be negotiated between a broker and an agent.

**OWNER:** Fill in the name of the Owner, whether it is an individual or a corporate entity. If the Owner is a corporate entity (corporation, partnership, etc.), put the company name where indicated. Because a company cannot physically sign a representation agreement, you will likely be working with one or more company representatives. Write the name of the person who will be signing the Contract along with his or her title. Provide contact information for the Owner including a mailing address, telephone number(s), email address(es) and a fax number.

**Note:** The owner identified on the contract is the party. However, when dealing with corporate clients, it is not unusual for a broker to be dealing with corporate representatives rather than with corporate officers. Keep in mind that corporate representatives may have different levels of authority. For example, in some instances, the individual working with a broker may only be authorized to do a preliminary search for a broker to hire and may not have the authority to actually sign a listing agreement. At a minimum, brokers need to be aware of whether the corporate representative they are working with has the authority to bind the owner to a fee agreement. If this is not the case, it may be advisable to investigate whether you can get a higher-level individual to authorize the contract.

In signing the Contract, the Owner acknowledges that the agreement is between the Owner and the Broker and it is exclusive. As a licensee interviewing potential clients, you are required by the Realtor<sup>®</sup> Code of Ethics to ask if they are subject to another exclusive listing contract. If the potential client indicates that they had been in a contract previously, ask to see their termination documentation. Be sure that they have actually terminated the other agreement, and that there are no restrictions of

the termination that you need to be aware of (for example, a provision binding the owner to pay a partial fee). Handling these issues at the outset of a relationship can avoid huge potential problems at or near closing if a broker you were unaware of suddenly appears with an exclusive listing contract and makes a claim for a fee.

If the Owner informs you that there is another contract, check the box for “Yes” and have the Owner explain the terms of that contract in the space provided, attaching another sheet if necessary. If there is not another current contract, check the box for “No.”

**Note:** There are many ethical and legal questions that should be answered before discussing the representation of an owner currently subject to an exclusive representation agreement. Always consult your Broker or attorney before entering into a contract under these circumstances.

## **Paragraph 1: PROPERTY**

### **Subparagraph (A): Description**

When identifying the Property, include as much information as possible so you have it ready when completing an agreement of sale or a lease. Insert the Property’s address including number, street, city, municipality and county on the first two lines. Indicate the Property’s tax identification number, parcel number, or deed book/page number, as dictated by common practice in the market area.

Additionally, the zoning classification and present use of the Property, and an indication as to whether the present use complies with zoning laws and ordinances, should be supplied. As in the agreement of sale, it is often advisable to include some explanatory information about the zoning classification rather than just the classification itself. This classification will help potential buyers have a better idea of permitted uses for the Property.

*For example:* “R-2, Residential, 1-4 family residences, non-industrial home offices” NOT “R-2”

If there are several units that make up the Property, provide the total number of units and the number of units being listed for sale or for rent. Indicate whether any of the units are currently leased by using the “Yes” and “No” checkboxes, and provide a further explanation if any of the units are leased.

### **Subparagraph (B): Inclusions**

List items that are being included in the sale as specifically as possible. For example, don’t state “all fixtures and personal property” unless the Owner truly is selling or renting everything. Be sure the Owner reads the list and understands what items will be sold or leased with the Property.

**Note:** A property description sheet that identifies inclusions may be attached to the Contract. If so, it should be noted by using the checkbox provided.

The default position of the Contract is that the Property is being sold only as a building or land itself, and does not include a business. If the sale of the Property includes the sale of a business, indicate the business to be sold on the lines provided.

### **Subparagraph (C): Exclusions**

List any fixtures and items excluded from the sale of the Property. As above, a separate attachment can also be used here.

## **Paragraph 2: STARTING & ENDING DATES OF LISTING CONTRACT (ALSO CALLED “TERM”)**

### **Subparagraph (A): Term is Negotiable**

RELRA requires a statement that the length of a listing contract is negotiated between the Owner and the Broker, which is provided here. No Association of Realtors<sup>®</sup>, whether it be national, state or local, has a pre-determined or recommended length of time for listing agreements. The term of the Contract should be negotiated by the parties.

### **Subparagraph (B): Starting Date**

The Contract automatically begins when executed by the Broker and the Owner, unless the parties specify a different date. If the Contract is to begin on a date after signing, fill in the blank to set that date.

**Practice Tip:** The Contract should generally be signed by the Owner first so it becomes binding when the Licensee signs it. This allows the Licensee to know exactly when the Contract starts, so any issues relating to the term of the Contract can be tracked. It also may be important if local MLS rules require verification that a Contract has been signed.

### **Subparagraph (C): Ending Date**

This language of this Paragraph anticipates that a specific date will be filled in. A Broker may choose to use a more general time period - for example, “three months from Starting Date” - but this is less precise. If there is an issue as to the exact ending date, a more general provision may be subject to interpretation (e.g., When did the contract start if there were multiple negotiated changes? Is the day of signing counted as a “day” in the calculation?). Providing a specific Ending Date avoids these issues.

**Practice Tip:** An ending date for the Contract must be specified. This is required to meet general legal standards for contract formation and to comply with the law that a listing contract in Pennsylvania cannot be longer than one year. A date that creates a contract term that is longer than one year is automatically reduced to 364 days to ensure that the term does not exceed the legal limit.

**Note:** There is no “implied” ending date or time period; a contract without an ending date may be considered to be void or unenforceable.

### **Paragraph 3: DUAL AGENCY**

RELRA requires a disclosure to the Owner if a broker could potentially be working as a Dual Agent. Rather than having to disclose in writing before each individual transaction whether the Broker also represents the prospective tenant or buyer, the disclosure is included in the Contract to put the Owner on notice that Dual Agency is possible. If your broker does not permit Dual Agency, check the box at the end of the Paragraph indicating that “Dual Agency is not applicable.”

### **Paragraph 4: DESIGNATED AGENCY**

The default language of the Contract assumes that Designated Agency is applicable unless you indicate otherwise by checking the box at the end of the Paragraph. Leaving the box unchecked means that the Broker *may* designate one or more licensees to represent the interests of the Owner, and that the Designated Agent will work exclusively for the Owner. If the same Designated Agent represents both the Owner and the buyer/lessee, that licensee is a Dual Agent.

### **Paragraph 5: LISTED PRICE AND TERMS**

#### **Subparagraph (A): Type and Terms of Transaction**

This Paragraph sets forth the Owner’s wishes for the transaction. If the Broker is being hired to negotiate a sale, check the first box and list in the space provided all of the material terms, including price. If the Broker is being hired to negotiate a lease, check the second box. If the Owner is providing you with a separate writing outlining the terms of the lease they will accept, then mark the checkbox. If there is no separate attachment, the list the terms of the lease on the lines provided.

#### **Subparagraphs (B) and (C): Marketing Expenses to be Paid by Broker or Owner**

If there will be any expenses to market the sale or lease of the Property, indicate which expenses will be paid by each party.

### **Paragraph 6: BROKER’S DUTY**

#### **Subparagraph (A): General Duties**

This Paragraph establishes the general responsibility of the Broker to use reasonable diligence and care to market and procure buyers and/or tenants for the Property.

#### **Subparagraph (B): Broker’s Services**

This Paragraph provides that, unless otherwise specifically agreed to in writing, the Broker will not provide any services other than real estate services. The Owner should be advised to contact other professionals if he or she needs assistance with property management, repair, legal, or tax issues.

### **Paragraph 7: OWNER’S DUTY**

#### **Subparagraph (A): No Other Contracts**

The Owner agrees not to begin a listing contract on the Property with another broker while this Contract, or any extensions thereof, is still valid. This provision doesn’t



necessarily prevent an owner from discussing the subject with another broker, although the second broker's ability to initiate a discussion on the matter is limited by the Code of Ethics.

**Note:** The Code of Ethics requires that brokers ask potential clients whether they are subject to an exclusive representation agreement before entering into a contract. This requirement is satisfied by the question on the first page.

#### **Subparagraph (B): Owner Cooperation**

The Owner is required to cooperate with the Broker to help with the sale or lease of the Property. This is a general requirement and can mean anything from promptly completing and returning paperwork to making sure that the Property is available for showings.

#### **Subparagraph (C): Showings**

The Owner is required to refer all inquiries regarding the Property directly to the Broker. Under an exclusive right to sell contract, the Broker earns a fee even if the Owner finds the eventual buyer or tenant, so it is generally in the Owner's best interest to turn over any potential leads and let the Broker handle them from the beginning.

#### **Subparagraph (D): Documentation Required from Owner**

In the space provided, fill in the number of days that the Owner will be given from the Starting Date of the Contract to provide copies of all of the necessary documentation to the Broker. Generally, the Contract requires the Owner to provide any documentation that would limit the Owner's ability to finalize a sale or a lease. If the transaction is a sale, the Owner must provide documentation of any liens or known title issues that may affect the Property after settlement.

The Owner must also provide documentation regarding the physical soundness of the Property if it is available. Results of inspection reports and environmental studies will assist the Broker in the marketing of the Property.

#### **Subparagraph (E): Signage**

In order to keep the listing of the Property exclusive, the Owner is not permitted to allow any other brokers' real estate signs to be displayed on the Property.

#### **Subparagraph (F): Broker Not Responsible for Damages**

This Paragraph is included to indemnify the Broker and the Broker's Licensees from any damages to the Property that they do not directly cause. For example, a broker would not be responsible for injuries to a potential buyer who falls down the stairs while viewing the property, nor would a broker be responsible for the theft of personal property by a buyer. Of course, this Paragraph doesn't protect a broker from damage actually caused by the broker or a salesperson (e.g., a salesperson who pushes the buyer down the stairs or steals from an owner).

## **Paragraph 8: BROKER'S FEE**

### **Subparagraph (A): Fee is Negotiable**

This is a standard disclosure found in all PAR employment forms, designed to combat a perception that there is some sort of “standard” or “recommended” fee established by the Association. The Broker and the Owner should negotiate the fee that will be paid.

**Note:** The fact that a fee is negotiable between a broker and an owner does not prevent a broker from requiring his or her agents to charge a specific fee. For example, it is *not* acceptable for all brokers in a market to get together and determine that the market-rate fee will be a certain amount for every transaction. It is permissible, however, for a single broker to set an internal policy that agents may not take a listing for a fee of less than X% or \$X.

### **Subparagraph (B): Fee for a Sale**

No matter what fee structure the Broker and the Owner agree to, fill in the details of how the fee will be paid. Fill in the blank spaces provided if you will be paid a percentage of the gross purchase price, a flat fee, a percentage of the purchase price of any personal property included in the sale, or a combination thereof. If your fee structure does not fit into the default provided, write your fee arrangement as specifically as possible in the space provided after the pre-printed language.

**Practice Tip:** It is recommended that you fill in all of the blanks in PAR forms, even if you fill them in with “0” or “N/A.” This will help contradict any claim that a blank (especially for fees) was filled in after the client signed the form.

*Example: Broker's Fee in the case of a sale is 5% of the gross purchase price of real property AND \$2,000, AND 0% of the gross purchase price of personal property, unless otherwise stated here:*

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### **Subparagraph (C): Fee for a Lease**

No matter what fee structure the Broker and the Owner agree to, fill in the details of how the fee will be paid. Fill in the blank spaces provided if you will be paid a percentage of the gross rent for the entire term of the lease or a flat fee. If your fee structure does not fit into the default provided, write your fee arrangement as specifically as possible in the space provided after the pre-printed language.

### **Subparagraph (D): Fee for Options, Renewals and Other Tenancy**

Fill in the details of how the Broker's fee will be paid for any continued tenancy after the original term of the lease. Fill in the blank spaces provided if you will be paid a percentage of the gross rent collected or a flat fee. If you and the Owner agree to different terms, write your fee arrangement as specifically as possible in the space provided after the pre-printed language.

**Practice Tip:** One good test for determining whether to use a separate form to explain your fee is to determine whether the fee is for “separate” services that would otherwise not be performed. For example, if you are charging a percentage fee plus a separate “transaction fee” for work generally included in your normal brokerage activity (i.e., work that you’ll do regardless of the final fee agreed upon), you may want to use the Contract to negotiate and disclose that fee as a single blended fee. If you are thinking of charging for tasks that you won’t perform unless you receive payment above your normal brokerage fee, then the Consumer Services Fee Addendum (Form CSF) is a better place to put it.

## **Paragraph 9: COOPERATION WITH OTHER BROKERS**

Your company may offer compensation to subagents, buyer’s agents, transaction licensees or any combination of these choices. Explain your company policy regarding agency relationship and cooperation with other brokers, and use the checkboxes to indicate the method(s) of cooperation that will be used and how cooperating agents will be compensated. Make sure the compensation is a specific and easily determinable amount (a percentage or a dollar amount).

**Practice Tip:** A question mark or the word “negotiable” is not a valid offer of compensation. Basically, you should fill out these provisions with the same information you provide in the MLS. If you plan to offer varying compensation based on some criteria, you may want to include that information in an addendum so the owner has all of the information.

## **Paragraph 10: PAYMENT OF BROKER’S FEE**

### **Subparagraph (A): If a Sale or Lease Occurs**

The Broker’s fee is *earned* at the same time in a traditional sale or an installment sale - that is, when a “ready, willing and able” buyer has been found for the property. Remember that the general practice is that the fee isn’t actually paid until settlement. In an installment sale, it could be months or years until the transfer of title, and during that time, many unexpected contingencies could prevent the transfer from occurring. Payment of the Broker’s fee upon execution of the installment sales contract recognizes that the Broker’s contribution to the transaction has been completed, and doesn’t force the Broker to delay or forfeit a fee based on circumstances beyond his control. Likewise, if the transaction is a lease, the fee is paid at the time the agreement is executed.

The Paragraph also specifies that the fee will be paid in United States currency and will accrue interest at a rate of 15% each year if the Owner fails to pay when the amount is due.

For purchases made after the ending date of the Contract, it is a little bit more complicated to determine whether a fee is owed and will generally depend on the circumstances surrounding the transaction on a case-by-case basis. If the Owner

enters into an agreement to purchase or lease property, he or she will owe the Broker's Fee if: (1) the agreement is a result of the Broker's actions during the term of the Contract, or (2) the property was seen during the term of the Contract AND the Owner is not under an exclusive representation agreement with another broker at the time the agreement to purchase or lease was signed.

**Note:** If an owner has signed an exclusive representation agreement with another broker, then the original broker will not be owed a fee for a purchase made after the end of the term of the Contract, regardless of how that individual found the property. If there is no other broker involved, however, the owner agrees to pay the original broker a fee.

#### **Subparagraph (B): If Sale or Lease Does Not Occur**

This provision allows the Broker to collect a fee if the transaction falls through for any of the reasons listed. Situations such as eminent domain, liquidation or bankruptcy of the Owner, or withdrawal of the Property from the market would all entitle the Broker to collect a fee. The Broker's fee in the case where a sale or lease does not occur would be based on listed price of the Property. This Paragraph is not intended to provide a fee to the Broker if the Property is simply not sold or leased during the term of the Contract.

#### **Subparagraph (C): Owner Default**

This Paragraph is a "back-up" fee structure in the event that the buyer or tenant of the property signs an agreement to purchase or lease but then backs out of the transaction. In the event that your client would end up in this situation, fill in these blanks at the time the Contract is signed; do not skip it and think that you'll figure something out "if it happens." The first line can be filled in with either a flat dollar amount or a percentage to be paid from damages owed by the buyer or tenant. The second line can be filled in with a flat amount for a fee. Keep in mind that the Broker, by the terms of the Contract, will accept whichever amount is less.

**Note:** Notice that the Contract specifies that the first option will be an amount paid by the seller or landlord on account of the transaction, which may be fees, damages, or judgments. This means that the Broker may be waiting for some period of time for a dispute to be settled by mediation, arbitration or in the court system.

Remember that the Broker may have policies about this type of fee, so be sure to check with brokerage policy.

#### **Subparagraph (D): Successors and Assigns**

This Paragraph provides that if a tenant is under a lease that would entitle the Broker to a fee under this Contract, and subsequently purchases the property either during the term of the lease, any extensions of the lease, or within a certain time period after the lease expires then the Owner will pay the Broker a fee. Fill in the blank with a number of days that will extend the fee provision.

This Paragraph is also binding on the tenant's successors, assigns, agents, officers, employees and shareholders. This prevents the tenant and Owner from agreeing to transfer ownership of the Property to a third party with the intention of avoiding payment.

### **Paragraph 11: BROKER'S FEE IF TENANT BUYS PROPERTY**

Enter a dollar amount or other fee that will be paid to the Broker if the tenant procured by the Broker purchases the Property. This fee is to be paid by the Owner at the time of settlement.

### **Paragraph 12: BROKER NOT RESPONSIBLE FOR DAMAGES**

This Paragraph is included to indemnify the Broker and the Broker's licensees from any damages to the Property that they do not directly cause.

### **Paragraph 13: BROKER INDEMNIFICATION**

This provision is intended to protect the Broker from claims by third parties for brokerage commissions if the Owner or a buyer or tenant fails to perform under the agreement. The Broker and Owner are agreeing that if claims are ever made against the Broker with regard to the Contract, that each party will pay its own legal fees.

### **Paragraph 14: CONFIDENTIALITY**

As a general matter, all licensees have a duty of confidentiality regarding Client information. The Owner agrees that a prospective buyer or tenant may not treat the existence or terms of negotiations as confidential unless there is a specific agreement to do so. If the Owner would like to keep the details of negotiations confidential, then they should be encouraged to provide an agreement to prospective buyers and/or tenants.

### **Paragraph 15: DEPOSIT MONEY**

#### **Subparagraphs (A) and (B): Deposit held by Broker**

Unless another escrow agent is named in the agreement of sale or lease, the Broker agrees to retain all deposit monies received on the Property in an escrow account in accordance with Pennsylvania law. The Broker holding the deposit monies will continue to do so until the transaction closes or the lease terminates. The Owner is advised that if a non-licensee is named as an escrow agent, that person may not be bound by RELRA, but only by the terms of a separate escrow agreement. Further, the Owner gives permission for the individual holding the escrow monies to wait to deposit any check that is received as a deposit until the Owner accepts the offer.

#### **Subparagraph (C): Disputes Over Deposits**

The intent of this language is to explain to the parties that brokers who are holding money in escrow are bound by the law and regulations regarding the release of escrowed monies. Specifically, the Owner is informed that the Broker cannot pay out escrowed funds where there is any "dispute" over their distribution, and that the

Broker does not have the legal authority to determine whether a party should be entitled to those funds where a dispute does exist.

Under Pennsylvania law, the following are the only four circumstances in which the Broker can distribute deposit monies:

1. If there is no dispute over entitlement to the deposit monies. The Buyer and the Seller agree that a written agreement signed by both parties is evidence that there is no dispute regarding deposit monies.

**Note:** Requiring it to be in writing helps protect brokers so one party could not argue that a dispute remains and the broker should not have distributed the monies. The PAR Release form (Form REL) can be used for this purpose, and many brokers may have preferred release language as well. Most broker-drafted release forms, as well as the PAR form, contain some language seeking to release the brokers from liability. Remember that the law does not permit brokers to dictate the terms under which escrowed funds will be released, as long as there is no disagreement between the parties. Thus, if the parties provide documentation that they agree to the release of funds but refuse to release the brokers from the possibility of a lawsuit, the brokers must still release the funds.

2. According to the terms of a written agreement signed by the Buyer and the Seller directing Broker how to distribute some or all of the monies.

**Note:** This circumstance implies that there was a dispute that has been settled. This requires the agreement to be in writing.

3. According to the terms of a final order of court.

**Practice Tip:** Have counsel review any court orders to ensure that the orders are final, with no further appeals.

4. According to the terms of a prior written agreement between the Buyer and the Seller that directs the Broker how to distribute the deposit monies if there is a dispute between the parties that is not resolved.

**Note:** The fourth option was added to RELRA in the summer of 2009 and took effect on September 4, 2009.

#### **Subparagraph (D): Broker Indemnification**

Generally, a broker who has distributed deposit monies according to an agreement between the parties or Pennsylvania law will not be liable for that distribution. If the Owner names the Broker or Licensees in litigation, the Owner will pay the Broker's and Licensee's legal fees.

## **Paragraph 16: BROKER'S SERVICES TO OTHER PARTIES**

This language is another disclosure required by RELRA, stating that the Broker might also provide services to the buyer or tenant. The fact that a buyer or tenant might pay a separate fee to the Broker for any services must be disclosed to the Owner.

## **Paragraph 17: OTHER PROPERTIES**

With this provision, the Owner agrees that the Broker may list other properties for sale and show other properties to prospective buyers. RELRA states specifically that this type of activity is not a conflict of interest.

## **Paragraph 18: ADDITIONAL OFFERS**

The first sentence of this Paragraph addresses a provision of the NAR Code of Ethics that requires brokers to reveal the existence of other offers on a property if permitted by a seller. As a practice issue it is difficult to know when signing a listing contract how the seller would prefer to handle a multiple-offer situation during a transaction. For this reason, the provision is as broad as possible, with a default allowing disclosure unless the Owner directs otherwise.

**Note:** The Broker and the Owner can decide whether the Broker has permission to disclose the existence of other offers or whether the Broker must answer with something like, "I'm sorry, but I'm not permitted to disclose that information." The NAR Code of Ethics (Standard of Practice 1-15), however, states that where a broker has permission to disclose that another offer has been made, the broker must automatically disclose whether the offer came from the listing agent, another agent with that brokerage, or a cooperating brokerage.

Sentence two refers to the NAR Code of Ethics and RELRA requirements that the agent for the seller must present all offers on a property to the seller until settlement, unless the seller instructs the licensee not to present additional offers once one has been accepted. This Paragraph ends the licensee's obligation to present additional offers once the Property is under an agreement of sale or lease. If the Broker does provide additional offers to the Owner after a contract has been signed, the Code of Ethics advises you to advise the Owner to get legal advice on what issues could arise if the Owner attempts to void an agreement and accept a later offer.

## **Paragraph 19: PROPERTY INFORMATION**

The Pennsylvania Seller Disclosure Law does not apply to all commercial transactions, but if your commercial transaction is for the transfer of dwelling units then your sale or lease may not be exempted. The Seller Disclosure Law requires that a disclosure form be filled out and provided to potential tenants and buyers for transfers of one to four dwelling units. If, for example, the Owner would like to list a three-unit condominium then the appropriate disclosures will have to be made, whether it is sold as a commercial or residential transaction.

Regardless of whether the Seller Disclosure Law applies, the Owner has a duty by the terms of this Contract to disclose all known material defects about the Property.

**Subparagraph (A): Property Information Sheet**

PAR has a document called the Commercial Property Information Sheet (Form CPI), which is similar to the residential disclosure form. The default language states that the Owner will provide a completed CPI within five days of the Starting Date of the Contract. If you do not require this form from your client, then check the box to indicate that the form will not be provided.

**Subparagraph (B): Known Material Defects**

A material defect is a problem with the Property that would have a significant adverse impact on its value or involves an unreasonable risk to people on the Property. This paragraph is a representation by the Owner that she knows of no material defects or environmental hazards affecting the Property. If the Owner does know of any material defects, then there is space for her to provide additional information. If necessary, have the Owner write the explanation on a separate form and attach it to the Contract.

**Subparagraph (C): Broker Indemnification**

If the Owner fails to disclose any known material defects of the Property, then he or she will indemnify the Broker against all claims and/or lawsuits that result from the Owner's failure to provide that information. The indemnification will include attorneys' fees, judgments and other costs.

**Note:** Note that this indemnification will only happen if the Owner fails to disclose any known defects. So if the Owner knows that someone has been dumping toxic waste on the corner acre of his property for years, but discloses that on the form then any resulting lawsuit or claim by a buyer will not be subject to this clause.

**Paragraph 20: OWNER REPRESENTATIONS**

This Paragraph contains a number of representations that the Owner of the Property is making by signing the Contract. Go through each of these statements with the Owner so that he does not affirm a statement that is not true. By signing the Contract, the Owner agrees:

**Subparagraph (A):** that the Owner, or the person signing the Contract for the Owner, has the authority to sign the Contract as or for the Owner;

**Subparagraph (B):** that the Owner either owns the Property or has the right to sell or lease it;

**Subparagraph (C):** that there are no bankruptcy or insolvency issues for the Owner or the Property;



**Subparagraph (D):** that there are no bankruptcy or insolvency issues for any of tenants or sub-tenants of the Property, if applicable;

**Subparagraph (E):** that there are no restrictions or limitations on the Owner's ability to sell or lease the Property that have not been disclosed, such as option rights, rights of first refusal, and rights of first offer;

**Subparagraph (F):** that there are no liens on the Property that would prohibit the Owner from conveying free and clear title which have not been disclosed; and

**Subparagraph (G):** that the Property is not subject to preferential tax treatment, unless indicated otherwise. Owner is also advised here to consult an attorney or tax professional if the Property does receive preferential tax treatment.

## **Paragraph 21: RECORDINGS ON THE PROPERTY**

### **Subparagraph (A): Buyers Recording**

Sellers should be aware that prospective buyers touring their properties in this technology era are more likely than not performing some sort of recording, whether that be by photography, videography or even a live stream on the internet. Though sellers can certainly set restrictions on this type of activity, it would be prudent to warn sellers to secure personal belongings and items prior to showings in the event the seller's wishes are not followed.

### **Subparagraph (B): Wiretapping Laws**

This is a simple restatement of the wiretapping law in Pennsylvania, which is known as a "two-party consent" state. This means that both the party doing the recording and the party being recorded must consent to it.

## **Paragraph 22: RECOVERY FUND**

This Paragraph contains the disclosure required by RELRA and the Rules & Regulations of the State Real Estate Commission.

## **Paragraph 23: NOTICE TO PERSONS OFFERING TO SELL OR RENT HOUSING IN PENNSYLVANIA**

This Paragraph alerts the Owner that both federal and state laws exist to protect against discrimination. This language is adopted from the Pennsylvania Human Relations Act.

## **Paragraph 24: TRANSFER OF THIS CONTRACT**

The Broker may transfer the Contract to another broker under certain circumstances, with written notice to the Owner. The Broker must notify the Owner in writing "immediately" that the transfer has occurred. The Owner agrees to fulfill the terms of the Contract after the transfer occurs.

**Note:** Remember that exclusivity runs both ways; just as the owner cannot decide on his own to terminate the contract and list with another broker, you as the broker cannot end the contract and send the client to another broker at any time.

## **Paragraph 25: ALTERNATIVE TRANSACTION**

If the Owner of the Property who initially intended to lease or sell enters into an agreement for another transaction such as option to purchase or an assignment, then the Owner agrees that the Broker will remain the exclusive agent for that transaction. The idea that this contract is “exclusive” is sometimes misunderstood by owners. They may believe that they do not owe a fee if the transaction is not a sale or lease as stated in the title. It is good business practice to explain very clearly what “exclusive” means in this context.

## **Paragraph 26: CONFLICT OF INTEREST**

This provision informs the Owner that the Broker has an ongoing obligation to inform the Owner in writing of any conflicts of interest on the part of the Broker or any of the Broker’s salespeople. Note that even without this contractual clause, all brokers and licensees are legally and ethically required to disclose any conflicts.

## **Paragraph 27: ENTIRE CONTRACT**

This Paragraph informs the parties that this Contract is the entire agreement, and any statements made before or after its execution must be reduced to writing and included here in order to be a part of the Contract. To put it another way, nothing communicated verbally is binding if it is not in the Contract.

## **Paragraph 28: CHANGES TO THIS CONTRACT**

All changes to this Contract must be reduced to writing and signed by the Owner and the Broker or Licensee. This may be done in the body of the Contract, if initialed by the Broker and the Owner, or on various addenda, including the Change to Listing Contract form (PAR Form CLC).

## **Paragraph 29: MARKETING OF PROPERTY**

### **Subparagraph (A): Multiple Listing Service**

Most properties today will be marketed using an MLS. This paragraph helps explain to Seller what an MLS is and what it is used for. It also informs them that an MLS is subject to its own rules and restrictions, which Broker and their licensees must comply with. The National Association of Realtors® sets MLS policies for Realtor®-owned MLS systems. One such example is the Clear Cooperation Policy, which was enacted in 2020. This change requires MLS entries for publicly marketed properties.

Seller still has the right to determine whether the listing will be advertised in an MLS but must understand that denying consent to use the MLS will probably restrict your

ability to market the Property in other ways. Mark the appropriate checkbox to indicate whether permission is given to market the property in the MLS.

#### **Subparagraph (B): VOW and IDX**

A Virtual Office Website is just the term for the listing broker's or agent's website, or part of a website, where the broker can provide services to consumers virtually and the consumer can search through MLS data. VOWs are also subject to certain policies and rules. An Internet Data Exchange (IDX) is the system which allows licensees to make MLS data available on their own websites.

Just as with the MLS, Seller has a right to decide how their property is featured on VOWs. The appropriate boxes should be checked to reflect Seller's choices on the information that is made available on the broker's VOW. Seller can opt out of one, both, or none at all. Simply leave both boxes unchecked if Seller would like to have comments and automated estimates on the IDX and VOW sites.

#### **Subparagraph (C): Other advertising**

The items listed here are permitted to for use in marketing the Property, unless otherwise specified. Keep in mind that certain advertising methods may possibly be restricted by law or municipal ordinance.

Seller can determine whether they would like the Property listed on the internet, or whether they would just like the physical address of the Property to remain off of the internet.

#### **Subparagraph (D): Open houses**

Subparagraph (D) reminds Seller that the address of the Property may show up on the internet if an open house is scheduled.

**Note:** MLS rules will generally require brokers to get permission from a seller before putting the property in the MLS, as well as permission to make the property address available to consumers in any advertising.

#### **Subparagraph (E): Other**

Any other issues dealing with the methods of marketing the Property should be dealt with here. Attach an addendum, if necessary.

### **Paragraph 30: PUBLICATION OF SALE PRICE**

The sale price of a property may end up being printed or published in many different places. For example, most MLS operators track sale prices in their database for use by MLS members. Sale prices are also filed with the county and are generally considered to be public information. In certain circumstances, newspaper or other media may decide to publish the sale price of a particular property.

Owners may not be aware that sale prices are public information, and may be concerned to see the price published or made available to others after the

transaction. This Paragraph simply provides disclosure to the Owner that after closing, the sale price is public information and may be published. Note that there is really nothing to “negotiate” here, as it is purely a disclosure to help the Owner understand this aspect of the transaction.

## **Paragraph 31: TAXES & ASSESSMENTS**

### **Subparagraph (A): Transfer Taxes**

The PAR Agreement of Sale presumes an equal division of transfer taxes between the buyer and the Owner, and that is reflected here in the Listing Contract. If the Owner wishes to make a change to the presumption, it is helpful to know that before entering into any negotiations, especially since it will have a potentially substantial impact on the estimated closing costs of each party.

### **Subparagraph (B): Property Taxes**

List the yearly taxes and the assessed value of the Property, as of the most current tax year.

### **Subparagraph (C): Preferential Assessments**

Indicate whether the Property is being preferentially assessed, including tax abatements. If the Property’s taxes are being abated, describe the abatement and how many years remain.

### **Subparagraph (D): Municipal Assessments**

Insert the cost of municipal assessments and explain their intended use.

## **Paragraph 32: FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT OF 1980 (FIRPTA)**

If Seller is a foreign person as defined in the Internal Revenue Code, they still subject to the taxation of certain gains made on the sale of the Property. FIRPTA allows the IRS to put the responsibility for withholding that tax onto the *buyer* of the Property, which is intended to ensure that the taxes are collected.

A “foreign person” for purposes of FIRPTA does not refer to a resident alien. Stated another way, it is not a person who simply does not possess U.S. citizenship. A “foreign person” is a:

- non-resident alien individual,
- foreign corporation that has not made an election under section 897(i) of the IRC to be treated as a domestic corporation,
- foreign partnership,
- foreign trust, or
- foreign estate.

There are a number of exceptions to the FIRPTA withholding requirement, and if none of them are applicable to the transaction then it is possible that the buyer will request that Seller complete a FIRPTA Affidavit, which is a sworn statement of

Seller's status as a foreign person. If the buyer makes such a request, Seller is expected to comply.

### **Paragraph 33: TITLE & POSSESSION**

#### **Subparagraph (A): Possession at Settlement**

If the Owner knows that the transfer of possession (right to occupy) will be different from the Settlement Date, or if there is a preference for it to be a different date, enter the preferred date of transfer in the blank provided. Otherwise, put "N/A" in the blank.

#### **Subparagraph (B): Title**

Oil, gas and mineral rights impact several real estate markets across Pennsylvania. The default language presumes that the sale of the Property will transfer the full package of rights, including the rights to oil, gas, minerals and coal (if any) contained in the ground below the Property.

If the Seller knows he does not own all oil, gas and mineral rights, the appropriate box should be checked. In the space provided, list all encumbrances on the title, such as easements, restrictions, or leases. Have the Owner provide copies of restrictive covenants, deed restrictions, etc. that the Owner has in his or her possession.

#### **Subparagraph (C): Loans**

List any mortgage and/or equity loans of the Owner which are secured by the Property. *If checked*, this section also gives the Broker permission to receive payoff information from lenders.

#### **Subparagraph (D): Judgments**

If the Owner has any other financial judgments, state or federal liens, or overdue assessments on the Property, list them here. An additional sheet may be used if necessary.

#### **Subparagraph (E): Notification**

If any of the information listed above changes after the Contract is prepared, then the Owner is obligated to inform the Broker of the change. This means that if a tax lien is paid off, the Owner must notify the Broker. It also means that if a new judgment has been entered against the Owner, he or she is obligated to provide that information.

**Note:** The notification is only required when the information changes so much that it is "materially inaccurate." For example, the Owner is not required to notify the Broker each and every time a mortgage payment is made, but should notify the Broker if the mortgage is satisfied.

### **Paragraph 34: BUYER FINANCING**

Mark the checkboxes for the types of payment arrangements acceptable to the Owner. Note that there is a blank in this section for types of financing that may not be listed. If the Owner is willing to provide seller assistance, indicate how in the space provided.

### **Paragraph 35: BANKRUPTCY**

Bankruptcy can affect the terms of the Contract in two ways: either the Property itself can be taken as part of a bankruptcy estate or the Owner could file for bankruptcy.

If the Property becomes part of a bankruptcy estate during the term of the Contract, then the Owner must notify the Broker immediately. If the Property is controlled by a bankruptcy court then the distribution of the Property in bankruptcy takes priority over any other transfer.

If the Owner files a bankruptcy plan, then the Owner must take “all steps necessary” to get approval for the Broker to continue to act as the Owner’s agent in selling or leasing the Property. However, if the Broker does not wish to exercise this option, then he or she may terminate the Contract.

### **Paragraph 36: COPYRIGHT**

Under U.S. copyright law, any original creative work belongs to the person who created it unless otherwise stated. A person using something created by another may only use it for the purposes granted, and can’t give others the rights to use that thing unless permitted by the original creator.

During the time a listing is active, an agent will probably create a number of marketing tools, including flyers, postcards and an MLS listing entry. Much of this material may find its way into the hands of various individuals and entities during and after the active marketing period. If any of the materials used in these marketing documents were provided by someone other than the owner, the agent may technically not have the right to use those materials.

For example, if an owner takes a photograph of her property, the owner owns the photograph and all rights to use the photograph. To be sure that the agent has the right to use that photograph, and to clarify in what circumstances those rights exist, the owner and agent should have a written understanding of just what the agent can do with the photograph. The language currently in this Paragraph is a grant of a license from the Owner to the Broker to utilize in the marketing of the Property any materials that may have been provided by the Owner. Note that this does not give the Broker the right to make any *other* uses of the materials (he cannot make it into a screen saver or sell it on eBay, for example), it simply gives him the authority that most owners probably thought they were already giving - the right to market the property with the owner-owned materials.

Another reason for including this language is that it helps mirror certain NAR suggestions for MLS administration. Specifically, changes to the 2006 model MLS rules suggest that an Association-owned MLS may (but is not required to) ask that all brokers guarantee that they have the right to use all materials included in an MLS listing. The broker would then grant the MLS the right to use the materials in other derivative methods. For example, some MLSs provide a data feed to third party providers who post listings, and they might ask the MLS to show that it has legal use of all the materials. Because this Paragraph in the form gives the broker authority to further sublicense the information, they therefore have the ability to push it to third-party sites and others who use the data.

**Note:** This Paragraph does not give any rights to the Owner as far as any of the materials prepared by the Broker or agent. So while the Owner grants a license to use any pictures or other materials, the Owner doesn't have the right to also take copies of the agent's work and pass it on to a second broker if the Property does not sell.

### **Paragraph 37: NOTICE BEFORE SIGNING**

This Paragraph is intended to make both parties aware that by signing the Contract, they are entering into a legally binding agreement. This also provides one last notice to the Owner that he or she should contact legal, tax or other experts as needed to handle any related issues that result from the sale or lease of the Property. The Owner is put on notice that the Broker does not have any duty to investigate the fitness of the Property or suitability of any buyer or tenant and that the Owner will be responsible for conducting its own investigations.

### **Paragraph 38: SPECIAL CLAUSES**

#### **Subparagraph (A): Addenda**

Several commonly-used PAR addenda are referenced here. When checked, these addenda become part of the Contract. The blank lines are provided to enable you to insert the titles of other addenda (including those that you may draft on your own) that are not referenced in the Contract.

#### **Subparagraph (B): Additional Terms**

This blank space is for any additional clauses that are not addressed in the Contract or in an addendum, and that significantly alter other clauses in the Contract. If the clauses are related to an existing paragraph in the Contract, number them as if they were appearing in the paragraph to which they relate. Make sure the language used is clear and unambiguous.

## **Signatures**

### **Consumer Notice**

By initialing this line, the Owner acknowledges having read the Consumer Notice. The form is required by the Real Estate Licensing and Registration Act.

### **Seller's Disclosure**

By initialing this line, the Owner acknowledges having received the Seller's Property Disclosure form, if applicable, and agrees to return it to the Broker in a timely manner.

### **Lead Disclosure**

By initialing this line, the Owner acknowledges having received the Residential Lead-Based Paint Hazards Disclosure form, if applicable, and agrees to return it to the Broker in a timely manner. A form of this type is required by federal law for residential properties built prior to 1978.

### **Transmission & Counterparts**

Return of this Contract, and any addenda and amendments, including return by electronic transmission, bearing the signatures of all parties, constitutes acceptance by the parties. Electronic transmission includes, but is not limited to, fax and email. Two contracts with identical terms can be signed on separate forms in different locations, but will still be counted as one executed contract.

*Example:* If three owners must sign the contract, each can sign an identical version and do not need to each sign the same contract in sequence.

**Note:** Agents and Brokers are strongly encouraged to retrieve a copy of the other counterpart(s) for their files to ensure the terms in each signed contract are identical.

### **Signing Notice**

Once the Contract is signed, the Owner and the Broker are legally bound by the terms of the agreement. Encourage the Owner to consult with a lawyer if the Owner has any questions about his or her rights and obligations under the Contract.

### **Signatures**

Make sure *all* the owners of the Property sign and date the Contract. In the blank next to "Broker," put the name of the real estate company as it appears on the real estate license. The salesperson or associate broker who is taking the listing should sign his or her name in the blank next to "Authorized Person" and put the date in the space provided.

### **Distribution**

Provide all parties with a copy of the signed Contract.