

A white wooden signpost stands in a well-manicured lawn. The sign is red with the words "FOR SALE" in large, white, bold, sans-serif capital letters. In the background, a two-story house with light-colored siding and white trim is visible. The house has a front porch with white columns and a dark door. There are green bushes and yellow flowers in the foreground.

**FOR
SALE**

UPDATED FORMS

Listing Agreements



MASSACHUSETTS
ASSOCIATION OF REALTORS®



The Basics

The MAR Forms Advisory Committee has worked diligently to give MAR forms an upgrade for **readability** and **clear consumer choice**.

This presentation covers updates to the standard version of the **Exclusive Right to Sell Listing Agreement #709**.

I/We _____ ("SELLER"), hereby grant to _____, a real estate broker licensed under the laws of the Commonwealth of Massachusetts ("LISTING BROKER"), the exclusive right to sell the property described as _____ and recorded in the _____ County Registry of Deeds at Book _____, Page _____ Certificate Number _____ ("PROPERTY") on the following terms and conditions:

1. Duties and Representations. The LISTING BROKER is granted the exclusive right to sell the PROPERTY, as the SELLER'S agent, during the term of the Agreement and the SELLER agrees to refer all inquiries to the LISTING BROKER, to cooperate in marketing the PROPERTY, including completing the lead paint **Property Transfer Notification Certification** disclosure (if property built before 1978) and other forms. **The SELLER acknowledges receipt of the Massachusetts Mandatory Licensee-Consumer Relationship Disclosure.**

The LISTING BROKER is authorized but is not required: (a) to place a sign on the PROPERTY; (b) to photograph, video and advertise the PROPERTY in such media as the LISTING BROKER may select; and (c) to place a lock box on the PROPERTY. The SELLER authorizes the LISTING BROKER to disclose to prospective buyers all information about the PROPERTY provided to the LISTING BROKER by the SELLER, all of which the SELLER represents to be accurate. The LISTING BROKER shall have no obligation to continue to market the PROPERTY after an offer has been accepted.

The LISTING BROKER is not hired as a property inspector, tax advisor or attorney and if such services are desired, SELLER should hire those professionals. It shall not constitute a violation of any duty owed by the LISTING BROKER or by any agent associated with the LISTING BROKER to disclose any material fact known to the LISTING BROKER about the PROPERTY as required under Massachusetts General Laws Chapter 93A, to advise a prospective buyer of the availability of a competing property or to assist a buyer with the purchase of another property. The SELLER and LISTING BROKER agree to comply with all applicable Federal, State and Local Fair Housing Laws.

SELLER is aware that there is a risk of injury to persons viewing the PROPERTY as well as a risk of loss or damage to PROPERTY of the SELLER during a showing or open house, whether the showing is accompanied by the LISTING BROKER, via lockbox or otherwise. SELLER has the responsibility to prepare the PROPERTY for marketing to minimize the likelihood of injury, damage and loss. SELLER agrees to indemnify, defend and hold LISTING BROKER and its agents harmless from any loss or claim of liability during any showing or open house, other than if proven to have been the result of LISTING BROKER'S intentional misconduct. SELLER understands and agrees that showings may be conducted by licensees other than the LISTING BROKER or its agents and that inspectors or appraisers may conduct inspections and appraisals outside the presence of the LISTING BROKER. SELLER further understands and agrees that other licensees and prospective buyers are permitted to photograph and videotape the PROPERTY unless expressly stated to the contrary.

SELLER hereby acknowledges that the PROPERTY **does** **does not** have recording devices, including, but not limited to devices such as: Nest, Arlo, Amazon Echo, Google Home, Ring, etc. If a device is present, SELLER hereby states that it records audio, video, or both audio and video. It is unlawful in Massachusetts to secretly listen to or record a communication of another individual without their knowledge and consent. Whenever a showing, open house or other inspection of the PROPERTY is conducted, any such surveillance equipment shall be turned off by the SELLER unless visitors are clearly made aware that the device is in use.

2. Listing Price. The listing price for the PROPERTY shall be \$ _____ dollars or such other price and terms as the SELLER may approve.

3. Listing Period. This Agreement shall begin on _____ and end on _____ and may be extended by agreement.



Exclusive Right to Sell Listing Agreement

- The first change to the Listing Agreement clarifies the **duties and representations** of both the Listing Broker and Seller.
- As you discuss the Listing Agreement with your client, you should find it easier to work through the scope of representation.

REMEMBER: Use the contract as your guide.

EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT #709 (Page 1 of 3) 

I/We _____ ("SELLER"), hereby grant to _____, a real estate broker licensed under the laws of the Commonwealth of Massachusetts ("LISTING BROKER"), the exclusive right to sell the property described as _____ and recorded in the _____ County Registry of Deeds at Book _____, Page _____ Certificate Number _____ ("PROPERTY") on the following terms and conditions:

1. Duties and Representations. The LISTING BROKER is granted the exclusive right to sell the PROPERTY, as the SELLER'S agent, during the term of the Agreement and the SELLER agrees to refer all inquiries to the LISTING BROKER, to cooperate in marketing the PROPERTY, including completing the lead paint *Property Transfer Notification Certification* disclosure (if property built before 1978) and other forms. **The SELLER acknowledges receipt of the *Massachusetts Mandatory Licensee-Consumer Relationship Disclosure*.**

The LISTING BROKER is authorized but is not required: (a) to place a sign on the PROPERTY; (b) to photograph, video and advertise the PROPERTY in such media as the LISTING BROKER may select; and (c) to place a lock box on the PROPERTY. The SELLER authorizes the LISTING BROKER to disclose to prospective buyers all information about the PROPERTY provided to the LISTING BROKER by the SELLER, all of which the SELLER represents to be accurate. The LISTING BROKER shall have no obligation to continue to market the PROPERTY after an offer has been accepted.

The LISTING BROKER is not hired as a property inspector, tax advisor or attorney and if such services are desired, SELLER should hire those professionals. It shall not constitute a violation of any duty owed by the LISTING BROKER or by any agent associated with the LISTING BROKER to disclose any material fact known to the LISTING BROKER about the PROPERTY as required under Massachusetts General Laws Chapter 93A, to advise a prospective buyer of the availability of a competing _____



Exclusive Right to Sell Listing Agreement

- NAR's preliminary settlement makes it plain that each representation agreement must contain clear **disclosure that commissions are not set by law and are negotiable.**
- In addition, the updated Listing Agreement takes on a new method for compensation allowing the Seller and Broker to negotiate separately for the Listing Broker's scope and cost of services, provided solely as the Seller's representative (paragraph 4).

EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT #709 (Page 2 of 3)



4. Listing Broker's Fee. According to the Code of Ethics and Standards of Practice of the National Association of REALTORS®, SELLER has been advised of (1) the LISTING BROKER'S general company policies regarding cooperation with and compensation to subagents, buyer's agents and other licensees; (2) the fact that a buyer's agent, even if compensated by the LISTING BROKER or SELLER will represent the interests of the buyer; (3) any potential for the LISTING BROKER to act as a disclosed dual agent on behalf of the SELLER and buyer; and (4) that **commissions are not fixed, controlled or recommended by law or by any person or entity not a party to this Agreement and are fully negotiable.** In consideration for the services performed under the Agreement, SELLER agrees to pay BROKER as follows (complete as applicable):

(a) **Commission.** If within the term of this Agreement or any extension, the PROPERTY is sold or the LISTING BROKER procures a buyer who is ready, willing and able to buy at a price and on the terms set forth herein or on such other price and terms as the SELLER may agree, the LISTING BROKER shall be due a Commission as follows:

_____% percentage of the net / gross selling price, or

Flat Fee of \$_____dollars.

I. Said Commission shall be paid at the time set for closing and may be deducted from amounts held by LISTING BROKER as escrow agent. If the PROPERTY is sold to a buyer procured by the LISTING BROKER, by the SELLER or by anyone else, the Commission shall be due.



Exclusive Right to Sell Listing Agreement

- To address the offer of a Buyer Broker's fee, the Seller is first asked if they would like to make the offer (paragraph 5).
- If Seller agrees and authorizes the Listing Broker to offer the Buyer Broker a fee, the new form, **Authorization to Offer Buyer Broker Compensation Addendum**, will be completed and attached.
- In this **two-step process**, the choice of the Seller is preserved as a term of the underlying agreement. The Listing Agreement is unencumbered by unnecessary paragraphs for those Sellers who choose not to do so, and the addendum further defines the scope.

EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT #709 (Page 3 of 3)



5. **Buyer Broker's Fee.** SELLER is not required to offer or provide compensation to brokers who represent the buyer, however, SELLER may direct the LISTING BROKER to offer compensation to licensed buyer brokers who procure a ready, willing and able buyer to purchase the PROPERTY. These fees are not set by law and are negotiable and shall not alter the terms of this Agreement except if the LISTING BROKER and SELLER have agreed in writing. SELLER hereby:

- agrees and authorizes LISTING BROKER to offer a Buyer Broker's Fee pursuant to the Massachusetts Association of REALTORS® **AUTHORIZATION TO OFFER BUYER BROKER COMPENSATION ADDENDUM** attached and incorporated herein.
- does NOT authorize nor agree to have LISTING BROKER offer a Buyer Broker's Fee.

SELLER understands that there are other ways that a buyer broker fee may be requested or paid, such as payment as a term of an agreement for the sale of the PROPERTY, none of which are set by law and each of which are fully negotiable.



Authorization to Offer Buyer Broker Compensation Addendum

- This Compensation Addendum is new and makes the conversation of **Buyer Broker compensation more detailed and transparent.**
- By asking the question in the Listing Agreement and completing this Addendum, the Seller's choice is clear and signals a more thorough conversation on the topic.

AUTHORIZATION TO OFFER BUYER BROKER COMPENSATION ADDENDUM



This is an Addendum to the Exclusive Right to Sell Listing Agreement ("Agreement") executed on _____ (date) between _____, the "LISTING BROKER" and _____, the "SELLER" regarding the real property described as _____ "PROPERTY" whereby the LISTING BROKER and SELLER agree as follows:

Separate and in addition to the fee set forth in Paragraph 4 of the Agreement, SELLER authorizes the LISTING BROKER to offer the following Buyer Broker's Fee to those licensed brokers who procure a ready, willing and able buyer:

- (a) agents: _____% of the (gross/ net) selling price OR a flat fee of \$_____dollars;
- (b) facilitators (non-agents): _____% of the (gross/ net) selling price OR a flat fee of \$_____dollars

By agreeing to and authorizing this Addendum, the SELLER understands that the total fee payable to the LISTING BROKER at the time of closing includes the fee listed in Paragraph 4 of the Agreement and the Buyer Broker's Fee reflected in this Addendum totaling: _____% of the (gross/ net) selling price OR a flat fee of \$_____dollars.

Authorization to Offer Buyer Broker Compensation Addendum

- This Addendum provides that separate, and in addition, to the fee set forth in the Listing Agreement, the Seller is authorizing the Listing Broker to offer a Buyer Broker's fee.
- The Addendum also provides an opportunity to show the Seller what the total payable fee will be.

AUTHORIZATION TO OFFER BUYER BROKER COMPENSATION ADDENDUM



This is an Addendum to the Exclusive Right to Sell Listing Agreement ("Agreement") executed on _____ (date) between _____, the "LISTING BROKER" and _____, the "SELLER" regarding the real property described as _____ "PROPERTY" whereby the LISTING BROKER and SELLER agree as follows:

Separate and in addition to the fee set forth in Paragraph 4 of the Agreement, SELLER authorizes the LISTING BROKER to offer the following Buyer Broker's Fee to those licensed brokers who procure a ready, willing and able buyer:

- (a) agents: _____% of the (gross/ net) selling price OR a flat fee of \$_____dollars;
- (b) facilitators (non-agents): _____% of the (gross/ net) selling price OR a flat fee of \$_____dollars

By agreeing to and authorizing this Addendum, the SELLER understands that the total fee payable to the LISTING BROKER at the time of closing includes the fee listed in Paragraph 4 of the Agreement and the Buyer Broker's Fee reflected in this Addendum totaling: _____% of the (gross/ net) selling price OR a flat fee of \$_____dollars.

Important:

- The fee is only payable in the event there is a Buyer Broker who procured a ready, willing, and able Buyer. Otherwise, the fee in the Addendum shall be returned or retained by the Seller at the time of closing.

AND

- If the Buyer requests additional funds for their Broker than what is reflected in the Addendum, those monies will be negotiated between Buyer and Seller.

This Buyer Broker's Fee is only payable in the event that there is a buyer broker who procured a ready, willing and able buyer, otherwise, the fee reflected in this Addendum shall be retained by, or returned to the SELLER, at the time of closing and only the fee reflected in Paragraph 4 of the Agreement shall be due to the LISTING BROKER at the time of closing unless the LISTING BROKER and SELLER have agreed otherwise in writing.

If the buyer requests that SELLER pay additional monies to the buyer's broker than what is reflected in this Addendum, said additional monies shall be negotiated between the SELLER and buyer and shall not alter any other terms of this Addendum or the Agreement except if the LISTING BROKER and SELLER have agreed in writing.

SELLER understands they are not required to have the LISTING BROKER offer a fee for buyer broker services and that said fee is not fixed, controlled or recommended by law or any other person or entity and are fully negotiable.

A copy of this Addendum may be provided to the buyer and buyer broker for their records and acknowledgment.

SELLER Date

SELLER Date



Resources

Additional resources featured in this presentation:

- [Updated Exclusive Right to Sell Listing Agreement #709](#)
- [Addendum – Broker Offer of Compensation #709](#)
- [Disclosure - Existing Exclusive Right to Sell Listing Agreement](#)



MAR LEGAL HOTLINE



1-800-370-LEGAL (5342)



- Call 800-370-LEGAL (5342) from 9 am – 4 pm Monday through Friday
- Or email Legalhotline@marealtor.com any time



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BROKER RESOURCES

