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## **SELLING YOUR HOUSE – LISTING AGREEMENTS**

When selling your house, one of the first documents you will be asked to sign by your real estate broker is a listing agreement. There are several types of listing agreement, but each authorizes a real estate broker to act on your behalf to sell your house. This Newsletter shall discuss the types and requirements of listing agreements.

**Exclusive Right to Sell Listing Agreement.** In an Exclusive Right to Sell Listing Agreement, you agree to pay a commission to the broker if your house is sold during the listing period by anyone, including you. The broker does not have to show he procured the buyer for your house. This is the most common form of listing agreement in California. As with the exclusive agency listing agreement described below, the exclusive right to sell listing agreement must contain a specified date of termination and the failure to do so is a violation of the law which is grounds for suspension or revocation of a broker's license.

**Exclusive Agency Listing Agreement.** An Exclusive Agency Listing Agreement is a contract in which you hire a broker on an exclusive basis to find a buyer for your house, and you agree that you will pay the broker a commission if the broker or any other broker finds a buyer who is ready, willing and able to buy your house on terms that are acceptable to you. As opposed to an exclusive right to sell listing agreement, the exclusive agency listing agreement allows you to sell the house yourself without paying a broker commission. This type of listing agreement is used when you have found several people who are interested in buying your house, and you do not want to pay a broker commission if any of these people buy your house. Generally, it is a good idea to list your preexisting prospects with the broker so there is no confusion as to the payment of a broker's fee if any of them buys your house.

**Open Listing Agreement.** An Open Listing Agreement is an agreement in which you hire a broker to act as your agent to sell your house on a non-exclusive basis. You can enter into more than one open listing agreement at a time. An open listing does not have to contain a termination date. The first broker who finds a buyer whose offer you accept is the one that earns the commission. If you sell the property yourself, you do not pay any commission on the sale.

**Net Listing.** In a net listing, the amount of the commission paid to the broker is not set forth in the listing agreement. Instead, the broker is paid all sums over a net amount you receive from the sale of your house. Both the exclusive listing and the open listings discussed above may be net listings.

A listing agreement must be in writing to be enforceable, and a copy should be given to you at the time you sign it. Typically, a listing agreement will provide that the commission is payable if the broker procures a buyer "ready, willing and able" to buy your house, regardless of whether the sale actually occurs. The listing agreement should provide the address or legal description of your house, the purchase price and other terms upon which you are willing to sell your house, and the amount of the commission you will pay the broker. Since it is possible that negotiations to sell your house may continue after the

expiration of the listing period, the listing agreement also typically provides that if the broker sells your house during a specified time period after the expiration of the listing to a person with whom the broker negotiated during the listing period, the broker will still receive a commission.

Most listing agreements are on preprinted forms, with the broker filling in specific information about the terms of the listing. However, it is also important to carefully consider optional provisions, such as whether you authorize the broker to put a lock-box on your house (which allows access to your house by other brokers and prospective buyers when your agent is not present and you are not home), whether you want a "For Sale" sign to be placed in front of your house, and whether you want your house to be listed for sale on the internet. Some homeowners are concerned about safety, breakage and theft issues and may decide that such concerns override the ease of access that a lock-box provides and publicity that signs and an internet listing provide.

Please feel free to contact us for further information. Visit our website at <http://www.candlaw.com>.

*This complimentary newsletter is intended to provide general information. Because of the complexities and constant changes in the law, it is important to seek professional advice before acting on any of the matters covered herein.*