

# Guidelines for the Preparation and Use of the Pennsylvania Association of Realtors® Listing Contract - Exclusive Right to Sell Real Property (Form XLS)

## General Notes on Usage of PAR Standard Forms

The 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. Further, it is helpful to remember that where pre-printed language is not agreeable to the parties it can be crossed out and/or modified, with the parties dating and initialing the change in the margins. Generally, 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.

As stated in the title, these are only guidelines for the proper use of this form. The Guidelines presented here should be used in conjunction with, and as a supplement to, your professional education, and are in no way meant to substitute for proper professional education. Seek guidance from your Broker and/or your legal counsel if you have any questions about the proper use of this or any PAR form in a transaction.

To make these Guidelines more useful there may be helpful “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 and legal counsel, and are designed to point out some of the more practical items involved in filling out this form.

**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.**

## Heading

The Broker and licensee(s) should fill in their names and contact information.

**Note:** The name of the Broker that is being filled in should be the name of the company (brokerage), not the name of the Broker.

**Practice Tip:** If more than one licensee is representing the Seller, all licensees should write in their names and contact information.

## Seller(s)

Starting next to the word “SELLER(S),” insert the full legal names of ALL owners in ALL CAPITAL LETTERS.

**Practice Tip:** Do not use terms such as “all registered owners” or “owners in title.” The registered owners are not necessarily the only ones who must sign agreements and deeds to convey legal title (e.g., spouses of owners under certain

circumstances). In the case of a cooperative sale where the Broker for Seller does not have the proper names of all Sellers, leave the lines blank and ask the Broker for Seller to insert the proper names before approval.

The NAR Code of Ethics requires that Brokers ask whether a consumer is currently subject to another exclusive representation agreement before entering into an agreement with them. That question is asked in the heading, with an opportunity for the seller to explain if the answer is “yes.”

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

## **Paragraph 1: PROPERTY**

Enter the listing price of the property on the far-right side of the first line.

A description of the property by house number, street, community, borough, city or township, and state is legally sufficient. Additionally, the zoning classification and present use of the property, and 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. For example, “R-2, Residential, 1-4 family residences, non-industrial home offices” instead of just “R-2” in the blank. This clarification will help potential buyers have a better idea of permitted uses for the property.

**Note:** Zoning information will be necessary for filling out an agreement of sale for the property. If the zoning classification is not stated in the agreement of sale, for anything other than a single-family dwelling, the buyer will have the right to void the agreement.

Indicate the property's tax identification number, parcel number, and/or page and recording date of the deed, as dictated by common practice in the market area. If the property is occupied by someone other than Owner, have your client provide that information on the appropriate line.

## **Paragraph 2: STARTING AND ENDING DATES OF LISTING CONTRACT**

### **Subparagraph (A): RELRA Requirements**

RELRA requires a statement that the length of a listing contract is negotiated between the seller and broker, which is provided here.

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

The contract automatically begins when executed by broker and seller, unless the parties state a different date. If the contract is to begin on a specific date after signing, fill in the blank to state that date.

**Practice Tip:** The listing contract should generally be signed by the sellers 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 contract term can be tracked. It also may be important if local MLS rules require verification that a Listing Contract has been signed.

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

An ending date for the contract must be specified. This is required to meet general legal requirements for contract formation and to comply with the law that a listing contract in Pennsylvania cannot be longer than a year. A date that creates a contract term that is longer than one year is automatically reduced to 364 days to ensure that this contract does not have a term that exceeds 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.

**Practice Tip:** The Ending Date provision anticipates that a specific date will be filled in. A Broker may choose to use a more general time period - for example, “3 months from Starting Date” - but this is less precise. If there is an issue as to the exact ending date, the 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:** Paragraph 5(B)2(f) contains a “protection period” that can be negotiated between seller and broker. This period protects Broker’s fee if Broker’s actions lead to the sale of the property but the transaction occurred after the ending date of the Listing Contract (subject to certain restrictions). The time period included in this protection period is not considered to be part of the contract period, so it can stretch beyond the 1-year contractual limit. There is no specific limitation on the length of the additional protection period, but it is generally not recommended to have a period of longer than 1 year.

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

RELRA requires a disclosure to the seller if a broker could potentially be working as a dual agent. To ensure that sellers understand and agree in advance, the disclosure is included in the Listing Contract.

**Note:** If the broker does not practice dual agency, use the Single Agency Addendum (PAR Form SA) to change the terms of this paragraph of the Listing Contract.

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

The standard language in this Listing Contract states that designated agency is applicable. The Listing Broker designates one or more licensees to represent the interests of the seller and that designated licensee will work exclusively for the seller. If

your Broker does not allow designated agency, check the “Designated Agency is not applicable” box.

If a licensee working for the same broker introduces the Property to a buyer whom the licensee does not represent, that licensee is automatically authorized to work for the seller. If the same designated agent represents both the buyer and the seller in the same transaction, that licensee is a dual agent.

**Note:** If the broker does not allow the same designated agent to represent both the buyer and the seller in the same transaction (or if the Seller is not willing to agree to dual agency) use the PAR Single Agency Addendum (PAR Form SA) to change the terms of this paragraph of the Listing Contract.

## **Paragraph 5: BROKER’S FEE**

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

RELRA requires a statement that any fee is negotiated between the broker and seller, and that a fee may possibly be based on a percentage of the purchase price. Brokers’ fees cannot be set or recommended by any association, multi-list, or any other organization or group, and members should avoid antitrust issues by not discussing fee structures with other brokers.

**Note:** The fact that a fee is negotiable between a broker and seller does not prevent a broker from requiring his or her salespersons 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 x% 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 \$ yyy.

### **Subparagraph (B): Explain the Fee**

The fee is expressed as “\_\_\_\_\_ % of the sales price, or \$\_\_\_\_\_, whichever is greater, AND \$\_\_\_\_\_ ...”

This is done to allow for the maximum flexibility in presenting a fee and it should be usable in a wide variety of circumstances. This method of expressing the fee, known as a blended fee, expresses the entirety of the Broker’s fee, even though it is laid out in multiple parts.

The fee percentage is a percentage of the sales price. The dollar amount in the middle blank is the minimum amount the Listing Broker would be willing to accept from that fee percentage. The flat fee is an amount that is charged in addition to or in place of the fee percentage. One or all of these three pieces can be included as part of your fee.

For example:

Description	Fee Percentage	Minimum \$ for That %	Flat Fee	Combined
% Fee Only	X%	\$ 0	\$ 0	X% of the sale price OR \$ 0, whichever is greater, AND \$ 0
% Fee, Plus Flat Fee	X%	\$ 0	\$ ZZZ	X% of the sale price OR \$ 0, whichever is greater, AND \$ ZZZ
% Fee With Minimum	X%	\$ YYYY	\$ 0	X% of the sale price OR \$ YYYY, whichever is greater, AND \$ 0
% Fee With Minimum, Plus Flat Fee	X%	\$ YYYY	\$ ZZZ	X% of the sale price OR \$ YYYY, whichever is greater, AND \$ ZZZ
Flat Fee Only	0%	\$ 0	\$ ZZZ	0% of the sale price OR \$ 0, whichever is greater, AND \$ ZZZ

**Practice Tip:** One good test for determining whether to use a separate form is to determine whether the fee is for “separate” activities 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 Listing 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 (PAR Form CSF) is a better place to put it.

**Practice Tip:** Check with your broker and/or counsel to determine how best to fill out this fee provision. Remember that Brokers have the authority to set rules and policies on acceptable levels of compensation that can be negotiated by their salespeople. There may be financial issues if an individual salesperson negotiates a fee that is outside of the guidelines set by the broker.

The samples below are for example purposes only and assume the property sells for the Listed Price.

*Flat Fee and Non-Refundable Fee the Same Amount*

Listed Price: \$100,000

Broker’s Fee: 25% of the sale price OR \$0, whichever is greater, AND \$1,000

Non-refundable fee at signing: \$1,000

Balance of Broker’s Fee: \$25,000 (25% of \$100,000)

*Flat Fee is More Than Non-Refundable Fee*

Listed Price: \$100,000

Broker’s Fee: 25% of the sale price OR \$0, whichever is greater, AND \$1,000

Non-refundable fee at signing: \$500

Balance of Broker's Fee: \$25,500 (\$25,000 (25% of \$100,000) AND \$500 (the other half of the flat fee))

*Flat Fee is Less Than Non-Refundable Fee*

Listed Price: \$100,000

Broker's Fee: 25% of the sale price OR \$0, whichever is greater, AND \$1,000

Non-refundable fee at signing: \$1,500

Balance of Broker's Fee: \$24,500 (\$25,000 (25% of \$100,000) MINUS \$500 (the difference between the non-refundable fee of \$1,500 and the flat fee of \$1,000))

*No Flat Fee with Non-Refundable Fee*

Listed Price: \$100,000

Broker's Fee: 25% of the sale price OR \$0, whichever is greater, AND \$0

Non-refundable fee at signing: \$1,000

Balance of Broker's Fee: \$24,000 (\$25,000 (25% of \$10) MINUS the \$1,000 non-refundable fee)

**Note:** The listed price and the sale price were assumed to be the same for ease of use. But it is important to note that anytime there are fees being expressed in the form of a percentage, that amount will remain unknown until the Agreement of Sale is completed. The Balance of Broker's Fee will be determined by the Purchase Price, not by the listed price, though the listed price can provide an estimate of what Broker's Fee will be. Here are two examples of what may happen if the sales price is lower than the listed price.

**Example 1 - No Minimum Fee**

Listed Price: \$100,000

Broker's Fee: 25% of the sale price OR \$ 0, whichever is greater, AND \$ 1,000

Assumed Fee in Dollars: \$26,000 (\$25,000 (25% of \$100,000) plus the \$1,000 flat fee)

Actual Sales Price: \$90,000

Actual Fee in Dollars: \$23,500 (\$22,500 (25% of \$95,000) plus the \$1,000 flat fee)

**Example 2 - With Minimum Fee**

Listed Price: \$100,000

Broker's Fee: 25% of the sale price OR \$ 24,000, whichever is greater, AND \$ 1,000

Assumed Fee in Dollars: \$26,000 (\$25,000 (25% of \$100,000) plus the \$1,000 flat fee)

Actual Sales Price: \$90,000

Actual Fee in Dollars: \$25,000 (\$24,000 (the minimum fee) plus the \$1,000 flat fee)

In the second example, the minimum fee of \$24,000 was used because it was greater than \$22,500 (25% of \$95,000). The flat fee of \$1,000 was still added because the \$24,000 was the minimum only in reference to the amount that would be earned from the fee percent portion of Broker's Fee.

## 1. Upfront Fee

The Broker may, but is not required to, charge the Seller a portion of Broker's Fee as a non-refundable (upfront) fee at the time this contract is signed. This upfront fee is part of the Broker's Fee, not in addition to it.

**Practice Tip:** Some brokers will prefer to charge this upfront fee to cover their initial investment of time and marketing costs and reduce their risk of walking away empty-handed; some brokerages may not wish to charge upfront fees in order to attract more listings. Either practice is fine and is within the discretion of the broker.

## 2. Balance of Broker's Fee

The Listing Contract provides several opportunities for the broker to recover the balance of the fee that was agreed upon, with the understanding that not every transaction is smooth sailing between acceptance and closing.

a. First and foremost, explain to the Seller that this is an exclusive right to sell contract, which means that the broker has a right to the Broker's Fee if the Property is sold or exchanged **by anyone** during the term of the contract. RELRA requires this language to be in an exclusive right to sell contract.

**Note:** Any exclusions to this exclusive right to sell provision (e.g., "Seller will not owe Broker's Fee if Property is sold to Cousin Bob before January 1.") must be stated in the contract or in an addendum such as the Change to Listing Contract (PAR Form CLC). As with most contracts, if there is an exclusion or any other variance from the pre-printed language it should be put in writing and signed by the parties.

**Note:** PAR does not produce an "Exclusive Agency Contract" or a "Non-exclusive Listing Contract" as part of the Standard Forms library. Brokers wishing to do business in this manner should engage counsel to draft an internal brokerage form. Agents must remember that they are obligated to follow the broker's rules regarding the types of relationships they may or may not enter.

b. This provision allows brokers to collect a fee if they find a suitable buyer, and that buyer later defaults and/or is not able to close the transaction. This could also apply to a situation where a suitable buyer is found but the seller inexplicably refuses to accept the offer. It is written that the fee owed is the lesser of the full Broker's Fee or the amount entered in the blank. Brokers who do not wish to require a fee in that circumstance can insert a zero in the blank.

c. The broker is entitled to a fee if negotiations for the Property are "pending" at the time the Listing Contract expires. It is important to review this provision carefully with the Seller so they understand exactly what this provision means.

**Note:** While this provision does protect the right of the Broker to collect a fee, it does not extend the agency relationship in any other manner. For example, a

listing contract expires on July 31 while negotiations with Buyer 1 are still underway, and a new Buyer 2 (who has not previously seen the property) shows up on August 5. Negotiations with Buyer 1 die on August 6 and Buyer 2 ends up purchasing the Property. Broker would not be entitled to any listing fee from the purchase by Buyer 2. In fact, since the agency contract had expired, Broker would not be permitted to show the property to Buyer 2 as a Seller's Agent (Listing Agent) unless Broker got another written agreement from Seller to act in that capacity.

**Note:** There is no specific definition for what makes negotiations "pending." It generally would include any actively ongoing negotiations, but other situations would have to be looked at on a case-by-case basis.

**d.** The Broker's Fee is also due if the Seller chooses or is unable to sell the Property as a result of the seller's actions after the Agreement of Sale is signed (default).

**e.** If a municipality takes some or all of the Property through eminent domain, this clause provides that the Broker is due a fee out of the monies paid by the government. If there is a likelihood that this may occur, be sure to discuss this provision with the Seller. As with any other fee provision, this is fully negotiable and can be stricken or altered by agreement of the parties.

**f.** Even if there were no specific negotiations occurring prior to the end of the Listing Contract, the Broker's right to collect a fee may extend to certain sales that occur after the ending date of the contract. If the Property is purchased within the number of days inserted in (f)(1) by a buyer who seen the property or had negotiated for its purchase during the term of the listing, then a fee is owed, even if negotiations are not active at the end of the Contract.

**Note:** The traditional purpose for this provision is to provide protection where a buyer and seller brought together by the Broker decide to delay negotiations until after the expiration of the Listing Contract in order to avoid paying a Broker's Fee. It isn't an attempt to prevent a seller from electing to move a listing to another broker at the completion of the Listing Contract, however. For this reason, even for a buyer who saw or negotiated for the property during the original Listing Contract, no fee will be owed if the Property is listed under an exclusive right to sell contract with another broker at the time of the eventual sale.

**Note:** Brokers who don't wish to include a "protection period" in the contract can simply cross out this provision. Agents should check with your broker to see if the broker has a preferred or required time period for this provision.

### **Subparagraph (C): Time of Payment**

This subparagraph addresses the timing of payment for Broker's Fee. Ordinarily, this provides for payment at closing, even though the fee may have actually been "earned" at an earlier time in the transaction (e.g., upon securing a "ready, willing, and able"



buyer). The exception to this is the installment sale, where Broker's Fee is due upon execution.

**Note:** The Broker's Fee is "earned" at the same time in the traditional sale or the installment sale - that is, when a "ready, willing and able" buyer has been found for the property. Because closing for the traditional sale occurs fairly close in time to the earning of the fee, however, it is generally practical to receive the fee at closing. In contrast, with 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.

### **Paragraph 6: BROKER'S FEE IF SETTLEMENT DOES NOT OCCUR**

This Paragraph allows the Listing Broker (or Listing Agent on the Broker's behalf) to specify an amount the Seller will owe if settlement does not occur. This amount can be expressed in dollars or as a percentage.

**Note:** This amount is of/from the deposit monies. This figure could be a portion of, equal to, or greater than the Broker's Fee but cannot exceed the total amount of the deposit monies.

### **Paragraph 7: 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 relationships 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, a blank line, or the word "negotiable" are not valid offers 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 Seller has full information.

### **Paragraph 8: DUTIES OF BROKER AND SELLER**

#### **Subparagraphs (A)/(B): General Duties**

These provisions establish the general responsibilities of both parties to the Listing Contract. Broker is responsible for making "reasonable efforts" to find a buyer for the Property, and the Seller is required to cooperate in those efforts as requested by Broker.

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

Seller is required to refer all inquiries regarding the Property directly to Broker. Under an exclusive right to sell agreement, Broker earns a fee even if the Seller finds the

eventual buyer, so it is generally in the Seller's best interests to turn over any inquiries and let the Broker handle them from the beginning.

### **Subparagraphs (D)/(E): Leases**

If the Property is rented, Broker should get copies of the leases and summaries of any verbal leases before the Listing Contract is signed. If the Broker has these items they can be provided to potential buyers before an agreement of sale is signed so the agreement doesn't have to be contingent on review of those documents. Because property subject to lease agreements may be more difficult to market, this listing contract provides that the Seller will not enter into or renew any leases during the term of this Contract without first telling Broker.

### **Paragraph 9: BROKER'S SERVICE TO BUYER**

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

### **Paragraph 10: 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, the Broker would not be responsible for injuries to a potential buyer who falls down the stairs while viewing the Property, nor would the Broker be responsible for the theft of property by a buyer. Of course, this Paragraph doesn't protect the 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 a seller).

### **Paragraph 11: DEPOSIT MONEY**

Unless another escrow agent is named in the agreement of sale, the Broker agrees to retain all deposit monies received on the property in an escrow account in accordance with Pennsylvania law.

**Note:** If a prospective buyer gives a deposit to a buyer's agent, who intends to transfer it to the listing agent, notice must be given to that buyer before the buyer signs the agreement of sale that the money is being transferred to the listing broker. The Deposit Money Notice (PAR Form DMN) can be used to fulfill this requirement.

The Broker holding the deposit monies will continue to do so until both parties agree to release them, a final court order is received, or the terms of a pre-agreement between the buyer and the Seller are met. PAR includes this pre-agreement in the Deposits paragraph of the Agreement of Sale.

### **Paragraph 12: OTHER PROPERTIES**

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

## **Paragraph 13: ADDITIONAL OFFERS**

The first sentence of this Paragraph deals with a provision in 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 Seller directs otherwise.

**Note:** There is no specific requirement that the direction be provided in writing; it is left up to individual brokers to decide if, as a business practice, they would prefer to memorialize those instructions in writing for each transaction. Further, if the Broker and the Seller decide before signing the Listing Contract that the Broker isn't authorized to make the disclosure, this part of the Paragraph can simply be crossed out.

**Note:** The Broker and the Seller 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 also disclose, if asked, 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 obligations that the agent for a seller must present all offers on a property to the Seller until settlement, unless the Seller instructs licensee not to present additional offers once one has been accepted. This paragraph ends the licensee's obligation to present additional offers once a property is under an agreement of sale. If the Broker does provide additional offers to the Seller after an agreement has been signed, the Code of Ethics requires you to advise the Seller to get legal advice on what issues could arise if the Seller attempts to void an agreement and accept a later offer.

## **Paragraph 14: DEFECTS AND ENVIRONMENTAL HAZARDS**

Generally speaking, any seller of a property containing 1-4 residential dwelling units will be required to fill out a Seller's Property Disclosure Form (PAR Form SPD). There are a number of exceptions to that requirement, which are listed on Page 1 of the Seller's Disclosure Form.

This provision goes beyond the basic requirement of the Real Estate Seller's Disclosure Law, however, by requiring as a condition of the Listing Contract that ALL sellers disclose any known material defects regarding the property. The definition of a "material defect" is taken directly from the Law. While this provision does not require that exempt sellers make the disclosure on any specific form, it may be preferable to request that Form SPD be used so Broker and any potential buyers will have disclosures in a format consistent with other transactions.

Sellers who do not provide full and complete disclosures, whether required by the disclosure law or not, agree in subsection (B) that they will indemnify the Broker against claims based on the failure to disclose, including the payment of costs and attorney fees if the Broker is joined in a lawsuit based on incorrect or incomplete disclosures.

**Note:** The disclosure law sets a legal “floor” for required disclosures. Sellers are permitted to disclose property defects beyond the requirements of the law should they so choose. Brokers might even make a business decision that they will not accept a listing unless the seller agrees to a certain type or format of disclosure.

## **Paragraph 15: IF PROPERTY WAS BUILT BEFORE 1978**

The Residential Lead-Based Paint Hazard Reduction Act requires that real estate licensees involved in a transaction concerning a pre-1978 property ensure that the seller has received the information contained in this Paragraph. The Seller has the opportunity to disclose the Seller’s knowledge about lead on the PAR Residential Lead-Based Paint Hazards Disclosure form (PAR Form LPD) and the PAR Seller’s Property Disclosure Statement (PAR form SPD). The LPD provides the opportunity for the Seller to disclose lead information and certify its accuracy, for the buyer to certify receipt of the information, and for the licensees to certify that the Seller has received the information contained in this Paragraph. The law requires real estate licensees to certify in an Agreement of Sale that they have complied with the Act. The Seller must also give the buyer the lead pamphlet Protect Your Family from Lead in Your Home (PAR Form LPB).

## **Paragraph 16: HOME WARRANTIES**

This Paragraph is primarily a notification to the Seller that a home warranty may be available for purchase. There is no check off for the buyer or the Seller to indicate that a warranty is being offered or purchased, nor does this paragraph create any sort of a presumption that a warranty will be offered or purchased.

**Note:** Some E & O insurers are offering discounts to brokers who can show that their salespeople are advising clients about the availability of home warranties. Check with your insurer to see if they have such a program. Remember that if the broker or salesperson has any financial interest in or relationship with home warranty company, it would have to be disclosed to the parties as with any other financial relationship. Be sure to check with your broker to understand the rules regarding this disclosure.

## **Paragraph 17: 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 18: RECOVERY FUND**

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

### **Paragraph 19: NOTICE TO PERSONS OFFERING TO SELL OR RENT HOUSING IN PA**

This Paragraph alerts the owner that both federal and state legislation exists to protect against discrimination. This language is adapted from the Pennsylvania Human Relations Act.

### **Paragraph 20: TRANSFER OF THIS CONTRACT**

The Listing Broker may transfer the Listing Contract to another broker under certain circumstances with written notice to Seller. Broker must notify Seller in writing “immediately” or the transfer cannot take place. Seller agrees to fulfill the terms of the contract after transfer. Similarly, if the Property is sold or otherwise transferred to another owner during the contract term, the new owner will be bound by the contract. This provision is included to prevent scenarios in which a seller who has changed his mind about selling the property engineers a sham transfer to another owner in order to void the terms of the Listing Contract.

### **Paragraph 21: NO OTHER CONTRACTS**

The Seller agrees not to begin a listing contract on the Property with another broker while this Contract, or any extensions of it, is still valid. This provision doesn’t necessarily prevent a seller from discussing the subject with another broker, although the broker’s ability to initiate the discussion 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 at the top of the first page.

### **Paragraph 22: CONFLICT OF INTEREST**

This provision informs the Seller that the Broker has an ongoing obligation to inform the Seller 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 23: ENTIRE CONTRACT**

This Paragraph informs the parties that this Contract is the entire agreement, and any statements made before its execution must be reduced to writing and included here in

order to be part of the agreement. To put it another way, nothing communicated orally is binding if it is not in the Contract.

## **Paragraph 24: CHANGES TO THIS CONTRACT**

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

## **Paragraph 25: 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.

## **Paragraph 26: PUBLICATION OF SALE PRICE**

The sale price of a property may end up being printed or published in several 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.

Sellers 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 Seller 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 Seller understand this aspect of the transaction.

## **Paragraph 27: COPYRIGHT**

Under US 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. But if any of the materials used in these marketing documents were provided by someone other than the agent, the agent may technically not have the right to use those materials.

For example, if a seller takes a photograph of her home, the seller owns the photograph and all rights to use the photograph. To be sure that the agent has the rights to use that photograph, and to clarify in what circumstances those rights exist, the seller and agent should have a written understanding of just what the agent can do with the photograph. The language currently in Paragraph 25 is a grant of a license from the Seller to the Broker to utilize in the marketing of the property any materials that may have been provided by the Seller. Be aware that this doesn't give the Broker the right to make any OTHER uses of the materials (he couldn't turn it into a screen saver or sell it on eBay, for example), it simply gives him the authority that most sellers probably thought they were already giving - the right to market the property with the seller-owned materials.

Another reason for inserting this language is that it helps mirror certain NAR suggestions for MLS administration. Specifically, the 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 brokers 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 gives the Broker the right to further sublicense the information they would therefore have the ability to push it to third-party sites and others who use the data.

**Note:** This Paragraph doesn't give any rights to the Seller to use any of the materials prepared by the Broker or agent. So, while the Seller grants a license to use any pictures or other materials, that Seller 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 doesn't sell.

## **Paragraph 28: FIXTURES AND PERSONAL PROPERTY**

### **Subparagraph (A): Be Specific**

Although it is the Agreement of Sale and not the Listing Contract that determines which items will be included in the sale of the Property, it is worth it to spend a little extra time at the forefront of the transaction deciding the items that the Seller wants to remove from the Property, even if they seem obvious. This is particularly the case as advancements in technology have made it easy to make personal property more personalized to the owner and more mobile. A Broker may rely on this information during negotiations with a buyer, however, so it is important that it be accurate.

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

Review the list items that are typically included in the sale of residential properties and write any additions on the lines provided. Be sure the seller reads the pre-printed language and understands what items will be marketed as inclusions with the Property. Any pre-printed item can be struck out if it is not included or listed in Subparagraph (D) as an exclusion.

**Note:** A property description sheet that identifies inclusions may be attached to the contract. If so, it should be noted in the space provided, along with any other items that may be included in the sale.

### **Subparagraph (C): Leased Items**

This section provides information on items that are leased by the Seller or are subject to some other type of financing agreement. These items are neither "included" nor "excluded," but must be handled between a buyer and the lessor. Brokers may want to get at least basic information on the status of the leases in order to provide information to potential purchasers on what would be necessary to extend or terminate those leases.

### **Subparagraph (D): Exclusions**

List any fixtures and items excluded from the sale. As above, a separate attachment can also be used here. This can be used to exclude items otherwise listed in (A) or for any



additional exclusions that may be needed.

## **Paragraph 29: TAXES & SPECIAL ASSESSMENTS**

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

The PAR Agreement of Sale presumes an equal division of transfer taxes between the buyer and the Seller, and that is reflected in the Listing Contract. If the Seller wishes to make a change to that assumption it is helpful to know that before entering 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 taxes and other costs associated with the Property, making sure to note how they are assessed (e.g., quarterly, annually, etc.).

### **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): Association Assessments**

Insert any condominium owners' association or homeowners' association special assessments and/or required capital contributions. Any assessments should be explained.

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

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

### **Subparagraph (F): Association Fees**

If the property is located in a planned community or homeowners' association, list the mandatory fees, what they cover, and how often they must be paid.

## **Paragraph 30: 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 31: TITLE & POSSESSION**

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

If the Seller 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 date other than settlement, enter the preferred date of transfer in the blank provided. Otherwise, put "N/A."

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

List all encumbrances on the title, such as easements or restrictions. Have the Seller provide copies of restrictive covenants, deed restrictions, association regulations, etc., that the Seller has in his or her possession. This information also will be useful in completing the Seller's Property Disclosure Statement.

**Practice Tip:** If the Seller indicates that they will transfer anything less than full rights of ownership to a buyer, consider using the Oil, Gas and Mineral Rights Interest Addendum to the Listing Contract (PAR Form OGMX) for additional details. Use of Form OGMX is unnecessary if full subsurface rights will be transferred to a buyer.

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

List any mortgage and/or equity loans of the Seller. If checked, this section gives permission for Broker to receive payoff information from lenders.

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

If the Seller has any other financial judgments, state or federal liens, past due fees or assessments against the Property, list them here using an additional sheet if necessary.

### **Subparagraph (E): Domestic Relations**

Sellers should provide information on any domestic relations cases related to child or spousal support payments.

## **Paragraph 32: BUYER FINANCING**

Mark the checkboxes for the types of payment arrangements acceptable to the Seller. If the Seller is willing to provide seller assistance, indicate how in the space provided.

## **Paragraph 33: SPECIAL INSTRUCTIONS**

The pre-printed contract has not been approved by the Office of the Attorney General for compliance with the Plain Language Consumer Contract Act. Any language added by any of the parties must comply with the Act.

## **Paragraph 34: SPECIAL CLAUSES**

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

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

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

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

## **SIGNATURE AREA**

### **Seller Acknowledgments**

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

The second line indicates that the Seller has received the Seller's Property Disclosure Statement and agrees to return it to the Listing Broker in a timely manner. The form is required by the Real Estate Licensing and Registration Act.

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

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.

"This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original, and which counterparts together shall constitute one and the same Agreement of the Parties." Two Contracts with identical terms can be signed separately in different locations, but will still be counted as one executed contract.

**Example:** If three Sellers 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 Seller and the Broker are legally bound by the terms.

Encourage the Seller to consult a lawyer if the Seller has any questions about his or her rights and obligations under the contract.

### **Signatures**

Make sure all the Sellers 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 “Accepted on behalf of” and put the date in the space provided.

Provide all parties with a copy of the signed Listing Contract.