

# COMMERCIAL REAL ESTATE LISTING CONTRACT

# \_\_\_\_\_  
Listing Contract Number

This form was developed by the Alberta Real Estate Association for the use of its members and may not be altered electronically by any person.

## This Contract is between

**THE SELLER ("You")**

and

**THE SELLER'S BROKERAGE (the "Brokerage")**

Name \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

\_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_ (postal code)

\_\_\_\_\_ (postal code)

Phone \_\_\_\_\_ Fax \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_

Email \_\_\_\_\_

Email \_\_\_\_\_

Broker, associate broker or agent authorized to represent the Brokerage

Member of the \_\_\_\_\_ Real Estate Board (the "Board")

## 1. THE PROPERTY

1.1 The Property is the Land, Buildings, Attached Goods (unless excluded) and included Unattached Goods located at (municipal street address): \_\_\_\_\_

1.2 The legal description of the Property is: \_\_\_\_\_

(postal code)

Plan \_\_\_\_\_ Block \_\_\_\_\_ Lot/Unit \_\_\_\_\_ Acres \_\_\_\_\_

Plan \_\_\_\_\_ Block \_\_\_\_\_ Lot/Unit \_\_\_\_\_ Acres \_\_\_\_\_

W. of (Meridian)	Range	Township	Section	Part	Acres

If Condominium Property, legal description and details as per Commercial Condominium Property Appendix (attached).

1.3 The Property includes:

(a) All goods attached to the Land and Buildings ("Attached Goods"), except those goods listed here or in the Appendix attached to this Contract:

(b) Goods not attached to the Land and Buildings ("Unattached Goods") as listed here or in the Appendix attached to this Contract:

## 2. OTHER LISTING CONTRACTS

2.1 Have you entered into any other listing contract for the Property during the last twelve months?  Yes  No

2.2 Is the Property currently listed for sale with another real estate brokerage?  Yes  No

## 3. TERM OF CONTRACT

3.1 You list the Property for sale with only the Brokerage(s) effective today until 11:59 p.m. on \_\_\_\_\_ (the "Expiry Date").

## 4. ASKING PRICE

4.1 The Asking Price for the Property, **not including GST**, is \$ \_\_\_\_\_

4.2 Where applicable, GST shall be the responsibility of the buyer.

## 5. POSSESSION DATE

5.1 The proposed Possession Date is \_\_\_\_\_

\_\_\_\_\_ Seller's Initials \_\_\_\_\_ Brokerage Representative's Initials

**6. REAL ESTATE COMMISSION**

- 6.1 The Real Estate Commission (the "Commission") is \_\_\_\_\_ plus GST.
- 6.2 The Brokerage will offer \_\_\_\_\_, plus GST, as compensation to other brokerages for finding a buyer.

**7. DEPOSITS**

- 7.1 All Deposits will be held in accordance with the terms of the signed Purchase Contract. The Deposits must be held in trust according to the *Real Estate Act* (Alberta).
- 7.2 You direct the Brokerage, the buyer's brokerage or the lawyer who holds the Deposits to use the Deposits to pay any money owed under this Contract. Any Commission or Alternate Compensation, plus GST, that has been earned by another brokerage and is no longer required to be held in trust shall be paid directly out of a trust account by the party holding the Deposits.
- 7.3 You **assign** to the Brokerage enough of the purchase money or forfeited Deposits to pay all money owed under this Contract. You agree not to revoke this assignment.
- 7.4 You direct your lawyer to pay all money owed under this Contract from the purchase money or the forfeited Deposits held by your lawyer.

**8. THE BROKERAGE'S AUTHORITY**

- 8.1 You authorize the Brokerage to obtain the following information:
- current property tax summary and related information
  - search of title
  - condominium additional plan sheet, if condominium property
  - if the Property is encumbered by a mortgage or agreement for sale that is assumable, copies of the documents and a Mortgage Verification Statement
- 8.2 Do you authorize the Brokerage to install and use a key box?  Yes  No
- 8.3 Do you authorize the Brokerage to install "FOR SALE" and "SOLD" signs?  Yes  No
- 8.4 Do you authorize the Brokerage and the Board to display the Property address on the Internet?  Yes  No
- 8.5 Unless otherwise agreed in writing, only the Brokerage may advertise the Property for sale.

**9. IMPORTANT INFORMATION**

- 9.1 You will provide the following Important Information to the Brokerage promptly and at your expense:
- a real property report, if applicable, reflecting the current state of improvements on the Property, according to the Alberta Land Surveyors' Manual of Standard Practice, with evidence of municipal compliance or non-conformance.
  - if the Property is a resale condominium, the Important Information as described in the Commercial Condominium Property Appendix (attached).
  - all other applicable property information that is reasonably required to develop particulars of sale, including but not limited to, financial information such as annual property operating data (APOD), tenant schedules and leases, service and supply contracts, engineering reports, environmental assessment reports, building plans and specifications.
- 9.2 You hereby authorize the Brokerage to obtain the Important Information as required by 9.1 on your behalf and at your expense.  Yes  No
- Seller's Initials \_\_\_\_\_
- 9.3 Are you aware of any defects in the Property that are not visible and that may render the Property dangerous or potentially dangerous to occupants or unfit for habitation?  Yes  No
- Seller's Initials \_\_\_\_\_

**10. DUTIES OF THE SELLER**

- 10.1 You will pay the Commission to the Brokerage if, during the Term of this Contract:
- (a) the Property is sold, exchanged or otherwise disposed of by you or anyone else;
  - (b) a person contacts you directly or through a brokerage or inspects the Property and the Property is then sold, exchanged or otherwise disposed of by you or anyone else to that person within six (6) months after the Expiry Date. This clause will not apply where you have signed another listing contract after the Expiry Date and a real estate commission is payable to another brokerage according to the terms of that other listing contract as a result of the sale or disposition;
  - (c) you have signed a Purchase Contract with a buyer who is willing and able to complete the sale but you refuse to complete the sale; or
  - (d) a buyer is found who is willing and able to complete the sale upon the conditions outlined in this Contract but you refuse to sign the Purchase Contract.
- 10.2 You will pay the Commission to the Brokerage no later than the second business day after the sale is completed, unless you and the Brokerage otherwise agree in writing. A sale is completed when the change in ownership is registered at the Land Titles Office and the buyer pays the purchase money to you or your lawyer. Any holdbacks or conditions accepted by you or your lawyer will not delay payment of the Commission to the Brokerage.
- 10.3 You will pay Alternate Compensation to the Brokerage if a Purchase Contract is signed but the buyer defaults and the Deposits are forfeited. This Alternate Compensation will be the lesser of the Commission that would have been payable had the sale been completed or 50% of the forfeited Deposits. Alternate Compensation shall be payable upon the forfeiture of the Deposits.

\_\_\_\_\_ Seller's Initials      \_\_\_\_\_ Brokerage Representative's Initials

- 10.4** If the Brokerage pays for the Important Information, you will repay the Brokerage promptly upon demand.
- 10.5** In addition, you will pay GST, where applicable, to the Brokerage on the Commission or on any Alternate Compensation due under this Contract.
- 10.6** You will make your best efforts to insure the Property and its contents against loss or damage due to perils that are normally insured against for similar properties. This insurance will be effective even when the Property is vacant.
- 10.7** You will make reasonable efforts to cooperate with the Brokerage and any other brokerages.
- 10.8** You will immediately inform the Brokerage of any relevant changes respecting the Property or its ownership that may occur after this Contract is signed.

## 11. DUTIES OF THE BROKERAGE

### 11.1 The Brokerage:

- will make reasonable efforts to find a buyer for the Property.
- will market the Property through the listing service operated by the Board.
- will not discourage any person who is an industry member as defined in the *Real Estate Act* (Alberta) and who is not a member of the Board from attempting to sell the Property, unless you otherwise instruct the Brokerage in writing.
- will pay any Commission, Alternate Compensation and GST that are payable to another brokerage.

## 12. SECURITY FOR THE BROKERAGE'S FEES

- 12.1** You now **encumber** all of your interest in the Land, Buildings and Attached Goods for the benefit of the Brokerage to secure payment of all money which may be owed by you to the Brokerage under this Contract. The parties agree that the Brokerage is entitled to encumber the Land in accordance with the *Land Titles Act* (Alberta). You now authorize the Brokerage to file and maintain a **caveat** to give notice of this encumbrance.
- 12.2** If the Brokerage successfully enforces any of its rights or remedies under this section, you will pay reasonable lawyer and client legal fees and costs incurred by the Brokerage.
- 12.3** If you owe money under this Contract and the Brokerage does not wish to enforce this Contract against you, then upon mutual agreement between the Brokerage and the buyer's brokerage, the Brokerage may assign this Contract to the buyer's brokerage. If this Contract is assigned, then the buyer's brokerage may enforce this Contract against you to collect the portion of the Commission or Alternate Compensation, plus GST, to which the buyer's brokerage is entitled, and the buyer's brokerage will have the same rights and security given to the Brokerage according to Section 12 of this Contract.

## 13. SELLER'S WARRANTIES

### 13.1 You warrant the following:

- You have the legal authority to sell the Property.
- The Attached Goods and included Unattached Goods are free and clear of any financial encumbrances except as follows:
  - Within the meaning of the *Income Tax Act* (Canada), you are not now, nor will be on Completion Day, a non-resident of Canada nor an agent or a trustee for any person with an interest in the Property who is a non-resident of Canada.
  - Where applicable, you have complied with the bylaws of the Condominium Corporation.

### 13.2 You warrant that, to the best of your knowledge, the following is truthful and accurate:

- You have disclosed to the Brokerage all information necessary to truthfully and accurately market the Property, including any environmental problems.
- The current use of the Land and Buildings complies with the existing municipal land use bylaw.
- The Buildings and other improvements on the Land are not placed partly or wholly on any easement or utility right-of-way and are entirely on the Land and do not encroach upon neighbouring lands, except where an encroachment agreement is in place.
- The location of Buildings and other improvements on the Land complies with all relevant municipal bylaws, regulations or relaxations granted by the appropriate municipality prior to the Completion Day, or the Buildings and other improvements on the Land are "non-conforming buildings" as that term is defined in the *Municipal Government Act* (Alberta).
- If the Property includes a condominium unit, then the warranties extend to and include the common property.

## 14. ENDING THE CONTRACT

### 14.1 This Contract will automatically end if the Brokerage:

- has its licence to trade in real estate suspended or cancelled under the *Real Estate Act* (Alberta).
- ceases to be a member in good standing of a real estate board.
- is bankrupt, insolvent, or in receivership.

### 14.2 Where a party to this Contract has breached a part of this Contract, the other party may end this Contract by notice in writing to the party in breach.

### 14.3 You and the Brokerage may enforce parts of this Contract even if this Contract has ended or expired.

## 15. ADDITIONAL TERMS

### 15.1 This Contract is for the benefit of and will be binding upon the heirs, administrators, executors, successors and assigns of the parties.

### 15.2 All changes of number and gender will be made where required.

### 15.3 This Contract is a Seller's Brokerage Agreement for the purposes of the *Real Estate Act* (Alberta).

### 15.4 This Contract will be governed by the laws of the Province of Alberta. The parties submit to the exclusive jurisdiction of the Courts in the Province of Alberta regarding any dispute that may arise out of this transaction.

\_\_\_\_\_ Seller's Initials      \_\_\_\_\_ Brokerage Representative's Initials

**16. ADVICE**

- 16.1 This Contract creates binding legal obligations. You are encouraged to obtain legal advice before signing.
- 16.2 The Seller acknowledges that the Brokerage is being retained as a real estate broker, not as a lawyer, tax advisor, lender, appraiser, surveyor, structural engineer, property inspector, or other professional service provider.
- 16.3 The Seller consents to the collection, use and disclosure of personal information by the Brokerage for the purpose of listing and marketing the Property including, but not limited to:
  - (a) listing and advertising the Property in any medium including electronic media, photographs and video;
  - (b) disclosing Property information to prospective buyers, brokers, agents and others;
  - (c) such other use of the Seller's personal information as is consistent with listing and marketing of the Property.
- 16.4 The Seller consents to placement of the listing information and any sale information by the Brokerage into the database(s) of the appropriate MLS®/CLS™ system(s) and acknowledges that the MLS®/CLS™ database is the property of the Board(s) and can, during or after the termination or expiry of this listing, be licensed, resold or otherwise dealt with by the Board(s). The Seller further acknowledges that the Board(s) may:
  - (a) distribute the information to any persons authorized to use such service which may include other brokers, government departments, appraisers, municipal organizations and others;
  - (b) market the Property, at its option, in any medium, including electronic media;
  - (c) compile, retain and publish any statistics including historical MLS®/CLS™ data which may be used by licensed board members to conduct comparative market analysis; and
  - (d) make such other use of the information as the Board deems appropriate in connection with the listing, marketing and selling of real estate.

**17. AGENCY DISCLOSURE/ACKNOWLEDGMENT**

- 17.1 You, the Seller, have entered into an agency relationship under common law with the Brokerage, including its broker, all its associate brokers and agents (collectively referred to as the **Seller's Agent**). A brokerage, its broker, associate brokers and agents representing a buyer are referred to as the **Buyer's Agent**.
- 17.2 The Seller's Agent is obligated to protect and promote your interests. Specifically, the Seller's Agent owes you the fiduciary duties of loyalty, obedience, confidentiality, reasonable care and skill, full disclosure and full accounting.
- 17.3 You, as the Seller, and potential buyers may be represented by different brokerages (the Seller's Agent and the Buyer's Agent). Each of these Agents owes its client the full fiduciary duties listed above. Other brokerages representing buyers will *not* have a fiduciary relationship with you.
- 17.4 Dual Agency occurs when one brokerage (the Dual Agent), trading in real estate from one or more locations, represents *both* you and a buyer with respect to the potential purchase of the Property. In such circumstances, the described fiduciary duties are limited as follows:  
 The Dual Agent will *not*:
  - (a) without prior written authority, disclose:
    - (i) to a buyer: that you will accept a price less than the asking price (or a countered selling price); the reason that you are selling or the terms and conditions of competing offers;
    - (ii) to you: that a buyer will pay a price higher than the price offered or the reason that a buyer is buying;
  - (b) except as set out in (a), owe any duty of confidentiality and **will disclose to you and a buyer all known defects and information that materially affect or may materially affect the marketability or value of the Property.**
- 17.5 The Seller authorizes the Seller's Agent to act as a Dual Agent according to the terms of this section.

**18. SIGNATURES**

18.1 This Contract may be signed by the parties and transmitted by fax. This procedure will be as effective as if the parties had signed and delivered an original copy.

This Contract is made effective \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Name of Owner Registered on Title

\_\_\_\_\_  
Authorized Signing Officer(s)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print Name of Authorized Signing Officer(s)

\_\_\_\_\_  
Print Name of Witness

\_\_\_\_\_  
Authorized Signing Officer(s)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print Name of Authorized Signing Officer(s)

\_\_\_\_\_  
Print Name of Witness

\_\_\_\_\_  
Signature of broker, associate broker or agent authorized to sign on behalf of the Brokerage

\_\_\_\_\_  
Seller: Initial here to show you have received a copy of this Contract