

REAL ESTATE IS NO PLACE FOR...

Risky Business

~Windermere Real Estate~

Raising your Real Estate IQ

August 17, 2023



BOTH LISTINGS AND TRANSACTIONS (SALES) MUST BE CREATED IN SKYSLOPE AND DOCUMENTS UPLOADED INTO THE CHECKLIST WITHIN 24-48 HOURS AFTER FULLY EXECUTED DOCUMENTS HAVE BEEN RECEIVED BY THE ASSOCIATE.

BROKERAGE REQUIRED LISTING DOCUMENTS

1. **RLA package** (to include AD, FHDA, PRBS, WFA, RLA, SA, CCPA)
2. **DIA-Disclosure Information Advisory** (note: this is beneficial to the sellers on “how to” fill out disclosures)
3. **Order the Preliminary Title Report.** This will ensure we have the correct Sellers shown on the Deed; and being sure there are no red flags on Title... very important so it does not delay the sale.
4. **Order the NHD Report.** To have knowledge right away if there is an insurance issue for a buyer, e.g., fire hazard, flood hazard, any other hazards, or increased pricing for homeowners’ insurance coverage)
5. **MLS Active** (or Coming Soon if applicable). Be sure the Sellers review the MLS report so they can approve the verbiage and all the fields for accuracy. Best practice is to have the Seller sign/initial the MLS report, however, an email approval from the Seller will suffice and should be uploaded into the checklist.
6. Include any other listing documents/addenda when applicable.
7. Have your Seller(s) complete the TDS & SPQ (FHDA if applicable) and upload into the listing file.



CLARIFICATION OF CERTAIN PROVISIONS IN THE SALES LISTING AGREEMENT

Date Prepared and listing beginning date need to be the same or not more than a day or two later than the Date Prepared.

If the Seller is an Entity (e.g., LLC, Trust, etc.), then the listing agreement needs to be in the name of the Entity.

Note: the listing agreement is not valid unless you have a beginning and ending date (listing period), and a sales price. (you cannot write in “TBD”).

Also, don't forget to fill in the full property address, zip code and APN.

Date Prepared: 08/15/2023

1. EXCLUSIVE RIGHT TO SELL: Seller Family Trust (“Seller”)
hereby employs and grants Windermere Real Estate (“Broker”)
beginning (date) August 16, 2023 and ending at 11:59 P.M. on (date) January 16, 2024 (“Listing Period”)

3.A. and 3.D.(1). Complete the commissions section correctly. Check the appropriate boxes. If a checkbox is missed, the auditors will request you go back and have it checked, and the sellers initial next to it.

3. COMPENSATION TO BROKER:

Notice: The amount or rate of real estate commissions is not fixed by law. They are set by each Broker individually and may be negotiable between Seller and Broker (real estate commissions include all compensation and fees to Broker).

A. Seller agrees to pay to Broker as compensation for services irrespective of agency relationship(s), either 6.000 percent of the listing price (or if a purchase agreement is entered into, of the purchase price), or \$ _____.

D. Seller has been advised of Broker's policy regarding cooperation with, and the amount of compensation offered to, other brokers.

(1) Broker is authorized to cooperate with and compensate brokers participating through the multiple listing service(s) ("MLS") by offering to MLS brokers out of Broker's compensation specified in **paragraph 3A**, either 2.500 percent of the purchase price. or \$ _____.

3.A.(2). Fill in the calendar days. We recommend no less than 90 days. 180 Days is best.

Section 3A(2) shall not apply to any offer made during or after the expiration of the Listing Period, or any extension.

(2) If within **90** calendar days (a) after the end of the Listing Period or any extension; or (b) after any cancellation of this Agreement, unless otherwise agreed, Seller enters into a contract to sell, convey, lease or otherwise transfer the Property to anyone ("Prospective Buyer") or that person's related entity: (i) who physically entered and was shown the Property during the Listing Period or any extension by Broker or a cooperating broker; or (ii) for whom Broker or any cooperating broker submitted to Seller a signed, written offer to acquire, lease, exchange or obtain an option on the Property. Seller, however, shall have no obligation to Broker under **paragraph 3A(2)** unless, not later than the end of the Listing Period or any extension or cancellation, Broker has given Seller a written notice of the names of such Prospective Buyers.

This is the "safe harbor" provision.

To avoid paying the Broker's compensation, a seller may be tempted to reject an offer from a buyer procured by the Broker, only to sell the property to the same Buyer after the listing period ends. This provision reduces the possibility of this happening by protecting the Broker's compensation for a certain number of days after the listing period ends.

- The provision pertains to prospective Buyers who physically entered and were shown the property during the listing period, or who submitted a written offer to the Seller.
- The safe harbor applies only if, by the end of the listing period, the Broker provides the Seller with a written list of those prospective buyers.

3.F. Identify any prior listing agent(s) with whom the Seller previously entered into a listing agreement, AND, list the names of the prospective Buyer(s) procured by that agent.

- F.** (1) Seller represents that Seller has not previously entered into a listing agreement with another broker regarding the Property, unless specified as follows: _____.
- (2) Seller warrants that Seller has no obligation to pay compensation to any other broker regarding the Property unless the Property is transferred to any of the following individuals or entities: _____.
- (3) If the Property is sold to anyone listed above during the time Seller is obligated to compensate another broker: (i) Broker is not entitled to compensation under this Agreement; and (ii) Broker is not obligated to represent Seller in such transaction.

- Even if a listing period has ended, a Seller who had a listing agreement with Broker A will not want to enter into a new listing agreement with Broker B during Broker A's safe harbor period.
- The Seller risks being obligated to pay full commissions to both Brokers if a Buyer procured by Broker A buys the property during Broker A's safe harbor period, and Broker B's listing period.
- To avoid this result, 3.F. allows the Seller to exclude prospective Buyers procured by Broker A from Broker B's listing agreement. **NOTE: Broker B will not receive any compensation if anyone on this list buys the property.**
- Broker B should be prudent and carefully review the terms of the Seller's listing agreement with Broker A, and verify that Broker A's list of prospective Buyers has been timely and properly submitted to the Seller.
- If Broker A's safe harbor period ends before Broker B's listing period ends, Broker B may want the exclusion to terminate.
 - For example, Broker B takes a listing from 9/1/23 thru 1/1/24, but Broker A's safe harbor period for certain Buyers ends 12/1/23. Broker B may exclude these Buyers until 12/1/23 only, and not for the full duration of Broker B's listing period 1/1/24.

4.A.,B.,C. Don't forget to complete these sections.

4.A. Any personal property. (e.g. refrigerators, w/d, potted plants. Or if the Seller is selling the property furnished, have the Seller complete our Windermere Inventory spreadsheet. (Agent should not fill it out).

4.B. Leased or Not Owned items; and financed/liened items

4.C. Smart Home Features. (e.g., cameras, lights, locks, security system)

4. A. ITEMS EXCLUDED AND INCLUDED: Unless otherwise specified in a real estate purchase agreement, all fixtures and fittings that are attached to the Property are included, and personal property items are excluded, from the purchase price.

ADDITIONAL ITEMS EXCLUDED: wine refrigerator in dining room

ADDITIONAL ITEMS INCLUDED: Refer to Inventory spreadsheet

Seller intends that the above items be excluded or included in offering the Property for sale, but understands that: (i) the purchase agreement supersedes any intention expressed above and will ultimately determine which items are excluded and included in the sale; and (ii) Broker is not responsible for and does not guarantee that the above exclusions and/or inclusions will be in the purchase agreement.

B. (1) LEASED OR NOT OWNED ITEMS: The following items are leased or not owned by Seller:

Solar power system Alarm system Propane tank Water Softener

Other _____

(2) LIENED ITEMS: The following items have been financed and a lien has been placed on the Property to secure payment:

Solar power system Windows or doors Heating/Ventilation/Air conditioning system

Other _____

Seller will provide to Buyer, as part of the sales agreement, copies of lease documents, or other documents obligating Seller to pay for any such leased or liened item.

C. SMART HOME FEATURES: The following smart home features/devices are:

(1) **INCLUDED IN THE SALE** (information regarding apps, logins, and instructions may be required in the sale):

(2) **EXCLUDED FROM THE SALE:** _____



5.C. Don't forget to enter your MLS information.

C. WHAT IS BROKER'S MLS? Broker is a participant/subscriber to **FLEX, OR CRMLS, OR SDMLS** Multiple Listing Service (MLS) and possibly others. That MLS is (or if checked is not) the primary MLS for the geographic area of the Property. When required by **paragraph 7** or by the MLS, Property will be listed with the MLS(s) specified above.

a **SELM or Coming Soon form is not required if Section 7.C. and or D** is completed in the **RLA**. (Some MLS's still require a SELM to be uploaded in their system/platform).

C. "COMING SOON" STATUS IMPACT ON MARKETING; Days on Market (DOM): Seller is advised to discuss with Broker the meaning of "Coming Soon" as that term applies to the MLS in which the Property will be listed, and how any Coming Soon status will impact when and how a listing will be viewable to the public via the MLS. **Seller does** **does not** authorize Broker to utilize Coming Soon status, if any. Seller is further advised to discuss with Broker how any DOM calculations or similarly utilized tracking field works in the MLS in which the Property will be listed.

D. Seller Instructs Broker: (MLS may require C.A.R. Form SELM or local equivalent form)
(1) Seller instructs Broker to market the Property to the public, and **to start marketing on the beginning date of this Agreement or** **09/01/2023** (date).



an RCSD-S is no longer required if #25. Legally Authorized Signer (on page 5 and 6) in the RLA is completed correctly (Check the Entity Box (top of page 6) and fill in #3).

ENTITY SELLERS: (Note: If this paragraph is completed, a Representative Capacity Signature Disclosure form (C.A.R. Form RCSD) is not required for the Legally Authorized Signers designated below.)

- (1) One or more Sellers is a trust, corporation, LLC, probate estate, partnership, other entity or holds a power of attorney.
- (2) This Agreement is being Signed by a Legally Authorized Signer in a representative capacity and not for him/herself as an individual. See **paragraph 25** for additional terms.

(3) The name(s) of the Legally Authorized Signer(s) is: Samuel Seller, Suzie Seller

(4) If a trust, identify Seller as trustee(s) of the trust or by simplified trust name (ex. John Doe, co-trustee, Jane Doe, co-trustee or Doe Revocable Family Trust). If the entity is a trust or under probate, the following is the full name of the trust or probate case, including case #: _____

SELLER SIGNATURE(S):

(Signature) By, _____ Date: _____

Printed name of SELLER: Seller Family Trust

Printed Name of Legally Authorized Signer: Samuel Seller Title, if applicable, Trustee

Address fill in address even if it's the same as property address City _____ State _____ Zip _____

Email fill in email address Phone # (760)555-6757

(Signature) By, _____ Date: _____

Printed name of SELLER: Seller Family Trust

Printed Name of Legally Authorized Signer: Suzie Seller Title, if applicable, Trustee

Address fill in address even if its the same as property City _____ State _____ Zip _____

Email fill in email address Phone # (760)222-9090

Be sure you fully complete the Broker Signature section.

BROKER SIGNATURE(S):

Real Estate Broker (Firm) Windermere Real Estate DRE Lic# 02018113

Address fill in complete branch office address City _____ State _____ Zip _____

By _____ Tel. (760)470-1632 E-mail donna Niksich@windermere.com DRE Lic# 01207501 Date _____

DONNA NIKSICH

Per DRE Regulation 2725 – Broker Supervision.



Requires the Designated Officer/Broker to supervise the activities of their salespersons (Associates). Supervision includes the establishment of policies, rules, procedures, and systems to **review, oversee, inspect, monitor, and manage the following:**

- Transactions ~ Documents/Disclosures ~ Filing/Storage/Maintenance of documents
- Advertising of any service for which a license is required.
- Educating Associates with requirements of Federal and State Laws relating to discrimination.
- Overall supervision of licensed activities of salespersons licensed to the broker.

NOTE: A Broker may appoint and assign the services of licensed Designated and Division Managers to assist in administering the provisions above.*

*(As long as the broker does not relinquish overall responsibility of supervision of the acts of the salespersons.)

Best Practices! The description should include the physical and aesthetic characteristics of the property.

Over the past few years, both NAR and CAR have suggested not to use the following terms in descriptions:

- **Walk ● Walkable ● Walking Distance ● Steps To or Step into** – WHY shouldn't we use these words? Reason: for those who are struggling with limited mobility, a handicap, in a wheelchair, etc., – “walk/walking” may be a misleading or problematic assertion. Can be an ADA issue. → **instead use close to, nearby, or the actual # of blocks or miles to a location you're referencing in the description.**
- **Master Bedroom/Bathroom** – WHY shouldn't we use “master”? The term is antiquated and has a sexist and even racist connotation. → **instead use “primary” or “en-suite bathroom”.**
- **Family Room ● Great backyard for the kids ● Family Friendly Neighborhood** – WHY shouldn't we use “family”? Can be sensitive to some people if they are single, unmarried couples, childless by choice or not, retirees (stay away from referencing anything “family”, “kids”, “children”). It also falls under Fair Housing Act - “familial status” → **instead use great room, bonus room, rec room; spacious backyard.**
- **Jack & Jill or His-and-Hers Bathroom** → use instead “adjoining bathroom” or dual or double (sinks)
- **She-Shed ● Man-Cave** - **These terms can be alienating and inaccurate. Just don't use it at all.**

Avoid using verbiage such as “nice”, “safe”, “quiet” neighborhood. This is an opinion or an assessment which may not be someone else's (prospective buyer).