

# 6 Real Estate Contracts

A **contract** is defined as a legally enforceable promise or set of promises that must be performed and, if a breach occurs, for which the law provides a remedy. Contracts may be classified according to whether the parties' intentions are **express** or are **implied** by their actions. They may also be classified as **bilateral**, when both parties have obligated themselves to act, or **unilateral**, when one party is obligated to perform only if the other party acts. In addition, contracts may be classified according to their legal enforceability as either **valid, void, voidable** or **unenforceable**.

Many contracts specify a time for performance. In any case all contracts must be performed within a reasonable time. An **executed** contract is one that has been fully performed. An **executory** contract is one in which some act remains to be performed.

The **essentials of a valid contract** are: legally competent parties, offer and acceptance, legality of object, and consideration. A valid **real estate contract** must also include a description of the property, and it should be in writing and signed by all parties to be enforceable in court.

In many types of contracts, either of the parties may transfer his or her rights and obligations under the agreement by **assignment** (of the contract or **novation** (substitution of a new contract)).

Contracts usually provide that the seller has the right to declare a sale canceled if the buyer defaults. If either party has suffered a loss because of the other's default, he or she may sue for damages to cover the loss. If one party insists on completing the transaction, he or she may sue the defaulter for **specific performance** of the terms of the contract; a court can order the other party to comply with the agreement.

Contracts frequently used in the real estate business include listing agreements, sales contracts options, land contracts (installment contracts) and leases.

A **real estate sales contract** binds a buyer and a seller to a definite transaction as described in detail in the contract. The buyer is bound to purchase the property for the amount stated in the agreement. The seller is bound to deliver title, free from liens and encumbrances (except those identified in the contract).

Under an **option** agreement the optionee purchases from the optionor, for a limited time period, the exclusive right to purchase or lease the optionor's property. A **land contract**, or installment contract or contract for deed, is a sales/financing agreement under which a buyer purchases a seller's real estate on time. The buyer takes possession of and responsibility for the property but does not receive the deed immediately.

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## KEY TERMS

assignment \_\_\_\_\_

bilateral contract \_\_\_\_\_

breach of contract \_\_\_\_\_

consideration \_\_\_\_\_

contingency \_\_\_\_\_

contract \_\_\_\_\_

counter offer \_\_\_\_\_

default \_\_\_\_\_

earnest money \_\_\_\_\_

equitable title \_\_\_\_\_

escape clause \_\_\_\_\_

executed contract \_\_\_\_\_

executory contract \_\_\_\_\_

express contract \_\_\_\_\_

implied contract \_\_\_\_\_

installment contract \_\_\_\_\_

land contract \_\_\_\_\_

legality of object \_\_\_\_\_

legally competent parties \_\_\_\_\_

liquidated damages \_\_\_\_\_

novation \_\_\_\_\_

offer and acceptance \_\_\_\_\_

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option \_\_\_\_\_

parol evidence rule \_\_\_\_\_

real estate sales contract \_\_\_\_\_

specific performance suit \_\_\_\_\_

statute of frauds \_\_\_\_\_

statute of limitations \_\_\_\_\_

unenforceable contract \_\_\_\_\_

unilateral contract \_\_\_\_\_

valid contract \_\_\_\_\_

void contract \_\_\_\_\_

voidable contract \_\_\_\_\_

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## ILLUSTRATIONS

Study the following illustrations and fill in the blanks completely.

### ESSENTIALS OF A VALID CONTRACT



**Legally Competent Parties**  
**Offer and Acceptance (mutual assent)**  
**Legality of Object**  
**Consideration**  
(plus the absence of misrepresentation, fraud, undue influence and duress.)

### ALSO, FOR A VALID REAL ESTATE CONTRACT

**In Writing and Signed by Both Parties**  
**Accurate Description of the Property**



1. Which of the essentials to a valid contract is also referred to as a "meeting of the minds"? \_\_\_\_\_
2. To be valid, a contract must have "legality of object." What does this mean? \_\_\_\_\_
3. For a contract to be valid, both of the parties must have given each other something of value. This is called \_\_\_\_\_
4. If one of the parties to a contract is a minor, and thus is not legally competent, what is the force and effect of the agreement? \_\_\_\_\_
5. In addition to the essentials noted, for a real estate sales contract to be valid, it must also be in \_\_\_\_\_ and include \_\_\_\_\_

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## Purchase and Sale Agreement (Residential)

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Dated \_\_\_\_\_ Brokerage Names \_\_\_\_\_ AK MLS ID # \_\_\_\_\_ Brokerage Ph \_\_\_\_\_  
 Listing Brokerage: \_\_\_\_\_  
 Selling Brokerage: \_\_\_\_\_  
 MLS # \_\_\_\_\_

Licensee Names	License #	Direct Ph	Cell Ph	Email Address
Listing 1: _____	_____	_____	_____	_____
Listing 2: _____	_____	_____	_____	_____
Selling 1: _____	_____	_____	_____	_____
Selling 2: _____	_____	_____	_____	_____

**Licensee Relationships:** The Seller and Buyer acknowledge the following:  
**a) Listing Licensee 1**  is representing the Seller only (may assist the Buyer); or  is assisting both the Buyer and Seller as a Neutral Licensee; or  is assisting the Seller without representation.  
**Listing Licensee 2**  is representing the Seller only (may assist the Buyer); or  is assisting both the Buyer and Seller as a Neutral Licensee; or  is assisting the Seller without representation.  
**b) Selling Licensee 1**  is representing the Buyer only (may assist the Seller); or  is assisting both the Buyer and Seller as a Neutral Licensee; or  is representing the Seller only (may assist the Buyer); or  is assisting the Buyer without representation.  
**Selling Licensee 2**  is representing the Buyer only (may assist the Seller); or  is assisting both the Buyer and Seller as a Neutral Licensee; or  is representing the Seller only (may assist the Buyer); or  is assisting the Buyer without representation.

1) Buyer(s), \_\_\_\_\_, hereby deposit(s) earnest money of \_\_\_\_\_ (\$ \_\_\_\_\_) Dollars  
 evidenced by:  Cash  Personal Check  Cashier's Check  Note, Due on \_\_\_\_\_, (date)  
 Or \_\_\_\_\_  
 shall be held in trust by  Listing Broker  Selling Broker  Other \_\_\_\_\_  
 as earnest money on and part payment for the purchase of real property and improvements situated in  
 \_\_\_\_\_ (city or area) \_\_\_\_\_ (zip), in the \_\_\_\_\_  
 Recording District, State of Alaska, described as: \_\_\_\_\_ (Address)  
 \_\_\_\_\_ (Legal) (the Property).

2) Purchase Price: \_\_\_\_\_ 00/100 (\$ \_\_\_\_\_) Dollars  
 Minimum Down Payment (including earnest money shown above)..... \$ or % \_\_\_\_\_

3) Terms:  
 Buyer  does  does not intend to occupy Property as Buyer's primary residence.  
 Property Type (check one):  Single Family  Condominium  PUD  Duplex  Triplex  Fourplex  
 Other \_\_\_\_\_

Check one below:  
 a)  All Cash Offer:  
 No loan is needed to purchase the Property; Buyer shall provide Seller written third-party documentation verifying sufficient funds to close no later than \_\_\_\_\_ (date) \_\_\_\_\_ (time). Seller shall have three (3) business days after receipt of documentation to notify Buyer, in writing, if the verification of funds is not acceptable. If Buyer fails to provide such documentation, or if Seller finds verification of funds unacceptable, Seller may terminate this Purchase Agreement. Failure of Seller to provide Buyer written notice of objection shall be considered acceptance of verification of funds.

b)  New Financing: Recording is contingent upon Buyer obtaining financing as follows:  
 Check the appropriate block(s) below.  
 Conventional  
 FHA – (Attach Required Addendums)

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Legal (the Property): \_\_\_\_\_



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- 1      VA – (Attach Required Addendums)
- 2      Alaska Housing Finance Corporation under the following program \_\_\_\_\_
- 3      RD - Rural Development
- 4      Other \_\_\_\_\_
- 5
- 6     i) On or before \_\_\_\_\_, (date) Buyer agrees to make a good faith loan application with
- 7         \_\_\_\_\_ (Lender).
- 8     ii) If Buyer does not reveal a fact or contingency to the Lender and this purchase does not record because of that
- 9         nondisclosure after initial application, the Buyer shall be in default.
- 10    iii) On or before \_\_\_\_\_, (date) the Buyer will provide the Seller a letter from the Lender verifying
- 11         the following items:
- 12         (1) a satisfactory credit report,
- 13         (2) acceptable income,
- 14         (3) source of down payment,
- 15         (4) availability of funds to close, and
- 16         (5) that loan approval  is or  is not contingent on the lease, sale or recording of a sale of any property.
- 17    iv) In the event Buyer fails to provide Seller with above-mentioned letter or other acceptable verification by the
- 18         date above, this Purchase Agreement may be terminated at the election of the Seller with written notice provid-
- 19         ed to the Buyer within \_\_\_\_ (3 if not filled in) days from date above.
- 20    v) Buyer must obtain Seller's approval in writing of any change in Lender, type of financing or allocation of closing
- 21         costs.
- 22    vi) Buyer agrees to pay all fees and satisfy all conditions, in a timely manner, required by the Lender for pro-
- 23         cessing of loan application. Buyer agrees the interest rate offered by Lender or the availability of any financing
- 24         program is not a contingency of this Purchase Agreement, so long as Buyer qualifies for the financing herein
- 25         agreed. Availability of any financing program may change at any time, Brokers and Licensees are not respon-
- 26         sible for representations or guarantees as to availability of any loans, project and/or property approvals or in-
- 27         terest rates.
- 28    c)  Seller Financing:
- 29         i) \$ \_\_\_\_\_ payable at \$ \_\_\_\_\_, or more, per month including \_\_\_\_ % interest per annum
- 30             for \_\_\_\_ years.
- 31         ii) The parties are encouraged to negotiate the important terms of seller financing now, and to include such terms
- 32             in Paragraph 25, or in a separate addendum. Important terms may include form of financing documents (con-
- 33             tract, note and trust deed or mortgage), due on sale clause, prepayment option or penalty, remedies upon de-
- 34             fault, etc., if any.
- 35         iii) Buyer shall provide Seller with documentation, as required by Seller, verifying Buyer's ability to purchase ac-
- 36             cording to the price, terms and conditions of the Purchase Agreement by \_\_\_\_\_, (date).
- 37         iv) Seller Financing is contingent upon the Seller's approval of the above documentation on or before
- 38             \_\_\_\_\_, (date). In the event Buyer fails to obtain Seller's approval, this Purchase Agreement
- 39             shall automatically terminate.
- 40

**4) Costs:**

If applicable, the costs shall be paid by Buyer (B) or Seller (S) as indicated below. Costs payable by both Buyer and Seller to be shared equally. **Buyer to pay for any fees due to requirements of the lender not covered below.**

ITEM	B	S	ITEM	B	S	ITEM	B	S	ITEM	B	S
Lender Origination Fee			Credit Report			Owner Title Insurance			Smoke Detectors		
Commitment Fee			Reserves			ALTA Title Insurance			CO Detectors		
Discount Points			Prepaid Interest			Recording Fee			As-Built Survey / Recert.		
MIP/PMI(default insurance)						Escrow Closing Fee					
VA Funding Fee			Sales Tax			Annual Escrow Fee			Tests for Health Authority Approval:		
Rural Dev. Loan Fee			Resale Certificate /			Bank Set-Up Fee			Well Flow (Quantity)		
Lender Doc. Prep Fee			Public Offer Statement			Assume/Transfer Fee			Basic Water Quality		
			HOA Transfer/Doc Fees			Assessments Levied			PIWA Water		
Flood Certification			HOA Assessments			Assessments Pending			Other Specified Water Test		
Tax Registration			HOA Questionnaire			Attorney Doc Prep Fee			Septic Inspection		
Home Warranty			Appraisal			Brokerage Fee			DEC/MOA Approval Fees		

**5) Funds at Recording:**

Seller and Buyer agree before recording can take place, funds provided to the Closing Agent shall be in the following form: cash; interbank electronic transfer; money order; a certified check or cashier's check drawn on a financial institu-

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1 tion located in the state; or any above combination that permits the Closing Agent to convert the deposit to cash not later than the next business day (AS 34.80.040).

2  
3 **6) Prorations:**

4 Property taxes, interest on loans being assumed, prepaid rents, and HOA fees, if applicable, shall be prorated as of the date of recording.

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6  
7 **7) Title/Survey:**

- 8 a) The Seller shall convey title by statutory warranty deed or \_\_\_\_\_
- 9 b) The Property may be subject to restrictions contained on the Plat; in the Deed; in covenants, conditions, and restrictions; or other documents noted in the preliminary title report
- 10 c) Upon execution of this Purchase Agreement by all parties, Seller will, at Seller's sole expense, order the report and exceptions from \_\_\_\_\_ (Title Company) and furnish them to Buyer.
- 11 d) Upon receipt of the report and exceptions, Buyer shall have \_\_\_\_\_ business days (three (3) if not filled in) within which to notify Seller, in writing of any matters disclosed in the report, which are unacceptable to Buyer. Buyer's failure to timely object, in writing shall constitute acceptance of the report.
- 12 e) If, within \_\_\_\_\_ business days (three (3) if not filled in) following receipt of the objections, Seller fails to remove or correct the matters identified in the objections, or does not give written assurances reasonably satisfactory to Buyer that they will be removed or corrected prior to the recording date this transaction shall automatically terminate. After recording, Buyer shall receive an owner's standard form policy of title insurance insuring marketable title in the Property to Buyer in the amount of the purchase price, free and clear of the objections and all other title exceptions agreed to be removed as part of this transaction.
- 13 f) Mineral rights may not pass with title to the Property.
- 14 g) Neither Seller nor Seller's licensee make any representation as to the location of the lot corners or boundary lines. Buyer accepts sole responsibility for identifying and locating the corners and boundary lines of the lot.
- 15 h) Survey, as-built survey, or recertification of survey shall  be dated on or after \_\_\_\_\_, (date)
- 16 **OR**  as required by Lender.

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28 **8) Documents/Disclosures Required By Law:**

- 29 a) **Lead-Based Paint Warning:** Unless exempt, if the improvements on the Property include one or more residential dwelling(s) constructed prior to January 1, 1978, the Buyer shall not be obligated under the terms of this Purchase Agreement unless a completed Lead-Based Paint Disclosure form is signed by Seller and the Seller's real estate licensee(s), which must occur before the parties sign this Purchase Agreement. (See EPA pamphlet Protect Your Family From Lead in Your Home for more information.) If applicable, Buyer acknowledges receipt of the lead-based paint disclosure signed by the Seller prior to signing this offer.
- 30 b) Buyer  has  has not received a copy of the **State of Alaska Residential Real Property Transfer Disclosure Statement**.
- 31 c) Buyer  has  has not received a copy of the **Alaska Real Estate Commission Consumer Pamphlet**.
- 32 d) **Sex Offenders:** The State of Alaska requires the registration of sex offenders residing within the State of Alaska (AS12.63.010). The Alaska Department of Public Safety is charged with maintaining the registry created. For more information, contact the Alaska State Trooper Post, Municipal Police Department or on-line at the State of Alaska /Department of Public Safety (<http://www.dps.state.ak.us>) Internet site by clicking on the Sex Offender Registry. As a buyer, it is your responsibility to independently investigate and verify for yourself the acceptability of a property with respect to these issues. (AS34.70.050). **If Buyer elects to terminate this agreement based upon this investigation, Buyer must provide Seller with written notice within the time set forth in Paragraph 9l.**
- 33 e) The State of Alaska maintains a list of properties that have been identified by Alaska law enforcement agencies as illegal drug manufacturing sites, including meth labs. For more information on this subject and to obtain a list of these properties, go to <http://www.dec.state.ak.us>. **If Buyer elects to terminate this agreement based upon this investigation, Buyer must provide Seller with written notice within the time set forth in Paragraph 9l.**
- 34 f) In the event a Resale Certificate or a Public Offering Statement is required by law for the transfer of this Property, it is hereby agreed that the time for the Buyer to review these documents begins at the date and time that the Buyer acknowledges in writing the receipt of these documents. **In the event that this Purchase and Sales Agreement terminates and Buyer has received a Resale Certificate or Public Offering Statement, the Buyer agrees to deliver the Resale Certificate or Public Offering Statement to Seller or Seller's Licensee.**

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55 **9) Physical Inspection of Property/Property Condition:**

- 56 a) Until the date of possession or recording, whichever is earlier, Seller agrees to maintain the Property in its current condition, subject to ordinary wear and tear.
- 57

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- 1 b) Buyer and Seller understand that Brokers and/or Licensees are not experts in the areas noted below and Buyer and
- 2 Seller should rely solely on experts who are qualified in these areas. Brokers and/or their Licensees make no rep-
- 3 resentations regarding the Property, including whether the residence or other improvements meet current building
- 4 codes, safety or other requirements; and assume no duty to investigate or verify any disclosures made by Seller.
- 5 c) Buyer shall have the right, at Buyer's expense, to have a licensed contractor(s) or other qualified professional(s) to
- 6 further inspect and investigate the subject Property on or before \_\_\_\_\_, (date) \_\_\_\_ a.m. \_\_\_\_ p.m. (time).
- 7 d) Buyer is advised to hire a qualified, licensed, adequately insured inspector upon terms satisfactory to Buyer, which
- 8 may cover some of the provisions below.
- 9 e) Seller to approve Buyer's selection of a qualified professional(s) prior to any inspection or action. Such approval
- 10 will not be unreasonably withheld. Buyer requests approval of the following inspector(s):
- 11 \_\_\_\_\_
- 12 \_\_\_\_\_
- 13 \_\_\_\_\_
- 14 f) Seller shall make the premises available for all inspections. Buyer shall defend, indemnify and hold Seller, Brokers
- 15 and Licensees harmless from all liability or property damage including any liens, claims, or personal injury arising
- 16 from the Property inspections. This indemnity includes Seller's right to recover all costs and expenses incurred by
- 17 Seller to enforce this subsection, including Seller's reasonable attorney fees. This provision shall survive the termi-
- 18 nation or buyer default of this Purchase Agreement.
- 19 g) Buyer's inspection may include, but is not limited to: square footage; rental/lease agreements; applicable school
- 20 boundaries; zoning; erosion; avalanche hazards; sex offenders; pests; structural; plumbing; sewer/septic system;
- 21 well (quantity/quality); heating; appliances; insulation; electrical; roof; soils; drainage; foundation; mechanical sys-
- 22 tems; lot corners and boundaries; code compliances; or possible past or present environmental hazards such as
- 23 asbestos, mold, illegal drug or substance manufacturing including meth labs, urea-formaldehyde, radon gas, waste
- 24 disposal sites, underground tanks, water contamination and/or other substances/products, etc.
- 25 h) Buyer understands that measurements for square footage and/or dimensions may vary. It is the Buyer's responsi-
- 26 bility to verify square footage (within the time set forth in Paragraph 9c) and not rely on information received from
- 27 Seller, Brokers and Licensees, or governmental agencies.
- 28 i) Buyer is responsible for researching whether the property is in a 'fire and/or road service' area.
- 29 j) Buyer is advised to research land use, land use permits, building regulations, status of building permits, final com-
- 30 pletion documentation, status of PUR 101, PUR 102 and zoning affecting the Property.
- 31 k) Buyer shall furnish to Seller copies of all reports obtained by Buyer concerning the subject Property at no cost to
- 32 Seller. Buyer and Seller understand that any written reports generated as a result of any inspection(s) and investi-
- 33 gation(s) of this Property become a material amendment to the State of Alaska Residential Real Property Transfer
- 34 Disclosure Statement. Upon the receipt by Buyer of any such new property disclosure, Buyer has seventy-two (72)
- 35 hours, or as otherwise allowed under AS Sec 34.70.020, to terminate this Purchase Agreement.
- 36 l) Buyer's request for repairs/remedies or termination shall be in writing, supported by written reports (if applicable),
- 37 and delivered to Seller or Listing Licensee(s) not later than \_\_\_\_\_, (date) \_\_\_\_ a.m. \_\_\_\_ p.m.
- 38 (time).
- 39 m) Seller and Buyer to reach an agreement regarding Buyer's request for repairs/remedies, by
- 40 \_\_\_\_\_, (date) \_\_\_\_ a.m. \_\_\_\_ p.m. (time).
- 41
- 42 If no agreement is reached by the above date, the Buyer shall exercise one of the following options, in writing, with-
- 43 in \_\_\_\_ business days (three (3) if not filled in):
- 44 i) Buyer may terminate this Purchase and Sales Agreement.
- 45 ii) Buyer may accept Seller's last counter offer of repairs/remedies.
- 46 iii) Buyer may accept the property with any and all property conditions and discoveries as a result of the Buyer's
- 47 inspection process.
- 48 If the Buyer does not respond in the allotted time, Seller may terminate this agreement in writing as outlined in Par-
- 49 agraph 17.
- 50 n) If Seller's corrections are subject to re-inspection and approval prior to closing, by the same or a qualified inspector
- 51 approved above, Buyer shall pay for first re-inspection. Thereafter, Seller to pay for all additional re-inspection
- 52 fees.
- 53 o) If Buyer fails to have the Property inspected or fails to provide Seller with a written request for repairs/remedies, in
- 54 accordance with this Purchase Agreement, Buyer accepts the Property in its present condition and as described in
- 55 the Residential Real Property Transfer Disclosure Statement.
- 56 p) Except as otherwise specifically stated in this Purchase Agreement or the Residential Real Property Transfer Dis-
- 57 closure Statement, recording of this transaction shall constitute Buyer's acceptance of the Property AS IS, WHERE
- 58 IS, at recording, with all defects, latent or otherwise. Neither Seller, Broker nor any Licensee shall be bound by any



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1 representation or warranty of any kind relating in any way to the Property, its condition, quality or quantity, except  
2 as specifically set forth in this Purchase Agreement or the Residential Real Property Disclosure Statement, which  
3 contains representations of the Seller only, and which is based upon the best of Seller's personal knowledge.

4 q) In the event the improvements on the Property are destroyed or materially damaged prior to recording, then, at the  
5 Buyer's option, this Purchase and Sale Agreement shall terminate upon Buyer's written notice to Seller.  
6

### 10) Appraisal:

- 7
- 8 a)  Buyer  Seller agrees to advance funds for the appraisal fee to Lender by \_\_\_\_\_, (date) and  
9 authorizes the Lender to order by \_\_\_\_\_, (date).
- 10 b) The completion of Purchase  is  is not contingent upon the appraisal of the Property being equal to or greater  
11 than the agreed upon Purchase Price.
- 12 c) If the completion of Purchase is contingent upon the appraisal, and the Property does not appraise for the Purchase  
13 Price or greater, the parties shall have \_\_\_\_\_ business days (three (3) if not filled in) to renegotiate the Purchase  
14 Price. In the event the parties do not reach agreement on the Purchase Price within this time, the Purchase  
15 Agreement shall automatically terminate. (In the event of FHA/VA loans, the FHA/VA Amendatory Clause shall su-  
16 persede).
- 17 d) In the event the appraisal generates Lender-required repairs, repairs to be negotiated between Seller and Buyer.
- 18 e) If Seller and Buyer have not reached an agreement regarding Lender-required repairs, within \_\_\_\_\_ business  
19 days (three (3) if not filled in) of Seller's receipt of the appraisal, this Purchase Agreement shall automatically termi-  
20 nate.
- 21 f) If repairs/remedies are subject to re-inspection and approval prior to the recording date, Buyer shall pay for first re-  
22 inspection. Thereafter, Seller to pay for all additional re-inspection fees.  
23

### 11) Recording/Possession:

- 24
- 25 a) This sale shall be recorded on \_\_\_\_\_, (date) or earlier by mutual agreement. Prior to recording,  
26 Buyer and Seller agree to sign all reasonably necessary closing documents and to perform the reasonable condi-  
27 tions required by the Closing Agent and Buyer's Lender.
- 28 b) If obtaining new financing, and:
- 29 i) If Buyer is unable to obtain a loan commitment from agreed Lender by Recording Date, through no fault of  
30 Buyer, Buyer to provide written notice to Seller immediately upon Buyer learning of their inability to obtain loan  
31 commitment from Lender. This Purchase Agreement shall terminate automatically unless Seller and Buyer  
32 agree to modifications by Amendment to this Purchase and Sale Agreement.
- 33 ii) If Buyer fails to provide notice of inability to obtain loan commitment by such date (11a), or as modified by  
34 Amendment, and this transaction does not record, through no fault of the Seller, Buyer shall be in default.
- 35 c) Seller shall deliver possession of the Property to the Buyer upon confirmation of recording or  
36  under attached occupancy agreement or  other \_\_\_\_\_.
- 37 d) Unless otherwise agreed in writing, Seller shall remove all debris, personal property not sold to Buyer, and leave  
38 the Property in clean condition. Seller shall provide keys and/or means to operate all locks, including but not limited  
39 to: mailboxes, security systems, alarms, garage door openers and any portable control devices for accessing the  
40 Property upon confirmation of recording.
- 41 e) Buyer may walk through the Property prior to recording to determine there have been no material changes to the  
42 condition of the Property.
- 43 f) If Property is a unit in a condominium or other common interest community, Buyer may be required to pay a deposit  
44 to the homeowners' association (HOA) to obtain access to HOA facilities.  
45

### 12) Tenant Occupied Property:

46 Seller to provide rental/lease agreement(s) within three (3) business days of fully executed Purchase Agreement which  
47 are subject to Buyer's approval within the time set forth in Paragraph 9c. Seller and Buyer shall comply with the regula-  
48 tions contained in the Alaska Landlord/Tenant Act. All refundable deposits shall be transferred to the Buyer at record-  
49 ing. Seller to provide Estoppel Certificate(s) prior to closing if requested herein.  
50

### 13) Insurance:

51 It is the Buyers' responsibility to determine whether homeowners' or property owners' insurance can be obtained for this  
52 property, within the time frame set forth in Paragraph 9c, and provide evidence of availability of same as may be re-  
53 quired prior to recording.  
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- 1 **14) Carbon Monoxide Detectors:**  
2 Carbon Monoxide (CO) is a colorless, odorless, and potentially fatal gas produced by the burning of fossil fuel. You are  
3 advised to use CO detectors in your property and have heating systems inspected and serviced regularly. **Alaska**  
4 **Statute AS 18.070.095(a).**  
5
- 6 **15) Home Warranty Protection Plans:**  
7 Home warranty protection plans (HWPP) may be available to buyers and/or sellers for residential properties, including  
8 multi-family units, during and after recording of this transaction. However, the HWPP does not replace the need for an  
9 independent home inspection. The Real Estate Brokerages do not warrant or provide any product or service in connec-  
10 tion with the HWPP. **In the event Buyer and/or Seller choose not to purchase a HWPP prior to recording, this**  
11 **paragraph shall serve as acknowledgement Buyer and/or Seller wish to waive their right to purchase the plan.**  
12
- 13 **16) Brokerage Notice Regarding Earnest Money Deposits & Refunds:**  
14 Under Alaska law (12 ACC 64.250(7)), earnest money must be deposited into the Real Estate Brokerage trust account  
15 in a timely manner. Alaska Statutes and Regulations also require real estate brokerages to ensure the bank has  
16 cleared the earnest money deposit before funds can be released. If an offer is not accepted, or Purchase and Sale  
17 Agreement terminates, there may be up to fourteen (14) business days delay in refunding the earnest money to the  
18 Buyer, to allow the Buyer's check to clear the Real Estate Brokerage Trust Account. If Buyer provides written documen-  
19 tation of cleared funds, Alaska Statutes & Regulations require the Broker refund the earnest money to the Buyer not  
20 more than one business day after the Buyer's check has cleared.  
21
- 22 **17) Termination:**  
23 In the event this Purchase Agreement is terminated as provided for in this Purchase Agreement, absent a default by the  
24 Buyer, all earnest money shall be returned to the Buyer and all parties shall be relieved of their obligations as set forth  
25 herein.  
26
- 27 **18) Time of the Essence and Remedies:**  
28 Seller and Buyer understand that time is of the essence. If any obligation is not performed or waived as provided, or if  
29 any note or check received as earnest money or any other payment is not paid, honored or tendered when due, there  
30 shall be the following remedies:  
31 a) **If Buyer is in Default:** Except as provided in Paragraphs 3, 7e, 9k, 9m, 9q, 10c, 10e, 11b, 19 and 20, Seller's reme-  
32 dies shall be limited to liquidated damages in the amount of the earnest money set forth in Paragraph 1. It is  
33 agreed that such payments and things of value are liquidated damages and are Seller's sole and only remedy for  
34 Buyer's failure to perform the obligations of this contract. The parties agree that Seller's actual damages in the  
35 event of Buyer's default would be difficult to measure, and the amount of the liquidated damages herein provided  
36 for is a reasonable estimate of such damages.  
37 b) **If Seller is in Default:** Buyer may elect to treat this Purchase Agreement as canceled, in which case all earnest  
38 money paid by Buyer hereunder shall be returned and Buyer may recover such damages as may be proper, or  
39 Buyer may elect to treat this Purchase Agreement as being in full force and effect and Buyer shall have the right to  
40 specific performance or damages, or both.  
41
- 42 **19) Earnest Money Dispute:**  
43 Notwithstanding any termination of this Purchase Agreement, Buyer and Seller agree that, in the event of any contro-  
44 versy regarding the earnest money held by Broker, the Broker may:  
45 a) Make the determination as to the cause of the failure of this Purchase Agreement and distribute the earnest money  
46 accordingly after giving notice to Cooperating Broker, or  
47 b) Require the parties to execute an agreement for the release of the earnest money, in which case the earnest mon-  
48 ey shall be distributed in accordance with such agreement. If the parties are unwilling to execute an agreement for  
49 the release of earnest money, the parties shall submit the matter to mediation as provided below, and if mediation  
50 fails, the broker may file an interpleader action in a court of competent jurisdiction requesting the court to determine  
51 the distribution of the earnest money. Broker shall be entitled to an award from the earnest money of full reasona-  
52 ble attorneys' fees and costs.  
53 c) In the event the Broker makes a determination as to the cause of the failure of the Purchase Agreement and dis-  
54 tributes the Earnest Money accordingly, the parties hereto agree to indemnify and hold the Broker harmless from  
55 any and all claims, liabilities or losses that either party may incur as a result of the Broker's decision.  
56  
57

# 6 Real Estate Contracts

**Purchase and Sale Agreement Regarding Property Described As:**

Address: \_\_\_\_\_

Legal (the Property): \_\_\_\_\_



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**20) Mediation:**

If a dispute arises relating to this Purchase Agreement, between or among Buyer and Seller, and is not resolved prior to or after recording, the parties shall first proceed in good faith to submit the matter to mediation. Costs to be shared by mutual agreement between or among the parties. Unless otherwise agreed in mediation, the parties retain their rights to proceed to arbitration or litigation.

**21) Costs and Expenses:**

In the event of any arbitration or litigation relating to this Purchase Agreement, the arbitrator or court shall award to the prevailing party all reasonable costs and expenses, including attorney fees.

**22) Broker:**

It is mutually agreed by all parties that the Brokers and/or their Licensees shall not be held liable in any manner whatsoever for damages arising from defaults or acts by or omissions of Buyer or Seller.

- a) Both Buyer and Seller acknowledge Brokers are participants of the Alaska Multiple Listing Service, Inc., (AK MLS) and are authorized to report details of the sale to AK MLS.
- b) Buyer and Seller authorize any Lender, escrow agent, closing agent, appraiser, home inspector, surveyor and any other related party to this sale to furnish and provide any and all information and copies of documents related to this sale to both the Listing and Selling Brokers and their Licensees.

**23) Foreign Investment in Real Property Tax Act:**

The Foreign Investment in Real Property Tax Act ("FIRPTA") requires every person who purchases real property located within the United States from a "foreign person" to deduct and withhold from the Seller's proceeds ten percent (10%) of the gross sales price, with certain exceptions, and to pay the amount withheld to the Internal Revenue Service. A "foreign person" includes a non-resident alien individual, foreign corporation, foreign partnership, foreign trust, and foreign estate. Seller and Buyer agree to execute and deliver, as appropriate, any instrument, affidavit or statement, and to perform any acts reasonable or necessary to comply with FIRPTA.

**24) Attachments:**

The following attachments are hereby made part of this Purchase Agreement:

\_\_\_\_\_  
\_\_\_\_\_

**25) Additional Terms and Conditions:**

See attached addendum for additional terms and conditions.

\_\_\_\_\_  
Buyer(s) Initials

\_\_\_\_\_  
Seller(s) Initials

# 6 Real Estate Contracts

## Purchase and Sale Agreement Regarding Property Described As:

Address: \_\_\_\_\_

Legal (the Property): \_\_\_\_\_



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### 26) Acceptance/Notice of Acceptance/Delivery:

This offer may be accepted by being signed, or electronically signed, by the other party with no changes, and such acceptance shall be effective when a complete copy of the fully signed agreement is delivered to the other party by any one of the following methods:

- a) Hand delivery to the other party or the other party's licensee or the other party's Brokerage;
- b) Via email to the other party or the other party's licensee, but only if the person transmitting the email receives electronic confirmation that the email was received by the intended recipient; or
- c) Via facsimile to the other party or the other party's licensee, but only if the transmitting fax machine prints a confirmation that the transmission was successful.

This Purchase Agreement may be signed in multiple counterparts with the same effect as if all parties signed the same documents.

Delivery of a photocopy, telefax, electronic, carbon or carbonless copy of a signed, or electronically signed, original of this Purchase Agreement or any other documents referred to herein shall be treated the same as delivery of the original.

### 27) Entire Agreement:

This Purchase Agreement, the Residential Real Property Transfer Disclosure Statement, and any attached addenda constitute the whole agreement between the parties. No warranties, including any warranty of habitability, agreements or representations have been made or shall be binding upon either party unless herein set forth. This document may not be modified except in writing and signed by the Parties.

- a) Buyer agrees to purchase and pay for the above-described Property on the terms and conditions herein stated. Receipt of a copy of this Purchase Agreement is hereby acknowledged. Buyer understands this is a legally binding contract.
- b) Buyer agrees that recording of the sale will constitute an acknowledgment that the premises and its systems are acceptable at the time the sale is recorded.

In the event the Seller or Seller's Licensee has failed to notify Buyer or Buyer's Licensee, of the Seller's signed acceptance prior to \_\_\_\_\_, (date) \_\_\_\_ a.m. \_\_\_\_ p.m. (time), this offer shall terminate.

This Purchase Agreement has significant legal and financial consequences. You are advised to seek independent legal and financial counsel, including tax advice from a tax attorney or CPA, before signing. The Brokers and Licensees cannot give legal, tax or financial advice.

### Buyer Signature(s)

1: \_\_\_\_\_ 2: \_\_\_\_\_ 3: \_\_\_\_\_

Date \_\_\_\_\_ Time: \_\_\_\_\_ a.m. \_\_\_\_ p.m.

Print name(s) to be on documents \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_ E-Mail \_\_\_\_\_

Name of Selling Broker's Office \_\_\_\_\_

Licensee Signature \_\_\_\_\_ Licensee Signature \_\_\_\_\_

Selling Licensee #1 Fax Number: \_\_\_\_\_ Selling Licensee #2 Fax Number: \_\_\_\_\_

Selling Licensee #1 Email: \_\_\_\_\_ Selling Licensee #2 Email: \_\_\_\_\_

Form 70711. Originated 11/04. Revised 12/12.

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\_\_\_\_\_  
Buyer(s) Initials

\_\_\_\_\_  
Seller(s) Initials

# 6 Real Estate Contracts

**Purchase and Sale Agreement Regarding Property Described As:**

Address: \_\_\_\_\_

Legal (the Property): \_\_\_\_\_



This form authorized for use ONLY by active Real Estate Licensee Subscribers of Alaska Multiple Listing Service, Inc.

1 **Brokerage Fee:**  
2 A real estate broker may be compensated by any party to a real estate transaction, by a third party, or by one or more of the  
3 parties to the transaction splitting or sharing the compensation. Seller and/or Buyer agree to pay forthwith at recording a  
4 brokerage fee in cash as stated in the Personal Services Agreement. (i.e. Listing Agreement, Buyer's Agreement)  
5

6 **Seller Response: (sign only one!)**

- 7  
8  **Seller accepts the foregoing offer as written. Seller agrees to sell and convey the Prop-**  
9 **erty described on the terms and conditions herein stated. Seller understands this is a**  
10 **legally binding contract.**

11 Seller Signature(s)  
12 1: \_\_\_\_\_ 2: \_\_\_\_\_ 3: \_\_\_\_\_  
13 Date \_\_\_\_\_ Time: \_\_\_\_\_ a.m. \_\_\_\_\_ p.m.

- 14  **Seller makes the attached Counter Offer**

15 Seller Signature(s)  
16 1: \_\_\_\_\_ 2: \_\_\_\_\_ 3: \_\_\_\_\_  
17 Date \_\_\_\_\_ Time: \_\_\_\_\_ a.m. \_\_\_\_\_ p.m.

- 18  **Seller hereby rejects the foregoing offer and declines to make a Counter Offer**

19 Seller Signature(s)  
20 1: \_\_\_\_\_ 2: \_\_\_\_\_ 3: \_\_\_\_\_  
21 Date \_\_\_\_\_ Time: \_\_\_\_\_ a.m. \_\_\_\_\_ p.m.

22 Print name(s) \_\_\_\_\_

23 Address \_\_\_\_\_

24 Phone \_\_\_\_\_ E-Mail \_\_\_\_\_

25 Name of Listing Broker's Office \_\_\_\_\_

26 Licensee Signature \_\_\_\_\_ Licensee Signature \_\_\_\_\_

27 Listing Licensee #1 Fax Number: \_\_\_\_\_ Listing Licensee #2 Fax Number: \_\_\_\_\_

28 Listing Licensee #1 Email: \_\_\_\_\_ Listing Licensee #2 Email: \_\_\_\_\_

29

# 6 Real Estate Contracts

## Counter Offer to the Purchase and Sale Agreement

This form authorized for use ONLY by active Real Estate Licensee Subscribers of Alaska Multiple Listing Service, Inc.



1 Date \_\_\_\_\_  
 2 Regarding the Purchase Agreement dated \_\_\_\_\_, referencing property commonly known as:  
 3 Address: \_\_\_\_\_  
 4 Legal (the Property): \_\_\_\_\_  
 5 in which \_\_\_\_\_ is/are referred to as Buyer  
 6 and \_\_\_\_\_ is/are referred to as Seller.  
 7 **Undersigned accepts all of the terms and conditions in the above designated Purchase Agreement with the following**  
 8 **changes or amendments:**

The following dates are changed to not later than (if left blank or stricken-through indicates NO CHANGE):			
Page/Line/Change:	Date:	Page/Line/Change:	Date:
1/26	Verification of funds for an all cash offer:	4/6	Buyer to inspect property:
2/6	Apply for new financing:	4/37	Buyer to provide written request/report:
2/10	Qualification letter from Lender:	4/40	Parties agreement on inspection repairs:
2/36	Documentation for Seller Financing:	5/8	Funds for appraisal prepaid to Lender:
2/38	Seller approval of Buyer's Ability:	5/9	Appraisal to be ordered:
3/25	Survey:	5/18	Days for agreement on appraisal repairs:
		5/25	Recording:

9 Purchase price shall be \_\_\_\_\_ 00/100 \$ \_\_\_\_\_.  
 10

11 **Withdrawal of Counter Offer:** The party making this Counter Offer may withdraw this Counter Offer prior to  
 12 notification of acceptance from the other party.  
 13 **Seller reserves the right** to continue to offer the Property for sale and accept any other offer prior to notification of  
 14 Buyer's acceptance.  
 15 **This Counter Offer shall expire** unless the party making this Counter Offer is notified of its acceptance no later than  
 16 \_\_\_\_\_ (date) \_\_\_\_\_  a.m.  p.m. (time).  
 17 **Notification of Acceptance or Withdrawal of this Counter Offer may be made only by one of the methods**  
 18 **specified in Section 26 of the Purchase and Sale Agreement.**

19 Date: \_\_\_\_\_ Time: \_\_\_\_\_  a.m.  p.m.  
 20  Buyer  Seller 1: \_\_\_\_\_ 2: \_\_\_\_\_ 3: \_\_\_\_\_  
 21 Brokerage \_\_\_\_\_ Licensee(s) \_\_\_\_\_  
 22

### The undersigned accepts the above Counter Offer

23  
 24  
 25 Date: \_\_\_\_\_ Time: \_\_\_\_\_  a.m.  p.m.  
 26  Buyer  Seller 1: \_\_\_\_\_ 2: \_\_\_\_\_ 3: \_\_\_\_\_  
 27 Brokerage \_\_\_\_\_ Licensee(s) \_\_\_\_\_

# 6 Real Estate Contracts

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## Addendum or Amendment to the Purchase and Sale Agreement

This form authorized for use ONLY by active Real Estate Licensee Subscribers of Alaska Multiple Listing Service, Inc.



1 Date \_\_\_\_\_

2 In reference to the Purchase and Sale Agreement between:

3 \_\_\_\_\_, the Buyer(s), and

4 \_\_\_\_\_, the Seller(s), dated

5 \_\_\_\_\_, covering the real property commonly known as:

6 Address: \_\_\_\_\_

7 Legal (the Property): \_\_\_\_\_

8 the undersigned Buyer(s) and Seller(s) hereby agree to the following (check only one):

9  Addendum – to be used when more space is needed on the Purchase and Sale Agreement

10  Amendment – to be used only when changing an existing Purchase and Sale Agreement

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29 **All other Terms and Conditions to remain the same.**

30 **This Addendum/Amendment shall expire** unless the party making this Addendum/Amendment is notified of its

31 acceptance no later than \_\_\_\_\_ (date) \_\_\_\_\_  a.m.  p.m. (time).

32 Notification of acceptance of this Amendment/Addendum may be made only by one of the methods specified in the

33 paragraph titled 'Acceptance/Notice of Acceptance/Delivery' as contained in Purchase and Sale Agreement.

34

35 Date: \_\_\_\_\_ Time: \_\_\_\_\_  a.m.  p.m.

36  Buyer  Seller 1: \_\_\_\_\_ 2: \_\_\_\_\_ 3: \_\_\_\_\_

37 Brokerage \_\_\_\_\_ Licensee(s) \_\_\_\_\_

38 **The undersigned accepts the above Amendment/Addendum**

39 Upon execution by both parties, this agreement becomes an integral part of the referenced Purchase and Sale Agreement.

40

41 Date: \_\_\_\_\_ Time: \_\_\_\_\_  a.m.  p.m.

42  Buyer  Seller 1: \_\_\_\_\_ 2: \_\_\_\_\_ 3: \_\_\_\_\_

43 Brokerage \_\_\_\_\_ Licensee(s) \_\_\_\_\_

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# 6 Real Estate Contracts

## Bill of Sale<sup>1</sup>

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1 \_\_\_\_\_, for and in consideration of the sum of  
 2 \_\_\_\_\_ Dollars shall convey to  
 3 \_\_\_\_\_, the following personal property currently  
 4 located at: \_\_\_\_\_, State of Alaska.

5 All fixtures including, but not limited to: plumbing, lighting (including chandelier/dining room fixtures), blinds  
 6 and drapes shall remain with the subject property.  
 7

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> Refrigerator            | <input type="checkbox"/> Wall/Ceiling Speakers               | <input type="checkbox"/> Workbench/Shelving         |
| <input type="checkbox"/> Oven/Range              | <input type="checkbox"/> Satellite Dish                      | <input type="checkbox"/> Corral                     |
| <input type="checkbox"/> Dishwasher              | <input type="checkbox"/> Satellite Dish Components           | <input type="checkbox"/> Swing set                  |
| <input type="checkbox"/> Microwave               | <input type="checkbox"/> Home Theater                        | <input type="checkbox"/> Greenhouse                 |
| <input type="checkbox"/> Trash Compactor         | <input type="checkbox"/> Projector                           | <input type="checkbox"/> Dog Kennel/Run             |
| <input type="checkbox"/> Water Softener          | <input type="checkbox"/> Screen                              | <input type="checkbox"/> Storage Shed               |
| <input type="checkbox"/> Central Vac Attachments | <input type="checkbox"/> Flat Screen                         | <input type="checkbox"/> Hot Tub                    |
| <input type="checkbox"/> Chandelier              | <input type="checkbox"/> All Speakers                        | <input type="checkbox"/> Garage Door Opener Remotes |
| <input type="checkbox"/> Window Coverings        | <input type="checkbox"/> AV Components                       | # of Remotes: _____                                 |
| Except for: _____                                | <input type="checkbox"/> Flat Screen TV(s) - Location: _____ | <input type="checkbox"/> Generator                  |
| _____  | <input type="checkbox"/> Living Room                         | <input type="checkbox"/> Propane Tank(s)            |
| <input type="checkbox"/> Pool Table              | <input type="checkbox"/> Family Room                         | <input type="checkbox"/> Propane in Tank            |
| <input type="checkbox"/> Washer                  | <input type="checkbox"/> Master Bedroom                      | <input type="checkbox"/> Oil Tank                   |
| <input type="checkbox"/> Dryer                   | <input type="checkbox"/> Other _____                         | <input type="checkbox"/> Oil in Tank                |

8 \_\_\_\_\_  
 9 \_\_\_\_\_  
 10 The Seller herein warrants that said property is free from all liens and encumbrances. If the Purchase and  
 11 Sale Agreement dated \_\_\_\_\_ does not record; this Bill of Sale shall become null and void.  
 12

13 **THE ABOVE DESCRIBED ITEM(S) SHALL BE CONVEYED IN "AS-IS" CONDITION AND NO**  
 14 **WARRANTIES ARE MADE AS TO THE CONDITION OF THE PERSONAL PROPERTY.**

15 **SELLER TO LIST THE ITEMS, APPEARING TO BE AFFIXED TO THE PROPERTY, THAT ARE NOT**  
 16 **INCLUDED WITH THE SALE:**  
 17 \_\_\_\_\_  
 18 \_\_\_\_\_  
 19 \_\_\_\_\_  
 20 \_\_\_\_\_  
 21 \_\_\_\_\_

22 Dated: \_\_\_\_\_ Dated: \_\_\_\_\_  
 23 Buyer 1: \_\_\_\_\_ Seller 1: \_\_\_\_\_  
 24 Buyer 2: \_\_\_\_\_ Seller 2: \_\_\_\_\_  
 25 Buyer 3: \_\_\_\_\_ Seller 3: \_\_\_\_\_

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# 6 Real Estate Contracts

## SELF-EVALUATION QUESTIONS

1. When a buyer and seller execute a sales contract signed by the parties:
  - a. the buyer may take possession of the real estate.
  - b. the seller gives the buyer an easement.
  - c. the buyer gets legal title.
  - d. the buyer has equitable title.
  
2. The act by which all parties agree to the terms of a contract is known as:
  - a. legality of object.
  - b. consideration.
  - c. meeting of the minds.
  - d. informed consent.
  
3. Bart agrees to buy Curt's real estate for \$46,000. Bart signs a sales contract and deposits \$4,600 earnest money with Broker Drake. Curt is unable to show good title and Bart demands return of his earnest money from the broker, as provided in the contract. In this situation, Broker Drake should:
  - a. deduct his commission and return the balance to Bart.
  - b. deduct his commission and pay the balance to Curt.
  - c. return the entire amount to Bart.
  - d. pay the entire amount to Curt to dispose of as he chooses.
  
4. Although a buyer may withdraw an offer at any time prior to acceptance by the seller, the seller:
  - a. can keep all of the earnest money.
  - b. must return half of the earnest money.
  - c. must return all of the earnest money.
  - d. must return the earnest money minus the broker's commission.
  
5. Which of the following is not essential to a valid real estate sales contract?
  - a. Earnest money
  - b. Writing
  - c. Offer and acceptance
  - d. Consideration
  
6. The listing broker obtained a signed offer and an earnest money check from a qualified buyer. Before the broker could present this to the seller for acceptance, the buyer called and said that he was being transferred out of town and therefore was withdrawing his offer. In this case, the buyer:
  - a. is within his rights.
  - b. may not withdraw the offer.
  - c. can be sued for specific performance.
  - d. must forfeit his earnest money deposit.

# 6 Real Estate Contracts

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7. On April 11, Allison and Raoul execute a sales contract for the purchase of Allison's property. The closing is set for June 10. On May 17, the property sustains considerable fire damage and is virtually destroyed. If the Uniform Vendor and Purchaser Risk Act has been adopted by the state in which the property is located, the loss is borne by the:

- a. buyer.
- b. seller.
- c. broker.
- d. tenant occupying the premises at the time.

8. A valid real estate sales contract is an example of which of the following?

- a. Implied contract
- b. Bilateral contract
- c. Unilateral contract
- d. Unenforceable contract

9. The buyer moves in and pays expenses and loan payments but the seller retains title in a:

- a. lease-option.
- b. purchase-money sale
- c. land contract.
- d. sale and leaseback.

# 6 Real Estate Contracts

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## SOLUTIONS

### KEY TERMS

**assignment**-The transfer of the rights and/or duties under a contract.

**bilateral contract**-A contract in which both parties to the agreement promise to do or refrain from doing something; one promise is given in exchange for the other. (Contrast with unilateral contract.)

**breach of contract**-Violation of any terms or conditions in a contract without legal excuse; for example, failure to make a payment when it is due.

**consideration**-Something of legal value bargained for and given in exchange for a promise or an act that induces a person to enter into a contract.

**contingency**-A necessary happening, stipulated in a contract, without which the parties will not be bound to perform the terms of the contract.

**contract**-A legally enforceable promise or set of promises that must be performed and for which, if a breach of promise occurs, the law provides a remedy.

**counter offer**-A new offer made as a reply to an offer received. It has the effect of rejecting the original offer, which cannot be accepted thereafter unless revived by the offeror.

**default**-A breach of any term of a contract; failure of one of the parties to live up to the provisions of the contract.

**earnest money**-An amount of money (or other consideration), deposited by a buyer under the terms of a contract, to be forfeited if the buyer defaults but applied to the purchase price if the sale is closed.

**equitable title**-The interest held by a buyer (vendee) under a purchase contract, installment contract or contract for deed; the equitable right to obtain absolute ownership.

**escape clause**-Provision in a contract that gives one of the parties the right to void the contract under certain conditions.

**executed contract**-A contract in which all parties have fulfilled their obligations and thus performed the contract.

**executory contract**-A contract under which something remains to be done or performed by one or both of the parties.

**express contract**-An oral or written contract in which the parties state the contract's terms and express their intentions in words.

**implied contract**-A contract that is inferred and demonstrated by the acts and conduct of the parties.

**installment contract or contract for deed**-A contract for the sale of real estate, under the terms of which the purchase price is paid in periodic installments by the purchaser who is in possession of the property even though title is held by the seller until an agreed-upon time. Also known as a land contract or contract for deed.

**land contract**-Another term for installment contract or contract for deed.

# 6 Real Estate Contracts

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**legality of object**-The principle of contract law that stipulates that to be valid, a contract must not be entered into for a purpose that is illegal or against public policy.

**legally competent parties**-People who are recognized by law as being able to contract with others; usually those of legal age and sound mind.

**Liquidated damages** -A specified amount of money, which one party agrees to accept as full compensation if the other party defaults.

**novation** - substituting a new obligation for an old one or substituting new parties to an existing agreement, for example, when the parties to an obligation accept a new debtor in place of an existing one.

**offer and acceptance**-Two essential elements of a valid contract; a "meeting of the minds," also called mutual assent.

**option**-An agreement to keep open, for a set period of time, an offer to sell or purchase property. It must be supported by consideration.

**parol evidence rule**-A rule of evidence that dictates that if the terms of a contract are written, no oral testimony is to be allowed regarding matters prior to or contemporaneous with the written agreement if the purpose of such testimony is to contradict the terms of the agreement.

**real estate sales contract**-A contract containing the complete terms of an agreement between buyer and seller for the sale of a particular parcel or parcels of real estate.

**specific performance suit**-A legal action to compel a party in default to carry out the terms of a contract.

**statute of frauds**-That part of state law that requires certain instruments, such as deeds, real estate sales contracts and certain leases, to be in writing to be enforceable.

**statute of limitations**-That part of state law pertaining to the period of time within which certain actions must be brought to court.

**unenforceable contract**-A contract that seems on the surface to be valid, yet under which neither party can sue the other to force performance of it.

**unilateral contract**-A contract under the terms of which one party makes a promise to induce a second party to do something. The second party is not legally bound to perform, but if the second party does comply, the first party is obligated to keep the promise. (Contrast with bilateral contract.)

**valid contract**-A contract that, by complying with certain essentials, is binding and enforceable on all parties to the agreement.

**void contract**-A contract that has no legal force or effect because it does not meet the essential elements of a valid contract.

**voidable contract**-A contract that is valid on the surface but that may be rejected by the party who might be injured if the contract were to be enforced.

# 6 Real Estate Contracts

## ILLUSTRATIONS

1. offer and acceptance (mutual assent)
2. The contract must be for a legal purpose--it must not violate the law or be against public policy.
3. consideration
4. The contract would be voidable at the minor's option.
5. writing and signed; a description of the property being sold

## SELF-EVALUATION QUESTIONS

1. **d.** The execution of a real estate sales contract by a buyer and a seller creates a valid agreement between the two parties, which either party may then enforce in court if the other party defaults. When the contract is executed, the seller retains his or her title as far as the public record is concerned until the seller delivers his or her deed at the closing. However, the courts' interpretation is that because the seller has agreed to convey title subject to certain conditions, the buyer has equitable title. This in effect makes the seller a kind of trustee, holding the title for the buyer until the buyer is able to perform his or her contract.
2. **c.** A meeting of the minds takes place when both parties agree on price and terms of the sale.
3. **c.** From the statement in the question, it is evident that the contract is worded so that if the seller defaults, the earnest money will be returned by the broker to the buyer. In this case, the broker has no choice but to return it. The broker probably has a claim against the seller for a commission, but has no right to retain the buyer's money.
4. **c.** The earnest money belongs to the buyer until his or her offer is accepted by the seller or until there has been a meeting of the minds. The broker, if any, holds the money on the buyer's behalf. If the seller does not accept the buyer's offer or if an agreement is not reached, the seller or broker must return all of the earnest money to the buyer.
5. **a.** Although many people believe earnest money is necessary to "bind the deal," it is not essential. The buyer's promise to purchase is sufficient consideration. A seller may, however, be reluctant to accept any offer that is not accompanied by a deposit. .
6. **a.** It is a principle of law that an offer, once it has been made, can be withdrawn anytime before it has been accepted by the offeree. This question really tests your knowledge of whether a real estate sales contract signed by a qualified buyer, with an earnest money check attached, is in fact a contract. Of course, the answer is no. It is just an offer. Since it is an offer, the buyer has the right to withdraw anytime before it is accepted.
7. **b.** This contract is terminated because of the considerable fire damage to the property between the date of the contract and the date of closing the sale. The

# 6 Real Estate

## Contracts

[www.AlaskaRealEstateSchool.com](http://www.AlaskaRealEstateSchool.com)

Uniform Vendor and Purchaser Risk Act, adopted by most states, specifies that the seller must bear the risk of fire damage as long as a buyer does not have title or possession. If the buyer gets title, he or she has an insurable risk. Note that in some states, the risk of loss passes to the buyer when a sales contract is signed, unless stated otherwise. Under an installment contract, however, the buyer is given possession. Therefore, in that kind of contract, the buyer takes the risk of loss and pays for the fire insurance.

**8. b.** A valid real estate contract is an example of a bilateral agreement--both parties promise to do something: the seller to deliver title and possession and the buyer to pay the purchase price. The contract is expressed (in writing, as dictated by the statute of frauds), rather than implied, and a valid contract is enforceable on all parties to it.

**9. c.** With a purchase-money mortgage and a sale and leaseback, the buyer receives title and becomes owner immediately. With a lease-option, the buyer may choose not to go through with the purchase, and pays only rent meanwhile.

# 6 Real Estate

## Contracts

### LISTING AGREEMENTS

To acquire inventory of property to sell, brokers must obtain listings. Types of listings include exclusive-right-to-sell, exclusive-agency and open listings.

With an **exclusive-right-to-sell listing** the seller employs only one broker and must pay that broker a commission regardless of whether it is the broker or the seller who finds a buyer-- provided the buyer is found within the listing period.

Under an **exclusive-agency listing** the broker is given the exclusive right to represent the seller, but the seller can avoid paying the broker a commission by selling the property to someone not procured by the broker.

With an **open listing** the broker must find a buyer before the property is sold by the seller or another broker to obtain a commission.

A **multiple listing** provision may appear in an exclusive-right-to-sell or an exclusive-agency listing. It gives the broker the additional authority and obligation to distribute the listing to other members of the broker's multiple listing organization. A **net listing**, which is outlawed in some states and considered unethical in most areas, is based on the net price the seller will receive if the property is sold. The broker is free to offer the property for sale at the highest available price and will receive as commission any amount over and above the seller's stipulated net. An **option listing**, which also must be handled with caution, gives the broker the option to purchase the listed property.

A listing agreement may be terminated for the same reasons as any other agency relationship.

When listing a property for sale, the seller is concerned about the selling price and the net amount that will be received from the sale. A competitive market analysis is a comparison of the prices of recently sold properties that are similar to the seller's property. The CMA or a formal appraised report can be used to help the seller determine a reasonable listing price. The amount the seller will net from the sale is calculated by subtracting the broker's commission and any other expenses that the seller incurs from the sale from the selling price.

A wide variety of listing contract forms may be used, depending on the customs and laws in an area. Typically they are preprinted forms that include such information as the type of listing agreement, the broker's authority and responsibility under the listing, listing price, duration of the listing, information about the property, terms for the payment of commission (including antitrust concerns and encumbrances) and the buyer's possession and nondiscrimination laws. Detailed information about the property may be included in the listing contract or on a separate property data sheet. Disclosure of the broker's law of agency relationship and discussion of the broker's agency policies has become the focus of laws in many states. The seller may also be expected to comply with mandatory disclosure of property conditions.

# 6 Real Estate Contracts

A Buyer Listing or Buyer's Representation Agreement binds a buyer to an agent for a specific amount of time. The agent agrees to use his or her best efforts to find a property that fits the buyer's needs at the best price.

## KEY TERMS

automatic extension \_\_\_\_\_

comparative market analysis \_\_\_\_\_

exclusive agency listing \_\_\_\_\_

exclusive-right-to-sell listing \_\_\_\_\_

listing agreement \_\_\_\_\_

market value \_\_\_\_\_

multiple listing service \_\_\_\_\_

net listing \_\_\_\_\_

open listing \_\_\_\_\_

option listing \_\_\_\_\_

special agency \_\_\_\_\_

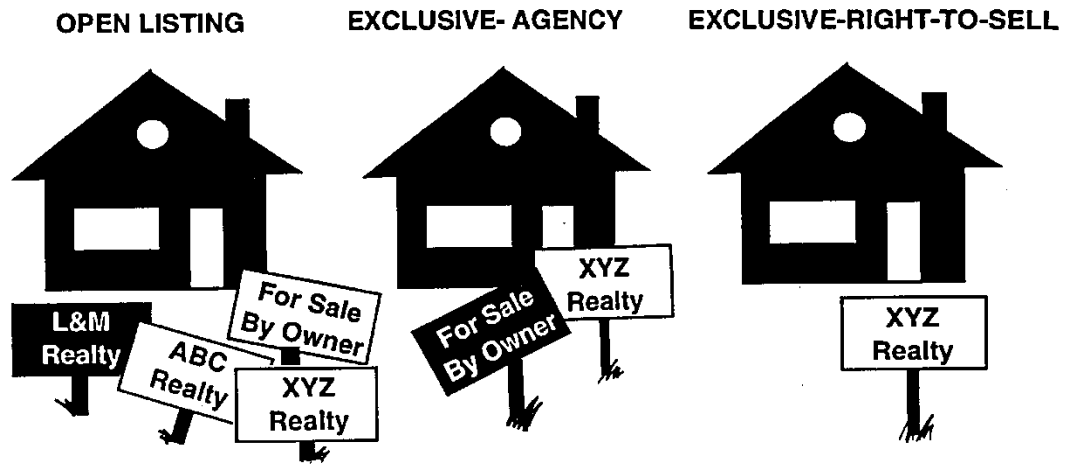
unilateral subagency \_\_\_\_\_



# 6 Real Estate Contracts

## ILLUSTRATIONS

Review the listing illustration below, then complete the questions that follow.



1. For the sale of a residential property in an area served by the local MLS, one of the most popular types of listings is the \_\_\_\_\_

2. When the owner sells the property without assistance from the broker(s), the owner does not owe a commission to the broker(s) in which type of listing(s)? \_\_\_\_\_

3. A type of listing which is used frequently for marketing land and commercial realty is the \_\_\_\_\_

On the following pages are examples of local listing forms

# 6 Real Estate Contracts

**Reset Form**

**Residential Input Form: Alaska Multiple Listing Service, Inc.**

*Required Field* \*Field with a list Page 1

<b>General Information</b>	
<i>Listing Member</i>	Co-listing Member

<b>Address Information</b>								
<i>Region*</i>	<i>Borough/C Area*</i>	<i>Area*</i>	<i>Street #</i>	<i>Directional*</i>	<i>Street Name</i>	<i>Arterial*</i>	<i>Unit #</i>	<i>Street Add Info</i>
<i>Closest USPS Town*</i>	<i>State*</i>	<i>Zip Code*</i>						

<b>Location, Legal, and School Info</b>			
<i>Remote Description</i>	<i>Latitude</i>	<i>Longitude</i>	<i>Grid # (Muni Anch)*</i>
<i>Tax Map #-Mat-Su*</i>	<i>Tax ID</i>	<i>Taxes</i>	<i>Tax Year</i>
<i>School-Elementary*</i>	<i>School-Middle*</i>	<i>School-High*</i>	<i>Builder Name &amp; Co</i>

*Legal*

<b>Contract Info</b>			
<i>LO Cntrl #</i>	<i>Price-List</i>	<i>Date-Listing</i>	<i>Date-Expiration</i>
<i>Contact Name</i>	<i>Contact Phone #</i>	<i>Sellers Name</i>	<i>Contract Type*</i> Please choose one option
<i>Commission Type*</i> Please choose one option	<i>Commission to SO</i>		

<b>Property Info</b>			
<i>Realtor.com Type*</i>	<i>Construction Status*</i> Please choose one option	<i>Beds</i>	<i>Baths</i>
<i>SF-Res</i>	<i>SF-Res Source</i>	<i>Year Built</i>	<i>Year Remodeled</i>
<i>Year Updated</i>	<i>Garage #</i>	<i>SF-Gar</i>	<i>Carport #</i>
<i>SF-Lot</i>	<i>SF-Lot Source</i>	<i>Acres</i>	<i>Zoning*</i>
<i>Energy Rating</i>			

<b>Directions and Remarks</b>
<i>Remarks-Public</i>
<i>Remarks-Confidential</i>
<i>Directions</i>

# 6 Real Estate Contracts

## Residential Input Form: Alaska Multiple Listing Service, Inc.

Required Field \*Field with a list Page 2

<p><b>Residential Type: 1 to 5 req'd</b></p> <p><input type="checkbox"/> B &amp; B in Operation <input type="checkbox"/> Single Family Res  <input type="checkbox"/> B &amp; B Potential <input type="checkbox"/> Site Condo-Attached  <input type="checkbox"/> Houseboat <input type="checkbox"/> Site Condo-Detached  <input type="checkbox"/> Manufactured <input type="checkbox"/> Townhouse  <input type="checkbox"/> Modular <input type="checkbox"/> ZLL - Attached  <input type="checkbox"/> PUD <input type="checkbox"/> ZLL - Detached  <input type="checkbox"/> Recreational/Cabin</p> <p><b>Association Info</b></p> <p><input type="checkbox"/> Dues-HOA Name  <input type="checkbox"/> Dues-Amount  <input type="checkbox"/> Dues-HOA Phone #  <input type="checkbox"/> Dues-Frequency*</p> <p><b>Mobile Homes Only</b></p> <p><input type="checkbox"/> Make  <input type="checkbox"/> Size W x L  <input type="checkbox"/> Model  <input type="checkbox"/> Tip Out Size  <input type="checkbox"/> Serial #  <input type="checkbox"/> Space Rent/Mo \$</p> <p><b>Mobile Home Features</b></p> <p><input type="checkbox"/> Arctic Entry <input type="checkbox"/> Building Addition</p> <p><b>Construction Type</b></p> <p><input type="checkbox"/> Block <input type="checkbox"/> Wood Frame  <input type="checkbox"/> Concrete <input type="checkbox"/> Wood Frame - 2x4  <input type="checkbox"/> Log <input type="checkbox"/> Wood Frame - 2x6  <input type="checkbox"/> Metal <input type="checkbox"/> Wood Frame - 2x8  <input type="checkbox"/> Mobile Home <input type="checkbox"/> Unknown-BTV  <input type="checkbox"/> Modular <input type="checkbox"/> Other - See Remarks</p> <p><input type="checkbox"/> Post &amp; Beam</p> <p><b>Exterior Finish</b></p> <p><input type="checkbox"/> Log <input type="checkbox"/> Unfinished  <input type="checkbox"/> Masonry <input type="checkbox"/> Vinyl  <input type="checkbox"/> Metal <input type="checkbox"/> Wood  <input type="checkbox"/> Stucco <input type="checkbox"/> Unknown-BTV  <input type="checkbox"/> Tyvek <input type="checkbox"/> Other - See Remarks</p> <p><b>Roof Type</b></p> <p><input type="checkbox"/> Asphalt/Comp Shingle <input type="checkbox"/> Rubber  <input type="checkbox"/> Bitumen/Torch Down <input type="checkbox"/> Slate  <input type="checkbox"/> Built-Up/Tar &amp; Gravel <input type="checkbox"/> Tile-Clay  <input type="checkbox"/> Hot Mop Asphalt <input type="checkbox"/> Tile-Concrete  <input type="checkbox"/> Metal <input type="checkbox"/> Wood Shake  <input type="checkbox"/> PVC Membrane <input type="checkbox"/> Unknown-BTV  <input type="checkbox"/> Rolled <input type="checkbox"/> Other - See Remarks</p> <p><b>Foundation Type: 1 to 9 req'd</b></p> <p><input type="checkbox"/> All Weather Wood <input type="checkbox"/> Treated Posts  <input type="checkbox"/> Concrete Block <input type="checkbox"/> Untreated Wood  <input type="checkbox"/> Piling <input type="checkbox"/> Wood Crib  <input type="checkbox"/> Post on Pad <input type="checkbox"/> None  <input type="checkbox"/> Poured Concrete <input type="checkbox"/> Unknown - BTV  <input type="checkbox"/> Quad-Lock <input type="checkbox"/> Other - See Remarks</p> <p><b>Miscellaneous</b></p> <p><input type="checkbox"/> Basement Status* Please choose one option</p> <p><b>Floor Style</b></p> <p>Continued...</p>	<p><b>Floor Style continued</b></p> <p><input type="checkbox"/> Cabin <input type="checkbox"/> Ranch-Traditional  <input type="checkbox"/> Chalet/A-Frame <input type="checkbox"/> Side/Calif Split  <input type="checkbox"/> Hlisd Rnch/Dit <input type="checkbox"/> Split Entry  <input type="checkbox"/> Bsmnt  <input type="checkbox"/> Log <input type="checkbox"/> Tri-Level  <input type="checkbox"/> Mobile-Double <input type="checkbox"/> Two-Story Reverse  <input type="checkbox"/> Wide  <input type="checkbox"/> Mobile-Single Wide <input type="checkbox"/> Two-Story Tradtnl  <input type="checkbox"/> Multi-Level <input type="checkbox"/> Two-Story W/Bsmnt  <input type="checkbox"/> Prow Front Split <input type="checkbox"/> Other - See Remarks</p> <p><input type="checkbox"/> Ranch-Raised</p> <p><b>Garage Type: 1 to 5 req'd</b></p> <p><input type="checkbox"/> Attached <input type="checkbox"/> Tuck Under  <input type="checkbox"/> Detached <input type="checkbox"/> None  <input type="checkbox"/> Heated <input type="checkbox"/> Other-See Remarks</p> <p><input type="checkbox"/> Tandem</p> <p><b>Carport Type: 1 to 5 req'd</b></p> <p><input type="checkbox"/> Attached <input type="checkbox"/> Tuck Under  <input type="checkbox"/> Detached <input type="checkbox"/> None  <input type="checkbox"/> Tandem <input type="checkbox"/> Other - See Remarks</p> <p><b>Heat Type: 1 to 5 req'd</b></p> <p><input type="checkbox"/> Baseboard <input type="checkbox"/> Stove  <input type="checkbox"/> Forced Air <input type="checkbox"/> None  <input type="checkbox"/> Monitor <input type="checkbox"/> Unknown-BTV  <input type="checkbox"/> Portable <input type="checkbox"/> Other - See Remarks</p> <p><input type="checkbox"/> Radiant</p> <p><b>Fuel Type: 1 to 7 req'd</b></p> <p><input type="checkbox"/> Electric <input type="checkbox"/> Wood  <input type="checkbox"/> Natural Gas <input type="checkbox"/> None  <input type="checkbox"/> Oil <input type="checkbox"/> Unknown-BTV  <input type="checkbox"/> Propane <input type="checkbox"/> Other - See Remarks</p> <p><input type="checkbox"/> Solar</p> <p><b>Sewer Type: 1 to 6 req'd</b></p> <p><input type="checkbox"/> Community <input type="checkbox"/> Public  <input type="checkbox"/> Crib <input type="checkbox"/> Septic  <input type="checkbox"/> Hold Tank <input type="checkbox"/> None  <input type="checkbox"/> Lift Station <input type="checkbox"/> Unknown-BTV</p> <p><b>Water-Type: 1 to 8 req'd</b></p> <p><input type="checkbox"/> Cistern <input type="checkbox"/> Shared  <input type="checkbox"/> Community Well <input type="checkbox"/> Spring  <input type="checkbox"/> Hold Tank <input type="checkbox"/> Water Delivered  <input type="checkbox"/> Private Well <input type="checkbox"/> None  <input type="checkbox"/> Public <input type="checkbox"/> Unknown-BTV</p> <p><b>Dining Room Type</b></p> <p><input type="checkbox"/> Area <input type="checkbox"/> Formal  <input type="checkbox"/> Breakfast Nook/Bar</p> <p><b>Features-Interior</b></p> <p><input type="checkbox"/> Air Exchanger <input type="checkbox"/> Jetted Tub  <input type="checkbox"/> Arctic Entry <input type="checkbox"/> Microwave (B/I)  <input type="checkbox"/> Basement <input type="checkbox"/> Range-Downdraft  <input type="checkbox"/> BR/BA on Main Level <input type="checkbox"/> Range/Oven  <input type="checkbox"/> Carpet <input type="checkbox"/> Refrigerator  <input type="checkbox"/> Ceiling Fan(s) <input type="checkbox"/> Sauna  <input type="checkbox"/> Central Vac <input type="checkbox"/> Security System  <input type="checkbox"/> Central Vac <input type="checkbox"/> Smoke Detector(s)  <input type="checkbox"/> Rough-in  <input type="checkbox"/> Cooling System <input type="checkbox"/> Telephone  <input type="checkbox"/> CO Detector(s) <input type="checkbox"/> Trash Compactor  <input type="checkbox"/> Den &amp;/Or Office <input type="checkbox"/> Washer &amp;/Or Dryer</p> <p>Continued...</p>	<p><b>Features-Interior continued</b></p> <p><input type="checkbox"/> Dishwasher <input type="checkbox"/> Wash&amp;/Or Dryer Hkup  <input type="checkbox"/> Disposal <input type="checkbox"/> Water Purification  <input type="checkbox"/> Elec Air Cleaner <input type="checkbox"/> Water Softener  <input type="checkbox"/> Electric <input type="checkbox"/> Wet Bar  <input type="checkbox"/> Family Room <input type="checkbox"/> Window Coverings  <input type="checkbox"/> Fireplace <input type="checkbox"/> Wired Audio  <input type="checkbox"/> Freezer-Stand Alone <input type="checkbox"/> Wired Data  <input type="checkbox"/> Hardwood Flooring <input type="checkbox"/> Wood Stove  <input type="checkbox"/> Home Theater <input type="checkbox"/> Workshop  <input type="checkbox"/> Humidifier <input type="checkbox"/> SBOS Req'd-See Rmks</p> <p><input type="checkbox"/> Intercom</p> <p><b>Features-Additional</b></p> <p><input type="checkbox"/> Airplane Access <input type="checkbox"/> Lot-Bluff  <input type="checkbox"/> Barn/Shop <input type="checkbox"/> Lot-Corner  <input type="checkbox"/> Buried Fuel Tank <input type="checkbox"/> Mother-in-Law Apt  <input type="checkbox"/> Covenant/Restrictio <input type="checkbox"/> Motion Lighting  <input type="checkbox"/> Deck/Patio <input type="checkbox"/> Outhouse  <input type="checkbox"/> DSL/Cable <input type="checkbox"/> Parkside  <input type="checkbox"/> Available  <input type="checkbox"/> Fence <input type="checkbox"/> Paved Driveway  <input type="checkbox"/> Fire Service Area <input type="checkbox"/> Road Service Area  <input type="checkbox"/> Fixer Upper <input type="checkbox"/> RV Parking  <input type="checkbox"/> Garage Door Opener <input type="checkbox"/> Satellite Components  <input type="checkbox"/> Generator <input type="checkbox"/> Satellite Dish  <input type="checkbox"/> Greenhouse <input type="checkbox"/> Storage Space/Unit  <input type="checkbox"/> Handicap Accessible <input type="checkbox"/> Sun Room</p> <p><input type="checkbox"/> Hangar <input type="checkbox"/> Swimming Pool  <input type="checkbox"/> Heated Driveway <input type="checkbox"/> Trailside  <input type="checkbox"/> Home Owner Assoc. <input type="checkbox"/> TV Antenna  <input type="checkbox"/> Home Warranty <input type="checkbox"/> View  <input type="checkbox"/> Horse Property <input type="checkbox"/> Waterfront  <input type="checkbox"/> In City Limits <input type="checkbox"/> Waterfront Access  <input type="checkbox"/> Inground Sprnkr Sys <input type="checkbox"/> SBOS Req'd-See Rmks</p> <p><input type="checkbox"/> Landscaping</p> <p><b>Access Type</b></p> <p><input type="checkbox"/> Airstrip <input type="checkbox"/> Paved  <input type="checkbox"/> Dedicated Road <input type="checkbox"/> Private  <input type="checkbox"/> Dirt <input type="checkbox"/> Trail  <input type="checkbox"/> Floatplane <input type="checkbox"/> Unmaintained  <input type="checkbox"/> Government <input type="checkbox"/> Water  <input type="checkbox"/> Gravel <input type="checkbox"/> Unknown-BTV  <input type="checkbox"/> Maintained</p> <p><b>View Type</b></p> <p><input type="checkbox"/> Bay <input type="checkbox"/> Ocean  <input type="checkbox"/> City Lights <input type="checkbox"/> Partial  <input type="checkbox"/> Glacier <input type="checkbox"/> River  <input type="checkbox"/> Inlet <input type="checkbox"/> Spit  <input type="checkbox"/> Lake <input type="checkbox"/> Unobstructed  <input type="checkbox"/> Mountains <input type="checkbox"/> Wetlands</p> <p><b>Topography</b></p> <p><input type="checkbox"/> Bluff <input type="checkbox"/> Sloping  <input type="checkbox"/> Gently Rolling <input type="checkbox"/> Steep  <input type="checkbox"/> Hilly <input type="checkbox"/> Wetlands  <input type="checkbox"/> Level <input type="checkbox"/> Other - See Remarks</p> <p><input type="checkbox"/> Rolling</p> <p><b>Waterfront Name</b></p> <p><input type="checkbox"/> Waterfront Name</p> <p><b>Waterfront-Access: 1 to 10 req'd</b></p> <p>Continued...</p>	<p><b>Waterfront-Access: 1 to 10 req'd continued</b></p> <p><input type="checkbox"/> Bay <input type="checkbox"/> Ocean  <input type="checkbox"/> Canal <input type="checkbox"/> Pond  <input type="checkbox"/> Creek <input type="checkbox"/> River  <input type="checkbox"/> Inlet <input type="checkbox"/> Slough/Estuary  <input type="checkbox"/> Island <input type="checkbox"/> None  <input type="checkbox"/> Lake <input type="checkbox"/> Unknown-BTV</p> <p><b>Waterfront-Access Near: 1 to 10 req'd</b></p> <p><input type="checkbox"/> Bay <input type="checkbox"/> Ocean  <input type="checkbox"/> Canal <input type="checkbox"/> Pond  <input type="checkbox"/> Creek <input type="checkbox"/> River  <input type="checkbox"/> Inlet <input type="checkbox"/> Slough/Estuary  <input type="checkbox"/> Island <input type="checkbox"/> None  <input type="checkbox"/> Lake <input type="checkbox"/> Unknown-BTV</p> <p><b>To Show: 1 to 14 req'd</b></p> <p><input type="checkbox"/> Appointment Only <input type="checkbox"/> Dont Disturb Tenant  <input type="checkbox"/> Call First <input type="checkbox"/> Keybox - AK MLS  <input type="checkbox"/> Call Listing Office <input type="checkbox"/> Keybox-Combo  <input type="checkbox"/> Call Listng <input type="checkbox"/> Keys in List Office Licensee  <input type="checkbox"/> Call Prop Contact <input type="checkbox"/> LL Must Be Present  <input type="checkbox"/> Call Tenant <input type="checkbox"/> Vacant  <input type="checkbox"/> Caution Pets <input type="checkbox"/> Other - See Remarks</p> <p><b>Contract Particulars: 1 to 12 req'd</b></p> <p><input type="checkbox"/> Bonus to Selling <input type="checkbox"/> Possession Ofc Recording  <input type="checkbox"/> CoLst wNon-MLS <input type="checkbox"/> Relo/Corp Owned Brkr  <input type="checkbox"/> Confndtl Stmt Req <input type="checkbox"/> Sir Ast Cls Cst Nego  <input type="checkbox"/> For Sale Sign Posted <input type="checkbox"/> Sir Ast Cls Cst Yes  <input type="checkbox"/> Foreclosure <input type="checkbox"/> Sub Agency Allowed  <input type="checkbox"/> Limited Svc Listing <input type="checkbox"/> Variable Rate Comm  <input type="checkbox"/> Possession Negotble <input type="checkbox"/> None Apply</p> <p><b>New Finance (Terms)</b></p> <p><input type="checkbox"/> AHFC <input type="checkbox"/> Non Qual Assumption  <input type="checkbox"/> Cash <input type="checkbox"/> Owner Finance  <input type="checkbox"/> Conventional <input type="checkbox"/> Qualifying Assumptn  <input type="checkbox"/> Exchange <input type="checkbox"/> VA  <input type="checkbox"/> FHA <input type="checkbox"/> VA 000 Down  <input type="checkbox"/> Lease/Op to Purchase <input type="checkbox"/> Other - See Remarks</p> <p><b>Mortgage Info</b></p> <p><input type="checkbox"/> Cash Req'd to Assume  <input type="checkbox"/> EM Minimum Deposit</p> <p><b>Internet Inst</b></p> <p><input type="checkbox"/> No Internet Marketng <input type="checkbox"/> No Addr on Internet  <input type="checkbox"/> No Dir on Internet</p> <p><b>Docs Avil for Review</b></p> <p><input type="checkbox"/> Appraisal <input type="checkbox"/> Pre-Lim  <input type="checkbox"/> As-Built <input type="checkbox"/> Prop Discd Available  <input type="checkbox"/> CC&amp;R's <input type="checkbox"/> Re-Sale Cert  <input type="checkbox"/> Docs Posted on MLS <input type="checkbox"/> Soils Test  <input type="checkbox"/> Floor Plan <input type="checkbox"/> Survey  <input type="checkbox"/> Home Inspection <input type="checkbox"/> Well &amp; Septic Test  <input type="checkbox"/> Lease <input type="checkbox"/> Other - See Remarks</p>
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# 6 Real Estate Contracts

## Authorization and Exclusive Right To Sell Agreement

This form authorized for use ONLY by active Real Estate Licensee Subscribers of Alaska Multiple Listing Service, Inc.



1 **1) Exclusive Right to Sell:** Seller hereby employs and grants \_\_\_\_\_ (name  
 2 of brokerage company) hereinafter called "Broker", and Broker's designated Licensee \_\_\_\_\_  
 3 (Licensee) the sole, exclusive and irrevocable right commencing on \_\_\_\_\_ (date) and expiring at midnight  
 4 on \_\_\_\_\_ (date) to sell or exchange the real property situated in:  
 5 \_\_\_\_\_ (city or area) \_\_\_\_\_ (zip), in the \_\_\_\_\_  
 6 Recording District, State of Alaska, described as:

7 \_\_\_\_\_ (Address)  
 8 \_\_\_\_\_ (Legal) (The Property).  
 9

10 Seller hereby: (check one)  
 11 a- authorizes Broker to commence with marketing, showing, and publication of the property data in the AK MLS database.  
 12 b- authorizes Broker to delay marketing, showing, and publication of the property data in the AK MLS database until  
 13 \_\_\_\_\_ (date). The purpose of the delay is to enable Seller to \_\_\_\_\_  
 14 c- requests the Property data not be placed in the AK MLS database, but authorizes Broker to commence marketing and  
 15 showing of the Property.  
 16

17 **If option b or c is selected, Broker must secure signatures below and forward agreement to AK MLS:**  
 18  
 19 Broker is a Subscriber of AK MLS, a statewide marketing system in which Brokers share property data, thereby increasing the  
 20 opportunity for sale or purchase by consumers. As such, Broker is REQUIRED to submit property data to AK MLS within three  
 21 (3) business days of Seller's signature on a listing agreement. Broker is not permitted to solicit or encourage Seller to refuse to  
 22 allow the property data to be submitted to AK MLS.  
 23

24 Seller(s) Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 25  
 26 Broker Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 27

28 **2) Licensee Relationships:** Licensee will only represent the Seller unless Seller has executed the "Waiver of Right to be Represented" (WRTR). In the event the Licensee represents a Buyer interested in the Property, Seller authorizes Licensee to act in the following capacity: (check one)  
 29 a- Seller has signed the **Alaska Real Estate Commission Consumer Pamphlet**, and has executed the WRTR (form attached) and hereby preauthorizes Licensee to act as a neutral licensee for both Seller and any Buyer. Seller authorizes the Licensee to show the Property to Buyers who are represented by the Licensee.  
 30 b- Seller has signed the **Alaska Real Estate Commission Consumer Pamphlet**, but has not executed the WRTR form and does not preauthorize the Licensee to act as a neutral licensee. Seller understands that the Licensee **will not show** the Property to any Buyer who is represented by the Licensee.  
 31

32 **3) Terms:** The listing price shall be \_\_\_\_\_ Dollars  
 33 (\$ \_\_\_\_\_), payable in cash or other terms acceptable to Seller. Broker is authorized to accept and hold earnest money deposits on behalf of Seller and prospective Buyer.  
 34

35 **4) Title Insurance/Prorations:** Seller warrants that Seller has the right to sell the Property on the terms herein provided, and agrees to furnish and pay for a policy of title insurance showing marketable title to the Property.  
 36 Seller agrees that interest on loans being assumed, taxes, rents and/or insurance will be prorated to the date of recording unless otherwise agreed in the Purchase and Sale Agreement.  
 37

38 **5) Compensation to Broker:** Seller agrees to compensate Broker a total of \_\_\_\_% of the sale price or (\$ \_\_\_\_\_) (of which Cooperating Broker is to be paid \_\_\_\_% or \$ \_\_\_\_\_ of sale price) and to pay any applicable sales tax to the appropriate taxing authority not later than date of recording, when:  
 39 a) Broker procures a Buyer under the terms of this Agreement or other terms acceptable to Seller.  
 40 b) The Property is sold or transferred by Seller to a Buyer placed under contract during the term of this Agreement or any extension hereof.  
 41 c) The Property is sold or transferred within \_\_\_\_\_ days after expiration or termination of this Agreement to anyone who was shown the Property through the marketing efforts of the Broker during the term of this Agreement, provided the Property is not sold or transferred through another Subscriber of AK MLS.  
 42 If Property is withdrawn from sale, or leased, or rented without the consent of the Broker, or made unmarketable by Seller's voluntary act during the term of this Agreement, Seller agrees to compensate Broker as above, unless otherwise stated as follows:  
 43 \_\_\_\_\_  
 44

# 6 Real Estate Contracts

## Authorization and Exclusive Right To Sell Agreement Regarding Property Described As:

Address: \_\_\_\_\_

Legal (the Property): \_\_\_\_\_



This form authorized for use ONLY by active Real Estate Licensee Subscribers of Alaska Multiple Listing Service, Inc.

1  
2  
3  
4  
5  
6  
7  
8  
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**6) Disclosure of Referral Fees or Other Compensation Paid by Broker:** Alaska law 12AAC64.940 requires written disclosure to the Broker's Principal (Seller) of any rebate, compensation, or fee paid to another Broker in connection with this transaction when the listing contract is signed and again at close of escrow.

The following fee(s) will be paid based on the compensation received by the Listing Broker for the Listing Side of the Sale:

_____	\$ _____ %
Name of Referral Company, Relocation Company, etc.	Amount or Percentage of Fee
_____	\$ _____ %
Name of Referral Company, Relocation Company, etc.	Amount or Percentage of Fee

**7) Information:** Seller authorizes:  
a) all mortgage and lien-holders to provide Broker information concerning the Property including, but not limited to: current and past loan balances and interest charges; reserve accounts; insurance; and taxes.  
b) Broker to release all information Broker has or acquires concerning the Property to AK MLS, financing institutions, appraisers and other real estate organizations and to prospective Buyers and Sellers.  
c) Broker to use the information to market Seller's property through advertising venues of Broker's choice, including the Internet. Broker assumes no liability for errors, omissions or inaccuracy of information on third party Internet sites.

**8) Alaska Multiple Listing Service (AK MLS):** Broker is a Subscriber of AK MLS and Broker's use of AK MLS systems is subject to the duties imposed on Broker by the rules and regulations of AK MLS. It is understood i) AK MLS is not a party to this agreement and its sole function is to disseminate, without verification, for its Subscribers, descriptive information on the Property as set forth on the Property data input sheet corresponding to this Agreement. AK MLS assumes no responsibility or liability to the Seller for errors or omissions on the input sheet or in the AK MLS System; ii) Seller authorizes Broker to pay part of the brokerage fee to a cooperating Broker, even if the cooperating Broker represents the Buyer; iii) Seller hereby assigns to AK MLS all copyright and other right, title and interest in and to all photographs, drawings, pictures, description, and other data and content regarding the Property, and hereby authorizes AK MLS to arrange, publish and republish, in any format or medium whatsoever, all such material for an indefinite period without compensation; iv) Broker is required to promptly provide information to AK MLS about any change in status or price of Seller's property; v) If Seller's property is sold, Broker must report to AK MLS the price and terms of the sale, inclusive of Non-MLS listings; vi) AK MLS will not permit data about the Seller's listing to be deleted from AK MLS's systems in order to conceal any information, including information that the Property was listed for a period of time by another Broker or Brokers; vii) Neither Seller nor any prospective Buyer of the Property can alter Broker's obligation to report all information to AK MLS; viii) AK MLS may display photographs and data regarding the Property on various websites as determined from time to time by Broker or AK MLS and may include data regarding the Property in various statistical reports and information products, without compensation to Seller (such authority shall survive expiration or termination of this Agreement.)

**9) Sign and Lockbox:** Seller authorizes Broker to install a FOR SALE/SOLD sign on the Property. Broker is authorized to install a key safe on the Property for the use of AK MLS Subscribers. Neither Broker, AK MLS, nor any Subscribers of AK MLS shall incur any liability for loss, theft or damage of any nature or kind whatsoever to the Property and/or to any personal property therein.

**10) Property Maintenance:** During the term of this Agreement, unless stated otherwise in a separate agreement between Listing Broker and Seller, Seller acknowledges:  
a) Seller is solely responsible for the Property and its components, vacant or otherwise;  
b) Listing Broker assumes no liability for maintaining the condition of the property or providing security to the property; and  
c) Seller has been advised to take steps to insure the maintenance, security, and upkeep of the property.

**11) Disclosure:** Seller agrees to provide a written disclosure statement (State of Alaska Residential Real Property Transfer Disclosure Statement, etc.) concerning the condition of the Property and agrees to save and hold Broker harmless from all claims, disputes, litigation and/or judgments arising from any incorrect information supplied by Seller, or from any material fact known by Seller which Seller fails to disclose.

**12) Tax Withholding:** Seller warrants they are U.S. citizens, permanent residents or otherwise exempt from the requirements of FIRPTA (Internal Revenue Code 1445) that requires payment of part of the sale proceeds to the IRS.

**13) Equal Housing Opportunity:** The Property is offered in compliance with federal, state, and local anti-discrimination laws.

# 6 Real Estate Contracts

**Authorization and Exclusive Right To Sell Agreement** Regarding Property Described As:

Address: \_\_\_\_\_  
 Legal (the Property): \_\_\_\_\_



This form authorized for use ONLY by active Real Estate Licensee Subscribers of Alaska Multiple Listing Service, Inc.

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**14) Attorney's Fees:** In any action, proceeding or arbitration arising out of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.

**15) Mediation:** If a dispute arises, relating to this Agreement, between the parties and is not resolved prior to or after expiration of this agreement, the parties shall first proceed in good faith to submit the matter to mediation. Costs to be shared by mutual agreement between the parties. Unless otherwise agreed in mediation, the parties retain their rights to proceed to arbitration or litigation.

**16) Addenda:**  REO  Short Sale  Relo  Other \_\_\_\_\_

**17) Other Terms:**

**Receipt:** Seller has read this Agreement and understands that this is a legally binding contract, and has been advised to seek independent legal and/or tax counsel. Seller acknowledges they have received a copy of this agreement and the attached property data input sheets this \_\_\_\_\_ (date).

Seller Signature(s)	E-mail Address	Office Ph(s) Home Ph(s)	Cell Ph(s) Fax Ph(s)
1: _____	_____	_____	_____
2: _____	_____	_____	_____
3: _____	_____	_____	_____

Mail Address \_\_\_\_\_

Physical Address \_\_\_\_\_

Broker/Licensee(s) agrees to use reasonable efforts to procure a Buyer.

by Broker/Licensee(s) \_\_\_\_\_

Date: \_\_\_\_\_

# 6 Real Estate

## Contracts

### SELF-EVALUATION QUESTIONS

1. By executing a listing agreement with a seller, a licensed broker has:
  - a. become a procuring cause.
  - b. become an agent.
  - c. become liable to a possible suit for specific performance.
  - d. obligated himself or herself to open a special trust account.
2. Which of the following is not among the information that a broker should obtain when taking a listing?
  - a. Age of the building.
  - b. Amount of mortgage on the property
  - c. Racial composition of the neighborhood
  - d. Cost of utilities
3. Mrs. Lee wants to net \$60,000 on the sale of her home, and her broker will charge a 7 percent commission. To obtain her net price, what must the gross selling price of the house be (rounded to the nearest dollar)?
  - a. \$55,800
  - b. \$60,000
  - c. \$63,830
  - d. \$64,516
4. Broker Sal listed David's home under a 90-day exclusive-right-to-sell listing agreement. The following week, she began advertising the home in a local paper and showed the property to two couples. Later that same week, David announced that he had decided to sell his home to his brother-in-law. After the sale has been completed, David is liable to Sal for:
  - a. nothing.
  - b. her full commission.
  - c. One-half of her commission.
  - d. her expenses
5. A clause in a listing agreement that states, "The listing period shall be 90 days and will continue for another 60 days if the property is not sold by the expiration date," is:
  - a. called an open listing clause.
  - b. illegal in many states.
  - c. a preferred marketing technique.
  - d. used in most states.
6. The person who is primarily responsible for setting the list price for a parcel of real estate is the:
  - a. broker.
  - b. seller.
  - c. salesperson.
  - d. listing agent.
7. Under the terms of most multiple-listing arrangements, a member-broker:
  - a. may retain a listing if it appears to be a "fast seller."
  - b. must distribute a listing to other brokers within a set period of time.
  - c. must charge the same commission rate as other brokers.
  - d. must belong to the local board of REALTORS@.



# 6 Real Estate Contracts

## KEY TERMS

## SOLUTIONS

**automatic extension**-A clause in a listing agreement, discouraged or prohibited in many states, that allows the agreement to continue automatically for a certain period of time after its original expiration date.

**comparative market analysis**-A comparison of prices of recently sold homes that are comparable to the listing seller's home; this comparison will assist the seller and broker or salesperson to arrive at a listing price for the seller's property.

**exclusive-agency listing**-A listing contract under which the owner appoints a real estate broker as his or her exclusive agent for a designated period of time to sell the property on the owner's stated terms, for a commission. The owner reserves the right to sell the property without paying the broker a commission, if the sale is made to a prospect who has not been introduced or claimed by the broker.

**exclusive-right-to-sell listing**-A listing contract under which the owner appoints a real estate broker as his or her exclusive agent for a set period of time, to sell the property on the owner's terms, and agrees to pay the broker a commission when the property is sold within this period, whether by the broker, the owner or a third party.

**listing agreement**-A contract between a property owner and a real estate broker by which the broker is employed as agent to sell the owner's real estate on the owner's terms within a set period of time, for which the property owner agrees to pay the broker a commission.

**market value**-The most probable price property would bring in an arm's-length transaction under normal conditions on the open market.

**multiple-listing service**-An organization of brokers whose members agree to distribute to and share with each other their exclusive listings.

**net listing**-A form of listing agreement, outlawed in many states, based on the net price the seller will receive if the property is sold. The broker is free to offer the property for sale at the highest price he or she can get in order to increase the commission.

**open listing**-A nonexclusive listing contract under which the broker's commission is contingent upon the brokers producing a ready, willing and able buyer before the property is sold by the seller or another broker.

**option listing**-A listing with a provision that gives the listing broker the right to purchase the listed property.

**special agency**-An agency relationship in which the agent is authorized to represent the principal in one specific transaction, such as the typical seller-broker relationship.

**unilateral subagency**-The offer made by a listing broker who invites other members of a multiple-listing service to cooperate in selling the property.

# 6 Real Estate Contracts

## ILLUSTRATIONS

1. exclusive-right-to-sell listing
2. open and exclusive-agency listings
3. open listing

## SELF-EVALUATION QUESTIONS

1. b. The one certain way a broker becomes an agent is by executing a listing agreement with a seller.
2. c. This information is unnecessary and its dissemination could be a violation of federal and state fair housing laws.
3. d. Compute this by thinking of the full sales price as 100 percent, the entire price. The broker will get 7 percent of this, leaving 93 percent as the seller's net price. The \$60,000 that Mrs. Lee wants as her net is 93 percent of the whole selling price. So:  $\$60,000 = .93 \times P$  is the equation;  $P = \$60,000 / .93 = \$64,516$ .
4. b. Sue, it is hoped, explained to David when he signed the listing that by this exclusive-right-to-sell agreement, she was entitled to her commission when the sale was closed, even if David were to make the sale himself; this is so by definition of an exclusive-right-to-sell.
5. b. This clause, called an automatic extension, is illegal in many states and unethical in most states.
6. b. Although the listing broker or salesperson must aid the seller in setting a reasonable selling price for his or her real estate, it is the seller's final decision that prevails. A broker or salesperson, however, should not take a listing in which the seller has set an unreasonably high selling price.
7. b. Brokers in a multiple-listing service must generally distribute new listings to other brokers in the group within a set time, often 72 hours after the listing is taken. Brokers may not retain listings after the set time; charging the same commission rate by agreement would be illegal price fixing; and not all MLS services are affiliated with local boards.