

BROKER / SALESPERSON INDEPENDENT CONTRACTOR AGREEMENT

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This form recommended and approved for, but not restricted to use by, the members of the Pennsylvania Association of REALTORS® (PAR).

This Agreement is entered into this (date) _____ between _____ hereinafter referred to as "Broker," and _____, hereinafter referred to as "Salesperson."

Whereas, Broker is engaged in business as a Real Estate Broker and is duly licensed to engage in the activities of a "Broker" as defined by the Pennsylvania Licensing and Registration Act, Act of February 19, 1980, P.L. 15, No. 9, as amended, and

Whereas, Broker maintains one or more offices properly equipped with furnishings, listing books and other equipment necessary and incidental to the proper operation of said business, and staffed with clerical employees, and is thereby suitable to serving the public as a real estate broker; and

Whereas, Salesperson is duly licensed by the Commonwealth of Pennsylvania as a real estate "salesperson" or "associate broker" as defined by the Pennsylvania Licensing and Registration Act, and whereas it is deemed to be to the mutual advantage of Broker and Salesperson to enter this contract upon the terms and conditions hereinafter set forth.

NOW THEREFORE, for and in consideration of the mutual covenants and promises herein contained, the undersigned hereby enter into the following articles of agreement:

1. *Independent Contractor.*

The relationship of Salesperson to Broker is that of an independent contractor. In performing the activities of a real estate "salesperson" as defined by the Real Estate Licensing and Registration Act (hereinafter referred to as "Act"), salesperson shall be free to devote such portion of his/her time, energy, efforts and skill, as he/she deems appropriate. In keeping with the independent contractor status, Salesperson shall be responsible for completing any training required by the Act or other laws of the Commonwealth of Pennsylvania; Salesperson shall work on a commission basis and receive no salary, fringe benefits, medical benefits, pension benefits, or profit sharing; no state, local, unemployment, Social Security or business privilege taxes (where applicable) shall be withheld from Salesperson. Salesperson shall pay all professional licensing fees, errors and omissions insurance premiums (except as otherwise provided herein), multi-listing fees and/or computer access fees. **Salesperson shall not be treated as an employee with respect to the services performed hereunder for federal or state tax purposes or for purposes under the Workers' Compensation Act.**

2. *Sales Effort.*

Salesperson agrees to act as an independent real estate salesperson and shall faithfully, loyally and legally engage his/her efforts to sell, trade, lease or rent any and all real estate listed with Broker, to solicit additional listings, customers and clients for Broker, and to otherwise promote the business of serving the public in real estate transactions to the end that each of the parties hereto may derive the greatest profit possible.

3. *Office Facilities.*

Broker shall from time to time designate the office with which the Salesperson shall be associated. That office shall be provided with such furnishings and equipment as deemed necessary at the discretion of Broker for the proper operation of a real estate office. Broker shall make available to the Salesperson all current listings of the office, and agrees, upon request, to assist the Salesperson in his/her work by advice, instruction, and cooperation, to the extent deemed appropriate by Broker. Salesperson shall pay for long distance telephone charges and for such other forms, equipment, supplies as shall be set forth in Broker's written office policies.

4. *Automobile.*

Salesperson shall furnish his/her own automobile and pay all related expenses and Broker shall have no responsibility relating to Salesperson's automobile or transportation. Salesperson agrees to carry liability insurance upon his/her automobile with minimum liability limits of \$300,000 for each person and \$500,000 for each accident and with property damage liability limits of \$50,000. Salesperson agrees to furnish Broker with a certificate certifying compliance with this requirement to be deposited with Broker on or before the effective date and each renewal date of this Agreement, or at other times as Broker may reasonably request.

5. *Commissions.*

Salesperson shall be entitled to a share of the commissions earned and received by Broker in accordance with Broker's Salesperson Commission Schedule in effect on the date of the act entitling Salesperson to a commission (e.g., obtaining listing, placing property under agreement of sale, etc.) or as otherwise agreed by the parties in writing as to a particular transaction. Broker may alter its Salesperson Commission Schedule from time to time without prior notification. Revisions to the schedule shall be immediately applicable to all future transactions. The division of commissions between Broker and Salesperson shall follow deduction of all expenses according to the Salesperson Commission Schedule. In no case shall Broker be liable to Salesperson for any commissions not collected. All commissions derived from a transaction shall be deposited with the Broker as required by the Act and/or Rules and Regulations of the Real Estate Commission and subsequently paid according to the Salesperson Commission Schedule. This distribution shall take place as soon as practicable after collection and receipt of such commissions. It is understood and agreed that the Salesperson's only remuneration for the services being rendered under this Agreement is the Salesperson's share of the commissions paid by the parties to real estate transactions.

6. *Client Fees.*

In no event shall Salesperson charge less than the commission or fee established by the Broker without the prior written consent of Broker. If Broker shall have entered into a special contract or agreement pertaining to any particular transaction, Broker shall advise Salesperson of such special arrangement. All commissions and fees from a particular transaction shall be payable to the Broker. Salesperson shall not be personally liable to Broker for any commissions not received by Broker from parties to a transaction unless such nonpayment is the result of collusion, intentional or reckless conduct. Broker shall have the exclusive right to determine whether to commence litigation to collect a commission or fee, or to settle any claim for the same.

7. *Ethic and Trade Associations.*

Salesperson and Broker shall conduct business and regulate working schedules so as to maintain and to increase the good will, business, profits, and reputation of Broker and Salesperson and each agrees to conform to and abide by all laws, rules and regulations, and code of ethics that are binding on, or applicable to, real estate brokers and salespersons. Salesperson and Broker shall be governed by the Code of Ethics of the National Association of REALTORS®, the Act, Rules and Regulations of the Real Estate Commission, as the same may be from time to time amended or supplemented, the constitution and by-laws of the local realty board (or such other board or association as may be agreed upon), and the rules and regulations of any multiple listing service with which Broker may now or in the future be affiliated. Broker and Salesperson shall retain membership in good standing with the National Association of REALTORS®, the Pennsylvania Association of REALTORS®, and the local realty board or association designated by Broker or as may be agreed upon by the parties. Whenever Broker is a member of any real estate organization which requires membership of Salesperson in said organization, then Salesperson agrees that he/she shall become a member and pay fees or dues required by such membership. Broker and Salesperson agree to be bound by the rules and regulations of such organizations pertaining to ethics and standards of conduct and procedure. Salesperson acknowledges possession of a current copy of the Pennsylvania Real Estate Licensing and Registration Act, the Rules and Regulations of the Pennsylvania Real Estate Commission, and the Code of Ethics of the National Association of REALTORS® and agrees to be apprised of the provisions thereof so that Salesperson will conduct all activities in a manner consistent with such laws and ethics.

8. *Real Estate License and Dues.*

Salesperson shall pay the cost of any real estate license required by the provisions of any law or regulation of the Commonwealth of Pennsylvania. Salesperson shall further ensure that the requirements for licensure as a real estate salesperson by the Commonwealth of Pennsylvania are satisfied in every respect, including the timely satisfaction of mandatory continuing educational requirements. Salesperson shall pay all dues for membership in the associations set forth in the preceding paragraph of this Agreement in a timely fashion and shall pay all taxes as may be levied upon income or productivity by the federal government, the Internal Revenue Service, the Commonwealth of Pennsylvania, or any local municipality or school district or other such taxing authority including but not limited to income taxes, occupation and occupation privilege taxes, per capita taxes, mercantile or business privilege taxes.

9. *Authority to Contract.*

Salesperson shall have no authority to bind, obligate or commit Broker by any promise or representation, unless specifically authorized by Broker in writing; provided, however, that Salesperson shall and is hereby authorized to execute listing agreements, buyer agency contracts, lease management contracts, as well as all addenda and agreements appurtenant thereto for and on behalf of Broker where not in conflict with Broker's agency practices and provided that the commission involved in such transaction is not less than that determined for such transaction or service by Broker. Prior to entering into any such contract or agreement, Salesperson shall determine the agency and management practices of Broker.

10. *Errors and Omissions Insurance.*

Salesperson shall cooperate fully with Broker in obtaining errors and omissions coverage in an amount, and with deductible, as shall from time to time be determined by Broker. Said insurance shall protect Salesperson against liability which may arise in connection with the conduct of Salesperson as an active real estate licensee. Said policy or policies shall contain an endorsement naming Broker and any subsidiaries of Broker as an additional insured and shall not be subject to cancellation except on a minimum of ten (10) days prior written notice to Broker. A certificate of said insurance shall be deposited with Broker on or before the effective date and each renewal date of this Agreement. The cost of said insurance shall be paid pursuant to the written policy of Broker, or, in the absence thereof, such cost shall be borne by Broker and Salesperson in the same proportion as they would normally share in the commission resulting from a listing and sale of a property as is set forth in the Salesperson Commission Schedule.

11. **Listings, Contracts, Correspondence, Records and Forms.**

Salesperson agrees that any and all listings of property, agency agreements, and all actions taken in connection with the real estate business, shall be in the name of Broker. Listings and agency contracts shall be filed with Broker within twenty-four (24) hours after receipt by Salesperson. All listings and agency contracts shall be and remain the exclusive property of Broker. All correspondence received, copies of correspondence written, plats, listing information, memoranda, files, photographs, reports, legal opinions, accounting information, and any and all other instruments, documents or information of any nature whatsoever concerning transactions handled by Broker or Salesperson, or jointly, are and shall remain the property of Broker provided that Salesperson is entitled to a copy of such instruments and information upon reasonable request concerning any transaction in which he/she is personally involved. The parties hereto shall mutually approve and agree upon all correspondence from the office of Broker pertaining to transactions handled by Salesperson, and shall further agree on the forms to be used and the contents of all contracts and other forms before they are presented to clients and customers for signature.

12. **Deposits.**

All deposits received by Salesperson in the course of a real estate transaction of any nature shall be immediately transferred to Broker for deposit pursuant to the Act, the Rules and Regulations of the Real Estate Commission and the agreement of the parties to the transaction; provided, however, that any deposit to be maintained by another broker of record pursuant to the Act, Rules and Regulations of the Real Estate Commission and agreement of the parties to a transaction shall be immediately transferred to such broker with the appropriate notice to the person making such deposit and to Broker.

13. **Indemnification.**

Salesperson shall indemnify and hold Broker harmless from any and all claims, costs, liabilities, and judgments, including attorney's fees, arising from the intentional or reckless acts of Salesperson, or acts outside the scope of Salesperson's authority. When litigation or a dispute arises concerning a transaction in which Salesperson was involved, the parties hereto shall mutually cooperate with each other. In disputes or litigation where there is a claim to the effect that Salesperson has acted intentionally or recklessly or outside the scope of Salesperson's authority, Salesperson shall bear the costs, expenses and liabilities including judgments and awards arising from the dispute or litigation. In disputes or litigation where there is a claim to the effect that Salesperson has acted negligently, Salesperson shall share the costs, expenses and liabilities including judgments and awards arising from the dispute or litigation. Such sharing shall be in the same proportion as the division of commission was, or would have been, from the subject transaction. The sharing of costs, expenses, and liabilities shall be without prejudice to Broker's rights of indemnification unless there has been a resolution of the indemnification issue between the parties hereto. Broker shall select counsel to represent Broker's and Salesperson's interests in litigation with costs borne by the parties in proportion as set forth above pertaining to the sharing of costs.

14. **Termination.**

This Agreement, and the relationship created hereby, may be terminated by either party hereto, with or without cause, at any time upon written notice. Upon termination, all negotiations commenced by Salesperson during the term of this Agreement shall be handled through Broker and with such assistance and cooperation by Salesperson as is reasonable under the circumstances for the protection of the interests of the parties to the real estate transactions involved. Salesperson, upon termination, shall furnish Broker with a bona fide list of all prospects, leads, and probable transactions developed by Salesperson as well as all correspondence and documents described in Paragraph 11 above, which are deemed to be the property of Broker. Salesperson further agrees that upon termination, or in anticipation thereof, he/she will not furnish to any person, firm, company or corporation engaged in the real estate business any information as to Broker's clients, customers, properties, prices, terms of negotiations nor Broker's policies or relationships with clients and customers nor any other information concerning Broker and/or his/her business. Salesperson shall not, after termination of this Agreement, or in contemplation thereof, remove from the files or from the office of Broker any materials, data, publications, correspondence, files or information that is property of Broker. Salesperson shall be entitled to copies of certain instruments pertaining to transactions in which Salesperson has a bona fide interest or pertaining to earnings of Salesperson.

15. **Commissions upon Termination.**

Upon termination, Salesperson's share of commissions on any transactions where a sales contract exists but the transaction has not closed, shall, after the closing of such transaction, be paid to Salesperson in accord with the Salesperson Commission Schedule in effect at the time of termination. There shall be deducted from such share, however, a servicing charge of \$ _____ or _____ % of the amount of the listing and/or sales commission, whichever is higher. No commission other than for those properties on which an agreement has been signed and accepted in writing by the buyer and seller on or before termination shall be deemed earned by Salesperson, unless otherwise agreed in writing. Likewise, no commission resulting from the listing for rent, or the rental of property shall be paid to Salesperson following termination with the exception of commissions arising from leases fully executed prior to termination and to the extent that lease payments are received prior to termination. Salesperson shall not, however, share in the commissions payable in the future and based upon the lease options or lease payments not yet due and payable.

16. **Termination Procedure.**

Upon termination by either party, Salesperson shall immediately:

- a) submit a letter of termination with a complete accounting of commissions, listings and buyer clients;
- b) return all supplies, client/customer prospect lists, keys and documents considered property of Broker pursuant to the provisions of this Agreement;
- c) meet with Broker for purposes of attempting to mutually agree upon a final accounting of commissions due and payable;
- d) cooperate in the notification of the Real Estate Commission regarding the termination of the relationship of Broker and Salesperson.

17. **Arbitration of Disputes.**

Disagreements or disputes between Salesperson and Broker, or between Salesperson and a real estate licensee associated with or contracted to Broker, and which arise out of, or in connection with, the real estate business, and which cannot be adjusted by and between the parties involved, shall be submitted for arbitration in accordance with Article XIV of the Code of Ethics of the National Association of REALTORS®. By this Agreement said arbitration shall be mandatory and Broker and Salesperson agree to provide a written agreement to the local association of REALTORS® as may be required by said association as a condition precedent to arbitration. Broker and Salesperson agree to be bound by the decision of the arbitration panel of the local association or the Pennsylvania Association of REALTORS® which has entertained the dispute or disagreement. The conduct of the arbitration shall be governed by the *Code of Ethics and Arbitration Manual* most recently published by the National Association of REALTORS® prior to Arbitration, as amended by the local association hearing the dispute.

18. **Amendments.**

This Agreement may be amended only by the parties hereto, in writing.

19. **Governing Law.**

This Agreement shall be governed by and interpreted pursuant to the laws of the Commonwealth of Pennsylvania.

20. **Successors in Interest.**

This Agreement shall inure to the benefit and be binding upon the successors in interest of Broker. This Agreement, however, is based on the personal services of Salesperson and Salesperson shall not delegate or assign any of Salesperson's rights or duties hereunder without the prior written consent of Broker.

21. **Policy Manual.**

Any office policy or rules and procedures manual now existing or hereafter adopted or amended shall be binding on the parties.

22. **Entire Agreement.**

This Agreement constitutes the entire agreement between the Broker and Salesperson, and there are no agreements or understandings not expressed herein.

IN WITNESS WHEREOF, this Agreement has been executed on the date first above written.

Witness (or attest):

By _____
Broker

Witness:

By _____
Salesperson

Broker should ensure that written office policies describing Salesperson's financial obligations with respect to office supplies, telephone, etc., and a Salesperson Commission