

# EXCLUSIVE RIGHT TO REPRESENT BUYER AGREEMENT

This form approved by the North Dakota Association of REALTORS®, which disclaims any liability out of use or misuse of this form. This form is only for use by licensed REALTORS® in the State of North Dakota.

1 **DATE:** \_\_\_\_\_

2 This Exclusive Right to Represent Buyer Agreement ("Agreement") is between:

3 **BUYER(s):** \_\_\_\_\_

4 and **BROKER:** \_\_\_\_\_.

5 This Agreement gives the Broker the exclusive right to locate, and/or negotiate for the purchase, exchange, lease, or option  
6 to purchase ("Purchase") property at a price and with terms acceptable to Buyer(s). This Agreement starts on  
7 \_\_\_\_\_ and ends at 11:59 P.M. on \_\_\_\_\_.

8 **NOTICE:** A signed written agreement is required prior to showing property.

9 **GENERAL NATURE OF PROPERTY:** This Agreement shall apply to the Purchase of real property (which may include  
10 items of personal property) described in the general terms as follows:

11 General type of property including new construction: (Check all that apply)

- 12 ☐ Residential/Personal                      ☐ Residential/Investment                      ☐ Commercial/Industrial  
13 ☐ Recreation                                      ☐ Farm Land                                      ☐ Vacant Land  
14 ☐ Address: \_\_\_\_\_

15 **BROKER'S OBLIGATION:** Broker will:

- 16 a) Make reasonable effort to locate and/or show property acceptable to Buyer(s) through the use of the Multiple  
17 Listing Service (MLS) or brought forth by the Buyer(s);  
18 b) Use professional knowledge and skills to assist in negotiations for Purchase of the property;  
19 c) Assist Buyer(s) throughout transaction and comply with all applicable fair housing and non-discrimination  
20 regulations;  
21 d) Act exclusively in Buyer's best interest

22 **BUYER'S OBLIGATION:** Buyer(s) will:

- 23 a) Work exclusively with Broker for Purchase of property;  
24 b) Provide Broker with accurate and relevant personal financial information to determine Buyer's ability to  
25 Purchase property;  
26 c) Agree to conduct all negotiations for the property through Broker;  
27 d) Cooperate with Broker in finding a property to Purchase. After a Purchase Agreement has been accepted by  
28 Seller(s), Buyer(s) is legally obligated to Purchase the property. If Buyer(s) refuses to close the Purchase for any  
29 reason other than the failure of Seller(s) to perform or contingencies not being removed or met, Buyer(s) will pay  
30 Broker all compensation due under this Agreement.

31 **BROKER COMPENSATION:**

32 **BROKER COMMISSIONS ARE NOT SET BY LAW AND ARE FULLY NEGOTIABLE.**

33 **BROKER MAY NOT RECEIVE COMPENSATION FROM ANY SOURCE THAT EXCEEDS THE AMOUNT OR**  
34 **RATE AGREED TO BY BUYER(S).**

35 In consideration of the services to be performed by the Broker, the Buyer(s) agrees to pay the Broker as follows (Check all  
36 that apply):

- 37 1) ☐ Buyer(s) agrees to pay Broker a retainer fee of \$\_\_\_\_\_ at the commencement of this Agreement,  
38 and such fee shall be kept by Broker whether or not Buyer(s) Purchases property. The retainer fee ☐ **SHALL**  
39 ☐ **SHALL NOT** apply toward satisfaction of any obligation to compensate Broker.  
40 2) ☐ Buyer(s) agrees to pay Broker a transaction fee of \$\_\_\_\_\_ when Buyer(s) closes the Purchase.  
41 3) ☐ Buyer(s) shall pay Broker, as Broker's compensation, \_\_\_\_\_ percent (%) of the purchase price or  
42 \$\_\_\_\_\_ when Buyer(s) closes the Purchase, if:  
43 a. Buyer(s) Purchases or agrees to Purchase a property before the expiration of this Agreement even if  
44 Buyer(s) does not use Broker's services; or

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

b. Within \_\_\_\_\_ calendar days after the end of this Agreement:

- i. the Buyer(s) Purchases property which either the Broker or the Broker's Agent(s) has physically shown the Buyer(s) or;
- ii. the Buyer(s) has made an affirmative showing of interest to the Broker or the Broker's Agent(s) before the end of the Agreement.
- iii. the Buyer(s) will not be obligated to pay a fee to the Broker if, upon expiration or termination of this Agreement, the Buyer(s) has entered into another valid agreement to represent Buyer(s) pursuant to which the Buyer(s) is obligated to pay a fee or commission to that broker for Purchase of real property.

Broker is authorized to negotiate and receive compensation paid by Seller(s), or Broker representing or assisting Seller(s). Any compensation accepted by Broker from Seller(s), or Broker representing or assisting Seller(s) ☐ SHALL ☐ SHALL NOT reduce any obligation of the Buyer(s) before paying the compensation by the amount received by Seller(s) or Broker.

**Before Buyer(s) signs a Purchase Agreement, Broker will disclose to Buyer(s), in writing, the amount of commission to be paid.**

**Caution:** Buyer's actions in locating a property may affect payment of compensation by Seller(s) and may therefore obligate Buyer(s) to pay all or part of the compensation in cash at closing (i.e. the signing of a Purchase Agreement through another Broker or with the Owner, as in "For Sale By Owner") may require Buyer(s) to pay the full amount of compensation due to the Broker.

**CLOSING SERVICES:**

After a Purchase Agreement for property is fully executed, arrangements must be made to close the transaction. Buyer(s) understands that no one can require Buyer(s) to use a particular person to conduct the closing and Buyer(s) may arrange for another qualified person, including Buyer's attorney. The real estate Broker, real estate Agent(s), or real estate closing agent, has not, and under applicable state law, may not, express opinions regarding the legal effect of the closing documents or of the closing itself.

Buyer(s) instructs Broker as follows (Check one):

- ☐ Buyer(s) requests Broker arrange for closing services. Broker will give Buyer(s) written disclosure of any controlled business arrangement Broker has with closing services selected.
- ☐ Buyer(s) will arrange for a qualified closing agent or Buyer's attorney to conduct the closing.

**APPOINTED AGENCY REPRESENTATION:** The Broker will appoint to the Buyer(s), in writing, a licensed Agent(s) who will be acting as the Buyer's Appointed Agent(s) to the exclusion of all other affiliated licensed Agent(s) of the Broker. By agreeing to Appointed Agency, the Buyer(s), the Broker, the Agent(s) of the Broker and the Appointed Agent(s) named below are considered to possess only actual knowledge and information. By an act of North Dakota Law, the definitions regarding Appointed Agency make it clear that there is no imputed knowledge or information between the Buyer(s), the Broker, the Broker's Agent(s), or the named Appointed Agent(s).

\_\_\_\_\_, ("Appointed Agent(s)"), an affiliated licensed Agent(s) of the Broker, is appointed to act solely as an Agent(s) for the Buyer(s) unless they personally represent the Seller(s), in which event, the Appointed Agent(s) is considered a Dual Agent (see Lines 94-109) in this transaction only. Buyer's designated Appointed Agent(s) is obligated not to reveal any confidential information obtained from the Buyer(s) to other licensed Agent(s), except to the Broker in charge of the oversight of the Buyer's transaction.

It is understood that the Broker may appoint another Agent(s) for the Buyer(s) during the term of this Agreement if:

1. The Appointed Agent(s) is not able to fulfill the terms of this Agreement, and/or
2. The Buyer(s) and the Broker mutually agree to the appointment of another Agent(s). An appointment of another Agent(s) as a new or additional Agent(s) does not relieve the first Appointed Agent(s) of any of the duties owed to the Buyer(s) as previously described in this Agreement.

Having read and understood this information about Appointed Agency, Buyer(s) now instructs Broker as follows:

Buyer(s) ☐ **accepts** ☐ **does not accept** a possible Appointed Agent Representation.

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

95 **DUAL AGENCY REPRESENTATION:** Dual Agency means the Broker represents both Buyer(s) and Seller(s) and owes  
96 the same duties to both parties. This agency relationship will prohibit the Broker from advocating exclusively for either  
97 party. Dual Agency will limit the level of representation the Broker can provide. Confidential information communicated  
98 by Buyer(s) or Seller(s) to the Broker in regard to price, terms, or motivation will remain confidential unless Buyer(s) or  
99 Seller(s) instructs the Broker in writing of specific information to disclose. All other information may be shared. The Broker  
100 cannot act as a Dual Agent unless both Seller(s) and Buyer(s) agree.

101 By agreeing to a **possible** Dual Agency, Buyer(s) may be giving up the right to exclusive representation in a transaction  
102 where the Agent(s) representing Seller(s) and Buyer(s) work for the same Brokerage or when one Agent(s) is representing  
103 both Seller(s) and Buyer(s).

104 By **not** agreeing to a **possible** Dual Agency, Buyer(s) will be giving up the opportunity to view and Purchase property  
105 listed by Buyer(s) Agent's Brokerage, unless Appointed Agency applies.

106 Buyer(s) ☐ **accepts** ☐ **does not accept** a possible Dual Agency Representation.

107 \_\_\_\_\_  
108 Buyer Signature Date Agent Signature Date

109 \_\_\_\_\_  
110 Buyer Signature Date

111 **OTHER POTENTIAL BUYER(S):** Broker may represent or work with other potential Buyer(s) for the same property  
112 before, during, and after the expiration of this Agreement. Other potential Buyer(s) may consider, make offers or  
113 Purchase through Broker the same or similar properties as Buyer(s) is seeking to acquire.

114 **EXCLUSIVE REPRESENTATION:** Buyer(s) represents to Broker that Buyer(s) has employed no other Broker to assist  
115 in acquiring an interest in property that is within the scope of this Agreement and agrees to protect, defend, indemnify  
116 and hold Broker harmless from the claims, liabilities and expenses, including reasonable attorney's fees, arising by reason  
117 of a claim of any other Broker for compensation as a result of a transaction that is within the scope of this Agreement.

118 **PRIVATE INSPECTION/WARRANTY:** Broker recommends that Buyer(s) obtain a private home inspection to satisfy  
119 Buyer(s) with the physical condition of the property. Furthermore, there are warranty programs available for some  
120 properties which Buyer(s) may wish to investigate prior to Purchase of any specific property.

121 **NONDISCRIMINATION:** All parties agree not to discriminate against or refuse to sell to, or discriminate in the terms,  
122 conditions, or privileges of sale against, or indicate or publicize that sale is unwelcome, objectionable, not acceptable, or  
123 not solicited from, any person due to that person's race, color, religion, sex, national origin, age, physical or mental  
124 disability, family status, status with respect to marriage, or status with respect to public assistance. All parties understand  
125 further applicable laws, rules, or ordinances may include other protected classes of persons.

126 **OTHER PROFESSIONAL SERVICES:** Buyer(s) acknowledges that Broker is retained solely as a real estate agent and  
127 **not** as an attorney, tax advisor, lender, appraiser, surveyor, structural engineer, home inspector or other professional  
128 service advisor. Buyer(s) has been advised to seek professional advice concerning the condition of the property, legal, and  
129 tax matters.

130 **CONFIDENTIAL OFFERS:** Buyer(s) is aware that Purchase Agreements generally are not confidential; and, in some  
131 cases, Seller(s), in dealing with multiple offers, could make other Buyers aware of the existence and contents of Buyer's  
132 Purchase Agreement. Buyer(s) is aware that Buyer(s) could make an offer on a property contingent upon confidentiality  
133 prior to commencing negotiations with a Seller(s).

134 **ENFORCEMENT:** If either Buyer(s) or Broker brings an action for enforcement of this Agreement, the prevailing party  
135 in such an action shall be entitled to recover all costs and expenses including reasonable attorney's fees and court costs.

136 **PREVIOUS AGENCY RELATIONSHIPS:** Broker and Agent(s) may have had a previous agency relationship with a  
137 Seller(s) of a property Buyer(s) is interested in purchasing. Buyer(s) acknowledges that Buyer's Broker or Agent(s) is  
138 legally required to keep information confidential regarding the ultimate price, terms the Seller(s) would accept, and  
139 motivation for selling.

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

140 **FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (“FIRPTA”):** 26 U.S. Code § 1445 (hereinafter “FIRPTA”)
141 requires a transferee (Buyer(s)) of a United States real property interest to withhold a tax from the proceeds of any
142 disposition of the real property interest if the transferor (Seller(s)) is a foreign person (any person other than a United
143 States person), unless an exception to the FIRPTA withholding requirements applies. Exemptions from the general rule
144 are set forth in the FIRPTA. Due to the complexity of the FIRPTA, both the Buyer(s) and the Seller(s) are advised to seek
145 appropriate legal and tax advice regarding FIRPTA compliance since failure to adhere to the FIRPTA withholding rules
146 could result in legal liability to both the Buyer(s) and Seller(s) and their Broker(s)/Agent(s) or qualified substitutes.

147 **SURVEILLANCE:** Properties may be under video/audio surveillance. It is advised that surveillance be disclosed,
148 however, it may not be.
149 **CANCELLATION:** This Exclusive Right to Represent Buyer Agreement can be cancelled only with mutual written
150 consent of the parties.

151 **ADDITIONAL PROVISIONS:**
152
153
154

155 **ELECTRONIC SIGNATURES:** The parties agree the electronic signature of any party on any document related to this
156 transaction constitutes valid, binding signatures.
157 **CONVENIENCE FEE:** Buyer(s) may be charged a convenience fee(s) if electronically depositing earnest money and/or
158 wiring funds.
159 **CONSENT FOR COMMUNICATION:** Buyer(s) authorizes Broker and its representatives to contact Buyer(s) by mail,
160 phone, fax, text messaging (SMS), email, or other means of communication during the term of this Agreement and anytime
161 thereafter.

162 **ENTIRE AGREEMENT:** This Exclusive Right to Represent Buyer Agreement constitutes the entire Agreement between
163 the parties relating to the subject hereof, and any prior agreement, whether oral or written, are merged, and integrated
164 into this Agreement. Any modification to this Agreement shall be reduced to writing and signed by all parties.
165 I/We hereby certify that I/we have received a copy of this Agreement and agree to its terms.

166 **ACCEPTANCE:**
167 To be binding, this Agreement must be fully executed by all parties:

168				
169	Buyer Signature	Date	Buyer Signature	Date
170				
171	Buyer’s Street Address		Buyer’s Street Address	
172				
173	City	State Zip Code	City	State Zip Code
174				
175	Buyer’s Phone		Buyer’s Phone	
176				
177	Buyer’s Email		Buyer’s Email	

178		
179	Brokerage Name	Agent Printed Name
180		
181	Brokerage Phone	Agent Signature Date