

## BUYER(S) CUSTOMER AGREEMENT

This form approved by the North Dakota Association of REALTORS®, which disclaims any liability out of use or misuse of this form. Only REALTORS® licensed in North Dakota are authorized to use this form in compliance with NDAR's Statewide Forms Policy.

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

2 This Buyer(s) Customer Agreement ("Agreement") is between:

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

4 **BROKER:** \_\_\_\_\_

5 Unless otherwise specified, the term "Broker," as used in this form, includes both Broker and Broker's Agent(s).

6 This Agreement starts on \_\_\_\_\_ and ends at 11:59 P.M. on \_\_\_\_\_.

7 If closing of an executed PURCHASE AGREEMENT is set to occur after the expiration date of this Agreement the parties  
8 agree that the terms of this Agreement shall be extended until the closing has been completed.

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

10 **NONREPRESENTATION:** A Seller(s), Buyer(s), Lessor(s), or Lessee(s), who is **not** represented by a Broker in a  
11 transaction, is considered a *customer*. Brokers are not agents of a customer and owe the customer only limited legal duties.  
12 **However, Brokers must deal honestly with any party to a real estate transaction, regardless of whether the**  
13 **party is represented by that Broker.**

14 These limited legal duties are to perform the customary acts typically performed by a Broker in assisting the transaction  
15 to the transaction's closing or conclusion with honesty and good faith and to disclose to the customer any adverse material  
16 facts actually known by Broker which pertain to the title of the real property, the physical condition of the real property,  
17 and defects in the real property.

18 A Broker does not owe the agency duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and  
19 accounting to a customer. **Customers should be aware that any information shared with Broker may be**  
20 **disclosed.** If a Broker represents another party in the same real estate transaction, Broker is required to place the interest  
21 of the represented client first.

22 You, as a customer, will be responsible to make all decisions pertaining to price and terms of your offer.

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

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

- 28 a) Work exclusively with Broker for purchase of properties shown during this Agreement;  
29 b) Provide Broker with accurate and relevant personal financial information to determine Buyer's ability to purchase  
30 property;  
31 c) Agree to conduct all negotiations for the properties shown during this Agreement with Broker;

32 Seller(s) can sell their property to other buyers during the term of this Agreement.

33 **BROKER COMPENSATION:**

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

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

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

- 38 1) ☐ Buyer(s) agrees to pay Broker a retainer fee of \$\_\_\_\_\_ at the commencement of this  
39 Agreement, and such fee shall be kept by Broker whether or not Buyer(s) purchases property. The retainer fee  
40 ☐ **SHALL** ☐ **SHALL NOT** apply toward satisfaction of any obligation to compensate Broker.  
41 2) ☐ Buyer(s) agrees to pay Broker a transaction fee of \$\_\_\_\_\_ when Buyer(s) closes the purchase.

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

- 3) ☐ Buyer(s) shall pay Broker, as Broker's compensation, \_\_\_\_\_ percent (%) of the purchase price or \$\_\_\_\_\_ when Buyer(s) closes the purchase, if:
- Buyer(s) purchases or agrees to purchase a property before the expiration of this Agreement even if Buyer(s) does not use Broker's services; or
  - Within \_\_\_\_\_ calendar days after the end of this Agreement:
    - Buyer(s) purchases property which either Broker or Broker's Agent(s) has physically shown Buyer(s) or;
    - Buyer(s) has made an affirmative showing of interest to Broker or Broker's Agent(s) before the end of the Agreement.

Buyer(s) will not be obligated to pay a fee to Broker if, upon expiration or termination of this Agreement, Buyer(s) has entered into another valid agreement to represent Buyer(s) pursuant to which 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 reduce any obligation of 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.**

Compensation is due upon the happening of the following events:

- at closing of the sale;
- After a Purchase Agreement has been accepted by Seller(s), Buyer(s) is legally obligated to purchase the property. If Buyer(s) refuses to close the purchase for any reason other than the failure of Seller(s) to perform or contingencies not being removed or met, Buyer(s) will pay Broker all compensation due under this Agreement.
- Buyer(s) understands that if Buyer(s) enters into an EXCLUSIVE RIGHT TO REPRESENT BUYER AGREEMENT or BUYER(S) CUSTOMER AGREEMENT with another Broker and purchases a property shown by above listed Broker, Buyer(s) may be obligated to pay commission to BOTH BROKERS.

**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 an 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. 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.

**FINCEN REPORTING NOTICE:** If Buyer(s) is an entity or plans to be an entity to purchase residential property, and Buyer(s) is paying with cash or obtaining financing through a Lender that does not independently satisfy federal anti-money laundering reporting obligations, Buyer(s) understands that Buyer(s) and Seller(s) shall have to disclose entity and personal identification information to the closing company prior to closing. This reporting requirement may affect whether Seller(s) is willing to accept the terms of an offer to purchase. This reporting requirement is as per the Financial Crimes Enforcement Network (FinCEN) of the U.S. Department of the Treasury.

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

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

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

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

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

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

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

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

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

**SURVEILLANCE:** Properties may be under video/audio surveillance. It is advised that surveillance be disclosed, however, it may not be.

**CANCELLATION:** This Buyer(s) Customer Agreement can be cancelled only with mutual written consent of the parties.

**ADDITIONAL PROVISIONS:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**MULTIPLE LISTING SERVICE:** Broker is a member of a Multiple Listing Service (MLS). If the Broker sells a property, the Broker may give information to the MLS concerning the Property sales price and terms of sale after closing.

**ELECTRONIC SIGNATURES:** The parties agree the electronic signature of any party on any document related to this transaction constitutes valid, binding signatures.

**CONVENIENCE FEE:** Buyer(s) may be charged a convenience fee(s) if electronically depositing earnest money and/or wiring funds.

**CONSENT FOR COMMUNICATION:** Buyer(s) authorizes Broker and Broker's representatives to contact Buyer(s) by mail, phone, fax, email, or other means of communication during the term of this Agreement and any time thereafter.

**ENTIRE AGREEMENT:** This Buyer(s) Customer Agreement constitutes the entire Agreement between the parties relating to the subject hereof, and any prior agreements, whether oral or written, are merged, and integrated into this Agreement. Any modification to this Agreement shall be reduced to writing and signed by all parties.

I/We hereby certify that I/We have received a copy of this Agreement and agree to its terms.

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

139 To be binding, this Agreement must be fully executed by all parties:

148		
149	Brokerage Name	Agent Printed Name
150		
151	Brokerage Phone	Agent Signature                      Date