

# **Designated Agency Implementation Kit**

**July 2016**

## Designated Agency – An Introduction

**Traditional agency** – client has an agency relationship with everyone in the firm.

**Designated agency** – client has an agency relationship with only those persons named in the listing contract or buyer broker contract.

- Allows firms to establish clear, consistent relationships with clients
- Limits the number of agents within a firm who have an agency relationship with the buyer or seller
- Is optional – a firm must choose to either practice designated agency or not
- Must be practiced by all agents in the firm, for all transactions
- Should be entered into at the time the listing agreement or buyer agency contract is signed

Designated agency **does**:

- Permit an individual agent to continue to provide the full range of services to the client during in-house transactions, even if another agent in the firm represents the other party (The firm and certain supervisory brokers act as the dual agent; the agents do not).
- Allow individual agents within a firm to represent buyers competing for the same property without risking a conflict of interest or breach of fiduciary duty.

Designated agency **does not**:

- Replace traditional agency law
- Change fiduciary responsibilities
- Eliminate or replace dual agency (it simply limits dual agency status in in-house transactions to the firm and supervisory brokers).

A firm must choose to operate **either** as a designated agency office or a traditional agency office. A firm cannot have some agents who are designated agents and some agents who are traditional agents. If a listing contract/buyer's agency contract is silent on the question, then a traditional agency relationship is automatically established. In order to establish a designated agency relationship with a client, you must enter into a written contract that specifically says that the agent will be a designated agent. For this reason, designated agency is not an option unless the firm's agents always enter into written buyers' agency contracts.

## **Michigan Realtors® answers your questions about Designated Agency**

- Q. Does the designated agency legislation require that Realtors® change the way they do business?**
- A. Designated agency is optional. A firm must decide whether or not it wants to be a designated agency firm.
- Q. Can designated agency be practiced by some, but not all, agents within a firm?**
- A. No. The broker and *not the individual salespersons*, must choose whether to offer designated agency.
- Q. Will designated agency change my fiduciary responsibilities?**
- A. No. In a designated agency office, agents will continue to represent buyers and sellers and will owe the same fiduciary responsibilities to their clients that they always have. The difference is that in a designated agency office, a client will no longer automatically have an agency relationship with everyone in the company. Instead, a client will **ONLY** have an agency relationship with the firm, the individual salesperson working directly with the client and that salesperson's supervisory broker.
- Q. Can an associate broker act as a "designated agent"?**
- A. Yes. The client would then have an agency relationship with the firm and the associate broker only (no supervisory broker is required).
- Q. Can a client have more than one designated agent?**
- A. Yes. A listing contract (or buyer's broker contract) can list one or more designated agents and one or more supervisory brokers.
- Q. Can a dual agency situation still occur in a designated agency office?**
- A. Yes. The firm will continue to be a dual agent if it represents the seller and the buyer. Likewise, if the same individual is a supervisory broker for both sides of the transaction, he or she will be a dual agent. Under the law, the firm and the supervisory broker are automatically deemed consensual dual agents. However, if the same salesperson (or associate broker) is the designated agent for both sides of the transaction, then he or she will need to get both clients' written consent to that dual agency relationship.
- Q. How does a firm implement a designated agency relationship with a seller?**
- A. MR has developed separate listing contracts and buyer's broker contracts for use by designated agency firms.
- Q. How does a firm implement a designated agency relationship with buyers?**
- A. The firm *must* use buyers' agency contracts that limit the buyers' agency relationship to the persons named in that contract. *You cannot practice designated agency relationship with a buyer without a written buyers' agency contract.* In the absence of a written buyers' agency contract, the buyer-client will automatically have an agency relationship with every agent in the firm.

**Q. What is the principal advantage of designated agency?**

A. Designated agents may continue to fully represent their clients in an in-house transaction.

**Q. What is the principal disadvantage of designated agency?**

A. Individual agents within a designated agency office may not freely share client information with other agents in the firm. Since any agent in the firm could end up on the other side of the transaction, no confidential information may be shared.

**Q. The agency disclosure form refers to an “Affiliated Licensee Disclosure.” What is an “Affiliated Licensee?”**

A. “Affiliated Licensees” are all of the licensees within the same firm. The question on the agency disclosure form is whether all “Affiliated Licensees” have an agency relationship with the client signing the form. This would be true in a traditional agency firm, but not in a designated agency firm.

# Six Easy Steps to Designated Agency

## Step 1.

### **Adopt a designated agency policy.**

The policy must be adopted by the entire firm and not individual agents. A sample policy is included; however, firms should consult with an attorney to develop a policy that works for them. At a minimum, the policy should address the following issues:

- Who will act as supervisory broker(s)?
- How will information be kept confidential?
- Who will represent the designated agent during vacations and other absences?

## Step 2.

### **Use listing contracts and buyers' broker contracts which specifically provide for a designated agency relationship.**

Without an express provision in a written listing contract or buyers' agency contract, a client will have an agency relationship with everyone in the company. Agents should explain to clients which members of the firm will be acting as their agent and designate those persons in the listing contract or buyers' agency contract. Examples of a designated agency listing contract and a buyers' agency contract are attached.

If a new designated agent or supervisory broker is assigned to a client (either as an addition to, or in place of, the previously designated individuals), the client should sign a written acknowledgment. A sample (*Acknowledgment of Change of Designated Agent/Supervisory Broker*) form is included in this kit.

## Step 3.

### **Indicate that this is a designated agency relationship.**

Agents should present agency disclosure forms to clients as usual and indicate in the new agency disclosure form that this is a designated agency relationship. In a designated agency firm, a client DOES NOT have an agency relationship with Affiliated Licensees.

## Step 4.

### **Advise buyer clients on any in-house showings.**

When showing in-house listings, a buyer's agent must advise his buyer clients that his firm represents both the buyer and the seller before any offer is made or presented.

Firms may want to add a paragraph to their purchase agreement form indicating that this is or is not an in-house transaction.

## **Sample:**

Buyer and Seller acknowledge that this \_\_\_\_\_ is or \_\_\_\_\_ is not an in-house transaction in which the Buyer and Seller are each represented by different designated agents within the same Realtor®/Brokerage Firm.

**Step 5.**

**Advise seller clients if potential buyer is a firm client.**

When a potential buyer is an in-house buyer, a listing agent must advise the seller that the firm represents both the buyer and the seller before any offer is made or presented.

**Step 6.**

**Use a dual agency agreement if the same designated agent represents both sides of the transaction.**

As an example, if Salesperson Smith is the designated agent for Seller Jones and is also the designated agent for Buyer Green, Salesperson Smith will be a dual agent if Buyer Green wishes to submit an offer on Seller Jones' home. Both Buyer Green and Seller Jones will need to sign a dual agency agreement.

## Designated Agency “Do’s and Don’ts”

1. **A firm must use *both written listing contracts and written buyers agency contracts* which contain designated agency provisions.**

This is a legal requirement. Firms CANNOT practice designated agency using just the agency disclosure form.

2. **In a designated agency firm, all relationships with clients must be designated agency relationships.**

This is a practical requirement. For designated agency to work, ALL agents within a firm must be able to assume that they do not have an agency relationship with other clients of the firm.

3. **Clients must be advised, at least orally, when the other party to the transaction is represented by another agent within the same firm.**

This is a legal requirement contained in agency disclosure statute. There is no requirement that this disclosure be in writing, although a written disclosure is beneficial in that it provides a record that the disclosure was made.

4. **A designated agent may not disclose confidential information about a client to other members of the firm who do not have an agency relationship with that client.**

The disclosure of confidential information about a client or customer to anyone in your firm who does not have an agency relationship with that client is a breach of fiduciary duty.

5. **Where the same designated individual represents the buyer and seller in a transaction, both clients must consent to this dual agency relationship.**

The legislation provides that in a designated agency relationship, the client automatically consents to the dual agency relationship of the firm and the supervisory broker(s), so no additional consent is required. This is not the case if the same licensee represents both parties, in which case you must obtain both parties’ informed consent. A written dual agency contract is strongly recommended for this purpose.

# SAMPLE

## Designated Agency Office Policy

### Exclusive Designated Agency Office

The Firm will practice designated agency ONLY. Designated agency will be explained to all potential clients. The Firm will not represent a client who does not wish to enter into a designated agency relationship. A potential buyer will always be treated as a customer of the Firm unless and until that buyer signs a buyer's agency contract which provides for designated agency.

Agents who have licensed assistants should have both the agent and the licensed assistant named as designated agents in the listing contract or buyer's broker contract. Likewise, teams should list all members of the team as designated agents of the client.

Offices within the Firm with a managing salesperson should have the managing salesperson named as an additional designated agent. **A managing salesperson cannot act as a supervisory broker.**

### Buyers' Brokers/Subagency

The Firm will only act as a buyer's agent pursuant to a written buyer's agency contract. If a buyer is unwilling to enter into a buyer's agency contract, the agent can only work with the buyer as a subagent of the seller.

### Supervisory Brokers

In all listing contracts, \_\_\_\_\_ and \_\_\_\_\_ will be listed as the supervisory brokers.

In all buyer broker contracts, \_\_\_\_\_ and \_\_\_\_\_ will be listed as the supervisory brokers.

### Confidential Information

A designated agent shall not disclose confidential information to anyone in the Firm other than the supervisory broker(s). Each agent will maintain a separate file cabinet for his/her clients' files, and only the supervisory brokers shall have access to those files. Mail, faxes and other correspondence shall be given directly to the named designated agent, his or her assistant or, if unavailable, a supervisory broker.

### Vacations and Other Absences

For planned, extended absences (more than three (3) days), a designated agent shall arrange for another agent in the office to handle his or her files. If action is required on those files during the agent's absence, it shall be the responsibility of the "fill-in" agent to have an addendum signed by the client establishing that "fill-in" agent as another designated agent for that client.

Client matters that arise during other absences should be referred to the supervisory broker(s) who shall have the authority to handle the matter directly or arrange for another member of the Firm to "fill-in" as a designated agent.

### **In-house Listings**

For negotiations on in-house transactions, if the buyer and seller are represented by different designated agents, no additional forms will be necessary. However, each agent is responsible for explaining to his or her client as soon as possible that this is an in-house listing and that accordingly, the Firm represents both sides of the transaction.

For negotiations on in-house transactions where both parties are represented by the same individual designated agent, a dual agency agreement is required.

### **Departing Agents**

In the event that an agent leaves the Firm, all active files shall be immediately identified and delivered to a supervisory broker(s) who shall be responsible for contacting the client and designating a new designated agent for that client.

## Disclosure Regarding Real Estate Agency Relationships

Before you disclose confidential information to a real estate licensee regarding a real estate transaction, you should understand what type of agency relationship you have with that licensee. A real estate transaction is a transaction involving the sale or lease of any legal or equitable interest in real estate consisting of not less than 1 or not more than 4 residential dwelling units or consisting of a building site for a residential unit on either a lot as defined in section 102 of the land division act, 1967 PA 288, MCL 560.102, or a condominium unit as defined in section 4 of the condominium act, 1978 PA 59, MCL 559.104.

- (1) An agent providing services under any service provision agreement owes, at a minimum, the following *duties* to the client:
- (a) The exercise of reasonable care and skill in representing the client and carrying out the responsibilities of the agency relationship.
  - (b) The performance of the terms of the service provision agreement.
  - (c) Loyalty to the interest of the client.
  - (d) Compliance with the laws, rules, and regulations of this state and any applicable federal statutes or regulations.
  - (e) Referral of the client to other licensed professionals for expert advice related to material matters that are not within the expertise of the licensed agent. **A real estate licensee does not act as an attorney, tax advisor, surveyor, appraiser, environmental expert, or structural or mechanical engineer and you should contact professionals on these matters.**
  - (f) An accounting in a timely manner of all money and property received by the agent in which the client has or may have an interest.
  - (g) Confidentiality of all information obtained within the course of the agency relationship, unless disclosed with the client's permission or as provided by law, including the duty not to disclose confidential information to any licensee who is not an agent of the client.

(2) A real estate broker or real estate salesperson acting pursuant to a service provision agreement shall provide the following *services* to his or her client:

- (a) When the real estate broker or real estate salesperson is representing a seller or lessor, the marketing of the client's property in the manner agreed upon in the service provision agreement.
- (b) Acceptance of delivery and presentation of offers and counteroffers to buy, sell, or lease the client's property or the property the client seeks to purchase or lease.
- (c) Assistance in developing, communicating, negotiating, and presenting offers, counteroffers, and related documents or notices until a purchase or lease agreement is executed by all parties and all contingencies are satisfied or waived.
- (d) After execution of a purchase agreement by all parties, assistance as necessary to complete the transaction under the terms specified in the purchase agreement.
- (e) For a broker or associate broker who is involved at the closing of a real estate or business opportunity transaction, furnishing, or causing to be furnished, to the buyer and seller, a complete and detailed closing statement signed by the broker or associate broker showing each party all receipts and disbursements affecting that party.

Michigan law requires real estate licensees who are acting as agents of sellers or buyers of real property to advise the potential sellers or buyers with whom they work of the nature of their agency relationship.

### SELLER'S AGENTS

A seller's agent, under a listing agreement with the seller, acts solely on behalf of the seller. A seller can authorize a seller's agent to work with subagents, buyer's agents and/or transaction coordinators. A subagent of the seller is one who has agreed to work with the listing agent, and who, like the listing agent, acts solely on behalf of the seller. Seller's agents and their subagents will disclose to the seller known information about the buyer which may be used to the benefit of the seller.

Individual services may be waived by the seller through execution of a limited service agreement. Only those services set forth in paragraph (2)(b), (c), and (d) above may be waived by the execution of a limited service agreement.

#### BUYER'S AGENTS

A buyer's agent, under a buyer's agency agreement with the buyer, acts solely on behalf of the buyer. A subagent of the buyer is one who has agreed to work with the buyer's agent with who, like the buyer's agent, acts solely on behalf of the buyer. Buyer's agents and their subagents will disclose to the buyer known information about the seller which may be used to benefit the buyer.

Individual services may be waived by the buyer through execution of a limited service agreement. Only those services set forth in paragraph (2)(b), (c), and (d) above may be waived by the execution of a limited service agreement.

#### DUAL AGENTS

A real estate licensee can be the agent of both the seller and the buyer in a transaction, but only with the knowledge and informed consent, in writing, of both the seller and the buyer.

In such a dual agency situation, the licensee will not be able to disclose all known information to either the seller or the buyer. As a dual agent, the licensee will not be able to provide the full range of fiduciary duties to the seller or the buyer.

The obligations of a dual agent are subject to any specific provisions set forth in any agreement between the dual agent, the seller and the buyer.

#### TRANSACTION COORDINATOR

A transaction coordinator is a licensee who is not acting as an agent of either the seller or the buyer, yet is providing services to complete a real estate transaction. The transaction coordinator is not an agent for either party and therefore owes no fiduciary duty to either party.

#### DESIGNATED AGENCY

A buyer or seller with a designated agency agreement is represented only by agents specifically named in the agreement. Any agents of the firm not named in the agreement do not represent the buyer or seller. The named "designated" agent acts solely on behalf of his or her client and may only share confidential information about the client with the agent's supervisory broker who is also named in the agreement. Other agents in the firm have no duties to the buyer or seller and may act solely on behalf of another party in the transaction.

#### LICENSEE DISCLOSURE (Check one)

I hereby disclose that the agency status of the licensee named below is:

- Seller's agent
- Seller's agent – limited service agreement
- Buyer's agent
- Buyer's agent – limited service agreement
- Dual agent
- Transaction coordinator (A licensee who is not acting as an agent of either the seller or the buyer.)
- None of the above

#### AFFILIATED LICENSEE DISCLOSURE (Check one)

- Check here if acting as a designated agent. Only the licensee's broker and a named supervisor broker have the same agency relationship as the licensee named below. If the other party in a transaction is represented by an affiliated licensee, then the licensee's broker and all named supervisory brokers shall be considered disclosed consensual dual agents.
- Check here if not acting as a designated agent. All affiliated licensees have the same agency relationship as the licensee named below.

Further, this form was provided to the buyer or seller before disclosure of any confidential information.

\_\_\_\_\_  
Licensee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Licensee

\_\_\_\_\_  
Date

**ACKNOWLEDGMENT**

By signing below, the parties acknowledge that they have received and read the information in this agency disclosure statement and acknowledge that this form was provided to them before the disclosure of any confidential information. **THIS IS NOT A CONTRACT.**

The undersigned \_\_\_\_\_ DOES \_\_\_\_\_ DOES NOT have an agency relationship with any other real estate licensee. If an agency relationship exists, the undersigned is represented as \_\_\_\_\_ SELLER \_\_\_\_\_ BUYER.

\_\_\_\_\_  
Potential Buyer/Seller (circle one)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Potential Buyer/Seller (circle one)

\_\_\_\_\_  
Date

**Disclaimer** This form is provided as a service of Michigan Realtors®. Please review both the form and details of the particular transaction to ensure that each section is appropriate for the transaction. Michigan Realtors® is not responsible for use or misuse of the form, for misrepresentation, or for warranties made in connection with the form.

# Exclusive Listing Contract (Designated Agency)



Contract Date: \_\_\_\_\_ through Expiration on \_\_\_\_\_ at 11:59 PM

Brokerage Firm: \_\_\_\_\_ (“Brokerage Firm”)

Address of Firm: \_\_\_\_\_

Designated Agent(s): \_\_\_\_\_ (“Designated Agent”)

Designated Agent’s Email Address: \_\_\_\_\_

Designated Agent’s Phone # \_\_\_\_\_ Designated Agent’s Facsimile # \_\_\_\_\_

Supervisory Broker(s): \_\_\_\_\_ (“Supervisory Broker”)

Seller(s): \_\_\_\_\_ (“Seller”)

Seller’s Home Address: \_\_\_\_\_

Seller’s Email Address: \_\_\_\_\_

Seller’s Phone # \_\_\_\_\_ Seller’s Facsimile # \_\_\_\_\_

**1. AGREEMENT:** In consideration of the agreement of Brokerage Firm to market Seller’s property and to use its best efforts to find a buyer, Seller gives Brokerage Firm the exclusive right to offer for sale and to sell the property for the listing period stated above. In consideration for exclusive sale rights, Brokerage Firm agrees to use reasonable efforts to sell the property, to present the property to other REALTOR® companies through a multiple listing service and to engage in marketing efforts to expose the property. **Brokerage Firm and Seller hereby designate the agent(s) listed above as Seller’s Designated Agent. Seller shall have an agency relationship with ONLY Brokerage Firm, Designated Agent and Supervisory Broker named above.**

**2. PROPERTY:** The property is located in the  Village,  Township,  City of \_\_\_\_\_,  
County of \_\_\_\_\_, Michigan,  
Street Address: \_\_\_\_\_  
Legal Description: \_\_\_\_\_  
\_\_\_\_\_ (the “Property”).

**3. YEAR BUILT:** \_\_\_\_\_ (check one):  
 Seller represents and warrants that the Property was **built in 1978 or later** and that therefore the federally-mandated lead-based paint disclosure regulations **do not apply** to this Property.  
or  
 Seller represents and warrants that the Property was **built before 1978** and that therefore the federally-mandated lead-based paint disclosure regulations **do apply** to this Property.

**4. PRICE/TERMS:** Brokerage Firm is authorized to sell the Property for the sum of \$ \_\_\_\_\_,  
subject to the following terms and conditions: \_\_\_\_\_

OR at such other price and on such other terms and conditions as Seller may agree to in writing.

The price includes all buildings; all fixtures; all gas, oil, and mineral rights owned by Seller; built-in appliances; lighting fixtures; plumbing fixtures; water softener (unless rented); heating fixtures; electrical fixtures; radio and television antennas and any mechanical controls; shades; awnings; shutters; window blinds; curtain and drapery rods; attached floor coverings; attached fireplace doors and screens; garage door opener and controls; screens, storm windows and doors; landscaping, fences, and mailboxes, if any. And/Including/Except: \_\_\_\_\_

5. **COMPENSATION:** If during the term of this listing anyone produces a buyer ready, willing and able to purchase the Property at the listed price and terms or for any other price, terms or exchange to which Seller consents in writing, Seller agrees to pay Brokerage Firm a fee equal to \$\_\_\_\_\_ and a commission equal to \_\_\_\_\_% of the sale price. FURTHER, if within \_\_\_\_\_ months after the expiration of this agreement, Seller sells, trades or exchanges the Property to anyone introduced to the Property during the listing term, the stated compensation will be paid by Seller to Brokerage Firm, unless at the time of the sale, the Property is listed with another REALTOR®. It is also agreed that in the event of a trade or exchange, Brokerage Firm is authorized to represent and receive compensation from both parties to the transaction.
  
6. **PARTICIPATION IN MULTIPLE LISTING SERVICE:** Seller authorizes Brokerage Firm to file this listing with any multiple listing service or any other medium selected by Brokerage Firm and provide any such multiple listing service with a copy of this agreement, any changes to this agreement and any post-closing information, including the sales price.
  
7. **COOPERATION:** Brokerage Firm is authorized to (indicate acceptance by **initialing**):  
 YES NO  
 \_\_\_\_\_ A. Offer a portion of the total commission due as compensation for producing the buyer while acting as a sub-agent. Said offer of compensation shall be \_\_\_\_\_% of the sale price or \$\_\_\_\_\_.  
 \_\_\_\_\_ B. Offer a portion of the total commission due as compensation for producing the buyer while acting as a buyer's agent. Said offer of compensation shall be \_\_\_\_\_% of the sale price or \$\_\_\_\_\_.  
 \_\_\_\_\_ C. Offer a portion of the total commission due as compensation for producing the buyer while acting as a transaction coordinator. Said offer of compensation shall be \_\_\_\_\_% of the sale price or \$\_\_\_\_\_.
  
8. **TITLE:** Seller represents the title to the Property to be good and marketable title and Seller will execute and deliver a Warranty Deed, Land Contract, or other instruments of assignment or conveyance as shall be required. By agreement on a subsequent purchase agreement, Seller will provide at Seller's cost an owner's title insurance policy in the amount of the purchase price.
  
9. **DEFAULT:** If a sale is not consummated because of Seller's refusal to perform, then the total agreed upon compensation shall be due and payable upon such refusal. If a sale is not consummated because of the buyer's failure to perform and the deposit made is forfeited, Seller agrees that said deposit shall be applied first to reimburse Brokerage Firm for all expenses incurred by Brokerage Firm on Seller's behalf and that \_\_\_\_\_% of the remainder of such deposit (but not in excess of the amount of the total agreed upon compensation) shall be retained by Brokerage Firm in full payment for services rendered in this transaction.
  
10. **SHOWING/SIGNS:** Brokerage Firm may photograph the Property and publish pictures, advertise the availability of the Property through any medium, place a "for sale" sign on the Property and remove other "for sale" signs and show the Property at reasonable hours. Seller acknowledges that the use of certain advertising will result in the contents of the Property being made known to third parties and consents to such advertising. Brokerage Firm is not responsible for the security of the Property. Seller releases and holds harmless Brokerage Firm and its agents and cooperating agents, from any liability for loss or damage to property by third parties, such obligation to include, but not be limited to, reasonable attorneys' fees and costs.
  
11. **LOCKBOX ACCESS:** Seller authorizes a lockbox to be placed on the Property in order to permit showings of the Property by other real estate licensees and to enable service providers to perform services in conjunction with a proposed sale of the property. Seller shall not disclose confidences to any other real estate licensee that Seller would not disclose to a potential buyer. Seller releases and holds harmless Brokerage Firm and its agents and cooperating agents from any and all liability as a result of injury to person(s) or damage or loss to property arising out of Seller's grant of access pursuant to this paragraph, such obligation to include, but not be limited to, reasonable attorneys' fees and costs.
  
12. **REFERRAL:** Seller agrees to refer to Brokerage Firm all inquiries received concerning the Property during the period of this agreement.
  
13. **ADDITIONAL OFFERS:** Once Seller and a buyer enter into a binding sales contract, Brokerage Firm shall not present to Seller any other offers unless Seller and Brokerage Firm otherwise agree in writing.
  
14. **POSSESSION:** Possession to be given \_\_\_\_\_ after close of the sale, subject to rights of present tenants, if any. An occupancy charge, if any, will be agreed upon by Seller and the buyer.
  
15. **CITIZENSHIP:** Seller is a United States citizen.  Yes  No

16. **HEIRS:** This agreement shall be binding on the heirs, personal representatives, administrators, executors, assigns and successors of Seller.
17. **NON-DISCRIMINATION:** It is agreed by Brokerage Firm and Seller, parties to this agreement, that as required by law, discrimination because of religion, race, color, national origin, age, sex, disability, familial status, or marital status by said parties in respect to the sale or lease of the Property is PROHIBITED. Local ordinances may offer protection against additional discrimination.
18. **SHOWING PROPERTY/CONFLICT OF INTEREST:** Seller understands and agrees that as part of marketing the Property, Designated Agent will show potential buyers properties other than Seller's Property and provide such buyers with information on the selling prices in the area. Seller also understands and agrees that Designated Agent can show Seller's Property to, and obtain offers from, all prospective buyers, including buyers with whom Brokerage Firm has an agency relationship. If a potential buyer is represented by a designated agent within Brokerage Firm other than Designated Agent, Brokerage Firm and Supervisory Broker shall automatically be deemed disclosed consensual dual agents. If a particular buyer is represented by Designated Agent, Designated Agent shall notify both Seller and the buyer and (**check one**):
- Designated Agent shall terminate its agency relationship with the buyer as it relates to the Property only; or
- Designated Agent shall act as a consensual disclosed dual agent of both Seller and the buyer; or
- Designated Agent shall act as a transaction coordinator to facilitate the transaction and not as an agent for either Seller or the buyer.
- In all cases, Brokerage Firm shall be entitled to the total compensation provided herein. **Designated Agent will preserve any confidential information obtained during another agency relationship or in a prior or pending transaction or business relationship. Seller acknowledges and agrees that the preservation of this confidential information shall not constitute a breach of any fiduciary duty owed by Designated Agent to Seller.**
19. **INDEMNIFICATION:** Seller shall indemnify and hold harmless Brokerage Firm and Brokerage Firm's agents and cooperating brokers and agents from any and all liability for any reason as a result of injury to person(s) or damage or loss to property arising out of showing of Seller's home pursuant to this listing.
20. **REPRESENTATIONS:** Seller hereby acknowledges that Brokerage Firm is relying upon the representations, whether oral or written, made by Seller with respect to the Property. Seller warrants to Brokerage Firm that any representations Seller has made or shall hereafter make are true and Designated Agent is authorized to make such representations to prospective buyers.
21. **UNPLATTED LANDS:** If this is an unplatted parcel, Seller agrees to grant to the buyer the right to make \_\_\_\_\_ division(s) under the Land Division Act. The word "zero" or a specific number should be inserted in the space designated above. The Land Division Act on March 31, 1997, created parent parcels from which future land divisions may be permitted. Contiguous parcels owned by Seller as of March 31, 1997, may be considered part of the parent parcel and therefore affect the total divisions available to be conveyed; a transfer of "all" divisions may be taken to include a transfer of divisions from contiguous parcels.
- If this parcel is a new division (check one):**
- Seller represents that this division has been approved by the local municipality; or
- Municipal approval of the division is required.
22. **SELLER DISCLOSURE:** Seller agrees to provide the buyer a "Seller's Disclosure Statement" prior to accepting a Buy and Sell Agreement from the buyer, unless the transaction is exempt under Michigan law. Seller agrees to release and hold harmless Brokerage Firm and its agents and subagents, from any liability arising as a result of Seller's failure to comply with Seller's disclosure obligations at law, such obligations to include, but not be limited to, reasonable attorneys' fees and costs.
23. **LIMITATION:** Seller and Brokerage Firm agree that any and all claims or lawsuits between the parties relating to this agreement must be filed no more than six (6) months after the date of termination of this agreement. The parties waive any statute of limitations to the contrary.
24. **ELECTRONIC COMMUNICATIONS:** The parties agree that this agreement, any amendment or modification of this agreement and/or any written notice or communication in connection with this agreement may be delivered by electronic mail or by fax via the contact information set forth above. Any such communication shall be deemed delivered at the time it is sent or transmitted. The parties agree that the electronic signatures and initials shall be deemed to be valid and binding upon the parties as if the original signatures or initials were present in the documents in the handwriting of each party.

25. **MERGER:** This agreement constitutes the entire agreement between the parties, and any prior agreements, whether oral or written, have been merged and integrated into this agreement.

26. **SIGNATORIES/COUNTERPARTS:** The undersigned Seller represents that all parties in title are a signatory on this agreement. This agreement may be signed in any number of counterparts.

27. **OTHER:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

28. **CANCELLATION:** This agreement can be CANCELLED or REVOKED only by mutual consent in writing.

29. **RECEIPT:** Seller has read this agreement and acknowledges receipt of a completed copy of this agreement.

Accepted by:

\_\_\_\_\_  
(Brokerage Firm)

\_\_\_\_\_  
(Seller)

\_\_\_\_\_  
(Designated Agent)

\_\_\_\_\_  
(Seller)

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## Exclusive Buyer Agency Contract (Designated Agency)



Contract Date: \_\_\_\_\_ through Expiration on \_\_\_\_\_ at 11:59 PM  
 Brokerage Firm: \_\_\_\_\_ (“Brokerage Firm”)  
 Address of Firm: \_\_\_\_\_  
 Designated Agent(s): \_\_\_\_\_ (“Designated Agent”)  
 Designated Agent’s Email Address: \_\_\_\_\_  
 Designated Agent’s Phone # \_\_\_\_\_ Designated Agent’s Facsimile # \_\_\_\_\_  
 Supervisory Broker(s): \_\_\_\_\_ (“Supervisory Broker”)  
 Buyer(s): \_\_\_\_\_ (“Buyer”)  
 Buyer’s Home Address: \_\_\_\_\_  
 Buyer’s Email Address: \_\_\_\_\_  
 Buyer’s Phone # \_\_\_\_\_ Buyer’s Facsimile # \_\_\_\_\_

1. **PURPOSE:** Brokerage Firm shall assist Buyer in purchasing real estate, as more particularly described in paragraph 3. Brokerage Firm’s services shall include, but not be limited to, consulting with Buyer regarding the desirability of particular properties and the availability of financing; formulating acquisition strategies; and negotiating purchase agreements.
2. **DESIGNATED AGENCY:** Brokerage Firm and Buyer hereby designate the agent(s) named above as the Buyer’s Designated Agent. Buyer shall have an agency relationship with ONLY Brokerage Firm and the Designated Agent and Supervisory Broker named above. Buyer acknowledges that neither Designated Agent nor Supervisory Broker named herein are acting as attorneys, tax advisors, surveyors, appraisers, environmental experts or structural or mechanical engineers, and that Buyer should contact professionals on these matters.

Neither Designated Agent nor Supervisory Broker is in a position to advise Buyer as to the location of any property within a floodplain or as to floodplain insurance requirements. Buyer is encouraged to visit the website <http://www.floodsmart.gov/floodsmart> and/or consult with appropriate professionals.

3. **PROPERTY:** Buyer desires to purchase real property meeting the following criteria (type, price range, geographical location, etc.): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_ (“Desired Property”).

4. **EXCLUSIVE AGENT:** Buyer agrees that during the term of this agreement any and all inquiries and/or negotiations on behalf of Buyer relating to the acquisition of any Desired Property shall be through Designated Agent.

5. **COMPENSATION OF BROKERAGE FIRM:** In consideration for the services to be performed under the agreement, Buyer agrees to pay Brokerage Firm as follows (check as applicable):

- Retainer Fee.** Buyer will pay Brokerage Firm a non-refundable Retainer Fee of \$\_\_\_\_\_, due and payable upon execution of this agreement. The Retainer Fee shall be applied against any commission owed to Brokerage Firm.
- Hourly Fee.** Buyer will pay Brokerage Firm an Hourly Fee of \$\_\_\_\_\_ for services performed under this agreement due and payable upon receipt of invoice(s) from Brokerage Firm. The Hourly Fee shall be applied against any commission owed to Brokerage Firm.
- Flat Fee.** In the event Buyer contracts to purchase the Desired Property, Buyer will pay Brokerage Firm a Flat Fee equal to \$\_\_\_\_\_. The Flat Fee is due and payable upon closing; provided, however, that if the transaction does not close because of any default on the part of the Buyer, the Flat Fee shall become immediately due and payable. The Flat Fee obligation shall apply to any purchase agreements executed during the term of this agreement, or during any extension of this agreement. The Flat Fee obligation will also apply to purchase agreements executed within \_\_\_\_\_ months after the expiration or other termination of this agreement, if the property acquired was presented to Buyer during the term of this agreement.

- Commission.** In the event Buyer contracts to purchase the Desired Property, Buyer will pay Brokerage Firm a Commission equal to \_\_\_\_\_% of the purchase price. The Commission is due and payable upon closing; provided however, that if the transaction does not close because of any default on the part of the Buyer, the Commission shall become immediately due and payable. The Commission obligation shall apply to any purchase agreements executed during the term of this agreement, or during any extension of this agreement. The Commission obligation will also apply to purchase agreements executed within \_\_\_\_\_ months after the expiration or other termination of this agreement, if the property acquired was presented to Buyer during the term of this agreement.
6. **CREDIT:** Buyer will receive a credit against any amount owed pursuant to paragraph 5 above for any commission paid to Brokerage Firm by the seller or the seller's listing broker.
7. **DISCLOSURE OF BROKER'S ROLE:** At the time of any initial contact, Designated Agent shall inform all prospective sellers and their agents that Designated Agent is acting on behalf of Buyer. **Designated Agent and Supervisory Broker will preserve any confidential information obtained during another agency relationship or in a prior or pending transaction or business relationship. Buyer acknowledges and agrees that the preservation of this confidential information shall not constitute a breach of any fiduciary duty owed to Buyer.**
8. **CONFLICT OF INTEREST (BUYERS):** Buyer acknowledges that Designated Agent may represent other buyers desirous of purchasing property similar to the Desired Property. Buyer acknowledges and agrees that Designated Agent may show more than one buyer the same property, and may prepare offers on the same property for more than one buyer. Designated Agent shall preserve any confidential information disclosed by any buyer-client and shall not disclose the existence of, or the terms of, any offer prepared on behalf of one buyer to another buyer. In the event Designated Agent works for two competing buyer-clients in connection with any specific property, Designated Agent will be working equally for both buyer-clients and without the full range of fiduciary duties owed by a buyer's agent to a buyer. In this situation, the competing buyer-clients are giving up their rights to undivided loyalty and will be owed only limited duties of disclosure, obedience and confidentiality.
9. **CONFLICT OF INTEREST (SELLERS):** If a particular seller is represented by another designated agent within Brokerage Firm other than Designated Agent, Brokerage Firm and Supervisory Broker shall automatically be deemed disclosed consensual dual agents. **If a particular seller is represented by Designated Agent (check as applicable):**
- This agreement shall automatically terminate only with regard to that seller's property (but shall continue as to all other real property) and Designated Agent shall continue the agency relationship with the seller where the agency relationship was terminated pursuant to his paragraph. Any fees previously paid to Brokerage Firm by Buyer pursuant to this agreement shall be returned to Buyer at closing.
- Designated Agent shall act as disclosed dual agent of both Buyer and the seller. In such event, Brokerage Firm shall be entitled to any fees owed by Buyer pursuant to this agreement.
- Designated Agent shall act as a transaction coordinator to facilitate the transaction, and not as an agent for either Buyer or the seller. In such event, Brokerage Firm shall be entitled to any fees owed by Buyer pursuant to this agreement.
10. **BUYER DISCLOSURE:** Buyer agrees to disclose to Designated Agent relevant personal and financial information to assure Designated Agent that Buyer has the ability to complete any transaction which is the subject of this agreement. Buyer hereby grants to Designated Agent the authority to disclose such information as Designated Agent deems necessary or appropriate in order to influence the decision of a seller to accept an offer from Buyer.
11. **LEASING or OPTIONING:** This agreement shall also apply to situations where Buyer wishes to lease or option property. In those situations, the terms used in this agreement shall be automatically changed as appropriate, so that the term "purchase" shall mean "lease," "rent" or "option" and the term "Seller" shall mean "Lessor," "Landlord" or "Optionor" and the term "Buyer" shall mean "Lessee," "Tenant" or "Optionee."
12. **COST OF SERVICES OR PRODUCTS OBTAINED FROM OUTSIDE SOURCES:** Brokerage Firm will not obtain or order products or services from outside sources (e.g. surveys, soil tests, title reports, inspections) without the prior consent of Buyer. Buyer agrees to pay for all costs for products or services so obtained.
13. **INDEMNIFICATION:** Buyer agrees to indemnify and hold harmless Brokerage Firm, Designated Agent and Supervisory Broker on account of any and all costs or damages arising out of this agreement, provided no one at Brokerage Firm is at fault, such obligation to include, but not be limited to, reasonable attorneys' fees and costs.
14. **NON-DISCRIMINATION:** It is agreed by Brokerage Firm and Buyer, parties to this agreement, that as required by law, discrimination because of religion, race, color, national origin, age, sex, disability, familial status or marital status by said parties with respect to the purchase of the Desired Property is PROHIBITED. Local ordinances may offer protection against additional discrimination.
15. **COUNTERPARTS:** This agreement may be signed in any number of counterparts with the same effect as if the signature of each counterpart were upon the same instrument.

- 16. **ELECTRONIC COMMUNICATIONS:** The parties agree that this agreement, any amendment or modification of this agreement and/or any written notice or communication in connection with this agreement may be delivered by electronic mail or by fax via the contact information set forth above. Any such communication shall be deemed delivered at the time it is sent or transmitted. The parties agree that the electronic signatures and initials shall be deemed to be valid and binding upon the parties as if the original signatures or initials were present in the documents in the handwriting of each party.
- 17. **CONDITION OF PROPERTY:** Buyer is not relying on Designated Agent to determine the suitability of any Desired Property for the Buyer's purposes or regarding the environmental or other condition of the Desired Property.
- 18. **LIMITATION:** Buyer and Brokerage Firm agree that any and all claims or lawsuits between the parties to this agreement must be filed no more than six (6) months after the date of termination of this agreement. The parties waive any statute of limitations to the contrary.
- 19. **MERGER:** This agreement constitutes the entire agreement between the parties, and any prior agreements, whether oral or written, have been merged and integrated into this agreement.
- 20. **CANCELLATION:** This agreement may be CANCELLED or REVOKED only by the mutual consent of the parties in writing.
- 21. **OTHER:** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- 22. **RECEIPT:** Buyer has read this agreement and acknowledges receipt of a completed copy of this agreement.

\_\_\_\_\_  
(Brokerage Firm)

\_\_\_\_\_  
(Buyer)

\_\_\_\_\_  
(Designated Agent)

\_\_\_\_\_  
(Buyer)

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

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

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**Acknowledgment of Change of Designated  
Agent/Supervisory Broker**

**THIS ACKNOWLEDGEMENT** is to be part of and incorporated into the (check one) \_\_\_\_\_ Listing Contract \_\_\_\_\_ Buyers' Agency Contract dated \_\_\_\_\_, between \_\_\_\_\_ REALTOR®/Brokerage Firm and \_\_\_\_\_, Client of REALTOR®/Brokerage Firm.

\_\_\_\_\_ REALTOR®/Brokerage Firm and Client hereby designate \_\_\_\_\_ as Client's designated agent, which agent shall represent Client (check one) \_\_\_\_\_ in addition to, or \_\_\_\_\_ in substitution for, the previously named designated agent(s).

\_\_\_\_\_ The following supervisory broker(s) in REALTOR®/Brokerage Firm shall also represent Client (check one) \_\_\_\_\_ in addition to, or \_\_\_\_\_ in substitution for, the previously named supervisory broker(s): \_\_\_\_\_.

Accepted by:

\_\_\_\_\_

Client \_\_\_\_\_

For:

Client \_\_\_\_\_

\_\_\_\_\_ REALTOR®/Broker

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

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