

RR101 – Exclusive Right-to-Sell Listing Contract – comments from membership
January – February 2016

1.		I LIKE IT. IT'S MORE PRECISE, MORE NEW INFO ADDED FOR MORE INFORMATION TO THE SELLER AND PROTECTION TO THE BROKERAGE.
2.		Well thought out changes and presentation of said changes cover all in understandable format for Sellers. Good work! :)
3.		Great job folks
4.		total page number should be 6? on screen, I saw 6 pages. currently corrected to 4 as total page...
5.		Somebody had WAY too much time on their hands! I was comfortable with the old version and now we will completely overwhelm Sellers and lose their attention before we even get through explaining this document. Granted there are some good additions, but . . .
6.		The changes will make the contract much easier to understand and clearer. Thank you for including the G.E.T. in the agreement.
7.		Please arrange the section #'s to coincide chronologically with when those items actually are completed during the escrow process. Some changes were made on the last revision but more are needed.
8.		I have always felt that there should be a section that addresses how much will be offered to cooperating brokers so that sellers are aware that the commission they agreed to is being offered as they were told. Some agents may tell sellers that the commission will be 5% split evenly, then take 3% for themselves and offer only 2% the cooperating brokers. This has a negative effect when placed in the MLS because agents may not be interested in showing listings that do not compensate them as well as others. The California Listing agreement has a provision that states the following: Broker is authorized to cooperate with and compensate brokers participating through the multiple listing service(s) ("MLS") by offering to MLS brokers out of brokers compensation either _____ percent of purchase price, or \$_____
9.		Should any language be added regarding out of state owners or out of country owners?
10.		Could we add a check box for items that an owner could authorize the brokerage firm to secure services on behalf of the owner? Examples; land survey, choice of escrow, termite company? Check box could be; seller authorizes brokerage to procure services on their behalf, yes or no and list the items...
11.		I would like to have listing add Seller gives permissions for videos/photos of other agents during showings Yes or No. I would like to have added: Seller gives _____ as reason for selling that brokerage firm is allowed to share with agents and clients.
12.		shouldnt there be a clause regarding fax signatures like in the purchase contract?
13.		Please include that if property is rented by Seller of property management firm, Seller will provide copy of listing contract, rental agreement, and arrange with tenant to cooperate with listing broker as far as showings and property condition.. thanks...
14.	Pg. 1, A-3, A-4	Thank you for all your hard work on this revision. Looks good overall. I do have a couple of comments: Page 1: Add a space for a second licensee's (co-listor) name and license number for team use A-3 Do not remove "or anyone else" — leave in and add "during this contract period, or any extension thereof." A-4 Advance, not Advanced (e.g., leave as-is)
15.	NOTE	page 1 NOTE: add at end "if any" and refer to the protection time period in the previous listing contract.
16.	A-1 (c), A-8, B-2, B-3, D-1, D-3, D-4, D-6, D-15	Thanks for your hard work on this. Here are some items you may wish to consider. For the entire contract choose either will or shall. Mixing them may lead to legal issues. The initial test for disciplined use of shall is whether you can in your mind replace it with "has [or have] a duty to." So in other words to convey a sense of importance or Duty the Seller shall The Broker shall. some examples are included below... A-1 (c) If Seller agrees, then a separate written Dual Agency Consent Addendum is required with the Purchase Contract under Hawaii law. Comment:: Dual Agency must be submitted and agreed on PRIOR to the presentation of an offer. Suggest:: If Seller agrees, a separate Dual Agency Consent Addendum shall be executed PRIOR to the receipt of any purchase contract. A-8 Comments:: 1) As part of their Fiduciary Duties Brokers are required to provide a full accounting of all funds provided by the seller. 2) This part of the listing contract should be open to all business models. Buyer's agents may collect their fee from the buyer. 3) A-8 should be rewritten to allow the Seller to be in charge of HOW their money is split and IF it is split at all. SECTION B: BROKERAGE FIRMS'S OBLIGATION B-2 Seller will: Suggest:: Seller shall: B-3 Brokerage Firm agrees to keep Seller informed of any potential interest in the Property, and to present all offers in a timely manner. Comment. This statement contains an unenforceable term. Just what is any potential interest? Suggest:: Brokerage Firm shall provide the seller a copy of any and all offers within 24 hours. SECTION D: SELLER'S OBLIGATION D-1 Seller will Suggest:: Seller shall D-3 ...and will obtain written permission Suggest:: ...and shall obtain written permission D-4 ...Seller agrees to secure Suggest:: Seller shall secure D-6 Seller agrees to consider all offers presented by Brokerage Firm and to act in good faith to sell the Property. Seller shall also agree to respond in writing to any offers presented by Brokerage Firm, indicating acceptance, rejection or preparing counter offer. Comment:: voidable term because it is

		missing a fuse. Suggest:: Seller shall consider all offers presented by Brokerage Firm and to act in good faith to sell the Property. Seller shall respond in writing to any offers presented by Brokerage Firm, indicating acceptance, rejection or preparing counter offer within 72 hours. Add D-15 because the Listing Contract is missing a statement for Seller non-performance. Suggest:: Failure of the Seller to perform Seller's obligations may at a minimum result in a lien on the property by the Brokerage Firm. Once again thank you for your volunteer time on this.
17.	A-4	p2 - A4 (or somewhere) verbiage should be added that dictates in the event of a contract coming from a previous listing agreement as a result of the protection period which broker is to handle the negotiation as well as the processing of the transaction through closing. this could also be a new paragraph to create policy for this occurrence, as currently there is no standard protocol. Also on another note adding the GET is a great idea.
18.	A-5	I think that the "Protection Period" should be explained and clarified more please. An attorney suggested to me that it was created to protect a listing agent for when a Seller finds a buyer and sells FSBO after a listing ends, to a client on the protection list. However, it is not clear what happens when there is a new listing agent. Does the original agent handle the transaction and the new listing agent bows out? It does spell out in the revised version that the original agent receives commission but it does specify which agent actually handles the deal in this case. Of course it makes sense that the original agent would handle the deal but I really think the Protection Clause should be explained more specifically in this document so that Sellers truly understand. Thank you!
19.	A-5	Please consider a review of the Protection Period Clause which remains very problematic! I have discussed this with attorneys and they concur that there is room for argument as to how we handle situations that may fall under the protection period. We need more concise language and clarity. The clause is too vague.
20.	A-8	Term A-8 I do not feel that it is appropriate for the GET tax to be mandatory on the listing agreement. This should continue as a negotiated item on the Data form
21.	A-8	It seems that it is now assumed that the Seller will pay GET on the commission. I believe it should be an option, and easy for the Seller to say "yes" or "no" too.
22.	A-8	GET Tax should be noted as 4.166% and/or noted to be paid on commission. Too many times, Sellers misunderstand and say "what?! 10%?!" - mahalo!
23.	A-8	A-8 firm should be plural more space for ge tax .0416
24.	A-8	Clause A-8 providing a general itemized seller expense list?
25.	A-8	A-8. Compensation to Brokerage Firm. By adding plus GET (General Excise Tax) this feels like licensees as a group are fixing the price to sell real estate. The decision to add or not add should be left to the Principal Broker not the industry. REMOVE THE WORDING!
26.	A-8	Add a check off "X" or "N/A" for GET to be paid by Seller.
27.	A-8	GET issue. Check with federal trade commission. It is not like based on the sales price of an item it is on the commissions.
28.	A-8 (d)	I re-reviewed the draft Right-To-Sell Listing Contract and found the additions to the Protection period. Awesome! It's now very clear that the listing Brokerage needs to provide a prospect list within 10 days of the cancellation/expiration of the listing. Mahalo for this important change!
29.	A-9	Section A-9 needs more space to write in special terms.
30.	A-9	A-9 Additional terms: please give us much more space to write terms. 10 lines would be nice.
31.	A-10	I think it is much cleaner and omitting such words as "thereof" is great. That is odd wording. I would suggest eliminating a line at A-10 so that it makes room for C-7 to stay within the C Section.
32.	B-2	Section B (B-2) advertising, too many Sellers are cancelling the listing contract before the expire date, Agents and Brokers have expenses out thousand of dollars, we need a to add a clause to have the right to collect upon proof of receipt or invoice the money we have expenses out, on behalf of the Sellers. Our intentions (agents and Brokers) is the fully market the property and go all out to put out of our owner pocket \$\$\$, thereafter the Sellers cancelled listing. We should have the right to collect our cost of expenses. Please feel free to call me about this
33.	B-2	Regarding Section B-2; we are now having the seller commit to lockboxes and signs in writing? If an owner does not want the sign, or lockbox, does this now become a clause we need to cross out and have them initial?
34.	B-2	It appears that para. B-2, currently under "Brokerage Firm Obligation" should be listed under "Seller's Obligation"
35.	B-2	B-2 make these items a check box for seller to fill out for not all sellers will agree to all items.
36.	B-4	p2 B-4 add "to the extent allowed by law in a dual agency relationship."
37.	B-6 & D-9	I think B-6/Fair Housing is excellent as it should be self-explanatory. D-9 is great as it lays responsibility on the seller to comply with Fair Housing
38.	Section C	Under Section C in the new form, I am confused and concerned about how or what this clause actually will create. Concern is that Owner signs that all of the items are clear under that section, and then completes SRPDS citing some of these issues, does this invalidate the listing since it is based on false information?
39.	D-7	Why not put Section D-7 under the disclosure section C?
40.	D-7 (b)	Paragraph D7(b) - last sentence says notice should be provided no later than noon on the last day prior to recording. For neighbor island transactions this is too late, since all signed docs and funds need to be pouched to Oahu 2 days before closing.

41.	D-10	megan's law issue. When is it stated as Seller's responsibility? The place it originated from even had major changes to the law.
42.	D-14	Regarding Section D-14; is it possible to insert the generic clause from the Purchase Contract
43.	D-14	D-14: Precede the first sentence with "Unless otherwise negotiated" .
44.	D-14	p3 D-14 add "general excise tax" after commission
45.	Page 3	Page 3: add place for Broker and Seller initials at bottom of page. 3.
46.	E-2	On E-2 Where it states: Seller agrees, consents and waives any objection should Brokerage Firm list and show similar properties. IT SHOULD END THERE. Because (as Seller's Property sounds like you want to represent those other similar properties as the sellers property. Saying similar properties is enough, the other could be confusing. Unless you state similar properties to the seller's property.
47.	E-2	E2 is ridiculous. Of course we sell similar properties. You are allowing the seller to impose a condition on us if we list their property we can't list other properties in the area. Remove this please.
48.	Page 4	Page 4: sellers' personal contact information (address and phone) are typically protected and not entered on this form. Recommend removing these blocks
49.	Page 4	p4 add space for "email address" for all sellers
50.	F-5	F-5: Reinstate "Additional Terms