

## **NEW Arizona Association of Realtors® Listing Forms – Frequently Asked Questions**

**Q1.** What will happen to existing MLSSAZ Residential Listing Agreement?

**A1.** As a valuable service the MLS will continue to develop, maintain, and offer to access to the MLSSAZ library of listing agreements and supporting documents.

**Q2.** Which Listing Agreement should I use?

**A2.** Its important to check with your Designated Broker for guidance.

**Q3.** Where can I find the AAR listing agreements?

**A3.** AAR will offer the listing agreements and addendum via Transaction Desk, ZipForms, and through the AAR MLS library.

**Q4.** Does having Listing Agreements drafted by the Arizona REALTORS® mean that I can access any MLS in Arizona?

**A4.** No. Having Listing Agreements drafted by the Arizona REALTORS® means that MLSs across the state of Arizona will have access to uniform Listing Agreements that will be maintained and updated by the state association, if the MLS chooses to adopt the forms. It does not mean agents will have access to MLSs the agents do not belong to.

**Q5.** Does having standardized Listing Agreements mean that the offer of compensation is extended to agents across the state of Arizona?

**A5.** No. Standardized Listing Agreements only means that agents will utilize the same forms, if the MLS adopts the forms. It does not mean there is an offer of compensation to an agent that belongs to a different MLS.

**Q6.** Must a legal description be inserted on lines 9-13 of the ER or can that be left blank as long as lines 7-8 are fully completed?

**A6.** Ideally, the property should include a legal description.

**Q7.** What should I do if the Legal Description is extremely lengthy and will not fit on lines 9-13 of the ER?

**A7.** If the Legal Description does not fit on lines 9-13 of the ER, you can insert “see Attachment” or “see Exhibit” on those lines and include the legal description on the Attachment or Exhibit or you could insert “see Additional Terms and Conditions for Legal Description” and thereafter draft the Legal Description in the Additional Terms and Conditions section.

**Q8.** Why do the Listing Agreements address sale and rental?

**A8.** The Workgroup felt that one form containing both options is more useful and efficient as there are times when an owner/seller may choose to list the home for sale and rent. Additionally, some MLSs did not have a rental option for their listings.

**Q9.** How can an owner/seller list a home for sale and rent?

**A9.** An owner/seller may choose to list the property for sale and rent in the MLS. The owner/seller may then decide to accept whichever offer (sale or rent) is more suitable for their needs.

**Q10.** Does sale and rent mean that the owner/seller is willing to allow pre- or post-possession of the property?

**A10.** No. The Listing Agreements are not intended to address pre- or post-possession of the property. Rather, the Listing Agreements simply allow for the owner/seller to choose if they would like to (1) sell; (2) rent; or (3) sell and rent the property.

**Q11.** Why are there three options on line 16 of the ER?

**A11.** The Workgroup believed that it was clearer to provide three separate options. In other words, if there were only two options, sale and/or rent, and both boxes were checked, there could be a misunderstanding as to whether the property is for “sale and rent” or “sale or rent.” To avoid this sort of confusion, three separate options exist: (1) sell; (2) rent; or (3) sell and rent.

**Q12.** Should I check all three options on line 16 of the ER if the owner/seller wants to sell and rent?

**A12.** No. If the owner/seller chooses to rent and sell the property, the owner/seller should only check the “Sell and Rent” box.

**Q13.** Why does line 19 of the ER contain blank lines for Sale and Rent?

**A13.** The Workgroup preferred to keep the verbiage consistent with line 16 of the ER. As such, in the event the property is only being listed for either sale or rent, the corresponding blank should be filled in and the blank line not being used should say "\$0 or N/A." If, however, the property is listed for sale and rent, both blank lines should contain numerical values.

**Q14.** Lines 21-23 are titled Term. Must line 21 include an Expiration Date or can the Agreement be open-ended?

**A14.** All written listing agreements must, among other things, have a definite duration or expiration date, showing dates of inception and expiration. See A.R.S. § 32-2151.02(A). In other words, the listing agreement should have a definite expiration date.

**Q15.** Section 4 titled Compensation does not contain a space for me to draft alternate terms for compensation such as a variable commission. Where can I insert that verbiage?

**A15.** Any time there are additional terms that need to be included, the parties can insert that verbiage into section 10 titled Additional Terms and Conditions.

**Q16.** How should lines 36 through 44 of the ER be completed if Broker has agreed to accept a reduced commission in the event they end up representing both buyer and seller?

**A16.** In the event an agent offers a variable commission, the agent should make those terms clear in the Additional Terms and Conditions section.

**Q17.** Must line 40 of the ER be completed or can it remain blank?

**A17.** If the broker does not charge additional commission above and beyond the amount inserted on line 39 of the ER, line 40 of the ER should either be left blank, state "\$0," or "N/A."

**Q18.** Line 58 references the REALTORS® Dispute Resolution System. Where can I find information on that process?

**A18.** Information regarding the REALTORS® Dispute Resolution System can be found on the Arizona REALTORS® website at [aaronline.com](http://aaronline.com).

**Q19.** Lines 81-89 of the ER identify fixtures and personal property that shall convey if the Premises is sold or leased. Can the Owner choose not to convey a specific fixture set forth on lines 81-89, and if so, how should that be documented?

**A19.** Yes, the Owner can elect not to convey a specific fixture. In that case, the fixture should be identified on lines 108-109.

**Q20.** Lines 110-113 of the ER state that unless otherwise agreed, Broker shall act only as the Owner's agent. If the Broker and Owner agree that the Broker can also represent a buyer, thereby resulting in a limited agency, what additional forms should be completed?

**A20.** A Broker can legally represent both the Owner and buyer with the knowledge and prior written consent of both parties. See A.R.S. §32-2153(a)(2) and A.A.C. R4-28-1101(F). The Broker should therefore use the Consent to Limited Representation Agreement form to satisfy the statutory and commissioner's rules requirements.

**Q21.** If the same real estate company represents both the Owner and buyer, but each is represented by a different individual agent, does that still constitute a limited agency relationship?

**A21.** Yes. Even though two different licensees represent individual parties, the same brokerage represents the Owner and buyer meaning that a limited agency relationship exists.

**Q22.** Lines 143-145 of the ER allows the Owner to decide whether to permit Broker to place images of the Premises on the internet and other electronic and on-line media platforms. In the event that Broker and Owner agree that Owner shall bear the costs of photographing and or videotaping the Premises, how do they document that agreement?

**A22.** The Broker and Owner should address the Owner bearing the costs of photographing and or videotaping the Premises on line 35 of the ER or in the Additional Terms and Conditions section of the ER.

**Q23.** Lines 153-154 of the ER state "If Premises is rented, Owner must Comply with providing proper notice to tenant(s) pursuant to Arizona law. Where can I find that law and what does it say?"

**A23.** [Arizona Residential Landlord and Tenant Act](#) provides that the landlord must provide tenant with at least two days' notice of intent to enter. See A.R.S. §33-1343. If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case, the tenant may recover actual damages not less than an amount equal to one month's rent. A.R.S. §33-1376(B).

**Q24.** Under section 8 titled Owner Obligation, why are some forms listed, but not all forms? Does this mean other disclosures like the Affidavit of Disclosure and Public Report are no longer required disclosures?

**A24.** The Workgroup opted to include those disclosures under which the timeline (pursuant to the terms of the Residential Resale Real Estate Purchase Contract) for providing the disclosures are time sensitive. It does not mean other disclosures like the Affidavit of Disclosure or Public Report are not required.

**Q25.** Lines 202 through 205 instruct the Owner to deliver to buyer a written five year insurance claims history regarding the Premises. How does the Owner obtain that information?

**A25.** The Owner should contact the Owner's insurance company, an insurance support organization, or a consumer reporting agency to obtain a five year insurance claims history for the Premises.

**Q26.** Lines 215 – 221 of the ER explain that Broker may recommend to Owner various third-parties, including an escrow company and title company. Can Broker require Owner to use a specific escrow company or title company based on Broker's relationship with that company?

**A26.** No. A Broker cannot require an Owner to use a specific escrow company or title company based on Broker's relationship with that company.

**Q27.** After Broker and Owner have executed a Listing Agreement, can either party unilaterally cancel the Agreement?

**A27.** No. A listing agreement is a binding bilateral contract between the listing brokerage and Owner. Any cancellation requires the consent of both the Owner and the listing broker, unless the listing agent has materially breached the agreement.

**Q28.** On the Listing Contract Addendum, whose name goes on line 3? The brokerage name, actual broker of record, or listing agent representing the broker?

**A28.** The Listing Agreements do not require the signature of the broker. Rather, the listing agent signs the Listing Agreement on the broker's behalf. As such, the listing agent's name would be inserted on line 3 of the Listing Contract Addendum.