

## FORM 1106 – LISTING AGREEMENT – EXCLUSIVE RIGHT TO SELL

### 1. PARA. 3(D) – FIXTURES, APPLIANCES, PERSONAL PROPERTY and EXCLUSIONS

#### A. PARA. 3(D)(i)- FIXTURES:

- i. Fixture language from Form 2104 (Residential Purchase Agreement) added to this section.
- ii. Under attached window covering, language added: *“NOT including curtains, unless otherwise indicated below”*  
Under Built-In Murphey Bed, language added *“Including mattress”*
- iii. Under TV Wall Mounts, language added: *“NOT including TVs, unless otherwise indicated below”*.

#### B. PARA. 3(D)(II) - PERSONAL PROPERTY: Personal Property language from Form 2104 (Residential Purchase Agreement) added to this section.

### 2. NEW BOX ON MLS ENTRY RULE ABOVE “SELLER OBLIGATIONS”:

#### **MLS ENTRY RULE**

***Effective no later than May, 1 2020, Multiple Listing Services in which Broker is a participant will require Broker to enter residential listings into the MLS within one (1) business day of conducting any public marketing of the Property. Public marketing includes, but is not limited to, flyers displayed in windows, yard signs, digital marketing on public facing websites, brokerage website displays (including IDX and VOW), digital communications marketing (email blasts), multi-brokerage listing sharing networks, and applications available to the general public. Effective dates of this new MLS Rule will vary between MLSs and Broker should contact the MLS(s) in which he/she participates to determine the exact effective date of this requirement. If listing is withheld from the MLS, Broker may ONLY market the Property within the Broker’s brokerage.***

### 3. PARA. 6 – SELLER OBLIGATIONS:

- A. **NEW PARA. 6(D) ADDED:** Language added creating an affirmative duty for seller to respond offers. While it is unlikely that any broker would pursue a breach of contract claim against a seller for refusing to respond (in some manner) to an offer; both a buyer who submits an offer and his/her broker always expects a response and this language was added in hopes it would emphasize to the Seller the importance of responding. **Seller Obligations: *“to respond to all offers presented. If Seller is rejecting an offer, Seller agrees to complete the “rejects offer” box on the offer, if such provision exists on the offer or to otherwise provide some written rejection of the offer.”***
- B. **NEW PARA. 6(I) ADDED:** Creates an affirmative obligation on Seller to secure all pets, valuables and medication accordingly when the Property is made available for showings. Also states that Broker does not guaranty the security of any of the foregoing against negligent or intentionally unlawful acts of third-parties. Language that releases Broker from liability (unless Broker is negligent) is already in the Hold Harmless and Indemnification Paragraph of the Listing Agreement.

### 4. PARA. 8(D)- SELLER AUTHORIZATIONS:

- A. **NEW PARA. 8(D)(ii) - OPEN HOUSES BY OTHER BROKERS:** Broker to authorize other brokers ☐ within Broker’s Brokerage ☐ outside Broker’s Brokerage to hold an Open House of Property. (check all that apply).

- B. NEW PARA. 8(E) – REPORTING FALSE INFORMATION:** Language added: *“Information found on some public-facing websites may be inaccurate; however, Broker has limited, and in some cases no, ability to remove false information from non-MLS participants’ websites.”*
- 5. PARA. 9 – DELAYED ENTRY INTO THE MLS:** Paragraph moved from 4 to 9 and the following language added: *“If listing is withheld from the MLS, Broker may ONLY market the Property within the Broker’s Brokerage.”*
- 6. PARA. 11– COMPENSATION:**
- A. PARA. 11(A) – COMPENSATION FOR SALE:** The definition of “sale” from first paragraph of Listing Agreement was moved here.
- B. PARA. 11(B) – OTHER EVENTS:**
- I.** The following language was added: *“Notwithstanding any provision to the contrary, the parties agree that if any of the following events shall occur, that actual damages suffered by the Broker will be difficult to determine with certainty; therefore the parties agree that Owner shall pay Broker compensation as follows: \_\_\_\_\_ PLUS New Mexico GRT.”*
- II. PARA. 11(B)(iv): Language added:** *“If during the term of this Agreement, Seller otherwise breaches this agreement in a manner including, but not limited to refusing to cooperate with Broker or unilaterally terminating this Listing Agreement.”*
- 7. NEW PARA. 16 – IMPORTANT NOTICE TO SELLER:** *“BROKER IS NOT RESPONSIBLE FOR VERIFYING AUTHENTICITY/ VERACITY OF PRE-QUALIFICATION OR PROOF-OF-FUNDS LETTERS OR FOR DETERMINING BUYER’S CREDITWORTHINESS UNDER ANY SELLER FINANCING INSTRUMENT. \_\_\_\_\_ Seller(s) Initials”*
- 8. NEW PARA. 18 – INSPECTION REPORTS:** *“The NMAR Purchase Agreement provides that if buyer opts to terminate the Purchase Agreement after conducting inspections of the Property, the buyer is NOT required to provide a copy of the inspection report to Seller unless otherwise directed by the Seller in writing. Further, if buyer objects to issues identified during the inspection, the Seller is only required to provide a copy of the **section** of the report on which the objection is based unless otherwise directed by Seller in writing. The Purchase Agreement is structured like this for the following reasons: 1) if Seller receives information regarding material defects in the Property and the contract terminates, the Seller and Broker will be required to provide this information to subsequent buyers; and 2) many inspection reports contain copyright language prohibiting the customer (who in most case is the buyer) from sharing, reproducing or distributing the report, which means that material defects identified in the report would have to be transferred into Seller’s Property Disclosure Statement or otherwise disclosed in writing.”*
- 9. ABOVE SIGNATURE LINES:** ADDED “WIRE FRAUD WARNING” BOX