

Real Estate Photography Terms of Service

DEFINITIONS:

This Agreement is between Jodi Adamo ("Photographer") and [You] ("Client") which includes Client's principals, employees, affiliates and representatives. Client agrees that it has the legal authority to enter into this Agreement on behalf of its employer, company or organization. Photographer's relationship with Client is that of an independent contractor.

"Image(s)" means the photographic material, whether still or moving, created by Photographer pursuant to this Agreement and includes, but is not limited to, transparencies, negatives, prints, or digital files, that were captured, recorded, stored, or delivered, in any type of analogue, photographic, optical, electronic, magnetic, digital, or any other, media.

USAGE RIGHTS AND OWNERSHIP:

Client acknowledges that Photographer is the Author of the Image(s) and also the first and sole owner of all copyrights of the Image(s). The Image(s) and all copyrights remain the exclusive property of Photographer without limitation. All usage rights to the Image(s) specifically granted by Photographer to Client appear in the following paragraphs.

PAYMENT:

Time is of the essence for receipt of full payment under this Agreement.

NO RIGHTS ARE GRANTED UNTIL PHOTOGRAPHER HAS RECEIVED FULL PAYMENT, INCLUDING, IF APPLICABLE, ANY LATE-PAYMENT CHARGES.

UNLESS OTHERWISE AGREED, THE USE OF ANY IMAGE(S) PRIOR TO FULL PAYMENT WILL BE CONSIDERED AN UNAUTHORIZED USE. CLIENT AGREES THAT THE REASONABLE AND STIPULATED AMOUNT THAT WILL BE PAID TO PHOTOGRAPHER FOR SUCH AN UNAUTHORIZED USE WILL BE DOUBLE THE INVOICE TOTAL.

Where usage rights before full payment are granted, Photographer reserves the right to rescind any such usage rights if Client fails to make timely payment.

All invoices are due upon receipt. Adjustments of amounts or terms must be requested within ten days of invoice receipt.

Photographer does not provide any receipts to Client. Photographer's invoice will serve as Client's receipt for work performed and services rendered. Bank transfer fees are the responsibility of the Client.

Provided that Photographer has executed the photography assignment in a professional and competent manner, Client agrees to pay Photographer all fees and expenses in connection with said assignment, whether or not Client uses any Image(s).

IMAGE LICENSING:

Client understands and agrees that it is not buying the Image(s) but is paying only for a license to use the Image(s) as specified on this Agreement. Note that buying the copyright to the Image(s) will always be much more expensive than any licensing fee.

The term of license begins from the date Photographer receives full payment of invoice and upon delivery of images.

Unless otherwise agreed, any rights granted are always non-exclusive, non-sub-licensable and non-transferable. Any Image(s) may not be used in a logo, corporate identity, trademark or other service mark.

Real estate photos may be used to promote the property for the duration it is on the market. This includes, but not limited to the use of images on websites, print materials, and internet.

The use of any Image(s) by Client will not constitute a work of joint authorship.

Copyright metadata contained within any digital file may not be altered, or removed, without the express consent of Photographer.

Unless otherwise agreed, Photographer retains the right to use the Image(s) for his self-promotion.

ARCHIVING DIGITAL FILES:

While Photographer may choose to archive the Image(s), it is Client's responsibility to properly store and archive the Image(s) for the duration of the term of license. Photographer cannot guarantee the availability of any Image(s) beyond the date of first delivery to Client.

Client is aware that optical, magnetic, electronic, and any other, media for storing digital data are inherently unstable. Client hereby releases Photographer and his contractors, and representatives, from any liability for any claims, damages, or costs, arising from any media supplied by Photographer becoming unusable.

All digital files created by, or on behalf of, Client that contain any Image(s) will be deleted or destroyed within ten days after the expiration date of license. If no expiration date is determined, then it is at the photographer's discretion to delete or destroy images at any time.

Any requests for the photographer to reproduce images that were already delivered will incur a \$100 processing fee.

GENERAL LIABILITY:

Photographer will take all reasonable care in the production of the Image(s) and the performance of this agreement. But Photographer will not be liable for any loss, damages, or costs, suffered by Client, or by any third party, arising from Client's use of any Image(s).

Client will indemnify, defend, and hold harmless, Photographer, his contractors, and his representatives, against any and all claims, liabilities, damages, costs, and expenses, including reasonable legal fees and expenses, that may arise from Client's use of any Image(s).

Photographer is not responsible for obtaining model, property, trademark, copyright, or any other, releases in connection with the Image(s) unless specifically stated in this Agreement. It is Client's responsibility to obtain all necessary permissions for any Image use that requires a release or other consents.

Should Photographer agree to deliver any releases, it is Client's responsibility to determine whether such releases are suitable for Client's purposes. Photographer gives no warranty or guarantee as to the legal validity of any release.

In any event, Photographer's liability for all claims will not exceed the total amount paid under this Agreement.

DIGITAL FILE QUALITY:

Photographer is committed to providing high quality services. Unless otherwise specified, Photographer may deliver, and Client agrees to accept, the Image(s) encoded in an industry-standard data format that Photographer may select, at a resolution that Photographer determines will be suitable to the reproduction technology and use(s) for which the Image(s) is licensed.

Photographer uses cameras and monitors that are color calibrated to industry standards. But due to variances in other monitors, software and computer platforms, the Image(s) may display differently on other monitors. Therefore, neutrals will be set for mathematical neutrality and color will be adjusted for pleasing tonalities.

It is Client's responsibility to verify that the digital data, including color profile, if provided, are suitable for reproduction of the expected quality and color accuracy, and that all necessary steps are taken to ensure correct reproduction. If the data are not deemed suitable, Photographer's sole obligation will be to replace or repair the data, but in no event will Photographer be liable for poor reproduction quality, delays, losses, expenses, or consequential damages, resulting directly, or indirectly, from defects or errors in digital files or their use.

All editing is done at the photographer's discretion. The photographer reserves the right to refuse any additional edits requested. If the client(s) wish to request additional editing of images this is done at an additional fee.

ACCEPTANCE OF TERMS:

Client may not assign or transfer this Agreement or any of the rights granted hereunder. This Agreement is binding upon, and inures to the benefit of, Client and Photographer, as well as their respective principals, employees, representatives, and successors. Client and its principals, and employees, are jointly and severally liable for the performance of all payments and other obligations hereunder.

No amendment or waiver of any items is binding unless set forth in writing and signed by the parties. E-mail and electronic signatures will be considered legal and binding. However, the invoice may reflect, and Client is bound by, Client's oral authorizations for any additional Image(s), fees, and expenses, that could not be confirmed in writing due to the immediate proximity of completing the photography assignment.

This Agreement will be deemed to be a contract made under the laws of the United States and the State of California, and for all purposes will be interpreted in its entirety in accordance with these laws. Client specifically and irrevocably confers personal jurisdiction over it by the courts of the state of California. Client will pay all arbitration and court costs, reasonable legal fees, expenses, and legal interest, on any award or judgment in favor of Photographer.

If any provision of this Agreement shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from this Agreement and shall not affect the validity and enforceability of any remaining provisions.

In addition to oral and written agreements, placing a retainer fee for a future session and/or use of any Image(s) by Client will constitute acceptance of all the above terms and conditions.

This Agreement constitutes the entire and only agreement between Photographer and Client with respect to its subject matter and supersedes all previous agreements, understandings, and communications, whether oral or written, between the two parties with respect to the subject matter hereof.