

2006 REVISIONS TO THE RESIDENTIAL SALE AGREEMENT AND ONLINE FORMS

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The following summary addresses the changes made to the OREF Residential Real Estate Sale Agreement form that will become available in January 2006. Some changes were stylistic and grammatical, and will not be discussed here as they do not materially affect Realtor® practice. The primary focus below will be on the substantive changes, the reason for the changes, and their impact on the use of the form. If you have any questions, please direct them to your principal broker. Note that OREF has also created several new online forms for use as separate addenda, notices, and special agreements related to the standard residential real estate transaction. *This summary should not be relied upon in lieu of a thorough review of the documents and provisions by each individual broker and principal broker.*

SECTION 13. (INSPECTIONS) The words “...complete all inspections and negotiations...” has been added to the Professional Inspections portion of this section. The full sentence now reads: “Buyer shall have ___ business days (ten [10] if not filled in), after the date Seller and Buyer have signed this Agreement, (hereinafter “the Inspection Period”) in which to **complete all inspections and negotiations** with Seller regarding any matters disclosed in any inspection report.” (Bold emphasis identifies new language.) The purpose of this change was to clarify that the Inspection Period is intended to cover *not only* the Buyer’s completion of all inspections, *but also*, any negotiations between Seller and Buyer regarding what repairs will be made, who will perform them, and the allocation of cost for doing so.

***Risk Management Tip** – Selling agents (i.e. those representing Buyers) should be vigilant in monitoring this time period. If your Buyer decides they want their Seller to perform and pay for certain repairs disclosed in an inspection report, these negotiations should be finalized and a fully executed written addendum confirming such, should be completed before the end of the Inspection Period. If it appears in advance that you may have some difficulty in meeting the deadline, you should contact the Seller’s agent for a written extension of time.*

Also, in Section 13, at the box entitled “SEE ATTACHED ADDENDUM REGARDING ALTERNATIVE INSPECTION PROCEDURES, the following advisory has been added: (USE OREF PROFESSIONAL INSPECTION ADDENDUM FORM #058 OR OTHER INSPECTION ADDENDUM.) This new language was to act as a “prompt” for Realtors® reminding them of the availability of the separate OREF inspection form, where local practice has been to use that form *instead of* following the inspection protocol described at the box entitled “Professional Inspections.”

***Risk Management Tip** – Sometimes agents check both inspection boxes even though Section 13 instructs them to “Check Only One.” The problem with checking both boxes is that the time frames found in the Professional Inspections provision are different from those contained in OREF form #058. Thus, use of both inspection provisions at the same time could cause confusion between Seller and Buyer as to how*

long they have to conduct inspections and negotiate for repairs.

SECTION 22. (ESCROW DEPOSIT) This section has been changed by adding the clause “... or a final ruling from a court or arbitrator...” The purpose of the change is to clarify that escrow may release disputed earnest money if a court or arbitrator says so, and that ruling is final. The full sentence now reads: “If you determine that the transaction cannot be closed for any reason (whether or not there is then a dispute between Seller and Buyer), subject only to Section 37 below, you are to hold all earnest money deposits until you receive written instructions from Seller and Buyer, **or a final ruling from a court or arbitrator**, as to disposition of such deposits.” (Bold emphasis identifies new language and does not appear in form.) This change does not affect Realtor® practice, since it is directed to the escrow company selected by the parties. However, agents should be aware of this provision in order to explain to their clients the conditions upon which deposits may be released from escrow.

SECTION 24. (APPROVED USES) ORS 93.040(2) and (3) require a statutory warning encouraging Buyers to verify approved uses of land and the existence of fire protection for structures or special assessments. This warning must appear in all owner’s sale agreements and earnest money receipts. It has been in the law for many years and has always been a part of the OREF sale agreement forms. This year, after Measure 37 was passed at the end of 2004, the Oregon Senate [Environment and Land Use Committee](#) introduced Senate Bill 353 [at the request of the Oregon Association of Realtors®](#). [The bill addresses Measure 37. The new statutory warning in the Sale Agreement will read as follows:](#) THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, **THAT**, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND **THAT** LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. **BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON’S RIGHTS, IF ANY, UNDER CHAPTER 1, OREGON LAWS 2005 (BALLOT MEASURE 37 (2004)).** BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES, **THE** EXISTENCE OF FIRE PROTECTION FOR STRUCTURES **AND THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER CHAPTER 1, OREGON LAWS 2005 (BALLOT MEASURE 37 (2004)).** IF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IS SUBJECT TO SPECIAL ASSESSMENT UNDER ORS 358.505, ORS 358.515 REQUIRES NOTIFICATION TO THE STATE HISTORIC PRESERVATION OFFICER OF SALE OR TRANSFER OF THIS PROPERTY. (The shaded portion identifies new language.)

[However, Measure 37 has now been ruled unconstitutional by the Marion County Circuit Court, a decision that will be appealed, therefore leaving its legal effect in question. Since Senate Bill 353 is now law, OREF is required to change all of its sale agreement forms to incorporate the new language. According to Harlan Levy, Senior Staff Attorney for OAR, their new language](#)

“... is designed to be an “issue spotter.” However, we drafted this new language carefully to also indicate that, in most transactions, Measure 37 will not be an issue. That being said, I don’t believe that the court decision changes anything with respect to the requirements of SB 353.”

Risk Management Tip – Realtors® are encouraged to become generally familiar with the status of Measure 37 – primarily because it is a current issue in Oregon. However, under no circumstances should Realtors® advise their clients about its legal effect or the probability of it ever becoming law. If a client has Measure 37 questions, or Measure 37 issues arise during the course of a transaction, Realtors® should immediately: (a) Clarify that they are not experts on this issue and it is not something they can render an opinion on; and, (b) Recommend that the client contact a Measure 37 expert.

SECTION 28. (LEVY OF ADDITIONAL PROPERTY TAXES) At the end of the existing provision the following sentence was added: “The preceding shall not be construed to limit Seller’s or Buyer’s available remedies or damages arising from a breach of this Section 28.” This new provision does not change the legal effect of Section 28. Rather, it is intended only to clarify that if the either party is in breach of it terms, the injured party’s rights and remedies are not intended to be limited by the language of Section 28.

SECTION 37. (EARNEST MONEY INSTRUCTIONS) In the 2003 Legislative Session, ORS 696.241 and ORS 696.578 were amended to provide that with the consent of all parties who have an interest in the trust funds, interest on earnest money deposits could be transferred to a qualified public benefit corporation for distribution to organizations and individuals for first time home-buying assistance and development of affordable housing. In September 2005, OAR requested that OREF include in its residential Sale Agreement form, a provision whereby the Seller and Buyer consented to such deposits. The new language added to Section 37, provides that if the escrow company or Buyer agent’s real estate company have arranged for earned interest on their deposits to be transferred to such a public benefit corporation, then all parties agree that the deposit shall be transferred in accordance with this provision.

Note: This new provision does not require escrow companies or real estate companies to set up interest bearing trust accounts. Rather, it is intended only to apply if such accounts already exist or the company is willing to do so as a part of the pending transaction. Secondly, this new provision does not, by its terms, apply to cases in which the listing brokerage for, say a builder, holds the earnest money deposit. The reason listing company CTA’s are not included is because the existing language of Section 37 does not currently provide that the Buyer’s earnest money deposit may be placed with a listing agent. Accordingly, if real estate brokerages with an interest-bearing CTA wants authority to transfer interest on earnest money funds to a qualified public benefit corporation for distribution to organizations authorized by ORS 696.241 and ORS 696.578, they should do so by a separate written addendum signed by the Seller and Buyer.

ONLINE FORMS

OREF has created several new forms which will be available online. Realtors® are encouraged

to familiarize themselves with these forms before using. The following forms are:

1. **Back-Up Offer Addendum** - For use in multiple offer situations.
2. **Seller's Fee Agreement** - For use in FSBO or limited service situations where the Buyer's agent wishes to submit an offer of purchase on behalf of their client and obtain compensation from the Seller.
3. **Repair Addendum and Notice & Acceptance of Completion of Repairs** - For use where the Buyer requests Seller to perform certain repairs identified during the applicable inspection contingency period.
4. **Condominium/Townhouse Addendum** - For use when the Buyer is acquiring an existing (as opposed to "new") condominium or townhome which has an operating Homeowners Association, and the Buyer desires to review more documents than those provided by Seller or identified in the Seller's Property Disclosure.
5. **New Construction Professional Inspection Addendum** - For use in those transactions where the agreement to sell has occurred prior to completion of the home and the Buyer wants to have certain "walk-through" rights before closing.

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