

2012 REVISIONS TO THE OREF FORMS

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The following summary addresses the major changes made to the OREF forms that will become available for 2012. Some changes were stylistic and grammatical, and will not be discussed here as they do not materially affect Realtor® practice. The primary focus of this summary is on the substantive changes that bear on Realtor® practice, the reason for the changes, and their risk management impact. **This summary should not be relied upon in lieu of a thorough review of the specific forms and their revised provisions by each individual broker and principal broker. [Changes have been highlighted in yellow.]**

Residential Real Estate Sale Agreement (OREF-001)

SECTIONS 2.2 AND 3.3 LENDER LOAN PROGRAMS

2.2 BALANCE OF PURCHASE PRICE. (Select A or B)

A. **This is an all cash transaction.** Buyer to provide verification (“Verification”) of readily available funds at time of submission of this Agreement to Seller or Listing Licensee. Seller may notify Buyer or Buyer’s Licensee, in writing, of Seller’s unconditional disapproval of the Verification within ___ business days (five [5] if not filled in) (“Disapproval Period”) following its receipt by Seller or Listing Licensee, in which case, all earnest money deposits shall be promptly refunded and this transaction shall be terminated. **If Seller fails to provide Buyer or Selling Licensee with written unconditional disapproval of the Verification by Midnight of the Disapproval Period, Seller shall be deemed to have approved the Verification.**

B. **Balance of Purchase Price to be financed as follows** (Select only one): Conventional; FHA; Federal VA;

Other (Describe): _____

(hereinafter “Loan Program”). Buyer agrees to seek financing through a lending institution (“Lender”) participating in the Loan Program identified above.

Pre-Approval Letter. Buyer has attached a copy of a Pre-Approval Letter from Buyer’s Lender or mortgage broker; Buyer does not have a Pre-Approval Letter at the time of making this offer; Buyer agrees to secure a Pre-Approval Letter as follows:

3.3 BUYER REPRESENTATION REGARDING FINANCING: As of the date of signing this Agreement, Buyer makes the following representations to Seller:

(1) Buyer shall apply for a loan not later than ___ business days (three [3] if not filled in) following the date Buyer and Seller have signed this Agreement, and will thereafter complete all reasonably necessary papers in a timely manner and exercise best efforts (including payment of all application, appraisal and processing fees, where applicable) to obtain the loan;

(2) Buyer shall make a good faith effort to secure the ordering of the Lender’s appraisal no later than expiration of the Inspection Contingency Period in Section 15 of this Agreement, or if the Professional Inspection Addendum (OREF-058) is used, expiration of the Negotiation Period.

(3) Buyer currently has liquid and available funds for the earnest money deposit and down payment, sufficient to Close the transaction described herein, and is not relying upon any contingent source of funds (e.g., from loans, gifts, sale or Closing of other property, 401K disbursements, etc.), except as follows (describe): _____

(4) Buyer authorizes Buyer’s Lender or mortgage broker to provide non-confidential information to Listing and Selling Licensees regarding Buyer’s loan application status.

(5) Buyer shall promptly notify Seller or Seller's Licensee if, after signing this Agreement, Buyer substitutes another lender for any reason. Buyer shall not be permitted to select a Loan Program different than the one selected in Section 2.2 (B) above, without Seller's advance written consent.

(6) Buyer agrees to keep Seller promptly informed of all other material non-confidential developments regarding Buyer's financing and the timing of Closing.

COMMENT: THESE HIGHLIGHTED CHANGES ADDRESS AN ISSUE THAT AROSE ALMOST IMMEDIATELY AFTER WE ROLLED OUT THE SALE AGREEMENT FOR 2011: DESPITE THE FACT THAT IT HAS ALWAYS BEEN CUSTOMARY PRACTICE IN THE REALTOR® INDUSTRY THAT BUYERS MAY NOT MOVE FROM A CONVENTIONAL LOAN TO AN FHA OR VA LOAN WITHOUT SELLER CONSENT, SOME BUYERS AND THEIR REALTORS® WERE TAKING THE POSITION THAT THE TEXT OF THE 2011 FORM LANGUAGE PERMITTED THEM TO DO SO. ACCORDINGLY, OREF ADDED NEW TEXT WHERE HIGHLIGHTED IN YELLOW, TO CLARIFY THAT CONSISTENT WITH LONGSTANDING PRACTICE, THIS CANNOT BE DONE WITHOUT THE SELLER'S CONSENT. TECHNICALLY, THE PROHIBITION APPLIES BOTH WAYS, FROM CONVENTIONAL TO NON-CONVENTIONAL, AND VICE VERSA.

Section 3.2 Failure of Financing Contingencies

3.2 FAILURE OF FINANCING CONTINGENCIES. If Buyer receives actual notification that any Financing Contingencies identified above have failed or otherwise cannot occur, Buyer shall promptly notify Seller, and the parties shall have _____ business days (two [2] if not filled in) following the day of Seller's receipt of such notification to either (a) Terminate this transaction by signing a Termination Agreement (OREF-057) or such other similar form as may be provided by Escrow; or (b) Reach a written mutual agreement upon such price and terms that will permit this transaction to continue. Neither Seller nor Buyer is required under the preceding provision (b) to reach such agreement. If (a) or (b) fail to occur within the time period identified herein, this transaction shall be automatically terminated and all earnest money shall be promptly refunded to Buyer. Buyer understands that upon termination of this transaction, Seller shall have the right to immediately place the Property back on the market for sale upon any price and terms as Seller determines, in Seller's sole discretion.

COMMENT: THIS CHANGE CLARIFIES THE PROTOCOL THAT SHOULD BE FOLLOWED WHEN A BUYER LEARNS FROM THEIR LENDER OR MORTGAGE BROKER THAT THERE IS A PROBLEM WITH THEIR FINANCING. IN 2010, THE OREF FORMS COMMITTEE DRAFTED LANGUAGE DESIGNED TO HELP KEEP THE TRANSACTION TOGETHER FOLLOWING A FAILURE OF THE FINANCING CONTINGENCY, BY PROVIDING FOR AN AGREED-UPON PERIOD OF TIME FOR SELLER AND BUYER TO NEGOTIATE ADDITIONAL TERMS TO THE TRANSACTION. HOWEVER, IN 2011, WE RECEIVED SUGGESTIONS FROM REALTORS® THAT THE PROTOCOL WAS NOT AS "TIGHT" AS IT COULD BE. WE AGREE. THIS CURRENT CHANGE CLARIFIES THE PROTOCOL THAT SHOULD BE FOLLOWED: (1) UPON LEARNING OF A FINANCING PROBLEM, BUYER IS TO PROMPTLY NOTIFY SELLER; (2) THE PARTIES THEN HAVE AN AGREED-UPON AMOUNT OF TIME FOLLOWING SELLER'S RECEIPT OF BUYER'S NOTIFICATION [DEFAULT PERIOD IS TWO BUSINESS DAYS] TO EITHER (A) TERMINATE THE TRANSACTION; OR (B) REACH AN AGREEMENT THAT PERMITS IT TO CONTINUE. IF NEITHER (A) NOR (B) OCCUR, THE TRANSACTION IS AUTOMATICALLY TERMINATED.

Section 3.4 Insurance

3.4 INSURANCE. If the Property is located in a designated flood zone, Buyer acknowledges that flood insurance may be required as a condition of the new loan. Buyer is encouraged to promptly verify the availability and cost of property/casualty/flood insurance that will be secured for the Property.

COMMENT: THIS IS AN IMPORTANT ADDITION TO THE SALE AGREEMENT AND IS INTENDED TO CONFORM TO THE SENTENCE PRECEDING IT, I.E. IF THE PROPERTY IS LOCATED IN A DESIGNATED FLOOD ZONE, BUYERS SHOULD VERIFY THE COST AND AVAILABILITY OF FLOOD INSURANCE.

Section 11. Woodstove/Fireplace Insert

11. WOODSTOVE/FIREPLACE INSERT: Does the Property contain a woodstove or fireplace insert? Yes No

Is the woodstove or fireplace insert certified? Yes No Unknown If "No" or "Unknown," Seller to provide Buyer with OREF-046 Woodstove/Fireplace Insert Addendum.

COMMENT: THIS CHANGE WAS MADE BECAUSE OF THE CHANGE IN OREGON LAW REQUIRING REMOVAL OF THE UNCERTIFIED WOODSTOVES OR INSERTS. [NOTE: THE WOODSTOVE/FIREPLACE INSERT ADDENDUM, OREF-046-01, WAS CHANGED

SLIGHTLY AT SECTION 5. (RESPONSIBILITY), TO BETTER CLARIFY WHEN THE BUYER ACCEPTS RESPONSIBILITY FOR REMOVAL OF THE INSERT, RATHER THAN THE SELLER.]

SECTION 23. CASUALTY INSURANCE

23. PROPERTY TO REMAIN INSURED: Seller shall keep the Property fully insured **through Closing**.

COMMENT: THIS CLARIFICATION SHOULD BE SELF-EVIDENT. SINCE CLOSING IS WHEN THE RISK OF LOSS (E.G. THROUGH FIRE OR OTHER CASUALTY) SHIFTS TO THE BUYER, IT IS IMPORTANT THAT THE PROPERTY REMAIN INSURED THROUGH THE DATE OF CLOSING. PRESUMABLY, THIS TECHNICAL CLARIFICATION DOES NOT CHANGE REALTOR® PRACTICE, WHICH IS FOR LISTING AGENTS TO MAKE SURE THEIR SELLERS DO NOT PREMATURELY CANCEL THE INSURANCE BEFORE THE ACTUAL DATE OF CLOSING. CONVERSELY, HOWEVER, BUYERS SHOULD BE ENCOURAGED TO MAKE SURE THEIR CASUALTY INSURANCE COMMENCES ON THE ACTUAL DATE OF CLOSING, SINCE CONCEIVABLY A LOSS COULD OCCUR ON "THE DAY OF CLOSING", BUT AFTER THE CLOSING EVENT HAS OCCURRED - FOR EXAMPLE, A FIRE AT 10:00 PM FOLLOWING A 4:00 PM CLOSING.

Sections 28.1 and 28.2 Tax Withholding Obligations

28.1 SELLER ADVISORY: OREGON STATE TAX WITHHOLDING OBLIGATIONS. Subject to certain exceptions, Escrow is required to withhold a portion of Seller's proceeds if they are a non-resident individual or corporation as defined under Oregon law. Buyer and Seller agree to execute and deliver, as appropriate, any instrument, affidavit or statement, and to perform any acts reasonable or necessary to carry out the provisions of Oregon law.

28.2 SELLER/BUYER ADVISORY: FIRPTA TAX WITHHOLDING OBLIGATIONS Seller is advised that upon Closing, Federal law, known as the Foreign Investment in Real Property Tax Act ("FIRPTA"), allows an escrow company, if they agree, to withhold a portion of Seller's proceeds if the real property is located within the United States and Seller is a "foreign person." A "foreign person" includes a non-resident alien individual, foreign corporation, foreign partnership, foreign trust and foreign estate. The amount deducted from Seller's proceeds is ten percent (10%) of the gross sales price and is required to be delivered over to the Internal Revenue Service ("IRS") within twenty (20) days of the closing of the transaction. Buyer may become responsible for payment if FIRPTA applies and Escrow is not instructed to withhold the funds. FIRPTA will not apply to this transaction so long as: (a) The sale price is \$300,000 or less; (b) The Property is to be used by Buyer as a residence; and, (c) Buyer is an individual. Where applicable, Buyer and Seller agree to execute and deliver, as appropriate, any instrument, affidavit or statement, reasonably requested by Escrow to carry out the provisions of FIRPTA. NOTE: AT SECTION 12 OF THIS AGREEMENT, SELLER REPRESENTS THAT SELLER IS NOT A "FOREIGN PERSON" (HEREINAFTER "SELLER'S NON-FIRPTA STATUS"). IF SELLER IS UNSURE, SELLER SHOULD FIRST CONFER WITH SELLER'S TAX COUNSEL OR CPA BEFORE ENTERING INTO THIS TRANSACTION. IN SUBMITTING THIS OFFER, BUYER REPRESENTS THAT BUYER HAS NO KNOWLEDGE, INFORMATION, OR BELIEF THAT SELLER IS A FOREIGN PERSON OR THAT THIS TRANSACTION IS SUBJECT TO FIRPTA. SELLER ACKNOWLEDGES THAT BUYER, LISTING AND SELLING LICENSEES, THEIR RESPECTIVE FIRMS, AND ESCROW, ITS AGENTS, EMPLOYEES AND REPRESENTATIVES, SHALL HAVE THE ABSOLUTE RIGHT TO RELY UPON SELLER'S REPRESENTATION OF SELLER'S NON-FIRPTA STATUS AT SECTION 12, ABOVE. THIS RIGHT OF RELIANCE SHALL CONTINUE THROUGH THE CLOSING DATE AND THEREAFTER, UNLESS SELLER HAS DISCLOSED OTHERWISE IN A WRITTEN COUNTER-OFFER OR ADDENDUM TO THIS SALE AGREEMENT. IF AT ANY TIME DURING THIS TRANSACTION, IT IS DETERMINED THAT SELLER'S REPRESENTATION OF SELLER'S NON-FIRPTA STATUS WAS INCORRECT, FOR ANY REASON, SELLER AND BUYER HEREBY APPOINT AND INSTRUCT ESCROW TO ACT AS THE QUALIFIED SUBSTITUTE FOR BUYER AS DEFINED BY THE IRS, FOR PURPOSES OF PREPARING THE NECESSARY PAPERWORK, WITHHOLDING THE NECESSARY FUNDS, AND REMITTING THE SAME TO THE IRS. IF FOR ANY REASON, ESCROW DECLINES TO ACT AS A QUALIFIED SUBSTITUTE, ESCROW IS REQUESTED TO PROMPTLY NOTIFY SELLER AND BUYER IN A TIMELY MANNER SO THEY MAY MAKE OTHER ARRANGEMENTS PRIOR TO THE SCHEDULED CLOSING. SELLER AND BUYER ACKNOWLEDGE THAT IF FIRPTA APPLIES TO THIS TRANSACTION, ESCROW'S ROLE AS A QUALIFIED SUBSTITUTE MAY

RESULT IN A DELAY IN CLOSING THIS TRANSACTION. UNLESS OTHERWISE PROVIDED IN THIS SALE AGREEMENT OR ANY SUBSEQUENT SIGNED WRITTEN AGREEMENT BETWEEN SELLER AND BUYER, CONFIRMATION OF SELLER'S NON-FIRPTA STATUS IS NOT A CONTINGENCY IN THIS TRANSACTION.

COMMENT: ORIGINALLY, BOTH THE STATE OF OREGON INCOME TAX WITHHOLDING OBLIGATION ON NON-RESIDENT SELLERS OF OREGON PROPERTY, AND THE FEDERAL TAX WITHHOLDING OBLIGATION ON CERTAIN FOREIGN SELLERS OF OREGON REAL PROPERTY WERE CONTAINED IN SECTION 28. THEY HAVE NOW BEEN SPLIT INTO TWO SUBSECTIONS, WITH THE OREGON STATE TAX PROVISION REMAINING SUBSTANTIALLY THE SAME. THE FEDERAL FIRPTA PROVISION HAS BEEN SIGNIFICANTLY EXPANDED IN THE APPLICABLE OREF SALE AGREEMENTS. ALTHOUGH FIRPTA TRANSACTIONS ARE NOT COMMON, WHEN THEY OCCUR THEY MUST BE DEALT WITH THROUGH PROPER DISCLOSURES. IT IS IMPORTANT TO UNDERSTAND THAT IF THE SELLER IS A "FOREIGN PERSON," 10% OF THE GROSS SALES PRICE MUST BE WITHHELD AS REQUIRED BY FIRPTA IF THE PROPERTY IS NOT OTHERWISE EXEMPTED (I.E. \$300,000 OR LESS AND USED BY AN INDIVIDUAL PERSON AS A PRIMARY RESIDENCE). IF COMPLIANCE DOES NOT OCCUR, IT IS THE BUYER WHO CAN BE HELD LIABLE. IN SOME INSTANCES EVEN THE REALTOR® CAN BE HELD LIABLE.

IT IS OUR UNDERSTANDING THAT RMLS™ IS CONSIDERING INSERTING A PROVISION INTO ITS LISTING AGREEMENT FOR SELLERS TO ACKNOWLEDGE WHETHER THEY MAY BE SUBJECT TO FIRPTA.

32. DISPUTE RESOLUTION BETWEEN BUYER AND SELLER: Buyer and Seller agree that all claims, controversies and disputes between them, including those for rescission (hereinafter collectively referred to as "Claims"), relating directly or indirectly to this transaction, shall be resolved in accordance with the procedures set forth herein, which shall expressly survive Closing or earlier termination of this Agreement. Provided, however, the following matters shall not constitute Claims: (1) any proceeding to collect, interpret or enforce any mortgage, trust deed, land sale contract or recorded construction lien; or (2) a forcible entry and detainer action (eviction). The filing in court for the issuance of any provisional process or similar remedy described in the Oregon or Federal Rules of Civil Procedure shall not constitute a waiver of the right or duty to utilize the dispute resolution procedures specified herein. **In the event of any suit, action or arbitration relating to the enforcement or interpretation of this Agreement, the matter shall be governed exclusively by Oregon law, and venue shall be placed in the State of Oregon for all purposes.**

COMMENT: AS FURTHER EVIDENCE THAT ANYBODY CAN SUE ANYONE, ANYWHERE AND AT ANY TIME, ONE OF OUR MEMBER REALTORS® WAS SUED IN THE STATE OF TEXAS OVER AN OREGON TRANSACTION WRITTEN UP ON OUR STANDARD OREF RESIDENTIAL REAL ESTATE SALE AGREEMENT. IN AN EFFORT TO ELIMINATE SIMILAR OCCURRENCES, WE HAVE SPECIFICALLY ADDRESSED THIS ISSUE WITHIN THE CONTRACTUAL PROVISIONS OF MEDIATION AND ARBITRATION IN SECTIONS 32 AND 37.

Remaining Real Estate Sale Agreements **(Commercial, New Construction, Vacant Land, Farms and Ranches)**

Most, but not all of the changes to the Residential Real Estate Sale Agreement have, where applicable, been continued over into the remaining sale agreement forms. Obviously, where the form deals with a type of property that does not warrant the change (e.g. the carbon monoxide alarm provisions are not found in the vacant land form) they will be absent. Conversely, however, there are no material changes to the remaining non-residential forms that are not also found in the Residential Real Estate Sale Agreement.

Planned Community/Condominium/Townhouse Addendum **(OREF Form-024)**

The title to this form has been changed to **Townhouse/Planned Community Addendum.**

COMMENT: OREF DEVELOPED A RESIDENTIAL CONDOMINIUM REAL ESTATE SALE AGREEMENT LAST YEAR. THIS COULD CREATE CONFUSION AMONG SOME REALTORS® WHO BELIEVE THAT THEY COULD DO A CONDOMINIUM TRANSACTION ON THE STANDARD RESIDENTIAL REAL ESTATE SALE AGREEMENT COUPLED WITH THE EXISTING "PLANNED COMMUNITY/CONDOMINIUM/TOWNHOUSE ADDENDUM." OREF CREATED THE RESIDENTIAL CONDOMINIUM REAL ESTATE SALE AGREEMENT EXCLUSIVELY FOR CONDOMINIUMS. FOR THAT REASON, WE HAVE CHANGED THE TITLE OF THIS FORM TO DELETE ANY REFERENCE TO CONDOMINIUMS.

IN 2012 AND THEREAFTER, IF A REALTOR® HAS A SALE OR PURCHASE TRANSACTION INVOLVING A CONDOMINIUM, THEY SHOULD USE THE RESIDENTIAL CONDOMINIUM REAL ESTATE SALE AGREEMENT (FORM-011); IF THE TRANSACTION INVOLVES A PLANNED COMMUNITY OR TOWNHOME DEVELOPMENT (I.E. A COMMUNITY OR DEVELOPMENT THAT INCLUDES COMMON AREAS AND ASSOCIATED ASSESSMENTS), THEY SHOULD USE THE NEWLY ENTITLED "TOWNHOUSE/PLANNED COMMUNITY ADDENDUM."

Notice of Buyer's Unconditional Disapproval
(OREF Form-064)

COMMENT: THIS IS AN ENTIRELY NEW FORM. IT HAS BEEN DEVELOPED AS AN OUTGROWTH OF THE PROFESSIONAL INSPECTION CLAUSE FOUND AT SECTION 15 OF THE RESIDENTIAL REAL ESTATE SALE AGREEMENT. THE TEXT OF THAT PROVISION PROVIDES AS FOLLOWS:

PROFESSIONAL INSPECTIONS: At Buyer's expense, Buyer may have the Property and all elements and systems thereof inspected by one or more professionals of Buyer's choice. Provided, however, Buyer must specifically identify in this Agreement any desired inspections which may include testing or removal of any portion of the Property. Buyer understands that Buyer is responsible for the restoration of the Property following any inspection(s)/test(s) performed by Buyer or on Buyer's behalf. Buyer shall have _____ business days (ten [10] if not filled in), after the date Buyer and Seller 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. However, during the Inspection Period, Seller shall not be required to modify any terms of this Agreement already reached with Buyer. Unless a written and signed modification is reached, at any time during the Inspection Period, Buyer may notify Seller or Listing Licensee, in writing, of Buyer's unconditional disapproval of the Property based on any inspection report(s), in which case, all earnest money deposits shall be promptly refunded and this transaction shall be terminated. Buyer shall promptly provide a copy of all reports to Seller only if requested by Seller. **If Buyer fails to provide Seller or Listing Licensee with written unconditional disapproval of any inspection report(s) by Midnight of the final day of the Inspection Period, Buyer shall be deemed to have accepted the condition of the Property.** (Bold already in text. Underscore added.)

THE SENTENCE AT THE END OF THIS CLAUSE THAT IS UNDERScoreD WAS INTENDED TO PREVENT REALTORS® FROM "HEDGING" THEIR DISAPPROVALS BY SUCH LANGUAGE AS "I APPROVE THE INSPECTION REPORT SO LONG AS THE SELLER INSTALLS A NEW WATER HEATER" OR "I DISAPPROVE THE INSPECTION REPORT UNLESS SELLER INSTALLS A NEW AIR CONDITIONER." NEITHER OF THE PRECEDING STATEMENTS TECHNICALLY COMPLY WITH THE "UNCONDITIONAL DISAPPROVAL" LANGUAGE OF SECTION 15.

IN AN EFFORT TO PROVIDE A FORM THAT CLEARLY DELINEATES THE “UNCONDITIONAL” NATURE OF A BUYER’S DISAPPROVAL, OREF HAS DEVELOPED FORM-064. THE PURPOSE IS TO AVOID ARGUMENTS ABOUT WHETHER A DISAPPROVAL WAS (A) UNEQUIVOCAL AND/OR (B) TIMELY. TO THAT END, THE FORM ALLOWS THE BUYER OR BUYER’S LICENSEE TO IDENTIFY THE TIME AND METHOD OF DELIVERY. IT ALSO ACTS AS AN ESCROW INSTRUCTION FOR RETURN OF THE BUYER’S DEPOSIT. NOTE THAT IT IS CONTEMPLATED THAT THE SELLER WILL ACKNOWLEDGE RECEIPT OF A COPY OF THE NOTICE. WHILE THE ACKNOWLEDGMENT DOES NOT CONSTITUTE AN AGREEMENT THAT THE DELIVERY WAS TIMELY, IT SHOULD EITHER ELIMINATE SOME DISPUTES, OR AT LEAST SHINE A BRIGHT LIGHT ON THE ISSUE OF THE TIMING OF THE DELIVERY.

Addendum to Listing/Employment/Service Contract (For Option Agreements)
(OREF Form-065)

COMMENT: THIS IS ALSO A NEW FORM. IT WAS DEVELOPED BECAUSE THE INDUSTRY IS SEEING MORE OPTION AGREEMENTS. HOWEVER, AT LEAST IN THE PORTLAND METRO AREA, THE RMLS™ LISTING AGREEMENT ONLY PAYS A COMMISSION UPON CLOSING OF THE SALE. THIS MEANS THAT WITHOUT MODIFICATION, REALTORS® PUTTING TOGETHER A SELLER AND BUYER USING AN OPTION AGREEMENT COULD NOT BE PAID UNLESS AND UNTIL THE OPTION WAS EXERCISED AND THE TRANSACTION CLOSED. THIS CAN BE AN UNSATISFACTORY RESULT.

THIS ADDENDUM IS INTENDED TO BE USED TOGETHER WITH THE LISTING, EMPLOYMENT OR SERVICE CONTRACT BY REALTORS® THROUGHOUT OREGON. BY ITS TERMS, IT ADDRESSES THE FOLLOWING POINTS:

- *IT MAY BE USED FOR OPTIONS, RIGHTS OF FIRST REFUSALS, AND SIMILAR AGREEMENTS;*
- *IT BIFURCATES THE COMMISSION PAYMENT OBLIGATION INTO TWO EVENTS: (A) THE “INITIAL COMMISSION” THAT IS TRIGGERED BY THE PARTIES’ SIGNING THE OPTION AGREEMENT¹, AND (B) THE “REMAINING COMMISSION” THAT IS TRIGGERED BY CLOSING OF THE SALE AFTER THE OPTION HAS BEEN EXERCISED;*
- *THE INITIAL COMMISSION IS NON-REFUNDABLE – IT IS NOT TO BE TREATED AS REFUNDABLE EARNEST MONEY IF THE BUYER FAILS TO EXERCISE THE OPTION.*
- *THE AGREEMENT PROVIDES THAT THE LISTING TERM SHALL CONTINUE TO RUN DURING THE PERIOD THAT THE OPTION PERIOD REMAINS OPEN AND UNEXERCISED.*
- *THE FORM CONTAINS A 180-DAY “SAFETY NET” PROVISION, SIMILAR TO MANY LISTING AGREEMENTS, PROVIDING FOR PAYMENT OF THE COMMISSION FOLLOWING EXPIRATION OF THE LISTING PERIOD, IF THE SELLER AND BUYER LATER CLOSE THE TRANSACTION.*

¹ Note: Since payment is a pre-closing event, this means that the Initial Commission will have to come from the Seller’s existing funds or a portion of the option payment itself. For this reason, among many others, the listing licensee should encourage the optionor/seller to demand a significant option payment. Realtors® should always encourage both parties to these types of transactions to obtain legal counsel. OREF has forms 085-1 and 085-2 that may be suitable for the Option Agreement and Memorandum for recording.