

OREF FORMS REVISIONS FOR 2014

By

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The following summary addresses the major changes made to the OREF forms that will become available for 2014. 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 those 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 managing principal broker. [Changes have been highlighted in yellow; deletions in have a ~~strike-through~~.]

Advisory: Sending Money Out of State [Late-Breaking News!]
(OREF-066)

[See Sample Form]

Form Clarification: The current Advisory has been changed to clarify that in REO sales, real estate licensees and their companies should not send client earnest money out of state. This meets the ORS and OREA compliance.

Private Well Addendum [Late-Breaking News!]
(OREF-082)

[See Sample Form]

Form Correction: The 2014 Private Well Addendum contained an error that has been corrected. Although sellers in residential transactions are responsible for having their well(s) tested at their own cost, this is not something that entails a “written application to the Oregon Health Authority.” Accordingly, the text identified below is now what you will currently find in Section 2. of the 2014 Private Well Addendum, is being deleted immediately.

2. SELLER TESTING: Within ____ business days, (seven [7] if not filled in) after Buyer and Seller have signed this Agreement, Seller shall, at Seller’s cost, ~~make written application to the Oregon Health Authority to~~ have the well tested in accordance with Oregon law. The test results shall be submitted to Buyer and the Oregon Drinking Water Services within forty-eight (48) hours following receipt.

Residential Real Estate Sale Agreement
(OREF-001)

2.2 BALANCE OF PURCHASE PRICE. 7. SELLER-CARRIED OWNER FINANCING (E.G. ADDITIONAL-LAND SALE CONTRACTS/TRUST DEEDS/MORTGAGES/OPTION AGREEMENTS, RENT-TO-OWN, ETC.):

Note: State and federal laws and regulations provide that under certain circumstances, offering or negotiating the terms of seller-carried financing must be performed by a Mortgage Loan Originator (see, ORS 86A.200(4)), and the terms of such financing may have to comply with certain consumer protection disclosure rules. Your real estate licensee is not qualified to provide these services or to advise you in this regard. Legal advice is strongly recommended. If this transaction is to include a land sale contract, trust deed, mortgage or option agreement between Buyer and Seller, the parties shall agree upon the terms and conditions of such document not later than _____ business days (ten [10] if not filled in) after the date Buyer and Seller have signed and accepted this Sale Agreement. Upon failure of Buyer and Seller to reach agreement as to the terms and conditions of the document within said time period, this transaction shall automatically terminate, all parties shall cooperate in signing such documentation reasonably necessary to effect a termination of this transaction and a refund of all deposits, if any, to Buyer. **Caveat: The additional documents identified in this Section 7 can have legally binding consequences, and Buyer and Seller are strongly encouraged to secure competent legal advice before entering into such agreements. If Escrow (as defined in Section 17) is instructed to prepare the note and trust deed or mortgage to be used in this transaction, state statute requires that Buyer and Seller receive from Escrow, at least three (3) days prior to Closing (as defined in Section 18), a statutory notice and a copy of the proposed documents. This requirement cannot be waived by Buyer or Seller without the approval of both of their respective Oregon-licensed attorneys.**

(Select A or B)

COMMENT: THE CONSUMER FINANCE PROTECTION BUREAU (“CFPB”), CREATED PURSUANT TO THE DODD-FRANK ACT, HAS ENACTED A SERIES OF REGULATIONS DESCRIBING WHAT KIND OF PROVISION MAY AND MAY NOT BE PART OF RESIDENTIAL LOANS (E.G. NEGATIVE AMORTIZATIONS, CERTAIN ADJUSTABLE RATE ARRANGEMENTS, ETC.). IT ALSO HAS ENACTED CERTAIN ABILITY TO REPAY (“ATR”) PROVISIONS, SUCH THAT LENDERS WILL HAVE TO VET THEIR BORROWERS’ FINANCIAL CAPACITY TO ACTUALLY AFFORD CERTAIN RESIDENTIAL LOANS. MOST OF THESE RULES WILL BECOME EFFECTIVE IN JANUARY, 2014. THESE LAWS, COUPLED WITH STATUTES AND ADMINISTRATIVE REGULATIONS AT THE STATE LEVEL, ARE BEING APPLIED TO PRIVATE SELLER-CARRIED FINANCING ARRANGEMENTS WHERE A STATE LICENSED MORTGAGE LOAN ORIGINATOR¹ IS NOT USED. WHILE THE SALE OF ONE’S PRIMARY RESIDENCE IS EXCLUDED, THE SALE OF A PERSON’S RESIDENTIAL RENTAL PROPERTY, VACATION HOME, OR SECOND HOME, IS NOT. THESE LAWS ARE QUITE COMPLICATED. ACCORDINGLY, OREF FORMS COMMITTEE FELT THAT IT WAS IMPORTANT TO ADD THIS NEW WARNING IN THE SELLER-CARRIED FINANCING SECTION OF THE SALE AGREEMENT. IT IS FOUND IN ALL OF THE OTHER OREF SALE AGREEMENTS, EXCEPT THE COMMERCIAL SALE AGREEMENT.

PRACTICE TIP: WHENEVER A TRANSACTION INVOLVES THE SELLER CARRYING BACK A NOTE AND TRUST DEED (OR OTHER SECURITY INSTRUMENT) REAL ESTATE BROKERS ARE ENCOURAGED TO MAKE SURE THEIR SELLER-CLIENTS SECURE LEGAL ADVICE AS EARLY AS POSSIBLE. THIS SHOULD BE DONE EVEN IN CASES IN WHICH AN OPTION OR LEASE-TO-OWN ARRANGEMENT IS UNDER CONSIDERATION.

10. PRIVATE WELL: ~~If applicable, Seller represents that the private water well located on or serving the Property has provided an adequate supply of water throughout the year for household use. To the best of Seller's knowledge, the water is fit for human consumption and the continued use of the well and water is authorized by and complies with the laws of the State of Oregon and appropriate governmental agencies. No other representation is made concerning the water supply and well except as expressly stated in this Agreement. If the well provides water for domestic purposes, upon Seller's acceptance of Buyer's offer,~~

¹ A “mortgage loan originator” or “MLO” is an individual who, for compensation or gain: (a) Takes an application for a residential mortgage loan; or (b) Offers or negotiates terms for a residential mortgage loan. The term does **not** include Oregon licensed real estate brokers, unless they receive compensation from a mortgage banker, mortgage broker, mortgage loan originator or lender, or one of their agents. [\[See, ORS 86A.200 et. seq.\]](#)

~~Seller, at Seller's expense, will have the well tested for arsenic, nitrates and total coliform bacteria and for such other matters as are required by the Oregon Health Division. Upon receipt, Seller shall submit the test results to the Oregon Health Division and Buyer within forty eight (48) hours. At Buyer's expense, Buyer may have the well water tested for quantity or quality by a qualified tester, and obtain a written report of such test(s), showing the deficiencies (if any) in the well and the standards required to correct the deficiencies, all within business days (seven [7] if not filled in) after the date Buyer and Seller have signed this Agreement. If the written report of any test made by Buyer or Seller shows a substantial deficiency in quantity or quality of the water, Buyer may terminate this transaction by delivering written notice of termination, together with a copy of the test report, to Seller or the listing licensee within twenty four (24) hours after the receipt by Buyer of the written test report unless, within twenty four (24) hours after delivery of notice of termination, Seller agrees in writing to correct the deficiencies shown on the report. Any report obtained by Buyer will show what deficiencies, if any, are substantial. In the event any wells located upon the Property are not currently registered with the applicable governmental agency, Seller agrees to assist Buyer, at Buyer's sole expense, in registering them. The preceding sentence shall survive Closing of this transaction. See OREF Private Well Addendum #082, or Addendum is attached to this Agreement. OREF-082 Private Well Addendum is attached to this Agreement.~~

10. PRIVATE WELL: Does the Property contain a Private Well ? Yes No If yes, Seller to provide Buyer with OREF-082 Private Well Addendum to Real Estate Agreement.

COMMENT: THIS SECTION OF THE RESIDENTIAL SALE AGREEMENT HAS REMAINED THE SAME FOR SEVERAL YEARS. ONE READING IT QUICKLY REALIZES THAT IT IS TRYING TO SAY MANY THINGS IN A SINGLE PARAGRAPH. CLEANING IT UP DEMANDED THAT IT BE DONE ON A SEPARATE ADDENDUM, WHERE THERE WOULD BE MORE ROOM TO CLEAN IT UP AND FORMAT IT. THE NEW PRIVATE WELL ADDENDUM, OREF-082, IS A VAST IMPROVEMENT BOTH IN CONTENT AND EASE OF READING.

PRACTICE TIP: WHILE WELLS AND WELL WATER ARE NOT AS PROMINENT AN ISSUE IN THE URBAN AREA, THEY ARE VERY IMPORTANT IN RURAL AREAS THROUGHOUT THE STATE. BROKERS DEALING WITH THESE ISSUES SHOULD FAMILIARIZE THEMSELVES WITH THE NEW ADDENDUM.

16.2 INSPECTIONS: (This text unchanged)

PROFESSIONAL INSPECTIONS: At Buyer's expense, Buyer may have the Property and all common and limited 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 including radon and mold. (Remainder is the same.)

COMMENT: ALTHOUGH THERE WAS SOME DIFFERING OPINIONS ON THIS ISSUE, THE MAJORITY OF THE FORMS COMMITTEE AGREED THAT TESTING FOR RADON OR MOLD WAS SOMETHING THAT THE BUYER SHOULD SPECIFICALLY CALL OUT.

PRACTICE TIP: WARNING TO SELLING BROKERS – VET THIS ISSUE WITH YOUR CLIENT BEFORE WRITING UP YOUR OFFER. RADON, ESPECIALLY, HAS BECOME THE ENVIRONMENTAL HAZARD DE JURE, AND THERE ARE CERTAIN AREAS IN THE PORTLAND-METRO AREA RANKING HIGH IN RADON LEVELS. A BELATED REQUEST COULD BE DENIED BY A SELLER, FORCING THE BUYER TO DECIDE BETWEEN MOVING FORWARD WITHOUT THE TEST, OR RISK LOSING HIS OR HER EARNEST MONEY DEPOSIT.

30.3 HISTORIC PROPERTY DESIGNATION: If the Property is or may be subject to a Historic Property local ordinance or is subject to or may 374 qualify for the Historic Property Tax Assessment under ORS 358.475 to 358.565 Seller shall provide OREF-045 Historic Property Addendum. (Provision stricken: If the Property described in this instrument is subject to special assessment under ORS 376 358.505, Seller to provide OREF-045 Historic Property Addendum.)

COMMENT: ROB LOWE ON THE OREF FORMS COMMITTEE REPORTED THAT MANY BROKERS APPEARED TO HAVE SOME CONFUSION ABOUT THE HISTORIC PROPERTY ADDENDUM, DUE TO ITS LIMITED FOCUS. AS A RESULT, THE COMMITTEE REVISED SECTION 30.3, ABOVE IN THE SALE AGREEMENTS [EXCLUDING RAW LAND], AND SUBSTANTIALLY REVISED THE ADDENDUM ITSELF WHICH IS INCLUDED UNDER THE SAMPLE FORMS. HERE ARE THE MAJOR PROVISIONS NOW INCLUDED IN THE REVISED ADDENDUM:

- **WE CLARIFIED AT VARIOUS PLACES IN THE FORM THAT IT SHOULD BE USED IF THE PROPERTY BEING SOLD IS ALREADY DESIGNATED HISTORIC, OR IF THE BUYER WANTS TO SECURE THAT DESIGNATION AFTER CLOSING;**
- **IF THE PROPERTY ALREADY IS DESIGNATED HISTORIC, THE SELLER AGREES TO PROVIDE BUYER WITH ALL AVAILABLE RECORDS;**
- **WE SET OUT VARIOUS CONSIDERATIONS FOR BUYERS TO KNOW, SUCH AS:**
 - **SOME MUNICIPALITIES HAVE THEIR OWN DESIGNATIONS OR USE RESTRICTIONS TO CONSIDER;**
 - **TO RETAIN BENEFITS, OWNERS MAY BE REQUIRED TO PROVIDE REPORTS, ALLOW INSPECTIONS, ETC.;**
 - **THE 10-YEAR CLASSIFICATION PERIOD MAY BE EXTENDED FOR ANOTHER 10 YEARS;**
 - **WE DIRECT BUYERS TO A LINK FOR THE SPECIAL ASSESSMENT OF HISTORIC PROPERTY PROGRAM ([HERE](#))**
 - **WE MOVED THE FOLLOWING STATUTORY STATEMENT FROM THE SALE AGREEMENT TO THE ADDENDUM: "THE PROPERTY DESCRIBED IN THIS INSTRUMENT IS SUBJECT TO SPECIAL ASSESSMENT UNDER ORS 358.505."**

PRACTICE TIP: IN RESEARCHING THE ISSUE, IT BECAME APPARENT THAT THERE ARE MANY DIFFERENT TYPES OF HISTORIC PROPERTY, AND MANY LEVELS OF REGULATION, FROM THE FEDERAL GOVERNMENT, TO STATE, AND LOCAL JURISDICTIONS. THIS IS A SPECIALIZED CATEGORY OF REAL ESTATE, AND BROKERS SHOULD NOT SIMPLY RELY UPON SELLER REPRESENTATIONS. WHERE APPROPRIATE, BROKERS SHOULD CONSIDER RECOMMENDING THAT THEIR BUYER-CLIENTS CONSULT AN EXPERT IN THE FIELD.

37. RECEIPT FOR EARNEST MONEY: Selling Firm acknowledges receipt of earnest money from Buyer in the sum of \$ _____ evidenced by ~~(check one)~~ CASH CHECK PROMISSORY NOTE payable as follows: _____

COMMENT: THIS MINOR CHANGE WAS MADE BECAUSE IT WAS BROUGHT TO OUR ATTENTION THAT SOMETIMES EARNEST MONEY DEPOSITS CAN TAKE A COMBINATION OF FORMS.

Seller's Property Disclosure Statement
(OREF-020-1)

The following changes were made to Section 3 (Sewage System) regarding whether the property has an on-site sewer system:

- (1) If yes, when was the system installed? Was it installed by permit?
- (2) *If yes, was the system installed by permit?
- (3) *Has the system been repaired or altered?
- (4) *Has the condition of the system been evaluated and a report issued?
- (5) Has it ever the septic tank ever been pumped?
If yes, when?
- (6) Does the system have a pump?
- (7) Does the system have a treatment unit such as a sand filter or an aerobic unit?
- (8) *Is a service contract for routine maintenance required for the system?
- (9) Are all components of the system located on the property?

COMMENT: THIS CHANGE WAS INITIATED BY THE OREGON DEQ AND WAS PASSED IN 2013 AS HOUSE BILL 3172.

PRACTICE TIP: NOTICE THE (*) NEXT TO SEVERAL OF THE QUESTIONS. THIS MEANS THAT IT IS EXPECTED THE SELLER WILL ATTACH COPIES OF THE DOCUMENTS MENTIONED. GOOD PRACTICE WOULD BE FOR BROKERS LISTING PROPERTY WITH AN ON-SITE SYSTEM TO VET THESE ISSUES WITH THEIR CLIENTS AND OBTAIN THE APPROPRIATE DOCUMENTS IN ADVANCE DISTRIBUTING THE DISCLOSURE STATEMENT TO PROSPECTIVE BUYERS.

Private Well Addendum
OREF-082

[See Sample Form]

COMMENT: AS NOTED ABOVE, THE PRIVATE WELL SECTIONS OF ALL THE SALE AGREEMENTS (EXCEPT THE COMMERCIAL SALE AGREEMENT) WERE ALL CHANGED TO REMOVE THE BULK OF THE TEXT, AND DIRECT SELLERS AND BUYERS TO THE PRIVATE WELL ADDENDUM. MOREOVER, THE CONTENT HAS BEEN BROKEN UP INTO IDENTIFIED SECTIONS, FOR EASE OF UNDERSTANDING.

Investment Property Addendum
(OREF- 070)

[See Sample Form]

COMMENT: THIS IS AN ENTIRELY NEW FORM. IT IS DESIGNED TO ASSIST BROKERS REPRESENTING BUYERS OF RESIDENTIAL PROPERTY [E.G. PLEXES] INTENDED FOR INVESTMENT PURPOSES. THE LIST OF ITEMS SOUGHT ARE GENERALLY THOSE DUE DILIGENCE ITEMS INVESTORS WOULD WANT TO SEE. THERE MAY BE OTHERS, AND THIS FORM IS INTENDED INCLUDE ALL POTENTIAL DUE DILIGENCE ITEMS. BROKERS UNFAMILIAR WITH SUCH TRANSACTIONS SHOULD SECURE ASSISTANCE FROM OTHER PROFESSIONALS AND NOT EXPECT TO RELY SOLELY ON THIS FORM.

NOTE: THE PROTOCOL FOR DEALING WITH BUYER DISSATISFACTION OF ONE OR MORE DUE DILIGENCE ITEMS IN THIS FORM IS SUBSTANTIALLY THE SAME AS WITH DISSATISFACTION WITH THE PROFESSIONAL INSPECTION REPORT IN THE OREF RESIDENTIAL SALE AGREEMENT. I.E. IT IS HANDLED THE SAME AS THE INSPECTION CONTINGENCY IN THAT FORM. IN THE INVESTMENT PROPERTY ADDENDUM, THERE IS A SPACE FOR THE PARTIES TO AGREE UPON THE LENGTH OF THE CONTINGENCY PERIOD FOR THE BUYER TO COMPLETE HIS OR HER DUE DILIGENCE AND NEGOTIATE WITH THE SELLER OVER THE COST AND RESPONSIBILITY OF REPAIRS OR OTHER ISSUES. IF AGREEMENT CANNOT BE REACHED, THE BUYER MAY EXERCISE THE CONTINGENCY AND TERMINATE THE TRANSACTIONS. HOWEVER, IF THE BUYER FAILS TO TIMELY OBJECT AND REACH AGREEMENT WITH THE SELLER ON A SOLUTION, HE OR SHE WILL BE DEEMED TO HAVE WAIVED THE CONTINGENCY.

Initial Agency Disclosure Form
(OREF-042)

[See Sample Form]

COMMENT: WITH NO ADVANCE NOTICE, THE OREGON REAL ESTATE AGENCY UNILATERALLY AMENDED THIS STATE MANDATED FORM THAT REQUIRES ALL LICENSEES GIVE TO THEIR PROSPECTIVE CLIENT. A SAMPLE FORM IS PROVIDED UNDER THE SAMPLE FORMS. AN INFORMATIONAL PUBLICATION BY THE OREGON REAL ESTATE AGENCY WITH INCLUDES OREGON ADMINISTRATIVE RULE 863-015-0215 WHICH CONTAINS THE RULES REGARDING WHEN THE PAMPHLET IS TO BE DELIVERED TO POTENTIAL CLIENTS AND THE REQUIRED CONTENTS OF THE PAMPHLET CAN BE FOUND HERE AT THE OREGON REAL ESTATE AGENCY'S WEBSITE

[HTTP://WWW.OREGON.GOV/REA/EDU/DOCS/SAMPLE%20INITIAL%20AGENCY%20DISCLOSURE%20PAMPHLET.PDF](http://www.oregon.gov/rea/edu/docs/sample%20initial%20agency%20disclosure%20pamphlet.pdf)

PRACTICE TIP – EACH BROKER SHOULD FOLLOW THE POLICIES OF HIS OR HER OFFICE AND MANAGING PRINCIPAL BROKER. HOWEVER, CHANGES TO THE PAMPHLET SIMPLY INCLUDED ADDITIONAL PROVISIONS ALREADY IN THE OREGON ADMINISTRATIVE RULES, SO IT DOES NOT APPEAR THAT REALTOR® PRACTICE WILL CHANGE – ASSUMING THAT IT COMPLIED WITH THE LAW IN THE FIRST PLACE. SECONDLY, ALTHOUGH THERE WAS AN ATTEMPT BY THE AGENCY TO CLARIFY IN OAR 863-015-0215 EXACTLY WHEN THE DUTY OF DELIVERY TO THE POTENTIAL CLIENT IS TRIGGERED – SINCE IT STILL PROVIDES THAT IT MUST BE “AT FIRST CONTACT.” THE TEXT OF THE RULE APPEARS SOMEWHAT CIRCULAR.² IT NOW SAYS THAT “FOR PURPOSES OF THIS RULE, ‘AT FIRST CONTACT’ MEANS AT THE TIME THE AGENT HAS SUFFICIENT CONTACT INFORMATION ABOUT A PERSON TO BE ABLE TO PROVIDE AN INITIAL AGENCY DISCLOSURE PAMPHLET TO THAT PERSON.” {EMPHASIS ADDED.] TO COMPLICATE MATTERS, THE RULES SAYS THAT “CONTACT WITH A PERSON INCLUDES, BUT IS NOT LIMITED TO CONTACTS IN PERSON, BY TELEPHONE, OVER THE INTERNET, BY ELECTRONIC MAIL, OR BY SIMILAR METHODS.” THAT APPEARS TO COVER THE ENTIRE REALM OF HUMAN COMMUNICATIONS. SINCE THE PAMPHLETS CAN BE DELIVERED BY ANY ONE OF THE DESCRIBED MEANS, IT WOULD SEEM IF THE BROKER HAD USE OF ANY OF THOSE MEANS, HE OR SHE WOULD HAVE “SUFFICIENT CONTACT INFORMATION.” UNFORTUNATELY, THAT GETS US NO CLOSER TO KNOWING WHEN THE PAMPHLET SHOULD BE DELIVERED.

IN REALTY, THIS ISSUE IS A TEMPEST IN A TEAPOT. MOST REALTORS® DELIVER THE PAMPHLET WHEN THEY BELIEVE IT APPROPRIATE, AND THAT SEEMS TO WORK. THERE IS VIRTUALLY NO ANECDOTAL EVIDENCE THAT A SINGLE COMPLAINT HAS EVER BEEN MADE, OR LICENSING ACTION TAKEN, AGAINST A LICENSEE BASED UPON THE TIMING OF THE PAMPHLET'S DELIVERY. THAT BEING THE CASE, SINCE OREGON REALTORS® SEEMS TO ALREADY BE DOING IT RIGHT, THE RECENT REA ACTIVITY DOES NOT APPEAR TO NECESSITATE A CHANGE IN CURRENT PRACTICE. AGAIN, CHECK YOUR COMPANY POLICY AND/OR WITH YOUR MANAGING PRINCIPAL BROKER!

² It appears the new rule concerning delivery of the Pamphlet is that if the broker's "first contact" with the person provides sufficient contact information about them to give them the Pamphlet, then licensees must do so. The answer begs the question.