

The OREF Residential Real Estate Sale Agreement

What Sellers and Buyers Need to Know



The Residential Real Estate Sale Agreement form contains printed provisions applicable to most standard purchase and sale transactions. It is intended to become a legally binding document. Unwritten understandings or oral agreements affecting legal rights in real estate can be very difficult to enforce, so it is important to include all of the important terms of the transaction in this document. If you want to change or add other provisions to the Sale Agreement, it should be done by a written addendum to the document which is also signed and dated. You should obtain legal counsel if necessary. What follows is a short summary of a few of the important sections of the Sale Agreement. There may be other provisions which are not covered below that may affect your legal rights and duties. It is important to thoroughly read and understand the entire Sale Agreement before signing. This brochure is not a substitute for obtaining competent legal advice, if needed.

FINAL AGENCY ACKNOWLEDGMENT

This section of the Sale Agreement, located at the top of the form, is intended as a final acknowledgement by the parties that they understand who is representing them in the transaction. The name of the real estate agent and company representing the seller and buyer should be disclosed here. The seller and buyer should then sign this acknowledgement confirming that they are aware of, and consent to, the disclosed representation. *Sellers are expected to sign the Final Agency Acknowledgement even though they may intend to reject the offer or submit a counter offer.*

PERSONAL PROPERTY AND FIXTURES In its simplest terms, personal property is movable (such as furniture, pictures, etc.) and fixtures are firmly attached to the structure (such as chandeliers, built-in shelving, etc.). The Sale Agreement has a section which addresses personal property and fixtures. It provides that all personal property belongs to the seller and the fixtures shall belong to the buyer. Note, however, the Sale Agreement provides that certain types of built-in appliances, such as ranges and ovens, must remain with the home after closing (even though they may be capable of being removed). If the parties wish to negotiate another arrangement, it should be specifically written into the Sale Agreement, since there can be confusion on these issues. *If there is any doubt about whether an item goes or stays with the property, the issue should be specifically addressed in writing in the Sale Agreement or an addendum.*

FINANCING If a new loan is required, Buyer states they will complete a loan application in an agreed to time frame. A completed loan application requires: Buyer's name(s), Buyer's income(s), Buyer's social security number(s), the property address, and estimated of the value of the property, and the loan amount. The transaction is now subject to the buyer and property qualifying for a loan. It also states that the lender's appraisal must not be less than the purchase price. These provisions are known as "contingencies," which means that certain events, such as financing or appropriate appraisal, must occur before the transaction becomes binding upon one or both of the parties. The Sale Agreement also contains a provision requiring that, in addition to bank financing, buyers must disclose any other contingent sources of funds intended to be used toward the purchase of the home, such as gifts from relatives, retirement plan distributions, or the sale of another residence. *If a disclosed financing contingency fails to occur, such as loan approval, and the buyer*

cannot close the transaction, after having made timely application for the loan, the buyer's earnest money deposit will normally be refunded. But if a buyer does not disclose a necessary source of funds they will need to purchase the home, and the funds are unavailable at closing, the seller may claim that the earnest money deposit is forfeited because it was not disclosed as a contingency in the Sale Agreement.

TITLE INSURANCE The Sale Agreement makes the buyer's approval of the condition of title a contingency in the transaction. Shortly after escrow is opened, the Sale Agreement states that the title insurance company will provide the parties with a preliminary title report disclosing all recorded liens, taxes, judgments, mortgages, etc. (frequently referred to as "encumbrances") and other matters appearing on the public record, together with actual copies of these recorded documents. Buyers should closely review the preliminary title report and the recorded documents, especially the deed restrictions (also known as "Conditions, Covenants and Restrictions" or "CC&Rs") as soon as they are received. If there are questions or if further information is required, the buyer should check with the title company or a real estate attorney. The Sale Agreement provides that the seller will pay for the buyer's title insurance policy which is issued shortly after closing. Although there is no law requiring that the seller pay for the buyer's title policy, it is the standard practice in Oregon. *In almost all cases, buyers should always obtain a title insurance policy when acquiring real estate, regardless of whether the property is new or used, or whether any bank financing is involved.*

INSPECTIONS Having the property thoroughly inspected by a licensed professional is probably the single most important thing buyers can do to protect themselves from surprises when purchasing a home, new or used. The Sale Agreement provides that the buyer has the right, at his/her expense, to have the home and all systems thoroughly inspected. The Sale Agreement also provides that the buyer has the right to reject the inspection report(s), terminate the transaction and obtain a complete refund of the earnest money deposit. However, this right of rejection must be exercised before the inspection contingency deadline that was agreed upon between the parties in the Sale Agreement. Prior to this deadline, the buyer is completely free to negotiate with the seller regarding the repair of any adverse conditions that are noted in the professional inspection report. *However, since the Sale*

Agreement provides that "time is of the essence," buyers must be extremely vigilant, since the failure to timely reject the inspection report(s) can mean that the buyer has accepted the condition of the property, with all defects, apparent or not apparent. Thereafter, if the buyer wants out of the transaction, they may have to forfeit their earnest money deposit in order to do so. Buyers are encouraged to review the Oregon Property Buyer Advisory for a more complete summary of important issues and conditions in residential property that they may wish to have inspected or tested. The website is: <http://rea.state.or.us>.

AS-IS CONDITION When property is being sold "AS-IS" it generally means the buyer assumes all risks of adverse conditions that may be discovered after closing. Most property, residential and commercial, is sold "AS-IS," subject to certain written disclosures or other representations that the seller may make to the buyer before closing. In Oregon, sales of owner-occupied homes almost always include a seller property disclosure form, which addresses many important aspects of the property, such as the status of title, the known condition of all systems (such as heating, cooling, plumbing, and electrical), whether there have been any leaks or other water problems, the structural condition of the home, etc. The Sale Agreement provides that subject only to the seller's written agreements and representations, and the information in the seller's property disclosure form, the home is being sold in its "AS-IS" condition. If the seller and buyer agree to modify this arrangement, it should be done in writing and included as a part of the Sale Agreement or an addendum. *NOTE: The AS-IS clause will not protect a seller from liability if known adverse conditions in the home are intentionally concealed from the buyer.*

SELLER REPRESENTATIONS The Sale Agreement contains a section which has several standard representations about the condition of the home, relating to such things as sewer, water, hazardous substances, known material defects or violations of law, etc. These representations are based upon the seller's best knowledge. They are not contractual warranties or guarantees, and are not a substitute for the buyer's duty to be vigilant and conduct their own independent investigation. *Sellers should read these printed representations closely to make sure that they accurately describe the condition of the home and property to the best of their knowledge. If a seller feels that any of these representations are not correct, it should be immediately discussed with their agent before they sign the Sale Agreement.*

CLOSING AND POSSESSION A common misconception is that “Closing” means the date the loan documents are signed. However, in most cases, signing loan documents (in Oregon this is called “consummation” of the transaction) will occur one or two days prior to Closing. Closing is the final event in the transaction process, where the loan is funded, costs such as title, escrow and loan fees are paid, taxes are prorated, proceeds are disbursed to the seller, documents get recorded and possession is transferred. The Sale Agreement contains a place for the parties to insert “no later than” date for closing to occur. Parties should be realistic in selecting the closing date, so that there is no risk that one side or the other will not be ready. Although there are many exceptions, most standard residential transactions involving the issuance of a conventional loan to qualified buyers are closed within 30 to 60 days. Possession is usually transferred from the seller to the buyer at the time of closing or shortly thereafter. If the seller needs extra time after closing to vacate, an Occupancy after closing agreement should be added to the Sale Agreement or by separate addendum. One final note regarding Closing; TILA-RESPA Integrated Disclosure Rules (TRID) have specific regulations on delivery of a Closing Disclosure to the buyer which can impact closing. Be sure to talk to your lender regarding the requirements.

DEFINITIONS

- (1) All references in this Sale Agreement to "Licensee" and "Firm" shall refer to Buyer's and Seller's real estate agents licensed in the State of Oregon and the respective real estate companies with which they are affiliated.
- (2) Time is of the essence of this Agreement.
- (3) Written notices required or permitted under this Agreement to be delivered to Buyer or Seller may be delivered to their respective Licensee with the same effect as if delivered to that Buyer or Seller.
- (4) Licensee(s) and Firm(s) identified in the Final Agency Acknowledgment Section above are not parties to this Agreement, except as may be expressly applicable.
- (5) A “business day” shall mean Monday through Friday, except recognized state and federal holidays as enumerated in ORS 187.010 and 187.020.
- (6) Unless Seller and Buyer expressly provide otherwise, the phrase “signed and accepted” in the printed text of this Sale Agreement, or any addendum or counteroffer, however designated (collectively, “the Agreement”), shall mean the date and time that

either the Seller and/or Buyer has/have: (a) Signed their acceptance of the Agreement received from the other party, or their licensees, and (b) Transmitted it to the sending party, or their licensee, either by manual delivery (“Manual Delivery”), or by facsimile or electronic mail (collectively, “Electronic Transmission”).

(7) The sending of a signed acceptance of the Agreement via Electronic Transmission from one party, or their licensee, to the other party, or their licensee, shall have the same effect as Manual Delivery of the signed original. If the parties intend to use any other method for transmitting a signed offer or acceptance of the Agreement (such as regular mail, certified mail, or overnight delivery), they should so specify at Section 20 (Additional Provisions) of this Sale Agreement.

(8) Time calculated in days after the date Buyer and Seller have signed and accepted this Agreement shall start on the first full business day after the date they have signed and accepted it.

(9) This Agreement is binding upon the heirs, personal representatives, successors and assigns of Buyer and Seller. However, Buyer's rights under this Agreement or in the Property are not assignable without prior written consent of Seller.

(10) This Agreement may be signed in multiple legible counterparts with the same legal effect as if all parties signed the same document.

(11) Excepting only the Lead-Based Paint Contingency Period identified in Section 11, unless a different time is specified in the Agreement, all deadlines for performance, however designated, that are measured in business or calendar days, shall terminate as of 5:00 p.m. on the last day of that deadline, however designated.

DEFAULT AND EARLY TERMINATION Although we don't like it when it happens to us, some residential transactions cannot be completed. Accordingly, it is important to know, in advance, the rights, duties and liabilities of the parties, should something occur which causes the sale to fail. The Sale Agreement has a section specifically dealing with this possibility. It provides that if a certain contingency fails or other adverse events occur through no fault of the buyer, such as the failure to obtain a loan, defects in title which cannot be cured, or an unacceptable inspection report, the earnest money will be refunded and the transaction is terminated. But if the transaction fails because a buyer changes their mind or has an unanticipated job transfer which prevents closing, the seller may declare the entire deposit forfeited. *Since the Sale Agreement provides that keeping the earnest money deposit is the seller's only*

remedy for a buyer's nonperformance, sellers should pay special attention to the amount of the agreed-upon deposit. Will the deposit sufficiently compensate the seller should the buyer fail or refuse to complete the transaction in violation of the Sale Agreement? It is also important for sellers to understand that if they change their mind after agreeing to sell the home, the buyer may declare them in breach of the Sale Agreement, asking that a court or arbitrator require the seller to "specifically perform" the contract by selling the property to them. If either party wants to change these remedies that are found in the printed terms of the Sale Agreement, it should be negotiated and agreed upon before the final document is signed. However, such important changes should only be made following competent legal advice.

SHORT SALE AND REO SALES It is important to note that even though most offers of purchase for short sale properties are written up on the standard OREF Residential Sale Agreement, the lender, not the seller, is the decision maker. This means that some of the provisions in the Sale Agreement will be

altered due to the nature of the short sale process. For example, all contingency time frames may change. OREF publishes a Short Sale Addendum that modifies some of the standard terms found in the Sale Agreement. Similarly, when purchasing a bank-owned property (sometimes called a "REO" property), the buyer's offer is generally made using the standard OREF Sale Agreement. However, if accepted, the banks typically submit to buyers their own "Addendum" which significantly alters many of the buyers protections found in the OREF Sale Agreement.

There are many other printed provisions in the Sale Agreement important to sellers and buyers. Your Realtor® is licensed to assist you in the sale and purchase of real estate. However, he/she is not trained as a lawyer, home inspector, title examiner, or other professional. If you have any questions that your Realtor® is not qualified to answer, you should contact an expert of your choice.

© Copyright 2016 by Phillip C. Querin. No part may be reproduced without the express written consent of the author.