

OREF FORMS REVISIONS FOR 2017

By

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The following Summary addresses the major changes made to the OREF forms that will become available for 2017. 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. [Additions are in red print, and have been highlighted in yellow; deletions have a strike-through and have also been highlighted in yellow. In some instances, an entire section is highlighted, since there were many changes and so for readability, the additions and deletions are not separately identified. There are some provisions that are not new for 2017, but received some attention during 2016, and for that reason, they are highlighted in grey and commented upon.]

1. Final Agency Acknowledgment Addendum OREF 010 (New Form). The form can be viewed online by going to: <http://orefonline.com/forms/form-changes/>

COMMENT: The text of this form will be exactly the same as the Final Agency Acknowledgment section appearing at the beginning of all 2017 OREF Sale Agreements. The reason for creating a separate Addendum is to deal with situations where the Seller, such as a builder, is using their own form of sale agreement, and has no Final Agency Acknowledgment section. In such cases, the Seller or buyer's broker can supply the Final Agency Acknowledgment Addendum for completion when the sale agreement is being negotiated.

NOTE: As long as the Final Agency Acknowledgment section in the OREF Sale Agreement has been in existence, it has referred to a "Listing Licensee" and a "Selling Licensee". These terms are an anachronism, likely related to the concept of "subagency" that disappeared in the early 1990s in most parts of the country. In OREF's 2017 forms, Oregon Realtors® will see these terms replaced by "Seller's Agent" and "Buyer's Agent". Interestingly, before making the change, OREF first needed to get the "OK" from the Oregon Real Estate Agency because the current Final Agency Acknowledgment text appearing at the top of all OREF Sale Agreements still use the "Listing Licensee" and "Selling Licensee" nomenclature. See, [Oregon Administrative Rule 863-015-0200 \(12\)](#). Beginning in 2017, OREF will use this new terminology for all of its forms. In the balance of this Summary they will not be separately identified as new changes.

RESOURCES: [ORS 696.845](#) (Acknowledgment of existing agency relationships form; rules) provides: "When signing an offer to purchase, each buyer shall acknowledge the existing agency relationships, if any. When a Seller accepts or rejects an offer to purchase in writing, each Seller shall acknowledge the existing agency relationships, if any. An agent to the real property transaction shall obtain the signatures of the buyers and the Sellers to the acknowledgment, which shall be incorporated into or attached as an addendum to the offer to purchase or to the acceptance. The Real Estate Agency shall prescribe by rule the form and content of the acknowledgment of existing agency relationships. [1993 c.570 §11; 2001 c.300 §49; 2003 c.398 §13; 2005 c.116 §16]"

2. Residential Real Estate Sale Agreement – OREF No. 001

FINANCING

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

- A. **This is an all cash transaction.** Buyer to provide verification ("Verification") of readily available funds as follows (select only one): Buyer has attached a copy of the Verification with the submission of this Agreement to Seller or Seller's Agent. Buyer will provide Seller or Seller's Agent with the Verification within _____ business days (five [5] if not filled in) after this Agreement has been signed and accepted; or Other (Describe): _____.

Seller may notify Buyer or Buyer's Agent, in writing, of Seller's unconditional disapproval of the Verification within _____ business days (two [2] if not filled in) ("Disapproval Period") following its receipt by Seller or Seller's Agent. **Provided, however, such disapproval must be objectively reasonable. Upon such disapproval, all earnest money deposits shall be promptly refunded to Buyer and this transaction shall be terminated.** If Seller fails to provide Buyer or Buyer's Agent with written unconditional disapproval of the Verification by 5:00 p.m. **of the last day** of the Disapproval Period, Seller shall be deemed to have approved the Verification. If Buyer fails to submit a Verification within a time frame selected above, unless the parties agree otherwise in writing, all earnest money deposits shall be promptly refunded and this transaction shall be terminated.

B. Balance of Purchase Price to be financed **through one of the following Loan Programs** (Select only one):
 Conventional; FHA; Federal VA;
 Other (Describe): _____ (hereinafter "Loan Program").

Buyer agrees to seek financing through a lending institution or mortgage broker (hereinafter collectively referred to as "Lender") participating in the Loan Program selected above.

C. **Pre-Approval Letter.** Buyer has attached a copy of a Pre-Approval Letter from Buyer's Lender; Buyer does not have a Pre-Approval Letter at the time of making this offer; Buyer agrees to secure a Pre-Approval Letter **and provide a copy to Seller as follows:** _____

COMMENT: As with many changes to the forms, they result from Realtor® input – and often this comes in the form of an anecdotal story that cannot be ignored as a "one-off". That was the case here. In today's market, we know that if the Seller wants to kill their pending sale in favor of a better offer, they will sometimes stop at nothing – in this case, disapproving the Buyer's verification of funds upon no reasonable basis. Accordingly, the Forms Committee added the requirement that the Seller's disapproval had to be "objectively reasonable". What does that mean? Does it get us any closer to preventing arbitrary refusals? Our belief is that it does; the refusal cannot be "subjective" – it must be "objective". And secondly, it must be "reasonable". So taken together, we believe that this phrase should be construed and applied to mean that the Seller's refusal must be based upon a reasonable third party seller under the same or similar circumstances.

5.1 FINANCING CONTINGENCIES. If Buyer is financing any portion of the Purchase Price, this transaction is subject to the following financing contingencies: (1) Buyer and the Property to qualify for the loan from Lender; (2) Lender's appraisal shall not be less than the Purchase Price; and, (3) Other (Describe): _____.

All Financing Contingencies are solely for Buyer's benefit and may be waived by Buyer in writing at any time.

5.2 FAILURE OF FINANCING CONTINGENCIES. If Buyer receives actual notification **from Lender** 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 **date day of Buyer's notification to Seller's receipt of such notification** to either (a) Terminate this transaction by signing a **Termination Agreement (OREF057)** and/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 in this Section 5.2, 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.

5.3 BUYER REPRESENTATION REGARDING FINANCING: As of the date of signing this Agreement, Buyer makes the following representations to Seller: (1) **Buyer's completed loan application, as hereinafter defined, shall be submitted to the Lender that provided the Pre-Approval Letter, a copy of which has been delivered to Seller, or will be, pursuant to Section 4C, above.**

(2) Buyer shall submit to Buyer's Lender or mortgage broker a completed loan application for purchase of the Property not later than _____ business days (three [3] if not filled in) following the date Buyer and Seller have signed and accepted this Agreement. A "completed loan application" shall include the following information: (i) Buyer's name(s); (ii) Buyer's income(s); (iii) Buyer's social security number(s); (iv) the Property address; (v) an estimate of the value of the Property; and (vi) the loan amount sought.

(3) Buyer agrees that if Buyer intends to proceed with the loan transaction, within ten (10) business days following receipt of the Loan Estimate from Buyer's Lender or mortgage broker, Buyer will provide said Lender or mortgage broker with written notice of such intent **within _____ business days (three [3] if not filled in - but not to exceed [10] business days), in a form**

reasonably required by Lender. Buyer or Buyer's Agent shall promptly notify Seller or Seller's Agent of the date of Buyer's signed notice of Buyer's intent to proceed with the loan.

- (4) Buyer will thereafter complete all paperwork requested by the Lender in a timely manner, and exercise best efforts (including payment of all application, appraisal and processing fees, where applicable) to obtain the loan.
- (5) Buyer agrees to keep Seller promptly informed of all other material non-confidential developments regarding Buyer's financing and the timing of Closing. The following circumstances shall constitute a "Notice of Event": (a) The Lender's Loan Estimate varies in any material way from the terms of the Preapproval Letter Buyer provided to Seller; (b) Buyer rejects the terms of the Loan Estimate from Buyer's Lender; (c) Buyer fails to notify Buyer's Lender of Buyer's intent to proceed within the time period selected in Section 5.3 (3), above; or (d) After notifying Lender of their intent to proceed: (i) Buyer's loan application is rejected for any reason; (ii) Buyer desires to replace Lender for any reason; (iii) Buyer desires to select a Loan Program different than the one selected in Section 4B (Balance of Purchase Price), above. Upon the occurrence of any Notice of Event, Buyer or Buyer's Agent shall notify Seller or Seller's Agent in writing, and the parties shall thereafter have [] business days (two [2] if not filled in) within which to reach agreement upon another Lender or Loan Program for Buyer to identify, and the terms and timing thereof. If no such written agreement is reached, all earnest money shall be promptly refunded to Buyer and this transaction shall be terminated. Notwithstanding the preceding sentence, Seller shall have no obligation to agree to any terms different than those originally contained in this Sale Agreement.

COMMENT: Several provision of Section 5.3 have been changed. In summary, they are the following:

- Section 5.3(1) requires that the Buyer's loan application be submitted to the lender or mortgage broker that issued the Preapproval Letter. The rationale for this is to assure that the Buyer does not submit a Preapproval Letter from a well-regarded local lender with good turn-around times, and then apply for the purchase money loan through an Internet lender or one with unknown or poor completion times. As all Realtors® know, if a loan is not completed and ready to fund by the Closing Date, the transaction is over, unless the parties reach agreement otherwise.
- Section 5.3(3) has a three business day default period for the Buyer to indicate to their lender whether they intend to proceed with the loan summarized in the Loan Estimate (formerly known as the "Good Faith Estimate"). Under TRID, the maximum time that the Loan Estimate remains open is ten (10) business days. We felt that that was far too long in this market for a Seller to permit their Buyer to decide whether to accept the terms of the Loan Estimate.
- We have defined several "Events" which require Buyer notification to Seller. Some are obvious, such as Buyer changing Loan Programs, e.g. from conventional to FHA. But most are new, such as the requirement that if, after indicating an intent to proceed with Lender A, Buyer wants to change to Lender B. Realtors® should familiarize themselves with these new changes.

PRACTICE TIP: Buyer agents should make sure their clients are well aware of these issues before making an offer on property, if they are going to finance a portion of the purchase price. This means that buyers should thoroughly vet their potential lenders or mortgage brokers to make sure that they get the Pre-Approval Letter from the one they intend to work with. Changing lenders or shopping the loan after the transaction is already written up, can cause potential problems, and in today's marketplace, the buyer could be at a disadvantage in doing so.

7. SELLER-CARRIED FINANCING (E.G., LAND SALE CONTRACT/TRUST DEED/MORTGAGE/OPTION AGREEMENTS, RENT-TO-OWN, ETC.): Notice to Buyer and Seller: If this transaction involves a land sale contract, trust deed, mortgage, option, or lease-to-own agreement (hereinafter a "Seller Carried Transaction"), Oregon law requires that, unless exempted, individuals offering or negotiating the terms must hold a mortgage loan originator ("MLO") license. Your real estate agent licensee is not qualified to provide these services or to advise you in this regard. Legal advice is strongly recommended. Oregon law exempts the following individuals from the MLO licensing law: (a) Those who offer or negotiate terms of a residential mortgage loan with or on behalf of their spouse, child, sibling, parent, grandparent, grandchild or a relative in a similar relationship created by law, marriage or adoption; (b) Those who sell their primary residence they currently or previously lived in; and (c) Individuals who sell up to three (3) non-primary residences during any 12-month period. (Note: One may not hold more than eight residential mortgage loans at one time.) If this is a Seller-Carried Transaction, and one or more of the preceding exemptions apply, Buyer and Seller should agree as follows (select only one):

- (a) Secure separate legal counsel to negotiate and draft the necessary documents; or
 (b) Employ an MLO; or
 (c) Use the **Seller-Carried Addendum (OREF 033)** and related forms.

Seller and Buyer agree that regardless of whether (a), (b), or (c) is selected, they will reach a signed written agreement upon the terms and conditions of such financing (e.g. down payment, interest rate, amortization, term, payment dates, late fees, balloon dates, etc.) within _____ business days (ten [10] if not filled in) commencing on the next business day following the date they have signed and accepted this Sale Agreement ("Negotiation of Terms Period"). Upon failure of Buyer and Seller to reach agreement by 5:00 p.m. on the last day of the Negotiation of Terms Period, or such other times as may be agreed upon in writing, all earnest money deposits shall be refunded to Buyer and this transaction shall be automatically terminated. **Caveat: Buyer's and Seller's Agents are not authorized to render advise on these matters. Buyer and Seller are advised to secure competent legal advice while engaged in a Seller-Carried Transaction.**

COMMENT: This change essentially calls upon the parties to reach agreement as to how they will proceed, i.e. secure separate attorneys or an MLO to negotiate the terms of the transaction, or use the OREF forms.

PRACTICE TIP: What is important for Realtors® to do is to keep their eyes on the clock. The default time for negotiating terms of the Seller-carried transaction is ten (10) business days. So while the parties may have a binding Sale Agreement on Day One, if the terms are not agreed-upon by 5:00 PM on the last day of the agreed-upon negotiation period, the deal dies, absent some 11th hour negotiation. My experience has been that the parties let this time go by without actually nailing down such things as late fees, balloon dates, rights of prepayment, etc. Realtors® involved in Seller-carried transactions are strongly encouraged to us OREF's Seller-Carried Addendum (OREF 033), if for no other reason than all the essential details of these terms are addressed up front.

9. TITLE INSURANCE: When this Agreement is signed and accepted by Buyer and Seller, Seller will, at Seller's sole expense, promptly order from the title insurance company selected at Section 22 below, a preliminary title report and copies of all documents of record ("the Report and Documents of Record") for the Property, and furnish them to Buyer at Buyer's contact location as defined at Section 30(3) below. Unless otherwise provided herein, this transaction is subject to Buyer's review and approval of the Report and Documents of Record (If, upon receipt, the Report and Documents of Record are not fully understood, Buyer should immediately contact the title insurance company for further information or seek competent legal advice). The Buyer's and Seller's Agents are not qualified to advise on specific legal or title issues.) Upon receipt of the Report and Documents of Record Buyer shall have _____ business days (five [5] if not filled in) within which to notify Seller, in writing, of any matters disclosed in the Report and Documents of Record which is/are unacceptable ("the Objections"). Buyer's failure to timely object in writing, shall constitute acceptance of the Report and/or Documents of Record. However, Buyer's failure to timely object shall not relieve Seller of the duty to convey marketable title to the Property pursuant to Section 27, below. If, within _____ business days (five [5] if not filled in) following Seller's receipt of the Objections, Seller fails to remove or correct the matters identified therein, or fails to give written assurances reasonably satisfactory to Buyer, that they will be removed or corrected prior to Closing, all earnest money shall be promptly refunded to Buyer, and this transaction shall be terminated. This contingency is solely for Buyer's benefit and may be waived by Buyer in writing. Within thirty (30) days after Closing, the title insurance company shall furnish to Buyer, an owner's standard form policy of title insurance insuring marketable title in the Property to Buyer in the amount of the Purchase Price, free and clear of the Objections, if any, and all other title exceptions agreed to be removed as part of this transaction. (Note: This Section 9 provides that Seller will pay for Buyer's standard owner's policy of title insurance. In some areas of the country, such a payment might be regarded as a "seller concession." Under the TILA/RESPA Integrated Disclosure Rules ("the Rules"), there are limitations, regulations and disclosure requirements on "seller concessions", unless the product or service paid for by the Seller was one customarily paid by sellers in residential sales transactions. In Oregon, sellers customarily and routinely pay for their buyer's standard owner's policy of title insurance. Accordingly, unless the terms of this Section 9 are modified in writing by Buyer and Seller, the parties acknowledge, agree and so instruct Escrow, that in this transaction, Seller's payment of Buyer's standard owner's policy of title insurance is not a "seller concession" under the Rules or any other federal law.)

COMMENT: Amidst several stylistic changes, there were two substantive ones: (a) The title company is to provide the preliminary title report and all "documents of record"; and (b) They are to be furnished to the Buyer at "Buyer's contact location as defined at Section 30(3) below." Section 30(3) states: Except as provided in Section 9, above, all written notices or documents, required or permitted under this Agreement to be delivered to Buyer or Seller may be delivered to their respective Agent with the same effect as if delivered to that Buyer or Seller. Upon opening of this transaction with the title company identified at Section 22, above, Buyer, Seller, and their respective Agents, where applicable, shall provide Escrow with their preferred means of notification (e.g. email or text address, facsimile number, or mailing or personal delivery address, or other), which shall serve as the primary location for receipt of all notices or documents (hereinafter, "Contact Location")

COMMENT: Many title companies provide links to the underlying recorded documents imbedded in an electronic copy of the preliminary report. For lawyers and those interested in this information, it is very handy. If the preliminary title report is issued without the copies or links to the underlying documents, there may be some, such as CC&Rs, that every Buyer should review as soon as possible. The failure to timely object to the report could be difficult later, since by the terms of this section, the failure to do so constitutes a waiver of the title contingency.

PRACTICE TIP: Is there a "standard of practice" that "requires" Realtors® to review the preliminary title report when received? No, but it's still a good idea to do so. That way, over time, you will become accustomed to the contents, and having seen enough preliminary reports, pretty soon you'll begin to know what is standard, and what is not. For example, most special exceptions to coverage are things such as utility easements, CC&Rs, and other matters that were recorded as a part of the development of the property. Additionally, you'll see any financial encumbrances on the property, such as recorded trust deeds that will have to be removed at the time of closing. For a primer to get started, [go to this link](#).

10. INSPECTIONS/ ENVIRONMENTAL HEALTH CONDITIONS

LICENSED PROFESSIONAL INSPECTIONS: At Buyer's expense, Buyer may have the Property and all elements and systems thereof inspected by one or more licensed professionals of Buyer's choice. Provided, however, Buyer must specifically identify in this Agreement any desired invasive inspections which may include testing or removal of any portion of the Property including radon and mold. 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 and accepted this Agreement (hereinafter "the Inspection Period"), in which to complete all inspections **and** negotiations with Seller regarding any matters disclosed in any inspection report. **Buyer shall not provide all or any portion of the inspection reports to Seller unless requested by Seller or Seller's Agent. However, at any time during this transaction, or promptly following termination, upon request by Seller or Seller's Agent, Buyer shall promptly provide a copy of such reports or portions of reports, as requested. During the Inspection Period, Seller shall not be required to modify any terms of this Agreement already reached with Buyer.** Unless a written agreement has already been reached with Seller regarding Buyer's requested repairs, at any time during the Inspection Period, Buyer may notify Seller or Seller's Agent, 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. **If Buyer fails to provide Seller or Seller's Agent with written unconditional disapproval of any inspection report(s) by 5:00 P.M. of the final day of the Inspection Period, Buyer shall be deemed to have accepted the condition of the Property. Note that if, prior to expiration of the Inspection Period, written agreement is reached with Seller regarding **ALL** Buyer's requested repairs, the Inspection Period shall automatically terminate, unless the parties agree otherwise in writing.**

Identify Additional Invasive Inspections:

COMMENT: The Forms Committee has clarified and expanded on the topic of Buyer Agents inadvertently or intentionally sending to Seller's Agents copies of all or portions of the inspection reports without being asked. By making this change we are not treading into the debate about whether Buyer Agents have some obligation to unilaterally email copies of reports accompanying a request for repairs. There is a school of thought that believes not all inspectors' reports call out the same items, and accordingly, Sellers have the right to rely upon their own inspectors and not necessarily a Buyer's inspection report. In some cases, but not all, one might expect a Seller to ask for portions of a Buyer's inspector's report relating to the need for certain requested repairs. But under this new provision, it's up to the Seller's Agent to ask; it's not up to the Buyer's Agent to automatically provide all, or a portion, of a report when requesting Seller repairs.

15.1 SELLER ADVISORY: OREGON STATE TAX WITHHOLDING OBLIGATIONS: Seller is is not a permanent resident of the State of Oregon. Subject to certain exceptions, Escrow is required to withhold a portion of Seller's proceeds if Seller***** is a non-resident individual or corporation as defined under Oregon law. Buyer and Seller agree to cooperate with Escrow by executing and delivering any instrument, affidavit or statement as requested, and to perform any acts reasonable or necessary to carry out the provisions of Oregon law. **[*****This is a recent correction made to the 2017 form.]**

Subject to certain exceptions, Escrow is required to withhold a portion of Seller's proceeds if Buyer is 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.

15.2 SELLER/BUYER ADVISORY: FIRPTA TAX WITHHOLDING REQUIREMENT: Seller and Buyer are advised that upon Closing, a Federal law, known as the Foreign Investment in Real Property Tax Act ("FIRPTA"), requires buyers to withhold a portion of a seller's proceeds if the real property is located within the United States and the seller is a "foreign

person" who does not qualify for an exemption ("Withholding Requirement"). A "foreign person" includes a non-resident alien individual, foreign corporation, foreign partnership, foreign trust or a foreign estate. Generally, the following rules apply under FIRPTA: (a) There is no Withholding Requirement, even if the seller is a "foreign person", if: (i) The purchase price of the property is not more than \$300,000; and (ii) The property will be occupied as a residence by a buyer who is an individual (or a member of his/her family) (iii) for at least 50% of the number of days (excluding days the property is vacant) it is used by such person during each of the first two 12-month periods following the date of closing; (b) The Withholding Requirement will be ten percent (10%) of the purchase price when the seller is a "foreign person" and the purchase price is over \$300,000, but less than \$1,000,000, and (a)(ii) and (iii) above apply; and (c) The Withholding Requirement will be a fifteen percent (15%) of the purchase price when the Seller***** is a "foreign person" and the purchase price is over \$1,000,000, regardless of use of the property. If FIRPTA applies, even if there is an exemption, Seller and Buyer should complete and sign the FIRPTA Addendum, OREF 093. Seller's and Buyer's Agents are not experts in FIRPTA and will not act as a transferor or transferee agent for purposes of the Withholding Requirement. If FIRPTA may apply in this transaction, Seller and Buyer should promptly consult their own experts familiar with the law and regulations. For further information, Seller and Buyer should go to: <http://www.realtor.org/articles/firpta-withholding-rate-increasing-to-15>. [*****This is a recent correction made to the new 2017 form.]

COMMENT: This section has not changed substantively; it has simply been clarified. With the influx of foreign investors following the real estate and financing crisis over the past several years, we can expect there to be more sales subject to FIRPTA. Brokers, especially those representing Buyers, should remain alert to transactions that may involve a "foreign person" as seller. Why? Because the IRS can assess the Buyer for the failure of the seller to withhold and transmit the necessary funds.

PRACTICE TIP: Buyer or Seller Agents can be held liable under FIRPTA if the Seller executes a Certificate of Non-Foreign Status that either or both of them know to be false. Sec. 1.1445-2(b)(2) (Situations in which withholding is not required under Section 1445(a))

RESOURCES: <http://www.irs.gov/Individuals/International-Taxpayers/FIRPTA-Withholding>

<http://www.irs.gov/Individuals/International-Taxpayers/Exceptions-from-FIRPTA-Withholding>

<https://www.nar.realtor/articles/firpta-withholding-rate-increased-to-15-percent-for-high-end-properties>

<http://www.opp.today/why-it-is-vital-that-agents-understand-firpta-changes/>

MISCELLANEOUS ITEMS

17. TOWNHOME/PLANNED COMMUNITY: Is the property a townhome or in a planned community? Yes No
 Unknown

If yes, Seller to provide Buyer with **OREF 024 Townhome/Planned Community Addendum**.

18. ALARM SYSTEM: NONE OWNED LEASED. If leased, Buyer will will not assume the lease at Closing.

19. WOODSTOVE/WOOD BURNING FIREPLACE INSERT: Does the Property contain a woodstove or wood burning fireplace insert? Yes No

If yes, is the woodstove/wood burning fireplace insert certified? Yes No Unknown. If "No" or "Unknown," Seller to provide Buyer with **OREF046 Woodstove/Wood Burning Fireplace Insert Addendum**.

20. HOME WARRANTIES: Home warranty plans may be available to help cover homeowner costs to repair/replace certain home systems and appliances. (See specific plan for details.) Will a plan be purchased for Buyer as a part of this transaction? Yes No

If yes, identify plan and cost: _____ \$ _____ To be paid at Closing by: Buyer Seller

21. ADDITIONAL PROVISIONS: _____ For additional provisions, see Addendum

COMMENT: Last year these items were located elsewhere in the form; now they have now been grouped under "Miscellaneous Items". Additionally, we've added the Townhome/Planned Community question, so that the separate Townhome/Planned Community Addendum (OREF 024) is used. The reason for doing so is because if the property is a townhome or located in a planned community, it has a homeowner's association ("HOA") with certain governance documents, including bylaws and a "Declaration" which defines rights and duties of the HOA members. These governance documents, including assessments and reserve studies should be reviewed by Buyers as a part of the transaction. OREF 024 addresses these documents and gives Buyers a period of time to review. See, ORS Chapter 94. These documents are typically provided by the title insurance company when the preliminary title report is issued.

CLOSING/ESCROW

22. ESCROW: This transaction shall be Closed at _____ ("Escrow"), a neutral escrow company licensed and located in the State of Oregon. Costs of Escrow shall be shared equally between Buyer and Seller, unless otherwise specifically prohibited by the U.S. Department of Veterans Affairs (Federal VA). Unless otherwise provided herein, the parties agree as follows: Seller authorizes Seller's Agent's Firm to order a preliminary title report and owner's title policy at Seller's expense and further authorizes Escrow to pay out of the cash proceeds of sale the expense of furnishing such policy, Seller's recording fees, Seller's Closing costs and any liens and encumbrances on the Property payable by Seller on or before Closing. Buyer shall deposit with Escrow sufficient funds necessary to pay Buyer's recording fees, Buyer's Closing costs, and lender's fees, if any. Real estate fees, commissions or other compensation for professional real estate services provided by Buyer's or Seller's Agent's Firms shall be paid at Closing in accordance with the listing agreement, buyer service agreement or other written agreement for compensation.

23. PRORATIONS: Prorates for rents, current year's taxes, interest on assumed obligations, and other prepaid expenses attributable to the Property shall be as of: (check one) the Closing Date; date Buyer is entitled to possession

24. RECEIPT FOR EARNEST MONEY: Buyer's Agent's Firm acknowledges receipt of earnest money from Buyer in the sum of \$ _____ evidenced by (check all that apply):

24.1 CASH Deposit in Buyer's Agent's Firm's client trust account, and Remain there until disbursement. Or thereafter be promptly deposited with Escrow.

24.2 CHECK Hold any earnest money that is in the form of a check undeposited until this Agreement is signed and accepted by Buyer and Seller, after which time it is to be deposited within three (3) banking days of receipt as follows: In Buyer's Agent's Firm's client trust account and remain there until disbursement. In Buyer's Agent's Firm's client trust account and thereafter deposit with Escrow. Deposit with Escrow.

24.3 PROMISSORY NOTE (See attached OREF 060 Promissory Note).

24.4 Other form of earnest money deposit: _____

24.5 BUYER'S AGENT AND BUYER'S AGENT'S FIRM SHALL HAVE NO FURTHER LIABILITY TO BUYER OR SELLER REGARDING ANY EARNEST MONEY THAT IS TRANSFERRED PURSUANT TO THE ABOVE INSTRUCTIONS.

Buyer's Agent's Firm

Buyer's Agent Signature



COMMENT: The changes made above were primarily for clarity, and should not alter broker practice.

PRACTICE TIP: Seller Agents should remember Oregon Administrative Rule 863-015-0186 Clients' Trust Accounts — Disbursal of Disputed Funds. It provides that if the Buyer's Agent's Firm is holding the earnest money deposit and buyer demands that the Firm's Principal Broker return the funds, the Principal Broker "...must deliver written notice to all parties that a demand has been made for disbursal of the funds, and that such funds may be disbursed to the party who delivered the funds within 20 calendar days of the date of the demand." Thereafter, even if the seller disputes the disbursal, "...if the parties have not entered into a written agreement regarding such disbursal, or if a party has failed to provide proof of filing a legal claim, the principal real estate broker may disburse the disputed funds to the person who delivered the funds within 20 calendar days of the date of the demand for disbursal."

This is good for Buyer Agents and Firms, since it allows the Buyer to continue searching for another property, but for Sellers, it forces them to file a claim either in arbitration or small claims court, to keep the disbursal from occurring. Accordingly, Seller Agents should make sure their clients understand the risks associated with leaving earnest money in Buyer's Agent's Firms all the way up to closing.

28. DEED: Seller shall convey marketable title to the Property by statutory warranty deed (or good and sufficient personal representative's or trustee's or similar legal fiduciary's deed, where applicable) free and clear of all liens of record, except property taxes that are a lien but not yet payable, zoning ordinances, building and use restrictions, reservations in federal patents, easements of record that affect the Property, covenants, conditions and restrictions of record, and those matters accepted by Buyer pursuant to Section 9. If Buyer's title will be held in the name of more than one person, see Section 38 regarding forms of co-ownership.

COMMENT: *The addition was requested by an escrow officer, so that for purposes of deed preparation, they would know how title was to be held, if vesting was to be in more than one person.*

PRACTICE TIP: *Buyer Agents should remember to discuss this with their Buyer clients where two or more are purchasing property together. There are several forms of co-ownership, and they can have significant consequences in the event of death of a co-owner. While Realtors® should never "advise" clients as to the best form of ownership, they want to make sure that if there are any questions that Buyers secure competent counsel.*

Although all of the OREF Sale Agreements call for the Seller to convey title by a Statutory Warranty Deed, there are several other forms of deeds. For a discussion of them, [go to link here](#).

DEFINITIONS/INSTRUCTIONS

30. DEFINITIONS/INSTRUCTIONS: (1) All references in this Sale Agreement to "Agent" 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) Except as provided in Section 9, above, all written notices or documents, required or permitted under this Agreement to be delivered to Buyer or Seller may be delivered to their respective Agent with the same effect as if delivered to that Buyer or Seller. Upon opening of this transaction with the title company identified at Section 22, above, Buyer, Seller, and their respective Agents, where applicable, shall provide Escrow with their preferred means of notification (e.g. email or text address, facsimile number, or mailing or personal delivery address, or other), which shall serve as the primary location for receipt of all notices or documents (hereinafter, "Contact Location"). 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) Agent 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, legal 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" or "the Sale 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 Agents, and (b) Transmitted it to the sending party, or their Agent, either by manual delivery ("Manual Delivery"), or by facsimile or electronic mail (collectively, "Electronic Transmission"). When the Agreement is "signed and accepted" as defined herein, the Agreement becomes legally binding on Buyer and Seller, and neither has the ability to withdraw their offer or counteroffer, as the case may be.

[7] *** (11) unchanged.]

COMMENT: *The change at subsection (3) regarding a "Contact Location" is simply to add some uniformity to the means and method for escrow/title to contact everyone. Although it does not appear that there are any glaring deficiencies in the current protocols, it is important that all parties and their agents are in the same information loop.*

DISPUTE RESOLUTION

37.3 MEDIATION AND ARBITRATION INVOLVING AGENTS/FIRMS: All Claims that include Agents or their Firms shall be resolved in accordance with the mediation and arbitration process described in Section 37.3 above, and if applicable, the prevailing party shall be entitled to an award of attorney fees, filing fees, cost, disbursements, and mediator and arbitrator fees, as provided therein.

All Claims that include Licensees or Firms shall be resolved through the arbitration process described in Section 37.3 above. However, participation in mediation by said Licensees or Firms shall be voluntarily and not mandatory, and no attorney fees shall be awarded to either party in arbitration. If a Licensee or Firm is also a Buyer or Seller in this transaction, the provisions of Sections 36-37 shall apply.

COMMENT: This is a change that has been far too long in coming. Many years ago, there was a coalition that wanted to see real estate brokers and firms excluded from the mandatory mediation requirements as well as the "prevailing attorney fee" provisions of the Dispute Resolution section of the Sale Agreement. This "safe harbor" for Realtors® was hard to justify or explain, especially since our industry created the form for Sellers and Buyers to use. The playing field is one again level, and both Realtors® and their clients are subject to the same ground rules.

NOTE: There is no provision in the Sale Agreement for Sellers or Buyers to bring claims in Small Claims Court against their Agents. See, Section 37.1. The reasons for this is that if there is a commission dispute, it is handled pursuant to the dispute resolution provisions of the Listing Agreement. If there is any other type of claim by a Seller or Buyer against their Agent, they are to use the dispute resolution provisions of the local Realtor® Board or Association.

See: <https://www.nar.realtor/LetterLw.nsf/pages/hards>

SIGNATURE INSTRUCTIONS

38. OFFER TO PURCHASE: Buyer offers to purchase the Property upon the terms and conditions set forth in this Agreement. Buyer acknowledges receipt of a completely filled in copy of this Agreement which Buyer has fully read and understands. Buyer acknowledges that Buyer has not relied upon any oral or written statements made by Seller or any Agent that are not expressly contained in this Agreement. Neither Seller nor any Agent(s) warrant the square footage of any structure or the size of any land being purchased. If square footage or land size is a material consideration, all structures and land should be measured by Buyer prior to signing or should be made an express contingency in this Agreement.

Deed or contract shall be prepared in the name of _____.

Co-Ownership Note: Buyer should secure advice from an expert or attorney regarding different forms of co-ownership and rights of survivorship. Agents are not qualified to provide advice on these issues. Once the form of co-ownership is determined, Buyer should promptly notify Escrow.

COMMENT: This reminder was discussed above in the Comment and Practice Tip regarding Section 28 (Deed), above.

41. SELLER'S REJECTION/COUNTER OFFER (select only one): Seller does not accept the above offer, but makes _____ the _____ attached counter offer.
 Seller rejects Buyer's offer.

Seller _____ Date _____, a.m. p.m. ↵

Seller _____ Date _____, a.m. p.m. ↵

Address _____ Zip _____

Phone Home _____ Work _____ E-mail _____ Fax _____

42.1 BUYER'S ACKNOWLEDGMENT: Buyer acknowledges receipt of a copy of Seller's signed response to Buyer's offer at Section 40, above (Note: The date and time of Buyer's signed acknowledgment below is not the moment this Agreement becomes binding upon the parties. See, Section 30 (6), above.)

Buyer _____ Date _____, a.m. p.m. ↵

Buyer _____ Date _____ , a.m. p.m. ↵

42.2 SELLER'S LATE ACCEPTANCE: If Seller signed where indicated at Section 39 accepting Buyer's offer, but transmitted it to Buyer or Buyer's Agent after the Offer Deadline identified at Section 38, above, Buyer (select only one) agrees does not agree, to be bound thereby. (The failure to check either box shall constitute rejection of Seller's acceptance after the Offer Deadline.) If Buyer checks the box agreeing to be bound by Seller's late acceptance occurring after the Offer Deadline, this Sale Agreement shall become binding on all parties only when Buyer(s) has/have signed below and transmitted it to Seller or Seller's Agent.

Buyer _____ Date _____ , a.m. p.m. ↵

Buyer _____ Date _____ , a.m. p.m. ↵

If Buyer checked the box and signed where indicated in this Section 41.2, agreeing to be bound by Seller's late acceptance of Buyer's offer, Buyer or Buyer's Agent must complete the information below and thereafter promptly transmit this Agreement to Seller or Seller's Agent:

Enter Date, Time, and Method of Transmission of Seller's Acceptance:
_____ ;

Enter Identity of Sender: _____

COMMENT: Section 42.1 clarifies that the "date and time of Buyer's signed acknowledgment below is not the moment this Agreement becomes binding upon the parties." In the past, this has been a common misconception. The Acknowledgement portion of the Sale Agreement was there so that if the Real Estate Agency was to audit a transaction, they could see that the offer, bearing the Seller's response, made it back to the Buyer who then "acknowledged" receiving it.

Section 42.2 clarifies the protocol for dealing with the Seller's belated acceptance. Since it is required that the Buyer's willingness to accept a Seller's late acceptance be communicated to the Seller, we have required that the date, time, and method of transmission be inserted along with the identity of the sender. (This protocol also exists in the Buyer's Counteroffer, OREF 004.)

NOTE: ALL OF THE ABOVE CHANGES TO THE OREF RESIDENTIAL REAL ESTATE SALE AGREEMENT HAVE BEEN ADOPTED, WHERE APPLICABLE, IN THE OTHER SALE AGREEMENTS

3. VACANT LAND SALE AGREEMENT – OREF No. 008

10.1 SELLER PROPERTY DISCLOSURE LAW: Buyer and Seller acknowledge that, subject to certain exclusions, Oregon's Seller Property Disclosure Law (ORS 105.462 – 105.490) applies only to real property transactions improved with 1-to-4 family dwellings, and does not apply to transactions involving vacant land.

10.2 SELLER VACANT LAND DISCLOSURES: Although not required by law, unless waived by Buyer in writing, Seller shall complete the Vacant Land Disclosure Addendum (OREF 019) (the "Addendum") for delivery to all prospective buyers making offers to purchase the Property. The Addendum addresses the current condition of the Property, and asks Seller to provide pertinent documents and information. Seller's answers are based solely upon Seller's actual knowledge of the condition of the Property, without necessarily having performed any inspections or tests. Notwithstanding receipt and review of Seller's completed Addendum, Buyer is cautioned to exercise their own due diligence by using experts and specialists of Buyer's choice. Neither Seller's nor Buyer's Agents are experts or specialists in vacant land. As more fully described in the Addendum, Buyer shall have a five (5) business day right to revoke their offer by giving Seller, or the Seller's Agent, written notice of revocation following Buyer's or Buyer's Agent's acknowledgment of delivery of the completed Addendum. Unless waived by Buyer in writing, Seller's or Seller's Agent's failure to deliver the Addendum with all required documents

and information to a Buyer that has made a written offer to purchase the Property, shall entitle Buyer to exercise their right of revocation up to the moment of closing. The right of revocation expires automatically upon closing.

COMMENT: In addition to the other changes from the Residential Sale Agreement, discussed above, are these two additions: Section 10.1 Acknowledges that the seller property disclosure law only applies to property improved with 1-4 family dwellings, and Section 10.2 advises that there now is a Vacant Land Disclosure Addendum (OREF 019), that can be used if the parties agree. It operates in much the same manner as the residential property disclosure law. The Addendum is attached at the end of this Summary.

PRACTICE TIP: Note that this provision defaults to the use of the Addendum; it is not something that the parties select or deselect with a box. So if a Seller does not agree, it needs to be withdrawn in a counteroffer. Listing agents should discuss with sellers in advance.

4. Vacant Land Disclosure Addendum (OREF 019)

COMMENT: This is an entirely new form. It is included at the end of this Summary. It operates much the same as the Seller Property Disclosure Statement although its use is not mandated by Oregon law.

5. Buyer's Repair Addendum – OREF No. 22A

COMPLETION DATE FOR REPAIRS/CORRECTIVE ACTION:

The Repairs/Corrective Action shall be completed on or before _____ ("the Completion Date"). Seller shall give Buyer or Buyer's Agent written notice of completion of the Repairs/Corrective Action and Buyer may, with Buyer's inspector, within _____ **business days** (two [2] if not filled in) following receipt of such notice, re-inspect the Property to confirm that the Repairs/Corrective Action have/has been completed.

Buyer Signature _____ Date _____, _____ a.m. _____ p.m. ↵

Buyer Signature _____ Date _____, _____ a.m. _____ p.m. ↵

SELLER'S RESPONSE (Check only one):

- Seller agrees to perform the Repairs/Corrective Action on or before the Completion Date and give timely notice thereof to Buyer. (**Note: If Seller checks this box, the Inspection Period shall automatically terminate, unless the parties otherwise agree in writing.**)
- Seller declines to perform the Repairs/Corrective Action and makes no counter-proposal.
- Seller makes a counter-proposal (**Note: Unless modified, all remaining terms above shall apply:**) Use Form OREF 022B for counter-proposal

Seller Signature _____ Date _____, _____ a.m. _____ p.m. ↵

Seller Signature _____ Date _____, _____ a.m. _____ p.m. ↵

COMMENT: The purpose of this provision is to make it clear that once Seller agrees to Buyer's requested repairs, if time still remains in Buyer's Inspection Period, it terminates - Buyer cannot later ask for additional repairs, and terminate if Seller doesn't agree.

6. Seller's Response to Repair Addendum – OREF No. 22B

For additional details, see Addendum _____

Warning: If the "Inspection Period" specified in the Inspection Section applicable to the Sale Agreement (or Section 1 of the Professional Inspection Addendum (OREF 058), if used in this transaction) is not properly extended, Buyer's failure to provide written unconditional disapproval of Buyer's inspection report(s) by 5:00 p.m. on the last day of the Inspection Period could be deemed an acceptance of the condition of the Property. Unless otherwise provided above, all Repairs/Corrective Action requiring the use of contractors (e.g. for electrical, HVAC, plumbing, or similar specialty work) shall be performed by Oregon licensed and bonded contractors in a workmanlike manner in accordance with all applicable laws, codes and ordinances, and shall be paid by Seller prior to the Closing Date.

This counter-proposal must be accepted by Buyer in writing within ___ business days (two [2] if left blank) or it shall be deemed automatically withdrawn, and all terms and conditions of the existing Sale Agreement shall remain in full force and effect, including the deadline established by the Inspection Period in the Inspection Section applicable to the Sale Agreement (or Section 1 of the Professional Inspection Addendum (OREF 058), if used in this transaction).

Seller Signature _____ Date _____, ____ a.m. ____ p.m. ↵

Seller Signature _____ Date _____, ____ a.m. ____ p.m. ↵

BUYER'S REPLY TO SELLER'S RESPONSE (Check only one):

Buyer accepts Seller's counter-proposal. (Note: If Buyer checks this box, the Inspection Period shall automatically terminate, unless the parties otherwise agree in writing.)

Buyer rejects Seller's counter-proposal.

(If Buyer intends to propose a modification to Seller's counter-proposal above, it is suggested that a new addendum or other document be immediately signed by all parties in order to assure that a binding amendment to the Sale Agreement occurs.)

Buyer Signature _____ Date _____, ____ a.m. ____ p.m. ↵

Buyer Signature _____ Date _____, ____ a.m. ____ p.m. ↵

COMMENT: This change makes it clear that specialty-type work has to be performed by licensed and bonded contractors.

7. TOWNHOUSE / PLANNED COMMUNITY ADDENDUM - OREF No. 024

DOCUMENTS TO BE PROVIDED TO BUYER

The Property that is the subject of this transaction includes a residence located within a planned community as defined in ORS Chapter 94. There exists a homeowner's association (collectively "the HOA"), which is responsible for one or more expenses relating to the Property and/or certain limited or general common elements. It is highly recommended that Buyer employ the use of third-party professionals familiar with townhomes and/or planned unit developments, their associations, governance, budgets, finances, and reserves. Seller is not required to provide documents under this Addendum that have already been provided with the Residential Real Estate Sale Agreement (OREF-001) or such other disclosures as may be legally required for the sale of new homes or condominiums under ORS Chapters 94 and 100.

COMMENT: When it comes to understanding and reviewing HOA minutes, bylaws, rules, budgets, and reserve studies, Buyers should be encouraged to seek outside professional help, if needed. There are companies that do this work for a fixed fee.

8. VACANT LAND – BUYER ADVISORY – OREF No. 030

1. VACANT LAND DISCLOSURE ADDENDUM (OREF 019) (the “Addendum”): This form is available for sellers to complete and deliver to potential Buyers of vacant land. Although Oregon law does not require this Addendum to be used, the OREF Vacant Land Sale Agreement (OREF 008) provides that sellers shall complete the Addendum, and deliver it to all Buyers making a written offer of purchase. Unless expressly waived in writing, Buyers shall have a right to revoke their offer by giving the seller, or Seller’s Agent, written notice within five (5) business days following Buyer’s acknowledgment of delivery of a completed Addendum, as more fully explained in that form. A Buyer’s right to revoke their offer is similar to the statutory revocation process available in certain residential real estate transactions. Before making or accepting offers for the purchase of vacant land, Buyers and sellers should familiarize themselves with the Vacant Land Sale Agreement (OREF 008) and Vacant Land Disclosure Addendum (OREF 019).

COMMENT: OREF has created a Vacant Land Disclosure Addendum (OREF 019) form that is similar, in concept, to the statutory seller’s property disclosure form, including a 5-business day right of revocation. Although use of the form is not “mandatory” for sellers, if they do not want to complete the form, it should be stricken from the Vacant Land Sale Agreement (OREF 008) which includes that protocol in the text of the form.

65. WATER RIGHTS, SOURCES, WELLS: Buyers should not purchase vacant land unless and until they have thoroughly satisfied themselves that they are aware of all sources of water for irrigation and, potable drinking water, and that the owner has established and properly registered all necessary water rights. If there are one or more wells used for domestic water purposes upon acceptance of an offer to purchase the land, the seller must have the well(s) tested for certain contaminants, such as bacteria, coliform, arsenic, etc. [(See, ORS 448.271.)] (Transfer of Property that includes Well) and OAR 333-061-0325 (Well Testing) ORS 448.271 only applies to wells that have been made operational to supply groundwater for domestic purposes. Capped domestic wells on unimproved lots are not required to be tested. (See https://public.health.oregon.gov/HealthyEnvironments/DrinkingWater/Rules/Documents/61-0305.pdf). Water flow of all operating wells should be tested. Buyers should confirm whether all work to construct, alter, abandon or convert a well has been properly permitted. For more information, Buyers should check with the Oregon Water Resources Commission and the Water Resources Department. (See also, ORS Chapter 537.)

COMMENT: This addition clarifies that the domestic well testing only applies to operational wells.

9. CONDOMINIUM RESALES – BUYER ADVISORY – OREF 031

2. HOMEOWNERS’ ASSOCIATION (‘HOA’) DUES AND ASSESSMENTS. One significant financial issue for condominium purchasers is to investigate the past, present, and anticipated future HOA dues. When are dues assessed – e.g. monthly, annually, etc.? How much are they and how long have they been at their current level? Try to obtain copies of a two or three year assessment history. Have the dues increased significantly over the years? If so, why? Are there any large or special assessments planned (or being discussed) by the Board of Directors? How do the HOA dues compare to those at other comparable condominium developments? What do they cover, e.g. sewer, water, reserves, insurance, etc.? Do the dues include an allocation for a reserve fund for capital improvements and major repairs? How long have contributions been made to this fund? What are the reserves being set aside for and will they be sufficient to replace or repair major capital items such as the roof, parking area or heating and cooling systems - or will there be a large special assessment because the reserves are inadequate? Buyers should consider obtaining a copy of all recent budgets and other financial information regarding the HOA – preferably going back at least for the last 12 months. Oregon law (ORS Chapter 100) requires that the condominium Board of Directors conduct a reserve study annually. Buyers may wish to verify that this is being done and review the studies. How realistic have they been? Copies of the HOA’s minutes for the last 12 months or more should be secured. Speaking with the treasurer of the HOA may be helpful. Is there any litigation, existing or planned, by the HOA for claims against the developer or others for construction defects, or for any other reasons? Is there a possibility of litigation by (or against) the HOA? If so, the buyer should consult with an attorney to secure further information. It is highly recommended that Buyer employ the use of third-party professionals familiar with condominiums, condominium associations, and their governance, budgets, finances, and reserves.

COMMENT: This recommendation is similar to the one given to Buyers using the Townhouse/Planned Community Addendum (OREF 024), i.e. that Buyers should be encouraged to seek outside professional assistance when reading and evaluating association governance and financial documents – especially reserve studies. There are companies that do this work for a fixed fee.

10. ADDENDUM FOR SELLER-CARRIED TRANSACTIONS – OREF 033

4. **Seller Exemption under ORS 86A.203.** In order for Seller to use this Addendum without the assistance of a MLO, attorney, or other expert qualified under ORS 86A.203, Seller must be a natural person, estate or trust, and the statements contained in the selected box at (a), (b) or (c) below must be true and correct. If none of the statements at (a), (b) or (c) below apply to the Property being sold to Buyer in this transaction, Seller should secure the assistance of a MLO, attorney, or other expert qualified under ORS 86A.203 in completing this transaction. **This Addendum should not be used for this transaction if no boxes have been selected below.** Seller represents to Buyer and all Agents, that the Property [select only one]:

- (a) [] Is a dwelling that is, or was at one time, Seller's primary residence; or
- (b) [] Is a dwelling for which Seller has authorized _____ ("Authorized Party") to offer or negotiate the terms of this transaction, with Seller, or on Seller's behalf, because Seller and the Authorized Party are related as either spouse, child, sibling, parent, grandparent, grandchild, or a relative in a similar relationship that is created by law, marriage or adoption; or
- (c) [] Is a dwelling that Seller owns as a rental, a second home, or a vacation home; and (i) This Seller-Carried Transaction is not more than the third (3rd) such transaction Seller has engaged in during the prior twelve (12) months; and (ii) The Property did not at any time serve as Seller's primary residence; and (iii) This Seller-Carried Transaction is not more than the eighth (8th) such transaction for which Seller is carrying the financing as a current receivable.

➤ **Seller certifies that Seller has read and understands this Section 4, and that the statement(s) set forth in the above-selected box (if applicable) is/are true and correct:**

Seller Initials: _____

Note: If Seller has not certified the accuracy of Sections 3 and 4 above, the parties should immediately consult a MLO, attorney, or other expert qualified under ORS 86A.203, to determine whether Seller is qualified to complete this transaction using this Addendum.

5. **Buyer Representation.** Buyer represents to Seller and all licensees- Agents that the Property that is the subject of this transaction is being acquired for the following purpose [select only one]:

- (a) [] For occupancy as a primary residence by Buyer or Buyer's spouse, parent or child;
- (b) [] For business/investment purposes, e.g., as a rental property;
- (c) [] The Property is being purchased for the construction of one or more one-to-four family dwellings

COMMENT: Sections 3 and 4 of this Addendum are designed to verify whether the Seller qualifies under one or more of the Mortgage Loan Originator exemptions. This "Note" at the bottom of Section 4, above, has been added to make sure that if the Seller does not so qualify, that he/she should not proceed with the transaction acting on their own behalf. The second addition focuses on an interpretation given by the Oregon Department of Consumer and Business Services, i.e. that even sales of raw land can become subject to the MLO requirements if the purpose of the purchase is for the construction of one-to-four family dwellings.

11. AGREEMENT TO OCCUPY AFTER CLOSING – OREF 054

"NOTICE: This Agreement is not subject to the Oregon Residential Landlord Tenant Act. See ORS 90.110(2). Seller's rights of eviction against Buyer requires advance written notice. See ORS 91.130."

1. **OCCUPANCY:** Buyer grants to Seller the right to occupy the Premises for residential use. Buyer retains use of the following portion(s) of the Premises:

2. TERM: The term of this Agreement shall not exceed ninety (90) days. The right to occupy shall begin on the date of closing (as that term is defined in the Sale Agreement) and continue until:

(1) by a.m. p.m. _____ days after Closing;

(2) by a.m. p.m. on the _____ day of

_____ (Date) or;
 by a.m. p.m. _____ days after Closing,

after which time Seller shall have no legal right to occupy the Premises. If the transaction fails to close according to the terms of the Sale Agreement, this Agreement to Occupy After Closing shall become automatically void and of no effect. Buyer to verify with lender (if applicable) that length of occupancy is allowed under their loan underwriting requirement. Any agreement to extend Seller's occupancy beyond the Term provided herein shall be in writing and signed by the parties. Unless otherwise agreed in writing, such extended occupanc

COMMENT: The first change is to advise Buyers who must go to court to secure the removal of a Seller who is holding over, that they need to give at least 24-hours' written notice. See, ORS 91.130. The second change is to remind Buyers that they must check with their lender to see if there are any limitations on these agreements. There have been anecdotal reports that some lenders do have such limitations.

14. **SELLER'S FAILURE TO VACATE BY END OF TERM; 24-HOURS'S WRITTEN NOTICE; DAMAGES:** If Seller remains in possession of the Premises beyond the Term provided herein, Buyer may bring an action for possession pursuant to ORS 105.105 et seq., if Seller has not vacated the Property following 24 hours written notice from Buyer to Seller or Seller's Agent. The notice may be delivered manually or electronic means (e.g. electronic mail or facsimile). In addition, upon Seller's failure to vacate the Premises within 24 hours following delivery of said notice, Buyer shall be entitled to recover from Seller, or the Security Deposit, or both, the following sum (select one):

A liquidated damage sum of \$ _____ (Zero [0] if not filled in);

An amount equal to two (2) months' rent or twice the actual damages sustained by Buyer, whichever is greater.

SELLER HOLDOVER: If Seller fails or refuses to vacate the Property by the Deadline, in addition to any other sums provided above, or remedies sought to recover possession, Buyer may withhold from the Deposit a sum equal to the per diem charge payable to Buyer's lender for principal, interest, property taxes and insurance for every day, or portion of a day, that Seller retained possession beyond the Deadline. If there is no lender, Buyer may withhold a sum equal to the per diem fair rental value of the Property for said period. Nothing herein shall be construed to prevent Buyer from pursuing further remedies for damages or defaults exceeding the Deposit.

COMMENT: The change to Section 14 deals with Seller's hold-over and the necessity of 24-hour written notice. It also permits the parties to select a damage formula.

PRACTICE TIP: Although there is not a lot of space provided for it, Buyer's Agents should consider a calculation based upon a per diem amount for the Buyer's PITI, if there is a loan. If not, consideration should be given to a per diem amount for the reasonable rental value of the property. For that calculation, a good property management company should be consulted.

12. PROFESSIONAL INSPECTION ADDENDUM – OREF 058

TIME REQUIREMENTS

Time is of the essence. If Buyer needs additional time, Buyer should immediately attempt to secure Seller's written consent to an extension of time before expiration of the time period described below. The time period agreed upon below may be shortened or extended only by written agreement between Buyer and Seller. Expiration of the time period shall occur at 5:00 p.m. Midnight of the final day of that period.

1. Buyer shall have _____ business days (ten [10] if not filled in), after the date Buyer and Seller have signed and accepted this Sale Agreement (hereinafter "the Inspection Period"), in which to complete all inspections and negotiations with Seller regarding any matters disclosed in any inspection report. Buyer shall not provide all or any portion of the inspection reports to Seller unless requested by Seller or Seller's Agent. However, at any time during this transaction, or promptly following termination, upon request by Seller or Seller's Agent, Buyer shall promptly provide a copy of such reports, or portions of reports, as requested. During the Inspection Period, Seller shall not be required to modify any terms of this Agreement already reached with Buyer. Unless a written agreement has already been reached with Seller regarding Buyer's

requested repairs, at any time during the Inspection Period, Buyer may notify Seller or Seller's Agent, 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. If Buyer fails to provide Seller or Seller's Agent with written unconditional disapproval of any inspection report(s) by 5:00 p.m. of the final day of the Inspection Period, Buyer shall be deemed to have accepted the condition of the Property. Note that if, prior to expiration of the Inspection Period, written agreement is reached with Seller regarding Buyer's requested repairs, the Inspection Period shall automatically terminate, unless the parties agree otherwise in writing.

COMMENT: This change mirrors the one inserted into the Residential Sale Agreement.

13. PROMISSORY NOTE FOR EARNEST MONEY – OREF 060

- 4) This Note is hereby incorporated into and made a part of the Real Estate Sale Agreement between Seller(s) and Buyer(s). In the event of any dispute between said Seller and Buyer, the mediation, arbitration and attorney fee provisions therein shall expressly apply. If this Note is for \$10,000 or less, notwithstanding the dispute resolution provisions of the Real Estate Sale Agreement, Seller may, but shall not be required, to enforce collection in Small Claims Court.
- 5) If payment is not made on or before the Due Date, and this Note is being held by Seller's or Buyer's Agent, said Agent, or Agent's Principal Broker, shall, upon demand, turn it over to Seller for enforcement. It is expressly understood and agreed that neither Agents, nor Agents' Principal Brokers, nor their respective Firms, its owners, officers or directors, licensees, employees or representatives, shall have any duty, responsibility or liability to Seller(s) to enforce collection of this Note, nor for any fees or costs associated therewith.

COMMENT: The change to Section 4, clarifies that the dispute resolution provisions of the Sale Agreement shall apply in the event of default. However, if the amount of earnest money is \$10,000 or less, the Seller may – but is not required – to still use the dispute resolution provisions of the Sale Agreement instead of going to Small Claims Court. The reason for allowing the Seller to opt out of Small Claims Court is because the amount at issue is a fixed sum; it is not an amount based upon perceived "damage" resulting, for example, from a seller's failure to disclose the existence of a leak, etc. Since Small Claims Court decisions are not appealable, the judges can make decisions that might not comport with how the matter might be handled in courts of record where appeals can be taken. The result could be that a Small Claims Court judge could decide to split the earnest money between Seller and Buyer. That is not the purpose of liquidated damage provisions, and some Sellers may feel they don't want to risk having a Small Claims Court judge issuing a decision that compromises the issue.

The second change clarifies that the broker holding the Note is to turn it over to the Seller for enforcement and thereafter has no further liability.

NOTE: There is a school of thought that Promissory Notes are unnecessary to serve as earnest money, and that the same thing can be accomplished by including the obligation in the Sale Agreement itself. This is especially so since they are electronically signed and often are never printed out or actually "held" by the Seller or Seller's Agent. OREF will explore this issue further in 2017.

14. PRIVATE WELL ADDENDUM TO REAL ESTATE SALE AGREEMENT – OREF 082

OREGON LAW: If this transaction includes a well that supplies domestic water to the Property, Oregon law requires that Seller shall have the well tested for arsenic, nitrates and total coliform bacteria ORS 448.271. For more information, see the Oregon.gov webpage titled "Domestic Well Testing and Real Estate Transactions". Note: This only applies to wells that have been made operational to supply groundwater for domestic purposes. Capped domestic wells on unimproved lots are not required to be tested. (See <https://public.health.oregon.gov/HealthyEnvironments/DrinkingWater/Rules/Documents/61-0305.pdf>).

For more information, see the Oregon.gov webpage titled "Domestic Well Testing and Real Estate Transactions".

REPRESENTATIONS, TESTING, TERMINATION & COOPERATION

1. **SELLER REPRESENTATIONS REGARDING WELL AND WELL WATER:** Seller represents to Buyer that to the best of Seller's knowledge: (a) The domestic well has provided an adequate supply of water to the Property throughout the year for household use; (b) The water is fit for human consumption; and (c) The continued use of the well and water complies with all applicable state and federal laws. No other representations are made concerning the well and well water supply, except as expressly stated elsewhere in this Agreement and the Seller's Property Disclosure Statement, if applicable.

2. **SELLER TESTING DUTIES:** Within business days, (five [5] if not filled in) after Buyer and Seller have signed and accepted this Agreement, Seller shall, at Seller's cost: (a) Have the well water testing ordered with a laboratory accredited according to Oregon Environmental Laboratory Accreditation Program (ORELAP) standards, for arsenic, nitrate, and total coliform bacteria; (b) Submit the results to the Oregon Healthy Authority (the "Authority") and to Buyer, promptly upon receipt, but in no event later than 90 days of submission to the Authority and (c) Complete and submit to the Authority its Water Systems Data Sheet ("Data Sheet") which must include: (i) Copies of the arsenic, nitrate, and total coliform bacteria lab slips, and (ii) The Water Resources Department well identification number, description of the Property, and location, identifying the street address, city, state, and zip code, together with the township, range, section number. (Note: (a) If the well is in a designated area of public health concern, the Authority may require additional testing; (b) The lab tests may not be waived, even if Buyer agrees not to have the well tested; (c) If the well is not located on the Property, but it includes a legal interest to a well on adjacent property [e.g. an easement], the legal interest would be considered part of the Property that is the subject of this transaction, and the preceding testing and submission requirements are required.)

See:

<https://public.health.oregon.gov/HealthyEnvironments/DrinkingWater/SourceWater/DomesticWellSafety/Pages/Testing-Regulations.aspx> .

~~Within business days, (five [5] if not filled in) after Buyer and Seller have signed and accepted this Agreement, Seller shall, at Seller's cost, 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.~~

COMMENT: The change at the top of the form clarifies that well testing rules only apply if they are "operational" and for domestic purposes. They do not apply to capped wells on unimproved land. This change has been made in other OREF forms dealing with wells and well water.

The Seller Testing Duties were added for clarity. The text paraphrases the Oregon Administrative Rule that applies. See, [OAR 333-061-0325 Domestic Well Tests](#).

15. CONTINGENT RIGHT TO PURCHASE – OREF 083

COMMENT: This form has been entirely revised to clarify the protocol when a buyer makes an offer subject to the sale of their home. It appears at the end of this Summary.

It makes the Sale Agreement contingent on the sale and closing of Buyer's property. Buyer has until 5:00 p.m. on _____, 20 ____ ("the Contingency Deadline") to give Seller written notice, on OREF 083A Contingent Right to Purchase – Notice to Seller, of their selection of either:

Alternative One: Buyer has accepted an offer on Buyer's Property:

1. Buyer agrees to keep Seller timely informed of all material developments of the transaction relating to Buyer's ability to meet this Contingency;

2. Agrees to remove all contingencies relating to the sale of Buyer's Property – except that closing of the sale of Buyer's Property shall remain a contingency in this transaction;
3. If Buyer's accepted offer on Buyer's Property terminates prior to its scheduled closing date, Buyer shall promptly notify Seller in writing ("Buyer's Notification of Termination"), whereupon Buyer and Seller shall either: (a) Terminate this transaction and all earnest money shall be promptly refunded to Buyer; or (b) Reach a written mutual agreement within two (2) business days following the date of Buyer's Notification of Termination on how the transaction will proceed;
4. If no written mutual agreement is timely reached, Section 3 (a) above shall apply;
5. Buyer Agrees to close the transaction in accordance with the remaining terms of this Sale Agreement.

Alternative Two: Buyer has listed Buyer's Property for sale but has not accepted an offer on it:

1. Buyer removes all contingencies relating to the sale and closing of Buyer's Property;
2. Buyer removes all contingencies relating to the Buyer qualifying for financing;
3. Buyer agrees to promptly provide Seller with written evidence, from Buyer's lender, reasonably satisfactory to Seller, that Buyer can obtain the financing necessary to complete the purchase of Seller's Property in accordance with the terms of this Sale Agreement, and without the sale and closing of Buyer's Property;
4. Buyer agrees to close this transaction in accordance with the remaining terms of this Sale Agreement;

The following provisions will apply:

- The Contingency is solely for the benefit of Buyer and may be waived, in whole or in part, in writing at any time only by Buyer.
- If Buyer does not give Seller written notice of Alternative One or Alternative Two prior to the Contingency Deadline the transaction is automatically terminated.
- Prior to Buyer's notice of selection of Alternative One or Alternative Two prior to the Contingency Deadline, Seller's Property may remain on the market for sale in a "Bumpable" status (or words to that effect) on the applicable multiple listing service.
- If Seller receives another written offer acceptable to Seller, Seller shall promptly execute and deliver to Buyer or Buyer's Agent, OREF 083B (Contingent Right to Purchase - Notice to Buyer).
- Upon delivery of that Notice, Buyer shall have ____ hours (twenty-four [24] if not filled in) thereafter (the "Notice Period"), within which to deliver to Seller notice of Buyer's selection on OREF 083A (Contingent Right to Purchase – Notice to Seller). If Buyer selects Alternative One or Alternative Two on the Notice, Seller's Property shall thereafter show as "Pending" (or words to that effect) on the applicable multiple listing service.
- If Buyer does not give Seller written notice of Alternative One or Alternative Two on OREF 083A (Contingent Right to Purchase – Notice to Seller) prior to end of the Notice Period, the transaction is automatically terminated.
- The time periods for all other agreed-upon contingencies (e.g., title insurance, inspection, etc.) shall be handled as follows (select one): Commencing on the next business day following the date this Sale Agreement is signed and accepted. Commencing on the next business day following the date Buyer gives written notification of selection of Alternative One or Alternative Two on OREF 083A (Contingent Right to Purchase – Notice to Seller)

16. CONTINGENT RIGHT TO PURCHASE – NOTICE TO SELLER - OREF 083A

COMMENT: This form is also appended at the end of this summary. Essentially, this form is designed to notify Seller that Buyer has selected either Alternative One or Two.

Alternative One provides that Buyer has accepted an offer on Buyer's Property and thereby:

- (1) Agrees to keep Seller timely informed of all material developments of that transaction relating to Buyer's ability to meet this Contingency;
- (2) Removes all contingencies relating to the sale of Buyer's Property – except that closing of the sale of Buyer's Property shall remain a contingency in this transaction;
- (3) If Buyer's accepted offer on Buyer's Property terminates prior to its scheduled closing date, Buyer shall promptly notify Seller in writing ("Buyer's Notification of Termination"), where upon Buyer and Seller shall either:
 - (a) Terminate this transaction and all earnest money shall be promptly refunded to Buyer; or
 - (b) Reach a written mutual agreement within two (2) business days following the date of Buyer's Notification of Termination on how the transaction will proceed;

- (4) If no written mutual agreement is timely reached, the transaction is terminated and EM refunds;
(5) AGREES to close the transaction in accordance with the remaining terms of the Sale Agreement.

Alternative Two provides that Buyer has listed Buyer's Property for sale but has not accepted an offer on it, and thereby:

- (1) Removes all contingencies relating to the sale and closing of Buyer's Property;
 - (2) Removes all contingencies relating to the Buyer qualifying for financing under the Sale Agreement;
 - (3) Agrees to promptly provide Seller with written evidence, from Buyer's lender, reasonably satisfactory to Seller, that Buyer can obtain the financing necessary to complete the purchase of Seller's Property in accordance with the terms of this Sale Agreement, and without the sale and closing of Buyer's Property; and
 - (4) Agrees to close the transaction in accordance with the remaining terms of the Sale Agreement.
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17. CONTINGENT RIGHT TO PURCHASE – NOTICE TO BUYER - OREF 083B

COMMENT: This form is also appended at the end of this summary. Essentially, this form is designed to notify Buyer that Seller has received another offer that is acceptable to Seller. Buyer has the amount of time identified as the "Notice Period" in the Contingent Right to Purchase form (083) within which to notify Seller of Buyer's selection of Alternative One or Alternative Two, in which case Seller's Property shall thereafter show as "Pending" (or words to that effect) on the applicable multiple listing service.

If Buyer decides not to select Alternative One or Alternative Two prior to end of the Notice Period, then Buyer should check the box terminating the transaction. The failure to timely select any of the boxes below by the end of the Notice Period shall be treated as Buyer's election to terminate.
