

OREF FORMS REVISIONS FOR 2015

By

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The following summary addresses the major changes made to the OREF forms that will become available for 2015. Some changes were stylistic and grammatical, and will not be discussed here as they do not materially affect Realtor® practice. The primary focus of this summary is on those substantive changes that bear on Realtor® practice, the reason for the changes, and their risk management impact. This summary should not be relied upon in lieu of a thorough review of the specific forms and their revised provisions by each individual broker and managing principal broker. [Changes have been highlighted in yellow; deletions have a strike-through. In some instances, the entire section is in yellow, since there were many changes and so for readability, the additions and deletions are not specifically identified.]

Residential Real Estate Sale Agreement

(OREF-001)

1. DEFINITIONS/INSTRUCTIONS: (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) 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. (3) A "business day" shall mean Monday through Friday, except recognized legal holidays as enumerated in ORS 187.010 and 187.020. (4) 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 licensee, 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"). (5) 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 4 (Additional Provisions) of this Sale Agreement. (6) Time calculated in days after the date Buyer and Seller have signed and accepted the Agreement shall start on the first full business day after the date they have signed and accepted it. (7) Excepting only the Lead-Based Paint Contingency Period identified in Section 16, below, 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 PM on the last day of that deadline, however designated.

COMMENT: THE HIGHLIGHTED TEXT WAS ADDED TO CLARIFY SOME DEFINITIONS/INSTRUCTIONS, AND ADD OTHERS.

(4) THE PRIOR OREF DOCUMENTS OF AGREEMENT MERELY REFERRED TO THE MOMENT THE DOCUMENT WAS "SIGNED AND ACCEPTED" – OR WORDS TO THAT EFFECT – TO DESIGNATE THE MOMENT THE AGREEMENT BECAME BINDING. IS AN EFFORT TO BETTER CLARIFY FOR REALTORS® AND THEIR CLIENTS EXACTLY WHEN THE SALE AGREEMENT BECOMES A LEGALLY BINDING DOCUMENT, WE ADDED SECTION (4). THUS, THE SALE AGREEMENT BECOMES LEGALLY BINDING WHEN A PARTY SIGNS HIS/HER NAME AND TRANSMITS THAT DOCUMENT TO THE OTHER SIDE. E.G. IF THE BUYER'S SIGNED OFFER IS DELIVERED TO SELLER, AND SELLER SIGNS AT 10:00 PM BUT DOES NOT TRANSMIT THE SIGNED ACCEPTANCE BACK UNTIL 11:00 AM THE NEXT DAY, THE CONTRACT BECOMES BINDING AT 11:00 AM ON THAT DAY. HOWEVER, IF, BEFORE THE SELLER'S SIGNED ACCEPTANCE WAS DELIVERED TO THE BUYER, THE BUYER NOTIFIED SELLER THAT HE/SHE WAS REVOKING THE OFFER, THE REVOCATION WOULD BE EFFECTIVE, SINCE IT WAS DELIVERED TO THE SELLER BEFORE THE SELLER'S ACCEPTANCE WAS TRANSMITTED TO THE BUYER.

(5) THIS CLARIFIES THAT A COPY, BE IT A FAX AND/OR PDF, MAY BE SIGNED SEPARATELY AND AT DIFFERENT TIMES, AND TOGETHER THEY WILL HAVE THE SAME LEGAL EFFECT AS IF THE SELLER AND BUYER SIGNED A SINGLE DOCUMENT. THIS AVOIDS THE PROBLEM OF HAVING TO TRANSMIT A SINGLE ORIGINAL DOCUMENT TO ALL PARTIES VIA MAIL OR PERSONAL SERVICE.

(7) THIS IS A SIGNIFICANT CHANGE: THE DEADLINE FOR PERFORMANCE WILL END AT 5:00 PM ON THE LAST DAY – NOT MIDNIGHT. THE FORMS COMMITTEE BELIEVES THAT AS PROFESSIONALS, REALTORS® SHOULD NOT BE FORCED TO WAIT UNTIL MIDNIGHT WHENEVER A DEADLINE WAS ENDING. THIS WILL APPLY TO ALL DEADLINES, UNLESS THE PARTIES PROVIDE OTHERWISE.

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

RESOURCES: THE FOLLOWING WEBSITES ARE HELPFUL TO THE ABOVE TOPIC:

[HTTP://Q-LAW.COM/WP-CONTENT/UPLOADS/2011/02/OFFERS-COUNTEROFFERS-THEIR-REVOCATION.PDF](http://q-law.com/wp-content/uploads/2011/02/Offers-Counteroffers-Their-Revocation.pdf)

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

3.5 FLOOD INSURANCE; ELEVATION CERTIFICATE: If the Property is located in a designated flood zone, flood insurance may be required as a condition of a new loan. Buyer is encouraged to promptly verify the need, availability, and cost of flood insurance, if applicable. An Elevation Certificate (“EC”) is the document used by the federal National Flood Insurance Program (“NFIP”) to determine the difference in elevation between a home or building, and the base flood elevation (“BFE”), which is a computed elevation to which floodwater is anticipated to rise during certain floods. The amount of the flood insurance premium for a particular property is based upon the EC. Not all properties in flood zones require an EC, depending upon when they were constructed. ECs must be prepared and certified by a land surveyor, engineer, or architect who is authorized by the local jurisdiction to certify elevation information. The costs and fees for an EC may range from a few hundred dollars to over a thousand. **If the Property requires an EC, it will need to be obtained prior to receiving a flood insurance quote. Additionally, lenders may require an EC as a condition of loan approval. For more information, go to the following link: http://www.fema.gov/media-library-data/20130726-1914-25045-8243/floodsmart_factsheet_homeowners.pdf.**

COMMENT: SECTION 3.4 NOTIFIES BUYERS THAT LENDERS MAY CONDITION THE LOAN ON CASUALTY INSURANCE (E.G. FIRE) AND ALSO FLOOD INSURANCE. SECTION 3.5 ALERTS BUYERS THAT IF THE PROPERTY IS LOCATED IN A DESIGNATED FLOOD ZONE, IT IS IMPORTANT TO OBTAIN AN ELEVATION CERTIFICATE, SINCE THE PREMIUM IS BASED UPON ELEVATION ABOVE THE “BASE FLOOD ELEVATION” OR “BFE.”

PRACTICE TIP: IT IS IMPERATIVE THAT REALTORS® AND THEIR BUYER CLIENTS USE A QUALIFIED INSURANCE BROKER INTIMATELY FAMILIAR WITH FLOOD ZONES AND FLOOD INSURANCE. SIGNIFICANT PREMIUM DOLLARS CAN BE SAVED WITH FAIRLY INEXPENSIVE CHANGES OR IMPROVEMENTS. A GOOD INSURANCE BROKER WILL KNOW ABOUT THESE ISSUES.

RESOURCES: THE FOLLOWING WEBSITES ARE HELPFUL TO THE ABOVE TOPIC:

- **<https://www.floodsmart.gov/floodsmart/>**
- **<https://www.fema.gov/national-flood-insurance-program>**
- **<http://q-law.com/wp-content/uploads/2011/02/Biggert-Waters-Act-of-20123.pdf>**
- **<http://q-law.com/waters-world/>**

7. SELLER-CARRIED FINANCING (E.G. LAND SALE CONTRACT/TRUST DEED/MORTGAGE/OPTION AGREEMENTS, RENT-TOOWN, ETC.): Note: If this transaction involves a land sale contract, trust deed, mortgage, option, or lease-to-own agreement (hereinafter a “Seller-Carry Transaction”) Oregon law requires that, unless exempted, individuals offering or negotiating the terms must hold a mortgage loan originator (“MLO”) license. Your real estate 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 per 12-month period. (Note: One may not hold more than eight residential mortgage loans at one time.) If this is a Seller-Carried Transaction, it shall be subject to Seller’s determination whether to employ a Mortgage Loan Originator to offer and negotiate the terms of financing with Buyer. Seller shall make that determination and notify Buyer or Buyer’s licensee in writing not later than _____ (two [2] if not filled in) business days after the date Buyer and Seller have signed and accepted this Sale Agreement (“the Notification Deadline”). Seller’s failure to timely notify Buyer or Buyer’s licensee, shall constitute an automatic election by Seller to offer and negotiate the terms of the transaction on Seller’s own behalf. The parties and/or their MLOs shall thereafter reach a binding written agreement upon the terms and conditions of their Seller-Carried Transaction not later than _____ business days (seven [7] if not filled in) after the date Seller has notified Buyer whether Seller will use a MLO, or the end of the Notification Deadline, whichever first occurs (“the Negotiation Period”). Upon failure of Buyer and Seller, and/or their MLOs to reach agreement as to the terms and conditions of the Seller-Carried Transaction within the Negotiation Period, this transaction shall automatically terminate, and all parties shall cooperate in signing such documentation reasonably necessary to effect a termination of this transaction and a refund of all deposits, if any, to Buyer. ***Caveat: Buyer and Seller are strongly encouraged to secure competent legal advice in drafting any legally binding agreements relating to the Seller-Carried Transaction. If Escrow (as defined in Section 17) is instructed to prepare the note and trust deed or mortgage to be used in this transaction, state statute requires that Buyer and Seller receive from Escrow, at least three (3) days prior to Closing (as defined in Section 18), a statutory notice and a copy of the proposed documents. This requirement cannot be waived by Buyer or Seller without the approval of both of their respective Oregon-licensed attorneys.***

COMMENT: THE ABOVE SECTION 7 REPLACES THE EARLIER TEXT. IT GOES INTO GREATER DETAIL THAN THE PREVIOUS EXPLANATION. SPECIFICALLY, IT EXPLAINS THE EXEMPTIONS FROM THE LAW WHICH OTHERWISE REQUIRES THE INVOLVEMENT OF A MORTGAGE LOAN ORIGINATOR (“MLO”) TO OFFER OR NEGOTIATE LOAN TERMS. SELLER SHALL HAVE TWO (2) BUSINESS DAYS TO DETERMINE WHETHER TO USE A MLO, AND THEREAFTER THE PARTIES WILL HAVE SEVEN (7) BUSINESS DAYS TO REACH WRITTEN AGREEMENT AS TO THE TERMS OF THE TRANSACTION.

PRACTICE TIP: WARNING TO SELLING BROKERS – VET THIS ISSUE WITH YOUR CLIENT BEFORE WRITING UP YOUR OFFER. RADON, ESPECIALLY, HAS BECOME THE ENVIRONMENTAL HAZARD DE JURE, AND THERE ARE CERTAIN AREAS IN THE PORTLAND-METRO AREA RANKING HIGH IN RADON LEVELS. A BELATED REQUEST COULD BE DENIED BY A SELLER, FORCING THE BUYER TO DECIDE BETWEEN MOVING FORWARD WITHOUT THE TEST, OR RISK LOSING HIS OR HER EARNEST MONEY DEPOSIT^[KQ1].

RESOURCES: THE FOLLOWING WEBSITES ARE HELPFUL TO THE ABOVE TOPIC:

- [HTTP://Q-LAW.COM/WP-CONTENT/UPLOADS/2011/02/SELLER-CARRIED-TRANSACTIONS.PDF](http://q-law.com/wp-content/uploads/2011/02/seller-carried-transactions.pdf)

14.1 PRIVATE WELL: Does the Property contain a well that supplies or is intended to supply domestic water for household use? Yes No If the property contains a private well, the **OREF-082 Private Well Addendum** will be attached to this Sale Agreement.

14.2 ONSITE SEWAGE SYSTEM: Does the Property contain an onsite sewage system? Yes No If the Property contains an onsite sewage system, the **OREF-081 Onsite Sewage System Addendum** will be attached to this Sale Agreement.

COMMENT: SECTION 14.1 FRAMES THE QUESTION MORE ACCURATELY THAN BEFORE. SECTION 14.2 WAS ADDED TO DIRECT THE PARTIES TO USE OREF-081 IF AN ONSITE SEWAGE SYSTEM IS LOCATED ON THE PROPERTY.

PRACTICE TIP: SECTION 3 OF THE SELLER PROPERTY DISCLOSURE STATEMENT ([ORS 105.464](#)) WAS AMENDED TO ADD ADDITIONAL QUESTIONS REGARDING SEWER SYSTEMS.

RESOURCES: THE FOLLOWING WEBSITES ARE HELPFUL TO THE ABOVE TOPIC:

- [HTTP://WWW.DEQ.STATE.OR.US/WQ/DWP/WELLOWNERS.HTM](http://www.deq.state.or.us/wq/dwp/wellowners.htm)
- [HTTP://WWW.DEQ.STATE.OR.US/WQ/DWP/PWOFAQS.HTM](http://www.deq.state.or.us/wq/dwp/pwofaqs.htm)
- [HTTP://PUBLIC.HEALTH.OREGON.GOV/HEALTHYENVIRONMENTS/DRINKINGWATER/SOURCEWATER/DOMESTICWELLSAFETY/PAGES/TESTING-REGULATIONS.ASPX](http://public.health.oregon.gov/HealthyEnvironments/DrinkingWater/SourceWater/DomesticWellsSafety/Pages/Testing-Regulations.aspx)
- [HTTP://WWW.OREGON.GOV/OWRD/PAGES/INDEX.ASPX](http://www.oregon.gov/OWRD/Pages/Index.aspx)
- [HTTP://WWW.DEQ.STATE.OR.US/WQ/ONSITE/ONSITE.HTM](http://www.deq.state.or.us/wq/onsite/onsite.htm)
- [HTTP://WWW.DEQ.STATE.OR.US/WQ/ONSITE/ABOUTSEPTIC.HTM](http://www.deq.state.or.us/wq/onsite/aboutseptic.htm)
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15.2 INSPECTIONS: Buyer understands that it is advisable to have a complete inspection of the Property by qualified professional(s) relating to such matters as structural condition, soil condition/compaction/stability, environmental issues, survey, zoning, operating systems, and suitability for Buyer's intended purpose. Neither Listing nor Selling Licensee is qualified to conduct such inspections and shall not be responsible to do so. For further details, Buyer is encouraged to review the Buyer Advisory at "<http://www.oregonrealtors.org>".

PROFESSIONAL INSPECTIONS: At Buyer's expense, Buyer may have the Property and all elements and systems thereof inspected by one or more professionals of Buyer's choice. Provided, however, Buyer must specifically identify in this Agreement any desired inspections which may include testing or removal of any portion of the Property 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. However, during the Inspection Period, Seller shall not be required to modify any terms of this Agreement already reached with Buyer. Unless a written and signed modification is reached, at any time during the Inspection Period, Buyer may notify Seller or Listing Licensee, in writing, of Buyer's unconditional disapproval of the Property based on any inspection report(s), in which case, all earnest money deposits shall be promptly refunded and this transaction shall be terminated. Buyer shall promptly provide a copy of all reports to Seller only if requested by Seller. **If Buyer fails to provide Seller or Listing Licensee with written unconditional disapproval of any inspection report(s) by 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 Inspections: _____.

COMMENT: THE "SIGNED AND ACCEPTED" CHANGE WAS MADE THROUGHOUT ALL OF THE OREF SALE AGREEMENTS. SEE COMMENT SECTION REGARDING SECTION 1 (DEFINITIONS/INSTRUCTIONS) ABOVE. THE 5:00 PM DEADLINE WAS ALSO ADDED TO ALL OF THE OREF SALE AGREEMENTS AND OTHER PLACES WHERE THERE WERE DEADLINES. SEE COMMENT SECTION REGARDING SECTION 1 (DEFINITIONS/INSTRUCTIONS) ABOVE.

RESOURCES: THE FOLLOWING WEBSITES ARE HELPFUL TO THE ABOVE TOPIC:

- [HTTP://Q-LAW.COM/PROFESSIONAL-INSPECTION-PROTOCOLS-OREGON-REALTORS/](http://q-law.com/professional-inspection-protocols-oregon-realtors/)
- [HTTP://WWW.Q-LAW.COM/ARTICLES/PDF/UNDERSTANDING%20REAL%20ESTATE%20CONTINGENCIES.PDF](http://www.q-law.com/articles/pdf/understanding%20real%20estate%20contingencies.pdf)

17. ESCROW: This transaction shall be Closed at _____ ("Escrow"), a neutral escrow 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). all escrow costs.**

COMMENT: THIS CHANGE WAS MADE TO ADDRESS FEDERAL VA RULES ON SHARING ESCROW COSTS. (I BELIEVE THIS WAS THE REASON FOR THE CHANGE, BUT NEED TO VERIFY WITH A COMMITTEE MEMBER WHO KNOWS.)

21. SELLER POSSESSION AFTER CLOSING: In the event that Buyer and Seller have agreed that Seller will deliver possession after Closing, ~~Seller shall pay as consideration \$_____ per day for each day after Closing that Seller is to remain in possession of the Property. Such payment shall be made by Seller through Escrow at the time of Closing and no landlord-tenant relationship shall be created thereby, so long as Seller's possession does not exceed 90 days after the date of Closing. OREF-054 (Agreement to Occupy After Closing) should be used as an addendum, or Addendum _____ is attached to this Agreement. will be attached to this Sale Agreement.~~

COMMENT: OREF REMOVED THE ORIGINAL TEXT AND THE PARTIES ARE NOW DIRECTED TO USE A SEPARATE FORM (OREF-054) WHICH GOES INTO MORE DETAIL ABOUT POST-CLOSING POSSESSION AND DEPOSITS. THAT FORM IS DISCUSSED BELOW.

**RESOURCES: THE FOLLOWING WEBSITES ARE HELPFUL TO THE ABOVE TOPIC:
ORS 90.110(2): [HTTP://WWW.OREGONLAWS.ORG/ORS/90.110](http://www.oregonlaws.org/ors/90.110)**

34. ARBITRATION BETWEEN BUYER AND SELLER: All Claims that have not been resolved by mediation, or otherwise, shall be submitted to final and binding private arbitration in accordance with Oregon laws. Filing for arbitration shall be treated the same as filing in court for purposes of meeting any applicable statutes of limitation, **statute of ultimate repose**, or for purposes of filing a lis pendens. Buyer or Seller may file Claims either with ASP or, alternatively, with any other professional arbitration service that has existing rules of arbitration, provided that the selected alternative service also uses arbitrators who are in good standing with the Oregon State Bar, with expertise in real estate law and who can conduct the hearing in the county where the Property is located. The arbitration service in which the Claim is first filed shall handle the case to its conclusion. BY CONSENTING TO THIS PROVISION BUYER AND SELLER ARE AGREEING THAT DISPUTES ARISING UNDER THIS AGREEMENT SHALL BE HEARD AND DECIDED BY ONE OR MORE NEUTRAL ARBITRATORS AND BUYER AND SELLER ARE GIVING UP THE RIGHT TO HAVE THE MATTER TRIED BY A JUDGE OR JURY. THE RIGHT TO APPEAL AN ARBITRATION DECISION IS LIMITED UNDER OREGON LAW.

COMMENT: THIS ISSUE CAME UP LAST YEAR. MOST STATUTES OF LIMITATION COMMENCE UPON DISCOVERY OF THE CLAIM. HOWEVER, A STATUTE OF REPOSE IS ONE THAT BARS ALL CLAIMS, IF NOT DISCOVERED WITHIN THE APPLICABLE STATUTE OF LIMITATIONS.

DISPUTE RESOLUTION INVOLVING LICENSEES OR FIRMS

36. SMALL CLAIMS COURT AND ARBITRATION: All claims, controversies or disputes relating to this transaction, including those for rescission, in which a Licensee or Firm identified in the Final Agency Acknowledgment Section above is named or included as a party, shall be resolved exclusively as follows: (1) If within the jurisdictional limit of Small Claims Court, the matter shall be brought and decided there, in lieu of arbitration or litigation in any other forum. **The preceding sentence shall be construed to mean that no party shall have a right to request a jury trial and so remove the matter from the Small Claims Department of the Circuit Court remove a matter from the Small Claims Court to Circuit Court under ORS 46.455(3). BY CONSENTING TO THIS PROVISION, BUYER AND SELLER ACKNOWLEDGE THAT THEY ARE GIVING UP THE CONSTITUTIONAL RIGHT TO HAVE THE MATTER TRIED BY A JUDGE OR JURY IN CIRCUIT COURT, AND THAT A JUDGMENT IN SMALL CLAIMS**

COURT IS FINAL AND BINDING, AND THERE IS NO RIGHT OF APPEAL. (2) All other claims, controversies or disputes involving such Licensee or Firm shall be resolved through final and binding arbitration using the arbitration selection process described in Section 34 above. Filing for arbitration shall be treated the same as filing in court for purposes of meeting any applicable statutes of limitation or for purposes of filing a lis pendens. This Section 36 shall be in lieu of litigation involving such Licensee or Firm in any other forum. Such Licensee or Firm may voluntarily participate in formal or informal mediation at any time, but shall not be required to do so under this Section 36. This Section 36 shall not apply to those matters in which: (a) The claim, controversy or dispute is exclusively between REALTORS® and is otherwise required to be resolved under the Professional Standards Arbitration provisions of the National Association of REALTORS®; (b) Licensee or Firm has agreed to participate in alternative dispute resolution in a prior written listing, service or fee agreement with Buyer or Seller, or (c) Licensee or Firm is Buyer or Seller in this transaction (in which case, Sections 31-35 shall apply). This Section 36 shall expressly survive Closing or earlier termination of this Agreement. In the event of any suit, action or arbitration relating to the enforcement or interpretation of this Agreement, the matter shall be governed exclusively by Oregon law, and venue shall be placed in the State of Oregon for all purposes. **In the event that one or more Licensees and/or Firms have been named or included in any claims, controversies or disputes that also include Buyer and/or Seller, the alternative dispute resolution and attorney fee provisions of Sections 31-35 above shall continue to apply to Buyer and/or Seller, and this Section 36 shall apply exclusively to Licensees and/or Firms.**

COMMENT: THE FORMS COMMITTEE FELT THAT IT IS IMPORTANT TO FURTHER CLARIFY THAT IF A MONETARY CLAIM IS WITHIN THE JURISDICTIONAL LIMIT OF SMALL CLAIMS COURT (PRESENTLY \$10,000) THAT IT STAYS IN SMALL CLAIMS COURT. IT MAY NOT BE REMOVED TO THE CIRCUIT COURT FOR A JURY TRIAL, EVEN THOUGH THE STATUTE PERMITS IT. THE ENTIRE PURPOSE OF THESE DISPUTE RESOLUTION PROVISIONS IS TO PROVIDE AN ALTERNATIVE TO THE COURT SYSTEM. ACCORDINGLY, IT WOULD BE MEANINGLESS TO CHANNEL CLAIMS TO SMALL CLAIMS COURT, ONLY TO HAVE ONE PARTY REMOVE IT AND DEMAND A JURY TRIAL. THAT WAS THE INTENT OF THE ORIGINAL LANGUAGE, BUT DUE TO QUESTIONS BEING RAISED, WE DECIDED TO PUT A FINER POINT ON THE ISSUE.

RESOURCES: THE FOLLOWING WEBSITES ARE HELPFUL TO THE ABOVE TOPIC:
[HTTP://WWW.PMAR.ORG/DOCUMENTS/CONSUMER%20RESOURCES/DISPUTE-RESOLUTION-OPTIONS.PDF](http://www.pmar.org/documents/consumer%20resources/dispute-resolution-options.pdf)

44. BUYER'S ACKNOWLEDGMENT: Buyer acknowledges receipt of a copy of Seller's written response to this Agreement. If Seller's response is an acceptance of Buyer's offer that occurred after the Offer Deadline identified at Section 41 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 acceptance occurring after the Offer Deadline, this Agreement shall become binding on the parties when Buyer's acceptance has been transmitted to Seller or Seller's Licensee.**

Buyer _____ Date _____, _____ a.m. ___p.m.
 Buyer _____ Date _____, _____ a.m. ___p.m.

COMMENT: THIS CHANGE CLARIFIES THAT THE BUYER'S SIGNATURE TO SELLER'S ACCEPTANCE AFTER THE OFFER DEADLINE IS NOT ENOUGH TO MAKE THE SALE AGREEMENT BINDING. THE BUYER'S ACCEPTANCE MUST ALSO BE TRANSMITTED TO THE SELLER OR SELLER'S LICENSEE. THIS APPROACH CONFORMS TO THAT DESCRIBED IN THE COMMENT AT SECTION 1 (DEFINITIONS/INSTRUCTIONS) ABOVE.

45. FIRMS/LICENSEES:

Selling Licensee _____ Selling Firm _____
 Selling Firm Office Address _____
 Phone _____ Phone _____ E-mail _____ Fax _____

Date and Time of Transmission of Acceptance _____

Listing License _____ Listing Firm _____
Listing Firm Office Address _____
Phone _____ Phone _____ E-mail _____ Fax _____

COMMENT: THIS CHANGE ALSO CONFORMS TO THE PROTOCOL DESCRIBED IN THE COMMENT AT SECTION 1 (DEFINITIONS/INSTRUCTIONS) ABOVE.

Addendum to Seller's Property Disclosure Statement
(OREF-028)

This is a new form. It is to be used with the Seller Property Disclosure Form (OREF-020). The Seller Property Disclosure form contains several asterisks (*) where the seller's answer is to be supplemented by additional information. This Addendum form, which is not required by the statute itself, is intended to prompt sellers to provide the additional information.

PRACTICE TIP: BUYERS HAVE A FIVE (5) BUSINESS DAY RIGHT OF REVOCATION FOLLOWING DELIVERY OF THE SELLER PROPERTY DISCLOSURE FORM. HOWEVER, IF THE FORM IS INCOMPLETE DUE TO THE FAILURE TO INCLUDE THE REQUIRED ADDITIONAL INFORMATION, THERE IS A GOOD ARGUMENT THAT THE 5-BUSINESS DAY PERIOD HAS NOT COMMENCED, SINCE THE FORM WAS NOT FULLY COMPLETED WHEN DELIVERED. LISTING AND BUYER BROKERS SHOULD MAKE SURE THAT IF THERE IS AN ASTERISK (*) NEXT TO A SELECTED ANSWER, THAT THE ADDITIONAL INFORMATION IS INCLUDED the Addendum and attached to the Seller Property Disclosure form when first delivered to the buyer.

RESOURCES: THE FOLLOWING WEBSITES ARE HELPFUL TO THE ABOVE TOPIC:

<http://www.oregonlaws.org/ors/105.464> (Seller Property Disclosure Form)

[Tips for reading the property disclosure form](#)

<http://q-law.com/beware-unknown-seller-property-disclosure-statement/>

Back-Up Addendum
(OREF- 009)

This Back-Up Offer is intended to create certain legally binding rights and duties between Buyer and Seller, once fully accepted and signed by them. If not understood, the parties should obtain competent legal advice before signing.

This is an Addendum to (Check only one):

Real Estate Sale Agreement Seller's Counter Offer Buyer's Counter Offer
Dated _____

Buyer: _____

Seller: _____

The real property described as: _____

("the Property")

Buyer and Seller acknowledge that this offer is accepted in a Back-Up Position, which means that a transaction ("the First Position Transaction") is currently pending between Seller and another buyer ("the First Position Buyer") involving this Property. Upon signing and accepting this Back-Up Offer **Addendum**, Buyer and Seller agree to the following:

- (1) While this transaction between Buyer and Seller is in a Back-Up Position, Seller may freely negotiate with the First Position Buyer all terms and conditions of the First Position Transaction.

(2) If Seller formally and completely terminates the First Position Transaction in writing with the First Position Buyer, Seller shall promptly notify Buyer in writing that Buyer has been automatically moved to First Position ("Notification").

~~All timelines, including the dates for payment of earnest money, removal of contingencies, and rights of revocation, termination, or cancellation provided under state or federal law or contained in this Sale Agreement, if applicable, shall begin only when Buyer has been notified by Seller that Buyer is in a "First Position" as further described in Section 3 below. Provided, however, at or before entering into this Sale Agreement, where applicable, Seller shall deliver to Buyer a copy of Seller's Property Disclosure form. (Add any exceptions to this Section)~~

(3) Subject to the following sentence, upon elevation to First Position, all timelines, including the dates for payment of earnest money, removal of contingencies, and rights of revocation, termination, or cancellation provided under state or federal law or contained in this Sale Agreement, if applicable, shall begin on the first business day after Buyer has been moved to "First Position." NOTE: If Seller has delivered to Buyer a copy of Seller's Property Disclosure form. Buyer's five (5) business day right of revocation shall not commence until Buyer has received written notification that Buyer is in "First Position."

~~If Seller formally and completely terminates the First Position Transaction in writing with the First Position Buyer, Seller shall promptly notify Buyer in writing that Buyer has been automatically moved to a First Position, whereupon all rights, duties and obligations between Buyer and Seller contained in this Sale Agreement and provided under state or federal law, shall, where applicable, commence immediately.~~

(4) In the event Buyer believes, in Buyer's sole discretion, that Buyer cannot remove all contingencies (excepting financing in Section 3) and close this transaction by the Closing Deadline identified at Section 18 of this Sale Agreement. Buyer shall so notify Seller in writing within _____ business days (two [2] if not filled in) after having been moved to First Position. Seller and Buyer shall thereafter have _____ business days (two [2] if not filled in) to reach written agreement on a new Closing Deadline and/or any other new contingency deadlines (the "Negotiation Period"). If Seller and Buyer are unable to reach such written agreement within the Negotiation Period, all earnest monies shall be promptly refunded to Buyer and this transaction shall be terminated. (Add any exceptions to this Section):

(54) This Back-Up Offer Transaction between Buyer and Seller shall automatically terminate and all earnest money, if any, shall be promptly refunded to Buyer upon the occurrence of: (a) Close of escrow of the First Position Transaction; or (b) Buyer's written unilateral withdrawal of this Back-Up offer, so long as it occurs before Buyer has received Seller's ~~such written withdrawal occurs before Buyer has received Seller's~~ written notification of being moved to a First Position pursuant to Section 23 above.

(65) Additional provisions: _____

Buyer Signature _____ Date _____, _____ a.m. ___ p.m. ←
Buyer Signature _____ Date _____, _____ a.m. ___ p.m. ←

Seller Signature _____ Date _____, _____ a.m. ___ p.m. ←
Seller Signature _____ Date _____, _____ a.m. ___ p.m. ←

Selling Licensee _____ Listing Licensee _____
Selling Firm Broker Initials/Date _____ / _____ Listing Firm Broker Initials/Date _____ / _____

COMMENT: THIS FORM IS USED WHEN THE BUYER IS IN A SECOND OR SUBORDINATE POSITION TO BUYER IN THE FIRST POSITION. THERE HAVE BEEN SUBSTANTIAL REVISIONS TO THIS FORM – PRIMARILY FOR CLARITY. THE SUBSTANCE OF THE PROTOCOLS REMAIN ESSENTIALLY THE SAME. IT IS IMPORTANT TO REMEMBER THAT UNTIL BUYER NO. 2 IS ELEVATED TO A FIRST POSITION, ALL CONTINGENCIES AND THE RIGHT OF REVOCATION UNDER SELLER PROPERTY DISCLOSURE DO NOT COMMENCE.

RESOURCES: THE FOLLOWING WEBSITES ARE HELPFUL TO THE ABOVE TOPIC:
[HTTP://Q-LAW.COM/OREGON-HOUSING-MULTIPLE-OFFERS-THEN-AND-NOW/](http://q-law.com/oregon-housing-multiple-offers-then-and-now/)

AGREEMENT TO OCCUPY AFTER CLOSING
OREF-054

Buyer(s) _____
Seller(s) _____
Property Address _____

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 _____ (“Term”), 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.

3. COMPENSATION: At the time of closing, or _____ Seller shall pay rent in the _____ amount of \$ _____ per day for the Term specified in Section 2. The total amount of daily rent for the Term is \$ _____ (“Total Rent”). The Total Rent shall be paid In a lump sum to Escrow at the time of closing and disbursed to Buyer, or Directly to Buyer in the rental amounts and on the due dates as follows:

_____ If the term shall continue for more than thirty (30) days, rent shall be paid as follows: _____. Rent shall be paid to Buyer at the following address: _____

If ~~the any rental payment remains rent is~~ unpaid for four (4) days after the due date, in addition to any other remedies allowed by law or this Agreement, Seller shall pay a late charge of \$ _____ (\$50.00 if not filled in) per day, commencing on the 5th day from the due date of the unpaid rental payment ~~of the month~~, until it and the late charges are fully paid in full. If rent or late fees, if any, are not paid within seven (7) days including the due date, then Buyer may post a written notice on the front door of the Premises that if the unpaid sums are not paid within seventy-two (72) hours of the time and date of posting (to be noted on said notice) this Agreement to Occupy will automatically terminate and the Buyer may take immediate possession of the Premises.

4. PURPOSE: The Premises shall be used by Seller exclusively as a private residence and shall be occupied by no more than _____ persons without the prior written consent of Buyer.

5. SERVICES, MAINTENANCE AND RISK OF LOSS: Seller has inspected the Premises and accepts the Premises on an "AS-IS" basis with the exception of the following repairs to be made:

Repair:

Party Responsible for Payment:

Seller shall, at Seller's sole expense, maintain heating, cooling, sewer, water, plumbing, and electrical systems and any built-in appliances and equipment in normal working order and shall keep the roof water-tight and maintain the grounds, beginning on the commencement date specified in Section 2, above. Seller shall make no structural alterations to the interior or exterior of the Premises without Buyer's prior written consent. Seller shall pay all utility bills accrued to date Buyer is entitled to possession.
 Exceptions: _____

FOR THE PURPOSE OF DETERMINING WHICH PARTY SHALL BEAR ANY RISK OF LOSS OR THE EXPENSE OF REPAIRING UNKNOWN DEFECTS OR DAMAGES THAT OCCUR OR APPEAR AFTER CLOSING AND DURING THE TERM OF SELLER'S POSSESSION, THE FOLLOWING RULES APPLY:

(A) Buyer shall assume all risk of loss as of the date of closing (as that term is defined in the Sale Agreement) subject only such obligations assumed by Seller in the Sale Agreement that were intended to survive closing. This provision shall not be construed as a limitation on Buyer's remedies for Seller's failure to disclose any known defects prior to closing. (B) The following shall apply to damages or expenses of maintenance:

(1) Seller shall be responsible for the cost of any replacements or repairs due to any damage to interior or exterior of the Premises after the commencement date specified in Section 2, caused by Seller's intentional reckless or negligent conduct.

(2) Buyer shall reimburse Seller for any expense of maintenance, repair or replacement resulting from Seller's reasonable, non-negligent use of the Premises, providing Buyer has consented to such maintenance, repair and replacement.

(3) Buyer shall not be required to submit any claims, losses, damages, and expenses to Buyer's insurance company resulting from Seller's negligent, reckless or intentional acts. In the event that a claim is submitted any proceeds received shall be applied toward the cost of repair or replacement as well as reimbursement to Buyer for any sums advanced. If insurance proceeds are insufficient, Seller shall pay any additional costs for negligent, reckless or intentional acts causing damage to the Property.

Seller shall cooperate with Buyer and Buyer's insurance company in submitting any claims to Buyer's insurance company.

If the Premises has oil heat, the oil shall be measured and Seller shall purchase such portion as would be used for the term of occupancy provided in Section 2, above.

Seller shall properly maintain all lawns, shrubbery, grounds and other landscaping.

6. SECURITY DEPOSIT/CONDITION OF PREMISES AT END OF TERM: Unless the following box is checked, Seller shall not be required to pay a security deposit as a part of this Agreement. Seller shall pay a security deposit ("Deposit") in the amount of \$ _____ (\$500 if not filled in) at or before closing Directly to Buyer; Directly to Escrow for prompt disbursement to Buyer. The Deposit does not need to be held in a segregated account or a trust account, and no interest shall accrue thereon. The Deposit may be applied by Buyer toward any damages or defaults caused by Seller under this Agreement. Provided, however, Buyer may not apply any portion of the Deposit toward the expenditure of Buyer's own time related to any damage or default of Seller.

At the end of the Term ("the Deadline"), it is agreed that Seller shall have fully vacated the Property and removed all of Seller's furniture, furnishings, and personal property not otherwise sold/transferred to Buyer as a part of this transaction, and shall have removed all accumulated trash and debris in or around the Property. It is the intent of the parties that by or before the Deadline, Seller shall have delivered possession of the Property to Buyer, together with all systems therein, including the lawns, shrubbery, grounds and other landscaping, in substantially the same condition as it was when they entered into the Sale Agreement.

If Seller has fully vacated the Property in accordance with the terms of this Agreement, and there are no damages or defaults thereunder, Buyer shall refund the entire Deposit within three (3) business days

following the date Seller notifies Buyer that the Property has been fully vacated. If there are damages or defaults under this Agreement, Buyer shall provide Seller with the following Required Information: (a) A written explanation of them (including any supporting evidence); (b) A reasonable accounting of how the Deposit was applied; and (c) An itemization of the actual costs expended. If Buyer paid a third-party for labor or materials to help remedy or cure any damages or defaults caused by Seller, the Required Information shall include copies of all receipts from said provider(s). If Buyer has not actually paid any third parties, but has good faith arms-length written bids for doing so, Buyer shall include them in lieu of receipts, together with a representation that Buyer will employ the maker of the bid(s) to perform the work. All Required Information shall be provided to Seller within ten (10) business days following the date Seller notifies Buyer that the Property has been fully vacated. If any of the Deposit remains after deducting the costs incurred, or to be incurred, to remedy or cure the defaults or damages under this Agreement, it shall be refunded to Seller together with the Required Information.

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.

~~6. SECURITY, CLEANING AND ALTERATIONS: Seller shall pay a fee of \$_____ (\$500 if not filled in) which shall be used to clean and restore the Premises if Seller fails to do so prior to departure at the end of the term. Any unused portion of said fee shall be refunded to Seller.~~

7. **PETS:** Seller is is not permitted to keep pets on the Premises. If permitted, pet(s) shall be limited to: _____

Seller is responsible for damage caused by Seller's pets.

8. **ACCESS AND REPAIR:** Seller agrees to admit Buyer or Buyer's authorized agent at reasonable times for the purpose of inspecting the Premises or for any other purpose reasonably related to the terms of this Agreement.

9. **ASSIGNMENT:** Seller shall not transfer or assign all or any portion of Seller's interest in this Agreement, nor rent, sublease or assign all or any portion of the Premises without Buyer's prior written consent.

10. **LIENS AND ENCUMBRANCES:** Seller shall keep the Premises free of all liens and encumbrances and shall hold Buyer harmless therefrom.

11. **COMPLIANCE WITH LAW:** Seller shall comply with all laws, orders, regulations, rules, ordinances, restrictive covenants and other restrictions and conditions with respect to the use, care and control of the Premises.

12. **INSURANCE:** Buyer shall maintain property and casualty insurance on the Premises. Seller shall bear the risk of loss to Seller's personal property on the Premises. Seller shall maintain personal liability damage insurance with an insurance company authorized by the State of Oregon with a single limit of liability coverage not less than \$_____ (\$500,000 if not filled in) and shall, upon request, provide Buyer with proof thereof. Buyer shall be named as an additional insured on the policy. ~~as a co-insured.~~

13. **INJURY TO PROPERTY OR PERSON:** Seller is responsible for any neglect or willful act or omission upon the Premises during the term of possession identified in Section 2, above. Seller shall indemnify and hold Buyer and all Real Estate Firms, their licensed agents, employees and representatives harmless from any and all claims, losses, liabilities, damages or expenses, including attorney fees, directly or indirectly arising from Seller's negligent, reckless or intentional conduct.

14. **SELLER HOLDOVER:** If Seller remains in possession of the Premises beyond the term provided herein, Buyer may bring an action for possession as provided by law. In addition, Buyer shall be entitled to recover from Seller (*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 damage sustained by Buyer, whichever is greater. 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, the continued tenancy shall be on the same terms as this Agreement. In no event shall Seller's total occupancy of the Premises exceed ninety (90) days from closing.

15. DISPUTE RESOLUTION; ATTORNEY FEES AND COSTS: Subject to the following sentence, any dispute between the parties directly or indirectly relating to this Agreement shall be resolved in accordance with the mediation and arbitration provisions of the Sale Agreement. Provided, however, in the event Buyer seeks to obtain possession of the Premises arising as a result of Seller's default under this Agreement, Buyer shall have the right to file an eviction proceeding in court pursuant to ORS 105.105 et. seq. and the prevailing party shall be entitled to recover their reasonable attorney's fees and costs in the proceeding and any appeal therefrom.

16. BINDING EFFECT: This Agreement shall be binding upon and inure to the benefit of the heirs, successors and permitted assigns of the parties.

17. NO WAIVER: Failure by Buyer to require strict performance of any term of this Agreement shall not affect Buyer's rights. No waiver of a default shall be a waiver of a later default or a waiver of this clause.

18. INTEGRATION AND AMENDMENT: This Agreement constitutes all of the terms, conditions and agreements of the parties relating to Seller's right of occupancy of the Premises and may not be modified or amended except in writing signed by the party against whom enforcement is sought.

IF THERE IS ANY CONFLICT BETWEEN THE TERMS OF THIS AGREEMENT AND THE TERMS OF THE SALE AGREEMENT, THE SALE AGREEMENT SHALL PREVAIL.

19. COMPLIANCE WITH OREGON LAW: This Agreement shall be enforced according to Oregon Law and venue and shall be placed in the county where the Premises are located. Under ORS 90.110(2), this Agreement does not create a landlord-tenant relationship.

20. ADDITIONAL PROVISIONS: _____

Buyer _____ Date _____ ← Seller _____ Date _____ ←
Buyer _____ Date _____ ← Seller _____ Date _____ ←
Selling Licensee _____ Listing Licensee _____
Selling Firm _____ Listing Firm _____

COMMENT: SECTION 3 PROVIDES ALTERNATIVES FOR PAYMENT OF THE RENT, I.E. A LUMP SUM AT THE TIME OF CLOSING, OR AFTER CLOSING IN PERIODIC INSTALLMENTS. SECTION 5 PROVIDES THAT UTILITIES ARE TO BE PAID BY SELLER UNTIL POSSESSION IS TURNED BACK TO THE BUYER. SECTION 6 ADDRESSES WHETHER A DEPOSIT IS TO BE PAID, AND IF SO, THE CONDITIONS UPON WHICH IT IS TO BE RETURNED. IT ALSO PROVIDES THAT IF THE BUYER RETAINS ANY OF THE DEPOSIT, AN ACCOUNTING MUST BE PROMPTLY PROVIDED.

PRACTICE TIP: IF THERE IS A DISPUTE BETWEEN THE PARTIES REGARDING THE DEPOSIT OR EXCESS DAMAGE TO THE PROPERTY, THE MATTER IS SUBJECT TO THE DISPUTE RESOLUTION PROVISIONS IN THE SALE AGREEMENT.

RESOURCES: THE FOLLOWING WEBSITES ARE HELPFUL TO THE ABOVE TOPIC:

- <http://www.oregonlaws.org/ors/90.110> (This is the statute that excludes buyers from being "landlords" when the seller retains possession, so long as the arrangement does not go beyond 90 days. The statute also covers sellers who allow buyers early possession – which is a far riskier proposition.

INVESTMENT PROPERTY ADDENDUM
(OREF-070)

Buyer(s) _____
Seller(s) _____
Property Address _____

This Addendum does not contain a complete list of all inspections, tests, information, feasibility studies, and reports (collectively "Due Diligence Items") that may be available or appropriate for this transaction. The parties may add other Due Diligence Items in the Additional Provisions Section below.

The Real Estate Sale Agreement is contingent upon Buyer's satisfaction with the information obtained from review of the Due Diligence Items selected below and reaching agreement with Seller for resolution of any repairs, corrections, or other remedial action before the Deadline identified in the Time Requirements Section below. Unless otherwise agreed in writing, selected Due Diligence Items shall be paid for by the party that agrees to either *provide* or *secure* them. Except as modified herein, all provisions of the Real Estate Sale Agreement remain in full force and effect.

REAL ESTATE LICENSEES ARE NOT QUALIFIED TO PERFORM INSPECTIONS, PERFORM RESEARCH, OR OTHERWISE PROVIDE ANY SERVICES THAT ARE A PART OF ANY DUE DILIGENCE ITEMS. NOR ARE THEY QUALIFIED TO RENDER OPINIONS ON THE RELIABILITY OF ANY REPORTS OR INFORMATION OBTAINED FROM THE DUE DILIGENCE ITEMS. BUYER SHOULD RETAIN THEIR OWN SEPARATE EXPERTS FOR THESE RESPONSIBILITIES.

SELLER TO PROVIDE:

1. Property Information

- Description of all assets being purchased
- Interior inspection of all units/offices/rooms
- Most recent survey & site plan
- Floor plans & as-built plans
- Latest appraisal
- Latest engineering reports
- Latest inspection reports
- Environment audits and reports (including Phase I)
- Verification of presence/absence of **Underground storage tanks**
- Inventory list of furniture, fixtures & equipment
- All operating licenses & permits
- Confirmation of current zoning status & compliance
- All notices from any governmental agency of any violation of law
- Parking lot plan
- If Property is under condominium ownership parties agree to use OREF Condominium Sale Agreement (OREF Form 011)
- If Property is a Historic Property parties agree to use OREF Historic Property Addendum (OREF Form 045)

2. Financial Information

- All operating contracts & service agreements
- Current rent roll
- All leases, rental agreements and tenant files
- Last three (3) years profit & loss statements
- Last three (3) years' capital expenditures
- Accounting of all (i) prepaid rents; (ii) security, key, pets, & other deposits (refund & nonrefundable)

- Current accounts receivable & payable
- Last three years' business tax returns of entity owner
- Last three years property tax statements and assessments
- All utility, maintenance, & operating bills that will remain unpaid on closing
- History of casualty and liability claims for past three (3) years
- Name of employees, job description and files
- All current payroll information
- Employee handbooks & benefit booklets
- All employment contracts and agreements

3. Miscellaneous Information

- All pending lawsuits & claims threatened or made (by or against entity owner)

- American Disability Act plans, audits, reports, notices or claims

4. Additional Due Diligence Items

- _____
- _____
- _____
- _____
- _____

TIME IS OF THE ESSENCE. DOCUMENT DELIVERY PERIOD. Seller shall have _____ business days (five [5] if not filled in), after the date Buyer and Seller have signed this Agreement in which to provide Buyer with all documents and information selected above (hereinafter the "Document Delivery Period").

DOCUMENT REVIEW PERIOD. Upon receipt of ALL said documents and information, Buyer shall have _____ business days (ten [10] if not filled in) thereafter to complete all inspections **and** negotiations with Seller regarding any issues, questions, or concerns raised by the documents and information provided (hereinafter, the "Document Review Period"). During the Document Review Period, Seller shall not be required to modify any terms of this Agreement already reached with Buyer.

SELLER TO PROMPTLY IDENTIFY UNAVAILABLE ITEMS. In the event Seller is unable or unwilling to provide any requested documents or information to Buyer during the Document Delivery Period, promptly following receipt of this offer, he/she shall notify Buyer, or Buyer's Licensee, regarding the specific documents or information at issue.

INABILITY TO REACH AGREEMENT; NONWAIVER. If the parties are unable to reach written agreement over Seller's production of any outstanding documents or information within _____ business days (three [3] if not filled in) following expiration of the Document Delivery Period, this transaction shall be automatically terminated and all earnest money deposits shall be promptly refunded to Buyer. Buyer's exercise of any due diligence efforts based upon Seller's provided documents and information shall not constitute a waiver of the right of unconditional disapproval, described below.

FAILURE TO GIVE TIMELY NOTICE OF UNCONDITIONAL DISAPPROVAL. If Buyer fails to provide Seller or Listing Licensee with written unconditional disapproval of any documents or information provided by Midnight 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 or concessions, the Inspection Period shall automatically terminate, unless the parties agree otherwise in writing.

NOTICE OF UNCONDITIONAL DISAPPROVAL. At any time during the Document Review Period, Buyer may notify Seller or Listing Licensee, in writing, of Buyer's unconditional disapproval of the Property based on any of the documents or information provided by Seller, in which case, all earnest money deposits shall be promptly refunded and this transaction shall be automatically terminated.

CONFIDENTIALITY. Unless the parties agree otherwise, all documents and written information provided to Buyer shall be deemed to be confidential for all purposes, and shall be promptly returned to Seller upon termination, expiration, or consummation, of this transaction. The preceding confidentiality provision shall survive such termination, expiration, or consummation of this transaction.



1. **MATERIAL EVENTS OCCURRING BEFORE CLOSING.** Seller covenants and agrees that all material events occurring after this Agreement is signed by all parties will be promptly disclosed to Buyer upon their occurrence. This includes any actual or potential increase or decrease in tenancies, actual or potential evictions, notices of claims, losses or liabilities, insurance claims, changes to vendor or supplier contracts, or any other material event affecting the Property or its value, regardless of whether actual financial damage could occur (“Material Events”). Seller further covenants and agrees to promptly provide Buyer with written notice of Material Events, including all relevant documentation. If a Material Event involves the extension or termination of any vendor or supplier contracts, accepting/terminating tenants, undertaking capital improvements, or any like matter, the effect of which could foreseeably survive the closing of this transaction, Seller will first consult with Buyer before taking such action,

2. **FURTHER ASSURANCES.** Seller covenants and agrees that in the event Seller receives notification of any Material Events after closing of this transaction that have not previously been disclosed to Buyer, Seller will promptly notify Buyer in the same manner as described in Section 1. above. This provision shall survive closing of this transaction.

3. **ADDITIONAL PROVISIONS.** _____

_____ For
additional provisions see Addendum _____

Buyer _____	Date _____	Seller _____	Date _____
Buyer _____	Date _____	Seller _____	Date _____
Selling Licensee _____		Listing Licensee _____	
Selling Firm _____		Listing Firm _____	

COMMENT: THE TERM “UNDERGROUND STORAGE TANKS” HAS BEEN SUBSTITUTED FOR “UST.” THE BALANCE OF THE CHANGES DEAL WITH THE DUE DILIGENCE PROTOCOLS REGARDING BUYER’S REQUEST FOR RECORDS AND DOCUMENTS. THE BUYER’S RIGHT TO GIVE “UNCONDITIONAL DISAPPROVAL” IS THE SAME AS IN ALL OF THE OREF SALE AGREEMENTS.

PRACTICE TIP: REMEMBER THAT “UNCONDITIONAL DISAPPROVAL” MEANS THAT IF THE BUYER DISAPPROVES OF THE SELLER-PROVIDED RECORDS OR INFORMATION OR INSPECTIONS, IT MUST NOT BE TIED TO A “CONDITION.” IN OTHER WORDS, TO SAY “I WILL TERMINATE THE TRANSACTION UNLESS YOU DO X, Y, AND Z” IS NOT AN “UNCONDITIONAL DISAPPROVAL.” AN EXAMPLE OF AN “UNCONDITIONAL TERMINATION” IS “I HEREBY TERMINATE THIS TRANSACTION.”



ONSITE SEWAGE SYSTEM ADDENDUM TO REAL ESTATE AGREEMENT
(OREF-081)

Buyer(s) _____
Seller(s) _____
Property Address _____

Buyer and Seller hereby agree the following shall become a part of the Real Estate Sale Agreement dated _____.

1. DEFINITION OF ONSITE SEWAGE SYSTEMS: Generally, onsite sewage (or “wastewater”) systems collect and treat wastewater and sewage from residences that are not connected to public or community systems. The generic term "septic system," is commonly used to describe them. They may include gravity flow systems, sand filter systems, alternative technology treatment systems, seepage pits, cesspools and other disposal systems. All such systems shall hereinafter collectively be referred to as and “onsite sewage system” or “system”. For more information go to Oregon Septic Smart web site: <http://www.oregon.gov/DEQ/WQ/pages/onsite/septicmart.aspx>.

2. NOTICES: (a) Inspections of onsite sewage systems must be performed by a DEQ certified professional; (b) There may be more than one onsite sewage system on a property; (c) Not all elements of onsite sewage system may be located on the property they service; (d) Oregon DEQ may require decommissioning of abandoned onsite sewage systems.

3. SELLER REPRESENTATIONS REGARDING ONSITE SEWAGE SYSTEM: Seller represents that to the best of Seller’s knowledge, the onsite sewage system serving the Property is: (a) Operating properly; and (b) Complies with all applicable local, state and federal laws. These representations shall be in addition to any others made by Seller in the Sale Agreement, other Addenda, and Seller’s Property Disclosure Statement, if any.

4. ONSITE SEWAGE SYSTEM INFORMATION PROVIDED BY SELLER: Seller agrees to provide Buyer, or Buyer’s licensee, with all written documentation regarding the onsite sewage system, including all inspections/testing done within the last six (6) months, existing maintenance contracts for the onsite sewage system (*which may be a DEQ requirement for sand filter and alternative technology systems*), and any other material information regarding the system within ___business days (three [3] if not filled in) after Buyer and Seller have both signed and accepted this Addendum.

5. PROFESSIONAL INSPECTIONS/TESTS/PUMPING/CLEANING/REQUESTED BY BUYER: Buyer requests the following services (*hereinafter collectively referred as “Service” or “Services”*) be performed on the onsite sewage system (*check all boxes that apply*):

- Inspections/Tests (*specify*) _____
 Seller pays Buyer pays
- Pumping/Cleaning (*specify*) _____
 Seller pays Buyer pays
- Other(*specify*) _____
 Seller pays Buyer pays

The party responsible for paying the above-selected Service shall promptly order it and promptly share all results (collectively “Documents and Information”) with the other party.

6. BUYER’S RIGHT TO TERMINATE TRANSACTION: Buyer shall have ___ business days (ten [10] if not filled in), after the date Buyer and Seller have signed and accepted this Real Estate Sale Agreement

(hereinafter "the System Contingency Period"), in which to complete all negotiations with Seller regarding any matters disclosed in any Documents/Information concerning the onsite sewage system. However, during the System Contingency Period, Seller shall not be required to modify any terms of this Agreement already reached with Buyer. Unless a written and signed modification is reached, at any time during the System Contingency Period, Buyer may notify Seller or Listing Licensee, in writing, of Buyer's unconditional disapproval of the system based upon any Documents/Information. In such case, all earnest money deposits shall be promptly refunded and this transaction shall be terminated. Buyer shall promptly provide Seller with a copy of all Documents/Information not previously turned over to Seller. If Buyer fails to provide Seller or Listing Licensee with written unconditional disapproval by Midnight of the final day of the System Contingency Period, Buyer shall be deemed to have accepted the condition of the onsite sewage system. Note that if, prior to expiration of the System Contingency Period, written agreement is reached with Seller regarding ALL Buyer's requested repairs to the onsite sewage system, the System Contingency Period shall automatically terminate, unless the parties agree otherwise in writing. Termination of this transaction shall not excuse either party from paying for any Service they agreed to be responsible for in Section 5., above.

7. BUYER'S ACKNOWLEDGMENT: Buyer acknowledges that by closing this transaction, it shall mean that Buyer is satisfied with all Documents/Information, received pursuant to this Onsite Sewage System Addendum. Buyer understands that while Seller has made certain representations regarding the condition of the onsite sewage system, they do not represent a guarantee or warranty of future performance. Events may occur that can change the condition of the system after it has been inspected. All Documents/Information and other such information should be viewed in this light. Buyer acknowledges that Buyer has not received or relied upon any oral or written statements regarding the onsite sewage system made by Seller or any real estate licensee not expressly contained in the Real Estate Sale Agreement or this Addendum. Neither Seller's nor Buyer's real estate licensees are experts in onsite sewage systems and should not be relied upon to provide opinions, advice or information concerning their or future performance.

Buyer _____ Date _____ Seller _____ Date _____

Buyer _____ Date _____ Seller _____ Date _____

Selling Licensee _____ Listing Licensee _____

Selling Firm _____ Listing Firm _____

COMMENT: THIS IS AN ENTIRELY NEW FORM. IT SHOULD ALWAYS BE USED WHERE THE PROPERTY HAS ITS OWN ON-SITE SEWAGE SYSTEM. THE SALE AGREEMENT PROMPTS THE PARTIES TO USE THIS FORM.

PRACTICE TIP: THERE ARE MANY DIFFERENT TYPES OF ON-SITE SYSTEMS, SO REALTORS® SHOULD BE FAMILIAR WITH THEM. ALSO, REVIEW SECTION (3) OF THE SELLER'S PROPERTY DISCLOSURE STATEMENT (([ORS 105.464](#))), WHICH CONTAINS NEW QUESTIONS REGARDING THE SEWER SYSTEM.

RESOURCES: THE FOLLOWING WEBSITES ARE HELPFUL TO THE ABOVE TOPIC:

- [HTTP://WWW.DEQ.STATE.OR.US/WQ/ONSITE/ONSITE.HTM](http://www.deq.state.or.us/wq/onsite/onsite.htm)
- [HTTP://WWW.DEQ.STATE.OR.US/WQ/ONSITE/ABOUTSEPTIC.HTM](http://www.deq.state.or.us/wq/onsite/aboutseptic.htm)

PRIVATE WELL ADDENDUM TO REAL ESTATE AGREEMENT
(OREF-082)

Buyer(s) _____
Seller(s) _____
Property Address _____

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. 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: Within ___ business days, (five [5] if not filled in) after Buyer and Seller have signed 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.

BUYER TESTING: Within ___ business days, (five [5] if not filled in) after Buyer and Seller have signed this Agreement, Buyer may, at Buyer's expense, have the well water **tested** for quantity or quality by a qualified professional testing service. (See Section 7 below for selected test, if any.)

3. BUYER RIGHT OF TERMINATION: Within three (3) business days after Buyer's receipt of all written reports from Buyer's and Seller's tests, Buyer shall have the absolute right to terminate this transaction by delivering to Seller or Listing Licensee: (a) Written notice of intent to declare an unconditional termination together with a list of substantial deficiencies identified by Buyer; and (b) Copies of all test reports received by Buyer. Buyer and Seller shall thereafter have ___ business days (two [2] if not filled in) to reach written agreement as to the method, cost and financial responsibility for correcting the substantial deficiencies identified by Buyer (the "Negotiation Period"). If the parties are unable to timely reach a written agreement by 5:00 p.m. on the last day of the Negotiation Period, all earnest money deposits shall be promptly refunded to Buyer and this transaction shall be terminated. Notwithstanding the preceding, Buyer shall have no obligation to reach any agreement with Seller during the Negotiation Period.

4. WELL REGISTRATION: In the event any wells located upon the Property are not currently registered as a part of the Oregon's Well Identification Program, Seller agrees to assist Buyer, at Buyer's expense, in registering them. The preceding sentence shall survive Closing of this transaction.

5. WELL INFORMATION PROVIDED BY SELLER:

Seller shall provide Buyer with the following information regarding the well located on or serving the Property:

- well logs (*specify*) _____
- well test reports (*specify*) _____
- other reports (*specify*) _____
- none. Seller has no documents regarding the well.

PROFESSIONAL WELL TESTING

6. Seller agrees, at Seller's expense, to have the well tested for arsenic, nitrates and total coliform bacteria and such matters as are required by the Oregon Health Division. Buyer elects to have the following additional professional tests performed:

- | | | |
|---|--|---|
| <input type="checkbox"/> Well flow test | <input type="checkbox"/> Buyer's expense | <input type="checkbox"/> Seller's expense |
| <input type="checkbox"/> Lead test | <input type="checkbox"/> Buyer's expense | <input type="checkbox"/> Seller's expense |
| <input type="checkbox"/> Additional water quality tests | <input type="checkbox"/> Buyer's expense | <input type="checkbox"/> Seller's expense |

Other (specify) _____
 Buyer's expense Seller's expense

none. (Buyer should seek competent professional advice before checking this option. Buyer's rights to terminate this transaction based upon any test report showing a substantial deficiency in quantity or quality of well water are set forth in Section 4 above. Buyer should review them carefully.)

TIME IS OF THE ESSENCE

7. All professional tests, inspections or reports agreed to be performed in this Addendum shall be ordered by the party responsible for paying for them within ___ business days (five [5] if not filled in) after the date both parties have signed this Addendum.
8. Buyer and Seller shall use their best efforts to obtain the required or elected tests, inspections or reports in a timely manner and shall promptly submit the results of such tests, inspections or reports to the other party. **Completed tests, inspections or reports shall be submitted to the other party within forty-eight (48) hours after receipt.**

BUYER'S ACKNOWLEDGMENT

Buyer acknowledges that the Property is served by one or more private wells. Buyer understands that while Seller has represented that, to the best of Seller's knowledge, the private well(s) located on or serving the Property has/have provided an adequate supply of water throughout the year for household use, and, to the best of Seller's knowledge, is/are fit for human consumption, this is not a warranty or guarantee. Natural and man-made events can and do occur that may quickly change well water quality and quantity. Events such as development and drought can affect the quality and quantity of well water. Any well test is merely a snapshot in time and is not a guarantee of a well's future performance. All well tests, inspections or reports should be viewed in this light. Buyer acknowledges that Buyer has not received or relied upon any oral or written statements regarding the well(s) made by Seller or any real estate licensee not expressly contained in the Real Estate Sale Agreement or this Addendum. Buyer should secure expert advice. Your real estate licensee is not an expert in well water quality or quantity.

Buyer _____ Date ____ Seller _____ Date _____
 Buyer _____ Date ____ Seller _____ Date _____
 Selling Licensee _____ Listing Licensee _____
 Selling Firm _____ Listing Firm _____

COMMENT: THE MAIN PURPOSE OF THE CHANGES TO THIS FORM ARE TO CLARIFY THAT IF THE BUYER REJECTS ANY OF THE REPORTS OR TESTS, THE BUYER HAS AN ABSOLUTE RIGHT TO TERMINATE THE TRANSACTION. PREVIOUSLY, IF THE SELLER COULD REMEDY THE ISSUE, THE BUYER HAD TO REMAIN IN THE TRANSACTION. WHILE THE SELLER DOES HAVE AN OPPORTUNITY TO TRY TO CURE, THE BUYER DOES NOT HAVE TO ACCEPT IT, AND MAY TERMINATE NEVERTHELESS. THE FORM FURTHER GIVES THE PARTIES THE OPPORTUNITY TO IDENTIFY WHO IS TO PAY FOR WHAT. CUSTOM VARIES THROUGHOUT THE STATE ON THIS ISSUE.

PRACTICE TIP: IT IS IMPORTANT FOR BUYER BROKERS TO REMEMBER THAT “SILENCE IS CONSENT.” THAT IS, IF THE BUYER FAILS TO TIMELY AND UNCONDITIONALLY REVOKE, HE/SHE IS STILL IN THE TRANSACTION, AND ACCEPTS THE CONDITION OF THE WELL AS-IS.

RESOURCES: THE FOLLOWING WEBSITES ARE HELPFUL TO THE ABOVE TOPIC:

- [HTTP://WWW.DEQ.STATE.OR.US/WQ/DWP/WELLOWNERS.HTM](http://www.deq.state.or.us/wq/dwp/wellowners.htm)
 - [HTTP://WWW.DEQ.STATE.OR.US/WQ/DWP/PWOFAQS.HTM](http://www.deq.state.or.us/wq/dwp/pwofaqs.htm)
 - [HTTP://PUBLIC.HEALTH.OREGON.GOV/HEALTHYENVIRONMENTS/DRINKINGWATER/SOURCEWATER/DOMESTICWELLSAFETY/PAGES/TESTING-REGULATIONS.ASPX](http://public.health.oregon.gov/healthyenvironments/drinkingwater/sourcewater/domesticwellsafety/pages/testing-regulations.aspx)
 - [HTTP://WWW.OREGON.GOV/OWRD/PAGES/INDEX.ASPX](http://www.oregon.gov/owrd/pages/index.aspx)
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