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Advisory for Buyers and Sellers of Real Estate

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INTRODUCTION: Buyers and sellers may feel like they almost have to learn a new language when they are buying or selling a home. The professionals who make up the real estate industry – real estate agents, title and escrow companies, mortgage lenders, regulators, and others – have each contributed to the way the home-buying process is discussed.

In addition to this overview, Oregon Real Estate Forms, LLC (OREF), also provides more detailed information on a number of these topics. For more information specifically about OREF’s Sale Agreement, see [OREF 000A – Things to Know Before Signing](#). And remember, your real estate agent is always just a call away if you need assistance.

HIRING AN AGENT

AGENCY: An agency relationship is a voluntary but legally binding agreement between a licensed real estate agent and their client. When representing someone, by law an agent must advocate for the client’s best interests along with other affirmative duties.. Oregon law also allows an agent to represent both a buyer and a seller, or two buyers wanting separately to buy the same property, in a transaction under Disclosed Limited Agency Agreements. Representing multiple parties has its limitations: the agent must remain neutral and cannot take actions that favor one party over another. OREF forms allow the client to choose whether an agent may represent more than one person at the same time. It is important to understand the types of agency and how they impact representation, loyalty,



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disclosure, and confidentiality. For more information about agency relationships, review [OREF 042 – Initial Agency Disclosure Pamphlet](#).

REPRESENTATION: Oregon real estate licensees, acting as agents of their client, may represent buyers and/or sellers. Representation agreements by law must be in writing. The types of agreements generally include Listing Agreements when representing sellers, and Buyer Representation Agreements when representing buyers. These agreements describe the property the seller is selling or the type of property the buyer is interested in buying, the length of the relationship, the duties each party has, and when compensation is owed. For additional information about this law and its requirements, please visit the Oregon Real Estate Agency website.

AGENT COMPENSATION: Keep in mind that there are no standard compensation rates in real estate, and compensation is always negotiable between a client and their agent. When negotiating compensation terms, carefully review the entire OREF Agreement, whether it's a Listing Agreement or a Buyer Representation Agreement, and don't hesitate to ask questions to fully understand your rights and responsibilities. Buyers may request that the seller pay some or all of the agreed-upon compensation included in their Buyer Representation Agreement. OREF Sale Agreements include a section designed to facilitate this request. For more detailed information about this subject, review [OREF 047 – Advisory Regarding Real Estate Compensation](#).

THINGS TO CONSIDER WHEN LOOKING FOR A PROPERTY

INSURANCE:

Flood Insurance. If the property is in a high-risk flood zone, flood insurance may be mandatory. Most homeowners' insurance policies do not cover flood damage. The National Flood Insurance Program provides flood insurance in the U.S., either directly or through an insurance company in your area.

Homeowners Insurance. Buyers should promptly verify the availability and cost of property and casualty insurance for the home they are purchasing. If the buyer obtains financing for the purchase, the lender may require proof of insurance as a loan condition.

SQUARE FOOTAGE AND ACREAGE: If the square footage of a home or property is critical to a buyer's decision to purchase, they should ask their agent



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to write a contingency in the offer and hire a contractor with experience measuring square footage. The square footage in an advertisement or database should not be relied upon. Sellers should be careful to avoid representing the square footage of a home or the size of a parcel of land from any source other than the county records unless they have knowledge of the accuracy of the representation, such as from a builder or surveyor. OREF Sale Agreements include a disclaimer regarding the square footage of the home or property, confirming that the seller and agents do not warrant the size and reminding buyers to create a contingency if the size is important to them.

OWNER ASSOCIATIONS AND CC&RS: During the last several decades, developers of subdivisions have created covenants, conditions and restrictions (CC&Rs) with the goal of protecting the value of homes within those subdivisions. Those CC&Rs empower homeowners and owner associations to enforce the CC&Rs. Owning a property that is governed by an owner association comes with certain rights and obligations. CC&Rs empower owner associations to make decisions for entire subdivisions, including which repairs or improvements the association will make to the common areas that it owns. Owners may then be charged the cost of those repairs or improvements through assessments. The association may also enforce rules that impact the use and appearance of the homes in the community. For more detailed information about owner associations, review [OREF 031 – Advisory to Buyer Regarding Owner Associations](#).

SOLAR PANELS: When purchasing a property on which solar panels have been installed, it is important for buyers and sellers to understand the details regarding if and how those solar panels will be transferred at closing. Buyers should obtain information about the system, whether the seller owns it and if not from whom it is leased, what the remaining financial obligation is, and if any existing lease is assumable. To learn how agreements about solar panels are dealt with in a transaction, review [OREF 116 – Advisory Regarding Solar Panels](#).

RECORDING DEVICES – AUDIO AND VIDEO: It is illegal under Oregon law to obtain a conversation without the consent of at least one party to the conversation. Many homes include devices or systems, such as smart doorbells, that have the ability to record or transmit video and/or audio. Sellers should disable the audio portion of these devices during all showings, open houses and inspections to ensure compliance with Oregon law. Buyers should be careful about what they say while touring a home and property. If buyers are not careful, they may disclose information that could negatively impact their negotiations with a seller, such as how much they are willing to spend and whether they are also



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interested in other homes. For more detailed information about this subject, review [OREF 102 – Advisory to Buyer Regarding Recording Devices](#).

NON-BORROWING CO-OWNERS: In certain circumstances, a buyer may wish to add a co-owner to the purchased property without requiring that person to take on responsibility for the loan used to finance the purchase. If the buyer is considering this type of arrangement, whether as the borrowing or non-borrowing co-owner, it's important for both the buyer and seller to understand the potential implications. Buyers and sellers should consult with their lender and title company to determine how this could affect the financing or closing timeline. For more detailed information about this subject, review [OREF 115 – Advisory Regarding Non-Borrowing Co-Owners](#).

FAIR HOUSING: Federal, state, and local fair housing laws ensure that buyers who are members of protected classes are safeguarded from discrimination by sellers, landlords, real estate agents, mortgage brokers, property managers, and other real estate service providers and their employees. At the Federal level, these protected classes include race, color, religion, national origin, sex (gender), disability (physical or mental), and familial status (children in the household under age 18). Additionally, the State of Oregon protects other classes: sexual orientation, gender identity (whether the individual identifies as female or male, both, or neither), marital status (single or married), legal source of income, and victims or survivors of domestic violence (including sexual assault and stalking). Local jurisdictions may protect additional classes, such as domestic partnerships, ethnicity, and age. In all cases, the laws most protective of a person's status – whether federal, state, or local laws – will apply. It is unlawful for a seller to refuse to sell a home to a buyer because the buyer is a member of, or is perceived to be a member of, a protected class. For more detailed information about this subject, review [OREF 104 – Advisory Regarding Fair Housing](#).

TENANT OCCUPIED PROPERTIES: Buyers considering the purchase of property occupied, or to be occupied, by tenants, should conduct due diligence beyond the typical property purchase. Federal, state, and local laws and rules govern many aspects of the landlord-tenant relationship. Buyers should familiarize themselves with applicable laws and rules so that they understand how they impact their rights as landlords, their obligations to tenants, and the income they can expect to earn from owning rental property. Sellers should confirm the terms of the existing lease or rental agreement they have with their tenants as well as applicable landlord tenant laws before committing to the removal of tenants by a certain date. OREF forms include the ability for the buyer to request information



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about the financial performance of the property, to determine whether tenants believe the seller has complied with the Lease, to learn whether tenants have paid rent in advance, and to discover whether a tenant has an option to buy the property. For more detailed information about this subject, review [OREF 106 – Advisory Regarding Tenant-Occupied Properties](#).

BANK-OWNED PROPERTIES: Bank-owned property is property a bank has acquired through bankruptcy, foreclosure, or by a voluntary process where the borrower has conveyed it to the bank “in lieu of foreclosure.” In these cases, the bank takes charge of reselling the property on the open market. Banks refer to property they hold through one of these methods as “Real Estate Owned” or “REO” property. Although buying a property from a bank is similar to buying from other sellers in many ways, there are a couple of important differences:

- (a) while most sellers of Oregon residential property are required to answer a lengthy list of questions regarding the property’s condition and status (known as a Seller’s Property Disclosure Statement, discussed below), banks selling REO properties are exempt from this requirement; and
- (b) banks are usually less willing to pay buyer costs that a seller would typically contribute towards.

For more detailed information about these properties review [OREF 061 – Advisory to Buyer Regarding Purchase of Bank-Owned Property](#).

HISTORIC PROPERTY: Historic properties have special tax consequences and may include restrictions on construction, remodels and how the property is used. For more detailed information about this subject, review [OREF 045 – Advisory to Buyer Regarding Historic Property](#).

MIDDLE HOUSING: “Middle housing” means duplexes, triplexes, quadplexes, cottage clusters (up to four small houses with a common courtyard), townhouses (two or more units, each on separate lots, but sharing at least one wall), and housing that is affordable (to low and median income buyers) or accessible (to people with disabilities). Oregon law allows some or all of these to be built on certain single-family lots inside an urban growth boundary. There are some exceptions, so buyers with questions about whether middle housing can be built on a particular lot should contact a land-use expert or land-use lawyer. Provisions prohibiting middle housing or accessory dwelling units that appear in CC&Rs or amendments are generally void.



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SHORT SALE PROPERTIES: In a short sale transaction, the amount the seller owes on the property is more than the market value of the property. These transactions will not close unless the seller brings in money to close or the lender agrees to accept less than the balance owing on the loan. If the seller doesn't have enough money, the sale cannot go forward until the seller obtains the written consent of the lender to accept a "short" payment. In short sale transactions, the parties may agree that the deadlines for completion of buyer contingencies be suspended pending third-party creditor consent. If those deadlines are not suspended, buyers could spend money on inspections, appraisals and other things during the purchase process only to later learn the lender's consent to the short sale cannot be obtained. Buyers and sellers should get legal advice before entering into a short sale transaction. For more detailed information about this subject, review [OREF 027BUY – Short Sale Summary for Buyers](#) or [OREF 027SEL – Short Sale Summary for Sellers](#).

TIMBER PROPERTY: When purchasing property with standing or recently-harvested timber, it's important to understand that the land may be subject to the Oregon Forest Practices Act. Buyers should be aware of specific regulatory requirements and the potential for fees and penalties if these requirements are not met. For more detailed information about this subject, review [OREF 111 – Advisory Regarding Timber Property](#).

VACANT LAND: Buyers of vacant land need to conduct extra due diligence, and sellers should be aware of this need. Buyers must determine whether their intended use is legally permissible and economically feasible. This includes checking with the appropriate governmental agencies and may include hiring a development or land use expert. Land use laws, zoning, overlays, and other regulations could negatively impact their intended use. For more detailed information about this subject, review [OREF 030 – Advisory to Buyer Regarding Vacant Land](#).

TRANSACTIONS

REAL ESTATE SALE AGREEMENT FORMS: As indicated above, Oregon law requires real estate purchase and sale agreements to be in writing. Buyers and sellers can choose which form set they want their agent to use for their transaction. Buyers should ask their agent which form set they are most familiar with, and sellers should confirm with their agent that any offer received is on a form the agent is familiar and comfortable with. For more detailed information



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about this subject, review [OREF 108 – Advisory and Instructions Regarding Real Estate Purchase and Sale Forms](#).

OFFERS AND COUNTEROFFERS: Offers to purchase real estate must be in writing according to Oregon law. If an offer is not accepted as written, a counteroffer can be presented by the other party, suggesting a change in terms that would make the offer acceptable to them. Real estate agents are licensed to assist buyers in writing offers and counteroffers, to assist sellers in reviewing those offers and writing counteroffers, and to help both buyer and seller negotiate agreeable terms. Agents know what is likely not to be accepted by the other party and what terms are likely to bring the parties together. Buyers and sellers should ask their agent to provide them with copies of any documents they expect will be used in their transaction in advance, to allow time for review. Or view sample files here on the OREF website at: <https://orefonline.com/oref-library>.

LEASE OPTION: A lease option is used when a seller agrees to sell property to a buyer at a specific price and within a specific time in the future, and agrees to lease the property to the buyer until such time as they elect to proceed with the purchase. A complete lease option agreement will spell out all of the terms of both the lease and sale of the property, as well as how the option to buy is exercised. A lease option may be attractive to buyers who are anticipating being able to buy a home in the future, and attractive to sellers who don't want to put their property on the market. There are many things to negotiate in a set of documents that cover both a lease and a sale, such as how long the lease will last, amount of the rent, when the option to buy can be exercised, the purchase price, the amount to be paid for the option, and whether rent payments will be credited toward payment of the purchase price. For more detailed information about this subject, review [OREF 085SUM – Advisory Regarding Lease Option](#).

DEFINITIONS & MISCELLANEOUS: OREF Sale Agreements have a list of definitions and provisions that govern the way the agreement is construed. Buyers and sellers should thoroughly review these sections of the Sale Agreement to ensure they understand what the defined terms mean. The first letter of these terms and provisions are capitalized throughout OREF documents as a reminder that they have a definition.

COSTS AND EXPENSES: Both buyers and sellers should be aware that real estate transactions come with a variety of expenses. These costs are not limited to the purchase price of the home and can vary depending on the specifics of the agreement. Buyers are typically responsible for the cost of home inspections, the



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appraisal ordered by their lender, and their share of closing costs. These closing costs may include lender fees, title insurance, escrow services, and other charges necessary to complete the transaction. Sellers should anticipate costs such as repairs they agree to make during negotiations and any closing costs they agree to pay under the terms of the contract. Real estate licensees are compensated according to written agreements between each party and their respective agents. The buyer and seller may also negotiate whether one party will contribute toward the other's agent compensation. Closing costs cover the services and fees required to finalize the sale and transfer ownership of the property. While both parties usually contribute to closing costs, the types and amounts paid by each party depend on the negotiated terms of the agreement.

EARNEST MONEY DEPOSIT: Offers to purchase real estate include a specified amount identified as the deposit, sometimes referred to as earnest money. This is an amount the buyer agrees to deposit upon acceptance of their offer, demonstrating their willingness to perform per the terms of the Sale Agreement. If the transaction closes per the terms of the Sale Agreement, these funds are credited toward the purchase price. Buyers and sellers should discuss earnest money in depth with their agent to ensure a thorough understanding of how a breach of contract can impact earnest money.

WIRE FRAUD: Transferring funds electronically is more of a threat than many people realize. Every day, scammers pretend to be trusted advisors, and by changing an email address or phone number, they can trick people into sending money to a fake account. Consumers have lost billions of dollars to scammers in real estate transactions, but there are ways to avoid scams. For more detailed information about this subject, review [OREF 043 – Advisory Regarding Electronic Funds](#).

ESCROW: The word “escrow” is used in two different ways in a real estate transaction. First, it refers to a neutral, third-party company that collects and holds funds and important documents during a real estate transaction. The escrow company will ensure that all of conditions of the sale are met before money and ownership are exchanged. Second, it refers to the process that the escrow company goes through to make sure the instructions of the buyer, seller, lender, real estate agents, title insurer, and government entities are followed in compliance with the law. In Oregon, escrow and title insurance functions are usually (but not always) performed by the same company. Costs of escrow are typically shared equally between the buyer and seller, but they can be negotiated.



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CONTINGENCIES: Contingencies are an important way for buyers and sellers to protect themselves in the sale process. They allow the party benefiting from the contingency to terminate the transaction with no penalty. The OREF Sale Agreements have several standard contingencies, including financing, inspection, and title review. All of these contingencies are for the benefit of the buyer. Additional contingencies benefiting either party can be added. It is important to pay close attention to the timeline for each contingency, as most are deemed waived if the benefiting party does not exercise them before the deadline.

Buyers may feel pressured to waive contingencies when there are a number of buyers making offers on the same property. Or, a seller may ask a buyer to waive a contingency. Waiving a contingency can result in buyers losing their right to terminate, loss of earnest money, and other adverse consequences. Buyers should consider these consequences carefully before waiving contingencies. For more detailed information about this subject, review [OREF 098 – Advisory to Buyer Regarding Waiving Contingencies](#).

PERSONAL PROPERTY AND FIXTURES: “Personal property” is property that is movable, such as furniture, pictures, and hoses. “Fixtures” might have been personal property at one time, but they have become attached to the structure or property in a permanent manner, such as chandeliers, built-in shelving, and garage door openers. The sale agreement says that, unless the parties agree to some other arrangement, all personal property belongs to the seller, and all fixtures remain with the home and belong to the buyer. However, it is not always clear whether a particular item is personal property or a fixture. For example, the sale agreement says that certain types of appliances, such as ranges and ovens, must remain with the home after closing, even though they may be capable of being removed. If there is any doubt about whether items will be sold along with the property, the parties must document their intent for those items in the OREF Sale Agreement. Buyers should not rely on an advertisement or listing information as a promise that certain items of personal property will stay or certain fixtures will go.

APPRAISAL: In the real estate industry, “appraisal” means both the process of determining the fair-market value of a property and the result of that process. Appraisals are crucial to buyers and lenders because buyers want to know whether the property they are buying is worth what they are paying (industry shorthand for this question is – “did it appraise?”) and lenders want to know that the security for their loan is worth the amount they loaned the buyer to buy it. An appraiser answers this question by looking at the prices paid for similar properties



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recently, adjusting those prices by the differences in features between those properties and the property that is the subject of the appraisal, and presenting their opinion of the property's fair-market value in an appraisal report.

FINANCING: If a buyer needs a loan to buy a property, OREF Sale Agreements allow the buyer to make the transaction contingent on the buyer and the property qualifying for the loan and the property appraising for at least the agreed-upon sale price. By placing an offer on a property, a buyer promises they have or will have the money to pay the deposits and down payments as detailed in the sale agreement. If a buyer obtains any funds from third-party sources (such as relatives, withdrawals from investment accounts, or proceeds from another closing), it must be disclosed in the Sale Agreement.

The failure to disclose contingent funds and/or financing could be considered a misrepresentation. If an offer is made that includes a specific lender, using that lender becomes a contractual term, and the buyer may not later change lenders without the seller's permission.

SELLER-CARRIED FINANCING: A seller-carried transaction is a real estate transaction in which some or all of the purchase price is carried by the seller acting as the lender, instead of a third-party lender. The buyer gives the seller a promissory note and deed of trust, or a contract of sale, to secure the buyer's repayment obligation. These arrangements benefit buyers who don't qualify for a typical mortgage loan, and sellers who want to earn interest and be paid back over a period of years for tax purposes. For more detailed information about this subject, review [OREF 032 – Advisory Regarding Seller-Carried Transactions](#).

SELLER REPRESENTATIONS: In the OREF Sale Agreements, sellers make representations about the property's condition, covering aspects such as sewer, water, hazardous substances, known material defects, encroachments, and legal violations. These representations are made to the best of the seller's knowledge: they are not warranties or guarantees, but the seller can be liable if they know the representations are not accurate. Sellers have an affirmative duty to disclose anything they know that would be important to a buyer regarding the condition of the property or its value. Buyers have the right to rely on these representations unless the parties agree otherwise in writing, but buyers must also conduct their own independent investigations.

HOMEBUYER PROTECTION ACT: Oregon's Homebuyer Protection Act safeguards buyers from construction liens. These liens can be filed by contractors



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or material suppliers for new construction, additions, or remodeling projects and could occur after closing. To ensure buyers are protected, sellers must provide a "Notice of Compliance with the Homebuyer Protection Act" form, issued by the Oregon Construction Contractors Board, at or before closing on any single-family home, condominium, or building with 2-4 units when more than \$50,000 in improvements have been made within 90 days before closing. This Act protects the buyer from the filing of a construction lien after closing, so that the buyer is not held responsible for construction costs that the seller should have settled before closing.

HOME WARRANTY PLANS: Home warranty plans are available to help cover homeowner costs to repair or replace certain home systems and appliances. Buyers and sellers can negotiate who is responsible for paying the cost of these plans.

CLOSING AND POSSESSION: Closing is the final step in the transaction process. It is when the loan is funded, fees are paid, proceeds are disbursed, documents are recorded, and ownership transfers. The OREF Sale Agreements contain a place for the parties to insert a "no later than" deadline for closing to occur. Parties should be realistic in selecting the closing deadline, because if the transaction fails to close by then, the buyer or seller may have breached the contract, or the other party may refuse to close later.

Possession is usually transferred from the seller to the buyer on the day of closing. If the parties agree that possession will occur on a day other than closing, OREF has agreements allowing the buyer to move in early or allowing the seller to move out after closing. Buyers and sellers should review both of these agreements if they have questions or are considering this.

BREACH OF CONTRACT AND DEFAULT: Most definitions of "breach" and "default" are very similar. Some say that a default is a failure to make a payment, while a breach is other failures to comply with a contract. For purposes of the OREF Sale Agreements, there is not a difference between "breach" and "default." The important issue is the remedy: what a party is entitled to do if the other party fails to comply with the agreement. There are three different types of breaches, and the type of breach is important to the remedy:

(a) **Immaterial Breaches.** Some breaches are so minor that the law ignores them. For example, if a seller says there are no encroachments onto their property, but a survey shows a neighbor's fence encroaching onto the seller's



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property by one inch, the inaccurate representation isn't usually significant enough to justify any remedy.

(b) **Material breaches.** A breach is material if it goes to the heart of the contract. In other words, if the failure means that a party will not get the benefit that they bargained for, it is a material breach. The law allows various remedies for these situations: depending on the circumstances, a court or arbitrator may grant specific performance, rescission, money damages, termination, or something else.

(c) **Breaches for which the contract states the consequence.** Sometimes the contract will state what happens if there is a breach: for example, the Earnest Money Deposits section of the OREF Sale Agreements states that the failure to deposit earnest money will result in a forfeit of the deposit and, at the seller's option, a termination of the agreement.

The existence of and remedy for a breach of an agreement are legal questions that an agent cannot answer. Buyers and sellers should contact a real estate attorney if they have questions about a potential breach.

TERMINATION: Some transactions fall apart before closing, and buyers and sellers need to know their rights, duties, and liabilities before a problem occurs. The OREF Sale Agreements provide that the earnest money will be refunded to the buyer and the transaction will be terminated if (a) certain contingencies are not satisfied or other events occur through no fault of the buyer (for example, if the loan is not approved, or the home appraises for less than the sale price, or a title defect cannot be removed), and (b) the buyer gives notice of termination. But if the transaction fails because a buyer changes their mind or terminates for another unpermitted reason, the seller is entitled to the earnest money. Because the OREF Sale Agreements say that keeping the earnest money is the seller's only remedy for a buyer's nonperformance, sellers should, before the Sale Agreement is signed, think about how much earnest money they want: will the deposit offered by the buyer sufficiently compensate the seller if the buyer fails or refuses to close? Also, sellers should understand that if they change their mind after agreeing to sell their home, the buyer can ask an arbitrator to force the seller to close.

DISPUTE RESOLUTION: The Sale Agreement contains a section for alternative dispute resolution, which mandates that most disputes between sellers, buyers, and agents must be resolved through private mediation and arbitration instead of



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using the courts. This process is final and binding. But if a dispute between a seller and buyer involves a money claim for an amount less than the Small Claims Court limit in Oregon, the dispute may only be brought to Small Claims Court. These parts of the Sale Agreement usually allow disputes to be handled more quickly and inexpensively than disputes that go through the court system.

DUE DILIGENCE

SELLER'S PROPERTY DISCLOSURE STATEMENT: The Seller's Property Disclosure Statement is a lengthy list of questions regarding the property that the seller must answer. The answers are based on the seller's actual knowledge, meaning that if they know something they must disclose it, but they have no obligation to investigate anything about the property before answering. Seller's agents are not permitted to advise a seller how they should answer any specific question. A seller of residential property, with some exemptions, is required by [ORS 105.462-490](#) to provide the buyer with a completed Seller's Property Disclosure Statement. Buyers have the right to revoke their offers any time prior to receiving the Seller's Property Disclosure Statement or within 5 business days after receiving it. If the seller doesn't provide a Seller's Property Disclosure Statement, the buyer is entitled to revoke their offer at any time before closing. Buyers should review the completed form to determine what they want to investigate further before they decide whether to proceed with the purchase.

INSPECTIONS:

Lead-Based Paint Hazard Inspections. Residential dwellings built prior to 1978 may expose their occupants to lead-based paint, which can result in lead poisoning, especially in young children. Sellers are required to disclose any information they know and records they have about lead-based paint hazards at the property. They also must provide the buyer with a copy of the EPA pamphlet "Protect Your Family from Lead in Your Home." And they must allow buyers to conduct a risk assessment or inspection for possible lead-based paint hazards, which is recommended prior to the purchase of any structure built before 1978. For more detailed information about this subject, review [OREF 021 – Lead-Based Paint Disclosure Addendum](#).

Professional Inspections. Having the property thoroughly inspected by licensed professionals is one of the most important things buyers can do to protect themselves from surprises when purchasing a home – regardless of



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the age of the home. OREF sale agreements give buyers the option to negotiate a home inspection contingency to have the home and all systems thoroughly inspected at the buyer's expense. Sellers should expect this as a part of any offer they receive. In addition to the basic inspection, the buyer could request pest, dry rot, mold, radon, or other inspections. This contingency also gives the buyer the right, during the inspection period, to terminate the transaction after reviewing the inspection report and to obtain a complete refund of all earnest money deposits. Before the end of the inspection period, the buyer is free to negotiate with the seller regarding the repair of any conditions noted in any inspection report. Still, the seller does not have to agree to perform any repairs.

Be vigilant about deadlines: a buyer's failure to timely and unconditionally disapprove can mean that the buyer has accepted the condition of the property, even defects that are or are not visible. If a buyer fails to terminate during the inspection period and later decides that the home's condition is unacceptable, the buyer may have to forfeit their earnest money deposit to terminate.

Sewer and Septic System Inspections. When purchasing a property that includes a septic system, buyers should ask for the system to be pumped and inspected. The OREF forms provide for the buyer to agree to pay for these expenses or to request the seller to pay. A buyer has the right to terminate the transaction and receive a refund of their earnest money deposit if the test shows a substantial deficiency in the septic system and the parties are not able to agree on repairs. Buyers unfamiliar with onsite systems should seek assistance from a professional in determining the proper use and maintenance of the system. For more information, review [OREF 081 – Septic/Onsite Sewage System Addendum](#).

Well Inspections. Oregon law requires a seller to have any wells that supply domestic water tested for arsenic, nitrates, and total coliform bacteria at the time the offer is accepted, and to provide those results to the buyer and to the Oregon Health Authority. A buyer has the right to terminate the transaction and receive a refund of their earnest money deposit if the test shows a substantial deficiency in the water quality and the parties are not able to agree on repairs. It is also helpful, but not required by law, to test well flow – the amount of water the well produces – to determine whether the flow is adequate for the buyer's intended uses. For more detailed information about this



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subject, review the state statute [ORS 448.271](#) as well as the terms of [OREF 082 – Private Well Addendum](#).

TITLE REPORT: OREF sale agreements state that the seller will order a “preliminary title report” for the property. Once it is ordered, a title insurance company begins creating a report that shows who owns the property, a description of the title insurance being purchased and amount of coverage, the cost of the insurance policy, the names of the buyers who will be covered by the policy, a legal description of the property, a description of the property taxes assessed against a property, a list of general title exceptions applicable to all title insurance policies, links to special title exceptions applicable to just the property being purchased, and the effective date of the report. The report also includes a description of what the title company requires to close the transaction, and a description of what the title insurance policy does not cover.

As soon as the buyer receives the report, they should review it and the documents that are attached to it. The information in these documents are essential to buyers and their lenders: it makes clear what the property can and cannot be used for, the easements that impact the property, and other important facts. As described in the sale agreement, the buyer should object in writing to any unacceptable title exception that will affect the property after closing. Soon after the transaction closes, the title insurance company will issue title insurance policies to the buyer and (if applicable) the buyer’s lender. The seller usually pays for the buyer’s title insurance, and the buyer usually pays for their lender’s title insurance. For more detailed information about this subject, review [OREF 103 – Advisory Regarding Title Insurance](#).

DEFECTIVE PRODUCTS AND MATERIALS: Homes may contain products and materials that have been subject to a recall or class action lawsuit. Sellers have the duty to disclose if this is the case, and buyers have the duty to pay diligent attention to any material defects that are known to the buyer or can be discovered by the buyer by obtaining a typical home inspection. That includes researching settlements or previous claims.

Buyers should review all disclosures provided by the seller and representations made by the seller regarding the existence of these products in the property and work with their real estate agent to determine the type of inspection necessary to become comfortable with their existence and condition or to have them removed.



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ENVIRONMENTAL HAZARDS: Hazardous substances are occasionally found at properties being sold. Their presence results from a variety of causes, including previous uses of the property (steel mills, fuel or chemical storage, dry cleaners), materials formerly used in construction (asbestos, lead paint), leaky storage tanks (for oil furnaces), and migration (hazardous substances leaking into the groundwater and migrating to other properties). Buying property containing these substances can result in health risks and removal costs. Buyers purchasing older homes, or homes on land that may contain harmful substances, should ask their real estate agents to help them find experts who can look for, evaluate and – in some cases – remove these substances.

SMOKE ALARMS & CARBON MONOXIDE ALARMS: Homes must have working smoke and carbon monoxide alarms before they can be sold. Alarm type, installation location, power source, maintenance, testing, and replacement are controlled by local and state laws and rules, as well as alarm manufacturer instructions. If the alarms are not in place when a home is appraised, the appraiser may charge for a return trip to verify that the alarms have been installed, at the seller's expense. For more detailed information about this subject, review [OREF 080 – Advisory Regarding Smoke and Carbon Monoxide Alarms](#).

UNDERGROUND OIL STORAGE TANKS: Oregon's Department of Environmental Quality (DEQ) has specific restrictions and requirements regarding the safe use and removal of underground oil storage tanks. Buyers should check with DEQ to determine whether any underground oil storage tanks are on the property they are purchasing and, if so, whether the tanks have already been taken out of service and made safe (also known as decommissioning). If buyers become aware of tanks still present on the property, the tanks should be evaluated by a DEQ licensed professional, who may recommend decommissioning. DEQ can pursue the current owner or tenant and previous owner and tenants for cleanup costs, so it is important to determine whether there is soil or water contamination before closing. For more information, review the DEQ's Underground Storage Tank Program <https://www.oregon.gov/deq/tanks>.

WOOD STOVES: Oregon law requires the removal and destruction of uncertified woodstoves and other solid fuel burning devices prior to closing. Uncertified devices must be removed from the entire property, including garages, outbuildings, and shops. The seller is responsible for removing and destroying an uncertified device unless the buyer accepts responsibility in writing for removal and destruction. For more detailed information about this subject, review [OREF 046 – Wood Stove and Wood Burning Fireplace Insert Addendum](#). Oregon's



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DEQ has <https://www.oregon.gov/deq/Residential/Pages/CertLabels.aspx> that helps buyers and sellers determine whether a device is certified.

For more information about this law, review <https://www.oregon.gov/deq/Residential>.

TAXES

DEFERRED PROPERTY TAX: Buyers should contact the county tax assessor to determine whether the property they are buying has a special property tax status, such as farm, forest, seniors, or disabled, that could lead to extra taxes being assessed in the future. If the property does have a special tax assessment, the buyer should contact the county to understand the rules that must be followed to keep that tax break. Not complying with those rules could result in losing the tax break and owing a large amount in back taxes. Sellers must disclose to buyers any information they have about a loss of the deferred tax status.

In the OREF Sale Agreements, the seller confirms the property currently meets the income or other requirements to keep its deferred tax status. However, the deferred taxes can be significant if triggered later, so buyers should make sure they fully understand the county's requirements and are prepared to comply with them.

FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA): Also referred to as FIRPTA, the Foreign Investment in Real Property Tax Act is a federal law that requires buyers to withhold a portion of a seller's proceeds if the property is located within the United States and the seller is a "foreign person" who does not qualify for an exemption. If the seller is not a U.S. citizen or a green card holder, escrow should be notified to determine the extent to which escrow can assist the parties with FIRPTA compliance. For more detailed information about this subject, review [OREF 092 – Advisory Regarding the Foreign Investment in Real Property Tax Act](#).

OMITTED PROPERTY TAX: Tax assessors may review past and present data to determine whether a property is being taxed appropriately. If improvements were made that the assessor did not know about, the assessor may decide the improvements were omitted from the appropriate tax roll. They may then notify the owner and add the property to the tax roll. Before closing on a property purchase, buyers should check to ensure all improvements are being taxed and the county has a record of all existing structures on the property.



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OREGON WITHHOLDING OF INCOME TAX: In most cases, if the seller is not an Oregon resident (person or business) or is moving out of state, escrow must withhold part of the money the seller would receive from the sale. The buyer and seller must cooperate with the escrow company by signing any forms or documents and taking any reasonable actions needed to comply with the withholding law.

PRORATION OF PROPERTY TAX: Oregon's property tax year runs from July 1st to June 30th. Property taxes are due on November 15th, but the tax can be paid in three equal installments on November 15th, February 15th and May 15th. Those who pay in full by November 15th receive a 3% discount. The current year's property taxes will be prorated by escrow based on the date the buyer and seller negotiate for prorates (usually the closing date). The appropriate amount will then be charged or credited to each party at closing.

ACKNOWLEDGMENT: The undersigned acknowledge that (a) they have read this Advisory for Buyers and Sellers of Real Estate; (b) they have received a copy for their files, and (c) they know the importance of understanding their transaction before closing a real property purchase.

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