

FAR-9

Residential Sale and Purchase Contract

Table of Contents

Contract (FAR-9 Rev. 4/07)

Introduction4

Parties and Description of Property

Sale and Purchase8

Price and Financing

Purchase Price10

Financing12

Closing

Closing Date; Occupancy14

Closing Procedure; Costs15

 Seller Costs15

 Buyer Costs15

 Title Evidence and Insurance15

 Prorations15

 Special Assessment by Public Body15

 Tax Withholding15

 Home Warranty15

Property Condition

Inspection Periods18

Real Property Disclosure19

 Energy Efficiency19

 Radon Gas19

 Flood Zone19

 Homeowners' Association19

 Property Tax Disclosure Summary19

 Mold19

 Coastal Construction Control Line19

Maintenance, Inspections and Repair22

 Warranty23

 Professional Inspection24

 Repair25

 Permits26

 Wood-Destroying Organisms26

 Walk-through Inspection27

Risk of Loss28

Title

Title29

 Title Evidence29

 Title insurance commitment30

 Existing abstract of title30

 Title Examination31

 Survey32

Miscellaneous

Effective Date; Time; Force Majeure33

Notices35

Complete Agreement35

Assignability; Persons Bound36

Default and Dispute Resolution

Default37

Dispute Resolution38

 Disputes Concerning Deposits38

 All Other Disputes40

 Mediation and Arbitration; Expenses41

Escrow Agent and Broker

Escrow Agent42

Professional Advice; Broker Liability43

Brokers44

Addenda and Additional Terms

Addenda45

Additional Terms45

Offer and Acceptance

Counter Offer/Rejection46

Effective Date47

Addendum (FARA-9 Rev. 4/07)

General Information50

Association Disclosures

Condominium Association51

Homeowners' Association57

Financing

Seller Financing62

Mortgage Assumption63

FHA Financing65

 Fees, Prepayments66

 Repairs67

 Home Inspection67

 FHA Certification68

VA Financing68

New Mortgage Rates70

Property

As Is With Right to Inspect71

Inspections73

 Self Inspection73

 Right to Cancel based on Inspection Results73

Insulation Disclosure (New Homes Only)74

Pre-1978 Housing Lead-Based Paint Warning

Statement75

Insurance79

 Homeowners' Insurance79

 Flood Insurance79

Housing for Older Persons80

Lease Purchase/Lease Option81

Miscellaneous

Interest-Bearing Escrow Account82

Back-Up Contract82

Broker - Personal Interest in Property84

Rentals85

Sale of Buyer's Property87

Rezoning88

Assignment88

Property Disclosure Statement89

Foreign Investment in Real Property Tax Act

 (FIRPTA)90

1031 Exchange91

Additional Clauses92

Comparison of Version 8 to Version 9 of the Contract

Summary of changes94

Copyright© 2007 by the Florida Association of Realtors®.
All rights reserved. Reproduction in whole or in part without written permission is prohibited.

General Considerations for Completing Preprinted Contracts

- **Adequacy of Contract.** Any preprinted contract is only appropriate when its provisions adequately convey the intent of the parties in a particular transaction. If extensive modifications are required to conform the contract to the parties' intent, it may be advisable for the parties to retain legal counsel to draft a custom agreement.
- **Contract Formation.** To be valid and binding on the parties, the contract must be:
 1. **In Writing.** The Statute of Frauds requires that contracts for the sale of real property in Florida must be in writing (there is an exception for oral contracts that have been partially performed, but the exception rarely arises). Witnesses are not required.
 2. **Based on the Mutual Consent of the Parties to all its Material Terms.** A material term is generally one that substantially constitutes the consideration of the contract or without which the contract would not have been made. To be valid, the parties must agree on the material terms.
 3. **Supported by Sufficient Consideration.** Consideration is the reason the parties enter into the contract. Consideration is a right, interest, profit or benefit that accrues to one party, or it can be the forbearance, detriment, loss or responsibility given, suffered or undertaken by the other party. In most real property transactions, the seller's promise to convey the property to the buyer is sufficient consideration for the buyer's promise to pay the purchase price to the seller or forfeit the deposit in the event of breach.
 4. **Sufficiently Certain in its Terms.** Material terms (especially the descriptions of the property, parties and purchase price) must be clearly stated. A court called upon to interpret the contract will not look beyond the contract's "four corners" to determine the parties' intentions.
- **Responsibility of Licensee.** The contract contains terms negotiated by the parties. It defines each party's rights and obligations. Therefore, the licensee who prepares the contract must be thoroughly familiar with its terms and with the expressed intent of the parties. The licensee is liable for his/her mistakes. If the licensee is not sure that a clause expresses the intent of the parties, the licensee should suggest that legal counsel be retained to draft the clause.
- **Completing the Contract.** To ensure clarity:
 1. Fill in all blanks, using "N/A" or "-0-" if necessary.
 2. Check at least one box where a choice is given.
 3. If a particular sentence or clause does not apply to the transaction, either cross it out or state in an addendum that the particular clause has been deleted.
 4. If additional information relating to a particular clause is inserted into an addendum, be sure to write in a reference to the clause number in the addendum. For example, "This sentence modifies paragraph _____ of the contract." Also, number the addendum and reference it in paragraph 20.

Specific Considerations for Completing the FAR Residential Sale and Purchase Contract

- **Use of Contract.** This contract is specifically drafted for use in residential transactions and in transactions involving vacant land or agricultural property to be used for residential purposes. It is designed to be used in conjunction with FAR's Residential Sale and Purchase Contract Comprehensive Addendum. It is not intended to be used for:
 1. **Agreement (Contract) for Deed.** This is basically a security arrangement used instead of a purchase money mortgage. When an agreement for deed is used, the seller is the record title owner until the agreement is completely fulfilled. In Florida, this type of agreement is treated like a mortgage and requires the seller to foreclose to regain title to the property in the event the buyer defaults. Therefore, this type of agreement should only be drafted by an attorney.
 2. **Lease With Option to Buy.** This contract is not an option contract or a lease. However, it may

be used as an exhibit to a lease-option contract.

3. Option Contract. This contract is not an option contract, but it may be used as an exhibit to an option contract.

4. Commercial Property. This contract is not intended for use in the sale of commercial property. Instead, use FAR's Commercial Contract, Commercial Contract: Optional Clauses and Feasibility Study forms as appropriate.

5. Sale of Business. This contract is not intended for use in the sale of an ongoing business.

6. Exchange Agreement. If the property is or will be used in a trade or business or as an investment, one or both of the parties may be interested in engaging in a tax-free (like-kind) exchange. An exchange agreement must be carefully structured to ensure that each party achieves the desired tax effect. This contract is not suitable for such an agreement without substantial modification.

7. Seller to Build or Complete Improvements. This contract does not contain language appropriate to protect the parties' interests when the seller will be obligated to construct improvements.

8. Vacant Land. Clauses specific to the sale of vacant property are contained in FAR's Vacant Land Contract.

• **Organization of Contract.** This contract was designed with the following features:

1. Readable Type. The type in this contract is larger than that used in some other sale and purchase contracts. This makes it easier to read and to fax.

2. Line Numbers. Each line is numbered for easy reference to text. Plus, the lines that contain a blank or box are indicated by an asterisk next to the line number.

3. Acknowledgment of Receipt of Page. An acknowledgment line is given at the bottom of each page of the contract and the comprehensive addendum. Each party should initial to indicate that he/she received a copy of the page. Plus, the licensee should be sure to insert the appropriate page number in the space(s) provided. The acknowledgment line states:

Buyer (____) (____) and Seller (____) (____) acknowledge receipt of a copy of this page, which is Page # of ____ Pages.

4. Blanks and Boxes. If any blank is inapplicable to the transaction, fill it in with "N/A" or "-0-" or some other appropriate filler. Do not leave any blank empty. All boxes appear to the left of the term to which the box applies.

5. Headings. This contract contains topical headings to facilitate quick reference to any clause. The contract is organized as follows:

a. Parties and Description of Property. This section includes names of parties, property address, legal description and description of items included and excluded from the sale.

b. Price and Financing. This section breaks down the purchase price and financing terms. It also includes a signature line for the person receiving the escrow to sign indicating that he/she received the buyer's deposit and line for address and phone number of escrow agent to whom the escrow is being delivered to.

c. Closing. This section establishes closing date, occupancy and closing procedure.

d. Property Condition. This section includes information on the inspection periods; seller's real property disclosure representation; maintenance, inspection and repair clause; and risk of loss clause.

e. Title. This section includes provisions for title evidence and examination.

f. Miscellaneous. This section establishes the effective date and time measurements, a force majeure provision, notice delivery, assignability and various clauses relating to the contract being the complete agreement between the parties.

g. Default and Dispute Resolution. This section includes buyer and seller default clauses and alternative dispute resolution clauses.

h. Escrow Agent and Broker. This section includes the parties' authorizations to the escrow agent and acknowledgment of the brokers involved in the transaction and their agency relationships.

i. Addenda and Additional Terms. This lists the clauses found in the comprehensive addendum with boxes to check to indicate whether the clauses are incorporated into the contract. It also provides space for other addenda to be acknowledged and room to write in additional terms.

j. Offer and Acceptance. This establishes the exact time that the seller's response to the buyer's offer must be received and provides signature lines for the buyers. It also provides signature lines for the seller if he/she accepts the buyer's offer and check box if he/she rejects the buyer's offer. Any counteroffers must be accepted within 2 days from the date the counter is delivered unless the parties agree otherwise.

- **Business Days.** This contract computes all deadlines in terms of business days. All deadlines end at 5:00 p.m. in the county where the property is located.
- **Acknowledgment of Receipt of Pages.** At the bottom of each page, space is provided for each party to initial indicating that he/she received a copy of the page. The licensee should fill in the total number of pages that make up the contract and note any addenda.
- **Copyright Protection.** This contract is protected under federal copyright law. As a purchaser of a form contract, you are authorized to make copies for the purpose of completing a draft copy of the final agreement. You are also authorized to reproduce, by photocopy or facsimile, a completed draft or final copy of the contract. You are not authorized to duplicate this contract in any way on your computer or word processor or for any purpose not listed above. If you are interested in obtaining a license to reproduce the Contract with your firm's name or logo at the top, please contact FAR at 407-438-1400. Computerized versions of the contract are also available. For a list of vendors authorized to offer FAR forms on computer, log on to <http://floridarealtors.org>.

Organization of Manual

This manual examines the FAR Residential Sale and Purchase Contract and the Residential Sale and Purchase Contract: Comprehensive Addendum clause by clause as follows:

- **Reprint of Clause.** At the beginning of each section, the applicable contract paragraph is reprinted with reference numbers in each blank.
- **Purpose.** This section briefly explains why the clause is included in the contract.
- **Deadlines.** This section highlights any specified time for performance in the clause.
- **Blanks/Boxes.** This section briefly describes how to complete contract blanks and boxes.
- **Explanation.** This section provides in-depth information regarding each clause.



- **Practice Tips.** These tips are practical pointers about handling situations that may arise when working with a particular clause.

Parties and Description of Property

Residential Sale and Purchase Contract

FLORIDA ASSOCIATION OF REALTORS®

1* **1. SALE AND PURCHASE:** **1** _____ (“Seller”)
2* and **2** _____ (“Buyer”)
3 agree to sell and buy on the terms and conditions specified below the property described as:
4* Address: **3** _____
5* _____ County: **4** _____
6* Legal Description: **5** _____
7* _____ Tax ID No: **6** _____
8 together with all existing improvements and attached items, including fixtures, built-in furnishings, major appliances (including
9* but not limited to range(s), refrigerator(s), dishwasher(s), washer(s), and dryer(s), **7** (#) ceiling fans (if left blank, all ceiling fans),
10* light fixtures, attached wall-to-wall carpeting, rods, draperies and other window treatments as of Effective Date. The only other
11* items included in the purchase are: **8** _____
12* _____
13* _____
14* The following attached items are excluded from the purchase: **9** _____
15* _____
16 The real and personal property described above as included in the purchase is referred to as the “Property.” Personal property listed

Purpose:

To identify the parties and the property included in the transaction.

Blanks:

- 1** Insert the full name of seller(s). Copy exactly the name(s) as shown on the title, including marital status.
- 2** Insert the full name of buyer(s). Show the name(s) in exactly the same manner the buyer wishes to take the title. If the buyer asks how the title should be taken, recommend that he/she seek legal advice.
- 3** Enter the street address (and unit number, if any) of the property. Remember to include the city and zip code.
- 4** Insert the name of the county.
- 5** Enter the legal description of the property.
- 6** Enter the tax identification number.
- 7** Enter the number of ceiling fans to be conveyed with the property.
- 8** List items of personal property that are included in the sale price.
- 9** List items, such as chandelier or water softener, that are attached to the property but that the seller wants to take with him/her upon moving. You may also use this space to specifically exclude any items that are commonly expected to stay with the property, such as a refrigerator, from the purchase.

Explanation:

- **Corporation.** Insert the complete corporate name including “Inc.,” “Corp.,” etc. Verify the exact name of the corporation with the Florida Department of State, Division of Corporations at <http://www.sunbiz.org>.
- **Estate.** Insert the name of the estate’s personal representative using the words, “as Personal Representative of the Estate of _____, deceased.” For example, “John Doe as Personal Representative of the Estate of Joe Smith, deceased.”
- **Trust.** Insert the name of the trustee and the title “Trustee,” e.g., “John Doe, Trustee.”

- **Power of Attorney.** If a person has a signed, written power of attorney authorizing him/her to buy or sell the property on behalf of another person (the “principal”), insert the name of the principal.



Practice Tip. If the parties’ names are too long to fit in the space provided, use paragraph 21 and insert “See paragraph 21” in the appropriate blank. For a legal description that is too long, use paragraph 21, paragraph Y of the Comprehensive Addendum or other separate addendum. Finally, if the list of personal property is too long, use paragraph 21, paragraph Y of the Comprehensive Addendum or other separate addendum.

- **Correct Legal Description.** Use the legal description found on the previous deed, an owner’s title insurance policy or a survey. Do not rely on the tax assessor’s description or the description in the Multiple Listing System or listing agreement, they are often inaccurate or abbreviated.
- **Platted Subdivision.** Include the county where located, lot and block, name of subdivision (with phase or unit if applicable), plat book and page number of recorded plat and tax folio number.
- **Unplatted Property.** Include the county where located, legal description and reference to section, township and range.
- **Condominium.** Include the county where located, unit or parcel number, name of condominium, identification of any common elements (such as parking or storage space) included in the real property, tax folio number, record book and page number of Declaration of Condominium with all subsequent amendments and record book and page number of any ground or recreational leases.
- **Tax ID Number.** This is the identification number assigned to the property by the property appraiser’s office. It is found on the property’s tax bill and usually starts with the section, township and range. It may also be referred to as the “tax number,” “folio number” or “parcel ID.”
- **Controversy Regarding Property Included in Sale.** Disputes often arise over whether or not a particular item was to be included in the purchase. Avoid this conflict by compiling an accurate list of all items included and excluded from the purchase.
- **Personal Property.** Items that are not permanently attached to the real property must be specifically listed in the contract if the buyer wants them included as part of the purchase. Otherwise, the seller is entitled to keep his/her personal property.
- **Fixtures.** Items that are permanently attached to the property are always included in the purchase unless specifically excluded. The following questions will help you determine whether or not an item is a fixture:
 1. Is the item so attached to the property that its removal would damage the property; i.e., is it permanently affixed to the property?
 2. When the owner installed the item, did he/she intend to make it a permanent part of the property?
 3. Is the item integral to the use or purpose of the real property?



Practice Tip. Beware! Each party’s opinion may differ on whether an item is a fixture or personal property. As a real estate licensee, you are not expected or recommended to determine whether a particular item is a fixture or personal property; however, you should be aware of the problem and of items that could be interpreted different ways. This will give you the opportunity to clarify in the contract whether those items are included or excluded. Here are some commonly disputed items to look for: water softeners, pumps, mailboxes, window air conditioning units, satellite dishes, garage door openers, security alarms and pool equipment, such as heaters and cleaning systems.

Contributory Value of Personal Property. This contract presumes that any personal property that is conveyed with the real property is an incidental part of the purchase price. A typical mortgage lender will generally not consider personal property to be good security for a residential loan, nor will an appraiser take the value of personal property into account when making the appraisal. The items listed as included in the purchase price are generally acceptable to lenders as part of the purchase price, are refrigerators, washers and dryers. If the seller is transferring personal property having significant value, it may need to be sold under a separate contract from the real property.

Existing Improvements and Attached Items. Unless specifically excluded, the Seller is required to deliver to buyer existing fixtures, built-in furnishings, major appliances, ceiling fans, light fixtures, attached wall to wall carpeting, rods, draperies, and other window treatments as of Effective date. Therefore, the seller could not, for example, replace a valuable major appliance with a less valuable major appliance. If the seller was obligated to replace one of these existing items, the seller must replace such items with items of comparable quality, value, capacity and performance.

Price and Financing

PRICE AND FINANCING	
18	
19*	2. PURCHASE PRICE: \$ _____ 10 payable by Buyer in U.S. currency as follows:
20*	(a) \$ _____ 11 Deposit received (checks are subject to clearance) on _____ 12 , _____ by
21*	_____ 13 for delivery to _____ 14 ("Escrow Agent")
22	Signature _____ Name of Company _____
23*	(Address of Escrow Agent) _____ 15
24*	(Phone # of Escrow Agent) _____ 16
25*	(b) \$ _____ 17 Additional deposit to be delivered to Escrow Agent by _____ 18 ,
26*	_____ or _____ days from Effective Date. (10 days if left blank)
27*	(c) _____ 19 Total financing (see Paragraph 3 below) (express as a dollar amount or percentage)
28*	(d) \$ _____ 20 Other: _____ 21
29*	(e) \$ _____ 22 Balance to close (not including Buyer's closing costs, prepaid items and prorations). All funds paid
30	at closing must be paid by locally drawn cashier's check, official bank check, or wired funds.

Purpose:

To indicate the purchase price and itemize how the price is to be paid.

Blanks:

- 10** Indicate the total amount of purchase price. The buyer must pay the price in U.S. currency.
- 11** Insert the amount of initial earnest money deposit.
- 12** Insert the month, day and year the deposit was received.
- 13** The person who received the deposit from the buyer should sign his/her name here.
- 14** Insert the name of the firm that will hold the deposit.
- 15** Insert the address of the escrow agent (firm that will hold the deposit)
- 16** Insert the phone number of the escrow agent (firm that will hold the deposit)
- 17** Insert the amount of any additional deposit the buyer must make.
- 18** Insert the month, day and year by which the additional deposit must be made; or insert the number of days from the effective date by which the additional deposit must be made.
- 19** Insert either a dollar amount or a percentage representing the total amount of the mortgages the buyer will obtain to finance the purchase of the property.
- 20** Indicate any other amount the buyer will itemize separately from the deposits and mortgages.
- 21** Describe the amount in blank 20.
- 22** If you inserted a dollar amount in blank 19, insert the amount the buyer must bring to the closing table (in addition to closing costs), to be calculated by deducting the amounts in blanks 11, 17, 19 and 20 from the amount in blank 10. If you inserted a percentage amount in blank 19, insert the term "balance" in this blank.

Deadlines:

- **Additional Deposit.** This must be made by the date specified in blank 18.

Explanation:

- **Variable Price.** If the full purchase price cannot be expressed in monetary terms (e.g., when the price is based on acreage), you should note in paragraph 21 the manner in which the purchase price will be determined. Write "See paragraph 21" in blank 10.
- **Foreign Buyers.** You may want to clarify that the full amount of the purchase price is due on the day of closing regardless of the exchange rate.

- **Necessity of Deposit.** A deposit is not required to make a binding sale and purchase contract. The mutual promises of the seller to sell and the buyer to buy the property at a specific price and terms are sufficient.
- **Amount of Deposit.** This contract provides that, in the event the buyer defaults, all deposits made and agreed to be made may be claimed by the seller as liquidated damages. Therefore, the seller will want a deposit large enough to cover any contemplated damages.
- **Clearance of Funds.** In this contract, deposit receipt is subject to clearance of funds if paid by check.
- **Who May Hold the Deposit.** The deposit(s) may be held in or out of Florida and may be paid directly to the seller or to anyone else who the parties agree should act as the escrow agent. If the parties decide not to have an escrow agent, be sure to delete paragraph 17 and put an appropriate note in blanks 14, 15 and 16 such as “N/A” or “None - deposit paid to seller.” No matter who holds the deposit, the real estate licensees involved in the transaction are responsible to monitor deposit deadlines and notify the parties if a deposit is late.
- **Non-Cash Deposit.** If the deposit is in the form of non-cash property (such as a promissory note, securities, jewelry, art, a car, etc.), insert the value assigned to the property in blank 11 and write in the form of payment (“1985 Nissan 200SX,” “200 shares XYZ Corp. common stock”) in the space below the blank. If the deposit is a promissory note, the note should be in the seller’s name.
- **Postdated Checks.** Under license law escrow rules, a real estate brokerage acting as an escrow agent cannot accept a postdated check unless the check can be deposited within the three business days from the date of receipt and the seller consents to the post date. If someone else is receiving the deposit, the buyer may write a postdated check only with the seller’s full knowledge and consent. If a post-dated check is acceptable to the seller, insert the date of the check in blank 12.
- **Procedure Upon Receiving a Deposit Check.** A real estate licensee may receive and transmit a deposit check made out to a third person without having to deposit the check in the brokerage escrow account. However, if a real estate licensee is to hold the deposit, the license law requires the following:
 1. If you are a salesperson or broker/salesperson, you must give, pay over or deliver the deposit to your broker by the end of the next business day after you receive it.
 2. The broker must deposit the check by the end of the third business day from the day the broker received it from the salesperson; Saturdays, Sundays and national legal holidays are not counted as business days. Checks should be kept in a secure place, such as a safe, until deposited.
 3. Funds may be placed in an interest-bearing escrow account only if both the buyer and seller agree in writing to (a) place the funds in an interest-bearing escrow account, (b) who is to earn the interest (anyone can earn interest including the broker, a third party, etc., if mutually agreed by the buyer and seller) and (c) the time at which funds should be disbursed. You may use paragraph O of the comprehensive addendum (miscellaneous clauses addendum) to fix the terms of the interest-bearing account.
- **Payment of Additional Deposit.** In this contract, time is of the essence, so the date the additional deposit is due should be emphasized to the buyer and then monitored to ensure compliance. If the deposit is not made on time, the seller’s agent should immediately notify the seller.
- **Total Financing.** This amount should be “0” if paragraph 3(a) (no financing contingency) is checked. If paragraph 3(b) is checked, the amount inserted in blank 19 should be the total amount of all the institutional, third-party and seller financing and mortgage assumption that the buyer intends to procure.
- **Other Amounts.** Blank 20 is for the value of any other form of payment of the purchase price. For example, if the buyer will convey a recreational vehicle (RV) to the seller as part of the transaction, indicate the value of the RV in blank 20 and describe the RV in blank 21. This space may also be used if a third deposit is required.
- **Exclusions from Balance.** If you include a dollar amount, emphasize to the buyer that this amount does not include prepaid insurance, other prepaid items, closing costs or prorated items.
- **Payment of Purchase Price.** The purchase price must be paid in U.S. currency with the amount due at closing made in the form of a locally drawn cashier’s check, wired funds or official bank check. The seller may agree, in writing, to accept some other form of payment.

Price and Financing

31* **3. FINANCING:** (Check as applicable) (a) Buyer will pay cash for the Property with no financing contingency.
32* (b) Buyer will apply for new conventional FHA VA financing specified in paragraph 2(c) at the prevailing interest rate and
33* loan costs based on Buyer's creditworthiness (the "Financing") within **23** days from Effective Date (5 days if left blank) and
34 provide Seller with either a written Financing commitment or approval letter ("Commitment") or written notice that Buyer is unable to
35* obtain a Commitment within **24** days from Effective Date (the earlier of 30 days after the Effective Date or 5 days prior to Closing
36 Date if left blank) ("Commitment Period"). Buyer will keep Seller and Broker fully informed about loan application status, progress
37 and Commitment issues and authorizes the mortgage broker and lender to disclose all such information to Seller and Broker. If,
38 after using diligence and good faith, Buyer is unable to provide the Commitment and provides Seller with written notice that Buyer is
39 unable to obtain a Commitment within the Commitment Period, either party may cancel this Contract and Buyer's deposit will be
40 refunded. Buyer's failure to provide Seller with written notice that Buyer is unable to obtain a Commitment within the Commitment
41 Period will result in forfeiture of Buyer's deposit(s). Once Buyer provides the Commitment to Seller, the financing contingency is
42 waived and Seller will be entitled to retain the deposits if the transaction does not close by the Closing Date unless (1) the Property
43 appraises below the purchase price and either the parties cannot agree on a new purchase price or Buyer elects not to proceed, (2)
44 the property related conditions of the Commitment have not been met (except when such conditions are waived by other provisions
45 of this Contract), or (3) another provision of this Contract provides for cancellation.

Purpose:

To acknowledge whether or not the transaction is contingent on financing and, if so, to establish the terms of the contingency and the financing.

Subparagraph (a) provides for a cash transaction with no financing contingency.

Subparagraph (b) provides terms for all financing contingencies.

Boxes:

Box (a) should be checked if the buyer is paying cash for the property and has no financing contingency.

Box (b) should be checked if the purchase is contingent on the buyer obtaining new conventional, FHA or VA financing. Check the box to the left of type of financing buyer will apply for.

Blanks:

23 Insert how many days the buyer will have to apply for financing.

24 Indicate how many days after the effective date the buyer will have to obtain a loan approval from a lender and provide a written commitment or approval letter to the seller.

Deadlines:

- **Application.** The buyer must submit a financing application to a mortgage broker or lender within five business days from the effective date unless another number of business days is inserted in blank 23.

- **Commitment.** This must be obtained within 30 business days from the effective date or 5 days prior to closing date, whichever is earlier, unless a specific date is inserted in blank 24.

- **Notice to Seller.** buyer must provide seller with written notice that buyer is unable to obtain a commitment within 30 days from effective date or 5 days prior to closing date, whichever is earlier, unless a specific date is inserted in blank 23.



Practice Tip. When the buyer is trying to obtain both seller financing and another type of financing, the seller must meet the 10 business day approval deadline in paragraph C of the comprehensive addendum (financing addendum) even if the number of days allowed in this paragraph for receipt of a commitment or approval exceeds 10 business days.

Explanation:

- **Application.** The buyer should complete whatever process or paperwork the lender initially requires to formally consider making a loan to the buyer.



Practice Tip. If the buyer's application is denied by the first lender, the buyer may continue to apply to other lenders until the deadline for providing a written commitment or approval letter has passed. Depending on the circumstances, the buyer's failure to try other lenders may be considered a lack of good faith effort. "Good faith" is generally characterized as honesty of purpose, lacking the intent to defraud and being faithful to one's duty or obligation.

- **Buyer's Information.** This contract requires the buyer to give a lender the information it requests by the deadline the lender imposes in order to make the loan. Failure to do so may constitute a default under the contract, unless the failure was in spite of the buyer using good faith and diligence to timely provide the required information.
- **Financing Contingency.** Rather than being contingent on the buyer being able to meet all terms and conditions of a mortgage commitment by closing, this contract is contingent simply upon the buyer finding a lender who will issue a loan commitment or approval and providing a letter to that effect to the seller. The buyer will be expected to meet all terms and conditions of the commitment or approval by closing or lose their deposit.
- **Commitment or Approval Letter.** The buyer must provide the seller with a commitment or approval letter within the time specified in order to proceed with the contract. There is no requirement that the letter must be written by the lender - the buyer could write it themselves - or that all terms and conditions must be specified in the letter.
- **Buyer Disclosure of Loan Progress.** To alert the brokers and seller to any financing glitches that may impact the closing of the contract, the contract imposes a duty on the buyer to keep the seller and brokers informed of issues regarding the loan application status, progress and commitment issues. It also contains an authorization that will allow mortgage brokers and lenders with whom the buyer is working to answer questions posed by the seller and brokers with regard to the loan.
- **Financing Denied Because Property Fails to Appraise.** If the buyer qualifies for the financing but the property does not, the buyer has a choice. The buyer may go ahead with the contract at the stated purchase price, waiving the financing contingency and coming up with the additional cash at closing. Or, the buyer may try to renegotiate the price to an amount that the lender is willing to finance. If the buyer wants to renegotiate but cannot agree with the seller on a new price, the buyer may choose to proceed at the stated purchase price, failing which either party may cancel the contract.
- **Failure to Obtain Commitment or Approval.** Either party may cancel the contract, if the buyer has provided all necessary information to a lender in a timely manner but is turned down for financing and provides notice to the Seller that Buyer is unable to obtain the commitment within the commitment period. Failure to give such notice will result in forfeiture of the deposit.
- **Other Provisions Requiring Deposit to be Returned.** The buyer may receive a return of deposit even after providing the commitment within the commitment period if another provision allows the buyer to cancel the contract on other than financing grounds. For example, paragraph 7(c) allows the buyer to cancel if the property is in a particular flood zone and the buildings are built below the minimum flood elevation. Additionally, the Buyer may also receive a return of the deposit even after providing the commitment if the property related conditions of the commitment (unless waived by other provisions of the contract) cannot be met. Examples of property related conditions include lender's minimum requirements for length of seller's ownership of the property, lender requirements of the condition of the property, and lender requirements to approve condominium or homeowner association documents. The buyer's deposit may also be returned if the seller is unable to fulfill contractual obligations on time.
- **Release of Deposit.** If the escrow agent is a real estate licensee, the broker holding the funds may release the deposit upon proper authorization from both parties or upon an award of an arbitrator, judgment from a court or order from the FREC (Florida Real Estate Commission). An escrow agent who is not a broker is not required to timely notify FREC of an escrow dispute and timely initiate an escrow settlement procedure. Often times, title companies and attorneys holding the funds will hold the escrow in their account until both parties mutually agree to release the escrow or until one party obtains a judgment from a court or award from an arbitrator.
- **Conflict in Demands.** The seller may refuse to authorize release of the deposit, even when the buyer has demanded the deposit and, in the licensee's opinion, the situation clearly calls for the deposit to be returned to the buyer. If this happens, the real estate licensee must treat the situation as a conflict in demands. The conflict in demands procedure is thoroughly covered in the discussion about paragraph 16.
- **Loan Expenses.** Unless modified, paragraph 5(b) requires the buyer to pay all loan expenses.
- **Third-Party Financing.** If the buyer seeks third-party financing, check box (b). Complete blanks 23-24. The contract simply provides that the financing will be at the prevailing interest rate and loan costs based on the buyer's credit worthiness. The only preprinted variable is for the amount of the loan. If the buyer wants only a fixed or variable interest rate, or wants to cap the interest rate or loan costs to which he/she will be obligated, complete blanks 23-24 and use paragraph G of the comprehensive addendum (financing addendum).

- **FHA Financing.** If the buyer seeks mortgage insurance from the Federal Housing Administration (FHA), check FHA box in subsection (b) and complete blanks 23-24. Then, complete paragraph E of the comprehensive addendum (financing addendum).
- **VA Financing.** If the buyer seeks mortgage insurance from the Department of Veterans Affairs (VA), check VA box in subsection (b) and complete blanks 23-24. Then, complete paragraph F of the comprehensive addendum (financing addendum).
- **Seller Financing.** If the buyer seeks a loan from the seller, check box (b) and complete blanks 21 and 24. Then, complete paragraph C of the comprehensive addendum (financing addendum). Blank 24 should be completed consistently with the terms of paragraph C of the addendum that require the seller to commit to the requested financing within 10 business days from the date the application period ends.
- **Mortgage Assumption.** If the buyer wants to assume the seller's mortgage, check box (b) and complete blanks 23 and 24. Then, complete paragraph D of the comprehensive addendum (financing addendum).

Closing

46 **CLOSING**

47 **4. CLOSING DATE; OCCUPANCY:** Unless the Closing Date is specifically extended by the **Buyer** and **Seller** or by any other provision in

48 this Contract, the Closing Date shall prevail over all other time periods including, but not limited to, inspection and financing periods. This

49 Contract will be closed on 25, _____ ("Closing Date") at the time established by the closing agent, by which time **Seller**

50 will (a) have removed all personal items and trash from the Property and swept the Property clean and (b) deliver the deed, occupancy

51 and possession, along with all keys, garage door openers and access codes, to **Buyer**. If on Closing Date insurance underwriting is

52 suspended, **Buyer** may postpone closing up to 5 days after the insurance suspension is lifted. If this transaction does not close for any

53 reason, **Buyer** will immediately return all **Seller**-provided title evidence, surveys, association documents and other items.

Purpose:

To establish the closing date and related obligations.

Blanks:

- 25 Insert the month, day and year by which closing must occur.

Explanation:

- **Closing Date.** This language means that closing must take place on the date indicated unless the parties agree to close on another date or the closing date is specifically extended by another provision in the contract.
- **Provisions That May Extend the Closing.** If used, the following provisions may extend the closing: Risk of Loss, in paragraph 9, subparagraph 10(b), Title Examination and subparagraph 10(c) Survey, Permits in subparagraph 8(a)(4) and force majeure in subparagraph 11(c).
- **Provisions That May Not Extend the Closing.** If used, the following provisions may not extend the closing date: financing period in paragraph 3 and warranted items inspection period.
- **Condition of Property.** The seller must remove all property that is not being transferred to the buyer under the contract and leave the property clean (trash must be removed but the property does not have to be scrubbed clean).
- **Delivery of Property.** In addition to delivering the deed at closing, the seller must also provide the buyer with occupancy and possession, e.g. unwanted tenants are out. And, the seller must provide necessary items such as keys, garage door openers and access codes to allow the buyer to effectively use the property.
- **Underwriting Suspension.** From time to time during hurricane season, insurance underwriters will stop writing homeowners' insurance policies due to the proximity of a storm. This results in inability of buyers to close their home loans, and consequently to close the sale. This clause gives the buyer the opportunity to reschedule closing.
- **Return of Documents.** If the contract is cancelled for any reason and the buyer received any title evidence, surveys or association documents or other items from the seller, they should be returned to the seller.

Closing

55 **5. CLOSING PROCEDURE; COSTS:** Closing will take place in the county where the Property is located and may be conducted by
56 mail or electronic means. If title insurance insures **Buyer** for title defects arising between the title binder effective date and recording
57 of **Buyer's** deed, closing agent will disburse at closing the net sale proceeds to **Seller** and brokerage fees to Broker as per
58 Paragraph 19. In addition to other expenses provided in this Contract, **Seller** and **Buyer** will pay the costs indicated below.

59 **(a) Seller Costs:**

60 Taxes and surtaxes on the deed

61 Recording fees for documents needed to cure title

62* Other: 26

63* **Seller** will pay up to \$ 27 or _____% (1.5% if left blank) of the purchase price for repairs to warranted items ("**Repair**
64* **Limit**"); and up to \$ 28 or _____% (1.5% if left blank) of the purchase price for wood-destroying organism treatment
65* and repairs ("**WDO Repair Limit**"); and up to \$ 29 or _____% (1.5% if left blank) of the purchase price for costs
66 associated with closing out open permits and obtaining required permits for unpermitted existing improvements ("**Permit Limit**").

67 **(b) Buyer Costs:**

68 Taxes and recording fees on notes and mortgages

69 Recording fees on the deed and financing statements

70 Loan expenses

71 Lender's title policy

72 Inspections

73 Survey

74 Flood insurance, homeowner insurance, hazard insurance

75* Other: 30

76 **(c) Title Evidence and Insurance: Check (1) or (2):**

77* **(1)** The title evidence will be a Paragraph 10(a)(1) owner's title insurance commitment. **Seller** will select the title agent
78* and will pay for the owner's title policy, search, examination and related charges or **Buyer** will select the title agent and pay
79* for the owner's title policy, search, examination and related charges or **Buyer** will select the title agent and **Seller** will pay
80 for the owner's title policy, search, examination and related charges.

81* **(2)** **Seller** will provide an abstract as specified in Paragraph 10(a)(2) as title evidence. **Seller** **Buyer** will pay for the
82 owner's title policy and select the title agent. **Seller** will pay fees for title searches prior to closing, including tax search and
83 lien search fees, and **Buyer** will pay fees for title searches after closing (if any), title examination fees and closing fees.

84 **(d) Prorations:** The following items will be made current (if applicable) and prorated as of the day before Closing Date: real
85 estate taxes, interest, bonds, assessments, association fees, insurance, rents and other current expenses and revenues of the
86 Property. If taxes and assessments for the current year cannot be determined, taxes shall be prorated on the basis of taxes for
87 the preceding year as of the day before Closing Date and shall be computed and readjusted when the current taxes are
88 determined with adjustment for exemptions and improvements. If there are completed improvements on the Property by
89 January 1 of the year of the Closing Date, which improvements were not in existence on January 1 of the prior year, taxes shall
90 be prorated based on the prior year's millage and at an equitable assessment to be agreed upon by the parties prior to Closing
91 Date, failing which, request will be made to the County Property Appraiser for an informal assessment taking into consideration
92 available exemptions. If the County Property Appraiser is unable or unwilling to perform an informal assessment prior to Closing
93 Date, **Buyer** and **Seller** will split the cost of a private appraiser to perform an assessment prior to Closing Date. Nothing in this
94 paragraph shall act to extend the Closing Date. This provision shall survive closing.

95 **(e) Special Assessment by Public Body:** Regarding special assessments imposed by a public body, **Seller** will pay (i) the full
96 amount of liens that are certified, confirmed and ratified before closing and (ii) the amount of the last estimate of the assessment
97 if an improvement is substantially completed as of Effective Date but has not resulted in a lien before closing, and **Buyer** will pay
98* all other amounts. If special assessments may be paid in installments **Buyer** **Seller** (if left blank, **Buyer**) shall pay
99 installments due after closing. If **Seller** is checked, **Seller** will pay the assessment in full prior to or at the time of closing. Public
100 body does not include a Homeowner Association or Condominium Association.

101 **(f) Tax Withholding:** **Buyer** and **Seller** will comply with the Foreign Investment in Real Property Tax Act, which may require
102 **Seller** to provide additional cash at closing if **Seller** is a "foreign person" as defined by federal law.

103* **(g) Home Warranty:** **Buyer** **Seller** **N/A** will pay for a home warranty plan issued by 31 at a
104* cost not to exceed \$ 32. A home warranty plan provides for repair or replacement of many of a home's mechanical
105 systems and major built-in appliances in the event of breakdown due to normal wear and tear during the agreement period.

Purpose:

To establish a procedure for closing and to allocate closing costs and prorations.

Subparagraph (a) lists the expenses that the seller must pay under the contract.

Subparagraph (b) lists the expenses that the buyer must pay under the contract.

Subparagraph (c) contains check boxes to indicate who is to pay for title search, examination and related charges and who is to select the title agent.

Subparagraph (d) indicates items that should be prorated as of the day before closing.

Subparagraph (e) describes how special assessments by public bodies (not condo or homeowners' associations) should be handled.

Subparagraph (f) provides for withholding taxes or establishing an exemption from withholding when the seller is a foreign person.

Subparagraph (g) describes the purpose of a home warranty and contains check boxes to indicate who is to pay for the home warranty, if any.

Boxes:

Box (c)(1) should be checked if the seller is providing a title commitment as title evidence under paragraph 10(a)(1). Then, indicate by checking the appropriate box who will select the title agent and who will pay for the title policy and related charges.

Box (c)(2) should be checked if the seller is providing title evidence pursuant to paragraph 10(a)(2). Then, indicate who will pay for the owner's title policy and select the title agent.

Box (e) indicate who is to pay special assessments by a public body that may be paid in installments. Under (g), indicate whether the buyer or seller will pay for a home warranty plan, or, if no plan will be purchased, check the box marked "N/A."

Blanks:

- 26 Insert any other costs not mentioned in the contract that the seller will pay, such as "Seller will pay 3% of the purchase price toward Buyer's closing costs."
- 27 Insert the amount the seller is willing to pay to repair warranted items that are not in the condition warranted under the contract (express as a dollar figure or a percentage of the purchase price; in an "as is" sale, insert "0").
- 28 Insert the amount the seller is willing to pay to treat for wood-destroying organisms and to repair damage caused by such organisms (express as a dollar figure or a percentage of the purchase price; in an "as is" sale, insert "0").
- 29 Insert the amount the seller is willing to pay to close out open permits and obtain required permits for improvements (express as dollar figure or a percentage of the purchase price; in an "as is" sale, insert "0").
- 30 Insert any other costs not mentioned in the contract that the buyer will pay, such as "Buyer will pay for all wood-destroying organism treatment and repairs in excess of the Termite Repair Limit."
- 31 Insert the name of the company that will provide the home warranty plan.
- 32 Insert the maximum premium charged to purchase the home warranty plan.

Explanation:

- **Place of Closing.** Unless the parties agree otherwise, the closing must occur in the county where the property is located. Therefore, a local closing agent should be used, though, of course, the documents can still be mailed to a remote seller for signature. The closing may be done by electronic methods.
- **Gap Insurance.** The title insurance will have a clause insuring the buyer for title defects that occur between the policy binder effective date (the closing date) and the date on which the deed is recorded (this period is known as the "gap"). As long as the buyer has gap insurance, the closing agent may disburse the proceeds at closing, rather than waiting until the deed is recorded.
- **Costs.** All closing costs may be negotiated by the parties. If FHA or VA financing is involved, subparagraphs (a) and (b) should be read in conjunction with paragraph E or F, whichever applies, of the comprehensive addendum (financing addendum). The terms of the FHA- or VA-specific provision prevail over any contrary information in subparagraphs (a) and (b).
- **Closing Cost Disclosure.** The state law requiring brokers to give buyers a separate list of known major closing costs prior to signing an offer to purchase property was *repealed* as being unnecessarily duplicative of the law that requires lenders to do so.
- **Special Assessment Liens.** A governmental authority may assess property owners for improvements such as paving roads, curbs, sidewalks, storm sewers, etc. The seller pays for all improvements that are substantially completed by the effective date because, presumably, the seller was able to get a higher price for the property because of the improvement. At times, special assessment may be paid in installments. The parties can select who is to pay installments due after closing. This clause does not cover special assessments by condominium or homeowners' associations. Instead, such assessments are treated as provided for in paragraph A or B of the comprehensive addendum.

- **“Substantially Completed.”** This generally means that the work for which the property owner was (is) assessed has been essentially finished and the only incomplete work is strictly technical or unimportant to the functionality of the improvement.
- **Lender Policy.** If a mortgage lender requires a title insurance policy on its behalf, the buyer must provide the policy and pay the premium. The lender has the authority to approve the title agent who must be able to provide a policy that is issued at the same time as the owner’s policy for the buyer (policies cost less when issued simultaneously).
- **Title Evidence and Insurance.** This paragraph has check boxes that work in conjunction with paragraph 10. The seller must provide title evidence to the buyer. The type of title evidence provided must be generally accepted in the county where the real property is located. The provisions were written to take into account different practices that prevail in different parts of the state. Such differences are often attributable to the practices of the different insurance underwriters utilized by local title agents.
- **Title Commitment as Title Evidence.** If the prevailing practice is for a title insurance commitment to serve as title evidence, then box (c)(1) should be checked. The parties may then negotiate who will select the title agent and who will pay for the title policy and related charges.
- **Abstract, Prior Policy or Title Commitment as Title Evidence.** If the prevailing practice is to provide existing title evidence, such as an abstract or prior policy, if such is available, then box (c)(2) should be checked. The parties may then negotiate who will select the title agent and pay for the title policy, but related charges are pre-allocated to the buyer and seller.
- **Selection of Title Agent.** The Real Estate Settlement Procedures Act provides that the seller may not require, as a condition of selling the property, that a buyer purchase title insurance from any particular title company when the buyer is obtaining a federally related mortgage loan to buy the property. HUD policy currently permits a seller to specify the title agent if the seller is paying all the costs associated with the title insurance policy. For this reason, there is no check box for seller selecting the title agent and buyer paying for title insurance.
- **Title Search Expenses.** These are the fees charged for examining the title evidence to determine the marketability of the property.
- **Tax Searches and Lien Searches.** As more public records become readily available through computerized searching mechanisms, more searches relevant to the property title become practical. Since such searching involves time and effort, as well as possible direct expense, the parties will be expected to pay for them. These fees are allocated to the seller under paragraph (c)(2) and are readily negotiable under paragraph (c)(1).
- **Closing Agent.** In Florida, the title agent usually closes a transaction; however, the parties may negotiate this role if desired.
- **Prorations.** At the time of closing, the seller’s payments must be up to date through the day before closing on the following items: all real estate taxes; interest, bond and assessment payments; rents, association fees, hazard and mortgage insurance premiums and interest owed on any mortgage the buyer will assume. The buyer will take over the payment of these items from the day of closing onward. If taxes cannot be determined, the parties will request an informal assessment from the County Property Appraiser.
- **Foreign Investment in Real Property Tax Act of 1980 (FIRPTA).** If the seller is a foreign person (which includes a nonresident alien or a foreign corporation, partnership, trust or estate), U.S. tax law requires the buyer (usually acting through the closing agent) to withhold 10 percent of the total amount realized by the seller on the transaction. The “amount realized” is usually the purchase price.
- **Seller is not a Foreign Person.** The closing agent may ask the seller to complete an affidavit of non-foreign status. FAR’s Seller’s Certification of Non-foreign Status (SCNF-1) form (available only through FAR’s forms licensing program or online) may be used for this purpose.
- **Seller is a Foreign Person.** The withholding may not be required if (a) the seller receives a qualifying statement from the IRS that a reduced amount or no withholding is required, or (b) the purchase price is not more than \$300,000 and the buyer acquires the property to use as his/her residence. FAR’s Buyer’s Affidavit For FIRPTA Withholding Exemption (BAWE-2) form (available only through FAR’s forms licensing program or online) may be used to certify the buyer’s intent to use an appropriately priced property as a residence. Other exemptions and reduced withholding are available.
- **Home Warranty Plan.** A home warranty plan may or may not be available on a particular property. If a warranty is available, the licensee should make the buyer aware of its price and benefits.

Property Condition

PROPERTY CONDITION

106
107* 6. INSPECTION PERIODS: Buyer will complete the inspections referenced in Paragraphs 7 and 8(a)(2) by _____ 33 _____,
108* _____ (the earlier of 10 days after the Effective Date or 5 days prior to Closing Date if left blank) ("Inspection Period");
109* the wood-destroying organism inspection by _____ 34 _____, _____ (at least 5 days prior to closing, if left
110 blank); and the walk-through inspection on the day before Closing Date or any other time agreeable to the parties; and the
111* survey referenced in Paragraph 10(c) by _____ 35 _____, _____ (at least 5 days prior to closing if left blank).

Purpose:

To establish deadlines for the buyer to conduct inspections of the property.

Blanks:

- 33 Insert the month, day and year by which the inspections permitted under paragraphs 7 and 8(a)(2) must be completed.
- 34 Insert the month, day and year by which the wood-destroying organism inspection must be completed.
- 35 Insert the month, day and year by which the survey must be completed.

Deadlines:

Professional Inspections. This must be conducted within 10 business days from the contract effective date or 5 days prior to closing date whichever is earlier unless a specific date is inserted in blank 33.

Energy-Efficiency Rating Determination. This must be conducted within 10 business days from the contract effective date or 5 days prior to the closing date whichever is earlier unless a specific date is inserted in blank 33.

Radon Gas Level Determination. This must be conducted within 10 business days from the contract effective date or 5 days prior to the closing date whichever is earlier unless a specific date is inserted in blank 33.

Lead Hazards Assessment. Permitted under paragraph K of the comprehensive addendum (property clauses addendum), this inspection must be conducted within 10 business days from the contract effective date or 5 days prior to the closing date whichever is earlier unless a specific date is inserted in blank 33.

Wood-destroying Organism Inspection. This may be conducted at least 5 business days before closing (the earlier the better) unless a specific date is inserted in blank 34.

Walk-through Inspection. This inspection must be conducted on the day before the closing date unless otherwise agreed by the parties.

Survey. This must be conducted at least 5 business days before closing unless a specific date is inserted in blank 35.

Explanation:

Timeliness of Inspections. Since time is of the essence, the buyer must conduct the inspections within the time specified or the right to conduct the inspections will be lost.



Practice Tip: Because of the increasing use of financing pre-approvals, the default timing of the home inspections is early in the transaction. Early inspections allow the seller time to complete repairs before closing, or, if the cost of repairs exceeds the Repair Limit, allows the buyer to quickly get back into the market for a more suitable property. However, if the buyer is not pre-approved, buyer's agents may want to time the home inspections to occur after the buyer is approved for financing (blank 24) but before closing (blank 25), and the wood-destroying organism inspection to coincide with lender requirements. Always try to set the inspection deadlines at least 10 business days before the closing date.

Property Condition

113 **7. REAL PROPERTY DISCLOSURES:** Seller represents that Seller does not know of any facts that materially affect the value
114 of the Property, including but not limited to violations of governmental laws, rules and regulations, other than those that Buyer
115 can readily observe or that are known by or have been disclosed to Buyer.

116 (a) **Energy Efficiency:** Buyer acknowledges receipt of the energy-efficiency information brochure required by Section 553.996,
117 Florida Statutes.

118 (b) **Radon Gas:** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient
119 quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and
120 state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be
121 obtained from your county public health unit. Buyer may, within the Inspection Period, have an appropriately licensed person
122 test the Property for radon. If the radon level exceeds acceptable EPA standards, Seller may choose to reduce the radon
123 level to an acceptable EPA level, failing which either party may cancel this Contract.

124 (c) **Flood Zone:** Buyer is advised to verify by survey, with the lender and with appropriate government agencies which flood
125 zone the Property is in, whether flood insurance is required and what restrictions apply to improving the Property and rebuilding
126 in the event of casualty. If the Property is in a Special Flood Hazard Area or Coastal High Hazard Area and the buildings are built
127 below the minimum flood elevation, Buyer may cancel this Contract by delivering written notice to Seller within 20 days from
128 Effective Date, failing which Buyer accepts the existing elevation of the buildings and zone designation of the Property.

129 (d) **Homeowners' Association:** If membership in a homeowners' association is mandatory, an association disclosure
130 summary is attached and incorporated into this Contract. **BUYER SHOULD NOT SIGN THIS CONTRACT UNTIL**
131 **BUYER HAS RECEIVED AND READ THE DISCLOSURE SUMMARY.**

132 (e) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY
133 TAXES AS THE AMOUNT OF PROPERTY TAXES THAT BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT
134 TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE
135 PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING
136 VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR FURTHER INFORMATION.

137 (f) **Mold:** Mold is part of the natural environment that, when accumulated in sufficient quantities, may present health risks to
138 susceptible persons. For more information, contact the county indoor air quality specialist or other appropriate professional.

139 (g) **Coastal Construction Control Line:** If any part of the Property lies seaward of the coastal construction control line as
140 defined in Section 161.053 of the Florida Statutes, Seller shall provide Buyer with an affidavit or survey as required by law
141 delineating the line's location on the Property, unless Buyer waives this requirement in writing. The Property being purchased
142 may be subject to coastal erosion and to federal, state, or local regulations that govern coastal property, including delineation
143 of the coastal construction control line, rigid coastal protection structures, beach nourishment, and the protection of marine
144 turtles. Additional information can be obtained from the Florida Department of Environmental Protection, including whether
145 there are significant erosion conditions associated with the shoreline of the Property being purchased.

146* Buyer waives the right to receive a CCCL affidavit or survey.

Purpose:

To reinforce the Florida legal requirement that the seller of residential property disclose to the buyer all facts the seller knows that are material to the property's value, unless the buyer already knows about the fact or condition or can readily observe the condition; and to ensure that specific disclosures required by law are given.

Subparagraph (a) provides a required disclosure that the buyer has the right to have the property's energy efficiency rating determined.

Subparagraph (b) provides the required radon gas disclosure.

Subparagraph (c) provides notice to the buyer to investigate implications of the property being located in a flood zone.

Subparagraph (d) provides notice to the buyer to read the homeowner association disclosure summary.

Subparagraph (e) provides the required property tax disclosure.

Subparagraph (f) provides a disclosure about mold.

Subparagraph (g) provides the required Coastal Construction Control Line disclosure and a check box for buyer to waive his/her right to receive a CCCL survey or affidavit.

Deadlines:

Energy Efficiency Rating Determination. Refer to the deadline on page 18.

Radon Testing. Refer to deadline on page 18.

Building Elevation Determination. If the property is located in one of the specified flood area and the buyer finds out that the buildings are built below the minimum flood elevation, the buyer must, within 20 business days from the effective date, give written notice of intent to cancel the contract
Coastal Construction Control Line affidavit or Survey. The Seller must provide this by closing unless the Buyer excuses the Seller from this requirement by checking the box to the left of the waiver language.

Boxes:

Box 7(g) should be checked if the Buyer waives his/her right to require the CCCL affidavit or survey from the Seller.

Explanation:

- **Material Fact.** This is a fact that constitutes substantially the consideration of the contract, or without which the contract would not have been made. This duty only requires revealing facts that affect the property's value — it does not require revealing personal facts about the seller, such as impending divorce.
- **Disclosure of Material Facts.** The landmark case *Johnson vs. Davis* requires sellers to reveal all facts that are material to the property's value, except for those facts that the buyer can readily observe or already knows about. If the seller knows about a material fact and conceals it, the buyer can sue for rescission of the contract.



Practice Tip. Many brokerage firms ask the seller to complete a detailed form concerning disclosure. At press time, the law does not require the seller to complete or sign any disclosure form — a verbal disclosure is sufficient as long as it is complete. Of course, the extent of the disclosure is easier to prove if it is in writing.

- **Licensee's Duty.** Another Florida court case, *Raynor vs. Wise*, extended to real estate licensees involved in a property's sale the duty to reveal known material facts.
- **Energy Efficiency Rating.** According to Section 553.996, *Florida Statutes*, prospective buyers of real property on which a building for occupancy is located must be given a brochure provided by the Florida Department of Community Affairs (DCA) relating to energy efficiency ratings at or prior to the time he/she signs a contract: To order this free brochure, call the DCA at 850/488-8466 or visit <http://www.dca.state.fl.us>.
- **Radon Gas Disclosure.** The radon disclosure — the first three sentences of subparagraph 7(b) — is required to be made at or prior to signing any offer to purchase real property in Florida.
- **Radon Testing.** Within the time specified in blank 33 of paragraph 6, the buyer may have the property's radon level determined by an appropriately licensed person. Florida law does not allow any person performing a radon test to charge a fee or receive any other payment or reward as a benefit for providing the service unless that person is certified by the Florida Department of Health (DOH). The buyer can find a professional radon tester by calling 800/543-8279 (or 850/245-4288 in Tallahassee). Those professionals are certified by Florida Measurement Business to test radon.



Practice Tip. The Environmental Protection Agency (EPA) publishes an informative booklet entitled "Home Buyer's and Seller's Guide to Radon." You can obtain this free publication from your local Board/Association of REALTORS, from FAR, or by calling the EPA at 800/543-8279 or going on to the Department of Health web site <http://radon.doh.state.fl.us>

- **Current EPA Standards.** Currently, the EPA recommends repairing a home if the radon level is at or above 4 pCi/L (pico curie/liter of air)
- **Levels Exceeding EPA Standards.** If the radon test results exceed the above figures (which are subject to revision), the seller may choose to take corrective measures to reduce the radon presence to acceptable levels. The EPA estimates the average cost to reduce the radon level ranges from \$800 to \$2500. Since the seller is not required to reduce the radon level and the seller's responsibility under this paragraph is not limited to any particular dollar amount, the seller may decide not to make the repair. In this case, either party may cancel the contract.
- **Flood Zones.** Topographic maps showing the location of flood zones are available for inspection where the county's public records are maintained. All Florida property is located in a flood zone and may be subject to periodic flooding.
- **Flood Insurance.** Only properties located in flood zones most likely to experience flooding are required to be covered by flood insurance. All flood insurance for U.S. real property is issued by the National Flood Insurance Program (NFIP) (800/638-6620) through local insurance agents. The seller's policy may or may not be transferable to the buyer. The buyer is advised to check with the lender regarding flood insurance requirements.
- **Restrictions on Rebuilding and Improvements.** The contract contains a notice to the buyer to investigate whether or not there are restrictions on constructing improvements or on rebuilding the property in the event of a casualty.



Practice Tip. Advise the buyer to obtain a survey in accordance with paragraph 10(c) to determine whether the property is in a flood zone. Flood zone areas can change, and a seller may not be aware that his or her property was remapped and included in a flood area. Advise the buyer to contact the FEMA map service center at 1-800-358-9616 to get a copy of the NFIP map for the area that the property is located.

- **Special Flood Hazard Area.** This is land in the flood plain that is subject to a 1 percent or greater chance of flooding annually. This area may be designated as zone A, AO, AH, A1-A30, AE, AR, AR/A, AR/AE, AR/AH, AR/AO, AR/A1-A30, A99, V1-V3, VE or V on the Flood Hazard Boundary Map.
- **What is the "100-year flood"?** The term "100-year flood" is misleading. It is not the flood that will occur once every 100 years. Rather, it is the flood elevation that has a 1- percent chance of being equaled or exceeded each year. Thus, the 100-year flood could occur more than once in a relatively short period of time. The 100-year flood, which is the standard used by most Federal and state agencies, is used by the NFIP as the standard for floodplain management and to determine the need for flood insurance. A structure located within a special flood hazard area shown on an NFIP map has a 26 percent chance of suffering flood damage during the term of a 30 year mortgage.
- **Coastal High Hazard Area.** This is the area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.
- **Contract Contingency.** The contract is contingent on the property's buildings being built above the minimum flood elevation, but *only if* the property is located in a Special Flood Hazard Area or Coastal High Hazard Area. The burden is on the buyer to find out whether the buildings are above or below the line and to deliver written notice of the intent to cancel within 10 days from the effective date if the buildings are below the line.
- **Failure to Give Timely Written Notice.** If the buyer does not deliver to the seller written notice of the buyer's intent to cancel the contract because the buildings are built below the minimum flood elevation, the buyer is deemed to accept the property with the existing location of the buildings.
- **Homeowners' Association.** Legislation effective on October 1, 1998, requires that if the buyer will be required to join a homeowners' association, the contract must (1) reference and incorporate the disclosure summary (Comprehensive Addendum paragraph B), and (2) contain a conspicuous warning that the buyer should not sign the contract until he or she has received and read the disclosure summary.
- **Property Tax Disclosure Summary.** In the 2004 session, the Florida Legislature enacted section 689.261, *Florida Statutes*, which provides that a prospective purchaser of residential property must be presented with a required disclosure before signing a sales contract. This is the all capitals statement that appears in paragraph 7(e). The purpose is to alert buyers that their property tax amount may be substantially more than that paid by the seller. Buyers are directed to contact the county property appraiser's office if they want more information.
- **Mold.** The presence of mold in housing has become a very hot issue in the past couple of years. However, at present time, neither the state nor the federal government have established standards to determine what levels of mold infestation are harmful. Therefore, this contract includes just a disclosure directing the buyer to contact an appropriate professional to get more information about potential mold hazards.
- **Mold Inspection.** The contract by itself does not give the buyer the right to inspect specifically for mold, and if mold is discovered through allowable inspections, does not require the seller to make repairs unless the mold is interfering with a warranted item. If the buyer specifically wants a mold inspection right, use paragraph I(2) of the comprehensive addendum. This clause gives buyers the ability to make any desired inspections and requires them to repair the property after such inspections.



Practice Tip. If the buyer wants to include a specific mold clause in the contract language to allow the buyer to cancel the contract if the cost to remediate the mold is exceeded, use the mold inspection addendum to contract (MIAC-1).

- **Coastal Construction Control Line (CCCL).** The CCCL is a "line in the sand" established by the Florida Department of Environmental Protection (DEP) in an effort to protect the state's beaches and coastal barrier dunes. The lines are established so as to define the portion of the beach-dune system that is subject to severe fluctuations based on a 100-year storm surge, storm waves or other pre-

dictable weather conditions. If a comprehensive engineering study and topographic survey show that placement of the control line is necessary for protection of upland properties and to control beach erosion, the DEP will hold a public hearing and then will establish the line.

- **Restrictions on Building Seaward of CCCL.** A person who wants to do any kind of construction seaward of the CCCL must apply for a permit from the DEP unless an exemption is available.
- **Survey or Affidavit.** Section 161.57, *Florida Statutes*, requires that the seller provide the buyer with an affidavit or a survey showing the location of the CCCL on the property, unless the buyer waives in writing the right to receive the affidavit or survey by checking box 7(g).
- **Requirements of Survey.** The survey must meet the minimum technical standards for land surveying, as established by the Board of Professional Land Surveyors pursuant to Chapter 472, *Florida Statutes*.

Property Condition

147 **8. MAINTENANCE, INSPECTIONS AND REPAIR:** Seller will keep the Property in the same condition from Effective Date until
148 closing, except for normal wear and tear ("Maintenance Requirement") and repairs required by this Contract. Seller will provide
149 access and utilities for Buyer's inspections. Buyer will repair all damages to the Property resulting from the inspections,
150 return the Property to its pre-inspection condition and provide Seller with paid receipts for all work done on Property upon its
151 completion. If Seller is unable to complete required repairs or treatments or meet the Maintenance Requirement prior to
152 closing, Seller will give Buyer a credit at closing for the cost of the repairs and maintenance Seller was obligated to perform. At
153 closing, Seller will assign all assignable repair and treatment contracts to Buyer and provide Buyer with paid receipts for all
154 work done on the Property pursuant to the terms of this Contract. At closing, Seller will provide Buyer with any written
155 documentation that all open permits have been closed out and that Seller has obtained required permits for improvements to
156 the Property.

Purpose:

This paragraph governs the property's condition from the time of contract through closing.

Subparagraph (a) addresses the seller's warranty, the buyer's inspection rights and the seller's obligation to make repairs to the property and close out open permits and obtain required permits. It also establishes which conditions the seller will repair.

Subparagraph (b) addresses the the buyer's inspection rights and the seller's obligation to make repairs or treat the property because of termites and other wood-destroying organisms.

Subparagraph (c) addresses the buyer's final walk-through inspection.

Explanation:

• **Maintenance Requirement.** The language under the main heading to paragraph 8 requires the seller to maintain all of the property (both warranted and unwarranted items) in the condition that the property was in on the effective date. This is to ensure that the buyer at least gets the property in basically the same condition it was in when he or she decided how much to pay for it. Regardless of cost, the seller is obligated to repair any damage to the property that occurs before closing that is beyond what would be considered normal wear and tear. Paragraph 9 will control if the damage is due to casualty.

• **Normal Wear and Tear.** Conditions such as wear marks or spots on the carpet, scuff marks on the walls and flowers that die because they are out of season are considered normal wear and tear. Changes that may not be considered normal wear and tear may include a portion of a fence falling down, shrubbery that dies from lack of care, a large hole in a wall or a warranted item that was working on the effective date and on the date of the buyer's inspection but stops working sometime afterwards.

• **Access and Utilities.** The seller is responsible to ensure that the buyer is given access and utilities to conduct the inspections.

• **Damages Caused by Inspections.** The buyer is responsible for repairing any property damage resulting from the inspections. The repairs should be to the extent that the property is in the same condition as it was before the inspections were made.

• **Requirement to Provide Receipts.** In an effort to avoid unforeseen contractors' demands or liens being placed on the property, the contract requires each party to provide to the other copies or originals of paid receipts for all work done on the property during the contract term. The buyer is required to provide receipts in case the contract is terminated before closing - the seller will still own the prop-

erty and needs to know that any work the buyer ordered was paid for. The seller is required to provide receipts to the buyer so that after closing, the buyer (and more likely, the real estate licensees involved) is not faced with having to pay for work the seller (who may no longer be reachable) should have paid for.

- **Requirement to Provide Documentation Regarding Permits.** Seller must provide Buyer with written documentation that all open permits have been closed out and that the Seller has obtained permits for improvements to the property. That means that the Seller must obtain permits, if permits are required, for improvements even if the improvements were made prior to Seller's ownership of the property.

- **Uncompleted Treatments and Repairs.** If the seller is required to make repairs or treatments under subparagraph 8(a)(3) or 8(b), and cannot complete them before closing, the buyer should be given a credit at closing for the amount necessary to complete the repairs. Some lenders will not accept a credit for uncompleted repairs. In this case, the parties should try to negotiate a later closing date to enable repairs to be completed so the loan can close. Since the seller will be assigning repair contracts to the buyer at closing, the buyer will be entitled to rely on the representations made by the contractor to the seller.

- **Assignment of Repair and Treatment Contracts.** Assigning the seller's rights in these contracts gives the buyer the contractual right to directly pursue the contractor if the repairs or treatments turn out to be inadequate.

Property Condition

157 (a) **Warranty, Inspections and Repair:**

158 (1) **Warranty:** Seller warrants that non-leased major appliances and heating, cooling, mechanical, electrical, security,
159 sprinkler, septic and plumbing systems, seawall, dock and pool equipment, if any, are and will be maintained in working
160 condition until closing; that the structures (including roofs, doors and windows) and pool, if any, are structurally sound
161 and watertight; and that torn or missing screens and missing roof tiles will be repaired or replaced. Seller warrants that
162 all open permits will be closed out and that Seller will obtain any required permits for improvements to the Property
163 prior to Closing Date. Seller does not warrant and is not required to repair cosmetic conditions, unless the cosmetic
164 condition resulted from a defect in a warranted item. Seller is not obligated to bring any item into compliance with
165 existing building code regulations unless necessary to repair a warranted item. "Working condition" means operating in
166 the manner in which the item was designed to operate and "cosmetic conditions" means aesthetic imperfections that
167 do not affect the working condition of the item, including pitted marcite; tears, worn spots and discoloration of floor
168 coverings/wallpapers/window treatments; nail holes, scratches, dents, scrapes, chips and caulking in bathroom
169 ceiling/walls/flooring/tile/fixtures/mirrors; cracked roof tiles; curling or worn shingles; and minor cracks in floor
170 tiles/windows/driveways/sidewalks/pool decks/garage and patio floors.

Explanation:

- **Warranty.** A warranty is a promise by the seller that the specified items are or will be placed in the described condition.

- **"Working Condition."** This means operating in the manner in which the item was designed to operate.

- **"Cosmetic Condition."** This means aesthetic conditions that do not affect the working condition of an item. Under this contract, the seller does not have to repair cosmetic conditions unless the cosmetic condition resulted from a problem with a warranted item. For example, if the air conditioning system leaked and discolored the wallpaper and part of the carpet, the seller would be obligated to repair the wallpaper and carpet as well as the air conditioning leak.

- **Warranted Items.** Only the listed items (major appliances, heating system, cooling system, mechanical system, electrical system, security system, sprinkler system, plumbing and sewer system, seawall and pool equipment) carry the seller's warranty of working condition. Plus, these items must be owned, as opposed to leased, to be covered. All structures (including their roofs, doors and windows) and pool must be structurally sound and watertight. This standard includes structures such as detached garages and mother-in-law apartments, docks and boathouses, sheds, barns, gazebos and any other structures on the property unless specifically excluded. The Seller warrants that missing or torn screens, and missing roof tiles, will be repaired or replaced. This includes torn or missing window screens as well as torn or missing pool cage or screen room screens. Finally, Seller warrants that open permits have been closed out and that required permits have been obtained for improvements to the property.



Practice Tip. If the seller knows that a structure leaks or is rickety and will cost more than the Repair Limit, it is best to exclude the structure from the seller’s warranty in paragraph 21. Use language such as “Seller specifically excludes the shed and boathouse from Seller’s Paragraph 8 Warranty.”

- **Unwarranted Items.** All cosmetic conditions and items not listed in subparagraph (a)(1) of the contract are required to be maintained only in the condition they were in on the effective date.
- **Building Code Violations.** Since the seller is obligated to remedy any violation of governmental entity, seller must remedy building code violations up to the permit limit.

Property Condition

171 (2) **Professional Inspection:** Buyer may, at Buyer’s expense, have warranted items inspected by a person who
 172 specializes in and holds an occupational license (if required by law) to conduct home inspections or who holds a Florida
 173 license to repair and maintain the items inspected (“professional inspector”). Buyer must, within 5 days from the end of the
 174 Inspection Period, deliver written notice of any items that are not in the condition warranted and a copy of the portion of
 176 inspector’s written report dealing with such items to Seller. If Buyer fails to deliver timely written notice, Buyer waives
 177 Seller’s warranty and accepts the items listed in subparagraph (a) in their “as is” conditions, except that Seller must meet
 178 the maintenance requirement.

Deadlines:

- **Professional Inspection.** This must be conducted by the date specified in blank 33 in paragraph 6.
- **Written Notice of Defects.** The notice must be delivered to seller, along with a copy of the professional inspector’s report, within 5 business days from the date specified in blank 33 in paragraph 6.

Explanation:

- **Buyer’s Expense.** The cost of all inspections conducted pursuant to subparagraph (2) are the buyer’s responsibility.
- **Option to Conduct Inspections.** The buyer may choose not to have a professional inspection. The consequence is that the buyer accepts the property in its existing condition with regard to any warranty violation that could have been discovered by the inspection.
- **Timing of Professional Inspection.** The buyer must conduct the professional inspection by the date specified in blank 33 in paragraph 6.
- **Who May Conduct Professional Inspection.** Only a home inspector (who specializes in home inspections and who holds an occupational license to do so, if an occupational license is required by local law) or a person who possesses a Florida license to repair and maintain the inspected items may conduct the inspection. If the parties want to allow unlicensed persons (such as themselves) to conduct the inspections, use paragraph I of the comprehensive addendum (property clauses addendum).
- **Scope of Inspection.** The inspection is limited to determining whether warranted items are in the condition warranted. If the buyer wants broader inspection rights, use paragraph I(2) of the comprehensive addendum.
- **Notice of Defects.** If the buyer’s inspector found that any items covered by the seller’s subparagraph (a)(1) warranty were not in the condition warranted (working condition, structurally sound or watertight, permit not pulled for work), then the buyer must deliver a written notice to the seller detailing how the items do not meet the warranty. The buyer must also give the seller a copy of the portion of inspector’s written report, dealing with such items, if the inspection reveals such items.
- **Failure to Provide Written Notice of Defects.** If the buyer fails to conduct the inspection or for some other reason does not give the seller the written notice of defects in time, the buyer loses the right to enforce the seller’s warranties, as listed in subparagraph (a)(1). The seller will still be responsible for the maintenance requirement, i.e., if something was working on the effective date, it must be working on the closing date.

Property Condition

179 (3) **Repair:** Seller will obtain repair estimates and is obligated only to make repairs necessary to bring warranted items
180 into the condition warranted, up to the Repair Limit. Seller may, within 5 days from receipt of Buyer's notice of items
181 that are not in the condition warranted, have a second inspection made by a professional inspector and will report
182 repair estimates to Buyer. If the first and second inspection reports differ and the parties cannot resolve the differences,
183 Buyer and Seller together will choose, and equally split the cost of, a third inspector, whose written report will be
184 binding on the parties. If the cost to repair warranted items equals or is less than the Repair Limit, Seller will have the
185 repairs made in a workmanlike manner by an appropriately licensed person. If the cost to repair warranted items
186 exceeds the Repair Limit, either party may cancel this Contract unless either party pays the excess or Buyer
187 designates which repairs to make at a total cost to Seller not exceeding the Repair Limit and accepts the balance of
188 the Property in its "as is" condition.

Purpose:

To establish the seller's right to get a second inspection and to establish parameters for the seller's obligation to make repairs.

Deadlines:

- **Second Inspection.** This must be conducted within five business days from receiving the buyer's written notice of warranted items not in the condition warranted.
- **Repair Estimates.** The seller must report repair estimates to the buyer within five business days from receipt of the buyer's notice of problems with the property.

Explanation:

- **Repair Estimates.** The seller is charged with obtaining repair estimates. If the seller desires, he or she may rely on any estimates provided by the buyer or the buyer's inspector.
- **Seller's Obligation to Make Repairs.** The seller is only obligated to repair items covered by the warranty of subparagraph (a)(1). In order to be considered sufficient under the contract, the repairs must bring the item into the condition warranted (working condition, structurally sound or watertight).
- **Repair Limit.** The seller's responsibility for repairs is limited to the amount specified as the Repair Limit in blank 27, paragraph 5.
- **Second Inspection.** A seller who is not satisfied with the outcome of the buyer's inspection report may choose to have his/her own professional inspection made to verify the accuracy of the first inspector's assessment of the property. If the seller has a second inspection, the inspector must have the same qualifications as the buyer's professional inspector — see the explanation to subparagraph (a)(2). The inspection must be conducted within five business days from the date the seller receives the buyer's notice of problems with the property. If the reports agree, the seller should repair the property in accordance with the terms of the contract.
- **Conflicting Inspection Reports.** If the buyer's inspector and the seller's inspector have different opinions about the need for repair of any warranted item, the parties should first try to compromise. If unable to compromise, the parties must agree upon a third inspector. Each party must pay half of the third inspector's fee and both parties will be bound by that inspector's report.
- **"Workmanlike" Manner.** This term means worthy of a good workman or skillful. The seller must ensure that the repairman is competent so that the repairs are made in a workmanlike manner and are not shoddy or incomplete.
- **Cost of Repairs Within Repair Limit.** If the cost to bring warranted items into the condition warranted equals or is less than the Repair Limit, the seller must make the repairs. The repairman must be licensed by the State of Florida to make the repairs, if such a license is required under Florida law.
- **Costs in Excess of Repair Limit.** If the cost of required repairs is more than the Repair Limit, then the buyer or the seller may decide to pay the excess balance and close the contract, **or** the buyer may designate which repairs to make at a total cost not to exceed the Repair Limit and accept the balance of the property in its "as is" condition. If neither party wants to pay the amount of repairs exceeding the Repair Limit and the buyer does not want to accept only a partial repair job, then either party may cancel the contract.

Property Condition

189 (4) **Permits:** Seller shall close out any open permits and remedy any violation of any governmental entity, including
190 but not limited to, obtaining any required permits for improvements to the Property, up to the Permit Limit, and with final
191 inspections completed no later than 5 days prior to Closing Date. If final inspections cannot be performed due to delays
192 by the governmental entity, Closing Date shall be extended for up to 10 days to complete such final inspections, failing
193 which, either party may cancel this Contract and Buyer's deposit shall be refunded. If the cost to close out open
194 permits or to remedy any violation of any governmental entity exceeds the Permit Limit, either party may cancel the
195 Contract unless either party pays the excess or Buyer accepts the Property in its "as is" condition and Seller credits
196 Buyer at closing the amount of the Permit Limit.

Purpose:

To establish the seller's obligation to close out open permits and to pull required permits.

Deadlines:

Seller must close out open permits and obtain required permits with final inspections no later than 5 days prior to Closing Date. If final inspection cannot be performed, Closing Date is extended up to 10 days to complete final inspections.

Explanation:

- **Open Permits.** Sellers must close out open permits
- **Permits for Improvements.** Seller must obtain permits for any additions or changes made to the property (even if the modifications or improvements were performed prior to Seller acquiring the property) if a permit is required. Seller is not obligated to pull a permit for work performed if a permit is not required by local or state governmental entity.
- **Violation of governmental entity.** Seller is obligated to remedy any violation of any governmental entity. This includes an obligation on the Seller to bring warranted items up to code even if such items complied with code requirements at the times the items were installed.
- **Permit Limit.** The seller's obligation to obtain permits, remedy violations of governmental entity or close out open permits is limited to the amount specified as Permit Limit in blank 29, Paragraph 5.
- **Final Inspections.** Final inspection to ensure that all required permits have been obtained, all open permits have been closed out and all violations of governmental entity have been remedied. If the governmental entity is unable to perform final inspections due to delays, buyer may extend Closing Date up to 10 days. If after the extension, final inspections cannot be completed then either party may cancel the contract and buyer shall be refunded the deposit.
- **Costs in Excess of Permit Limit.** If the cost to close out open permits, to obtain required permits or to remedy any violation of any governmental entity is more than the Permit Limit, then the buyer or seller may pay the excess or the buyer may accept the property "as is" and receive a credit in the amount of the Permit Limit. If neither party wants to pay the excess and the buyer does not want to accept the property as is with the credit, then either party may cancel the contract.



Practice Tip. If the seller does not wish to close out open permits or to obtain required permits, the limit under paragraph 5 would be \$0 and the word not should be added to lines 161 and 162 and lines 189 and 190 of the Contract.

Property Condition

197 (b) **Wood-Destroying Organisms:** "Wood-destroying organism" means arthropod or plant life, including termites, powder-post
198 beetles, oldhouse borers and wood-decaying fungi, that damages or infests seasoned wood in a structure, excluding fences.
199 Buyer may, at Buyer's expense, have the Property inspected by a Florida-licensed pest control business to determine the
200 existence of past or present wood-destroying organism infestation and damage caused by infestation. If the inspector finds
201 evidence of infestation or damage, Buyer will deliver a copy of the inspector's written report to Seller within 5 days from the date
202 of the inspection. If Seller previously treated the Property for the type of wood-destroying organisms found, Seller does not have
203 to treat the Property again if (i) there is no visible live infestation, and (ii) Seller transfers to Buyer at closing a current full treatment
204 warranty for the type of wood-destroying organisms found. Otherwise, Seller will have 5 days from receipt of the inspector's
205 report to have reported damage estimated by a licensed building or general contractor and corrective treatment estimated by a
206 licensed pest control business. Seller will have treatments and repairs made by an appropriately licensed person at Seller's
207 expense up to the WDO Repair Limit. If the cost to treat and repair the Property exceeds the WDO Repair Limit, either party may
208 pay the excess, failing which either party may cancel this Contract by written notice to the other. If Buyer fails to timely deliver the
209 inspector's written report, Buyer accepts the Property "as is" with regard to wood-destroying organism infestation and damage,
210 subject to the maintenance requirement.

Deadlines:

- **Termite Inspection.** This must be conducted by the date specified in blank 34 in paragraph 6.
- **Termite Infestation or Damage Report.** This is due within five business days from date of the inspection.
- **Treatment and Repair Estimates.** This is due within five business days from having received the inspector's report.

Explanation:

- **Extended Closing Date.** This provision may not extend the closing date since the closing date prevails over all other time periods and this section does not specifically extend the closing date. If the buyer is getting third party financing, you should tie the inspection date to the commitment date specified in blank 21 in paragraph 3. You may also wish to establish a specific deadline at least ten business days before the closing date if any of the following are true:
 1. The buyer is paying cash with no financing contingency.
 2. The seller is providing all the financing.
 3. You anticipate that termite infestation or damage will be found.
- **“Wood-Destroying Organism.”** The definition in the contract tracks the Section 482.021(28), *Florida Statutes*, definition of a “wood-destroying organism.” Chapter 482 regulates the pest control business.
- **Property Excluded From Coverage Under Inspection/Repair Provision.** Fences are not covered by the inspection and repair rights arising under subparagraph 8(b).
- **Buyer’s Inspection.** The buyer may pay for a pest control business (licensed to operate in Florida) to inspect the property any time prior to closing. The purpose of the inspection is to determine whether or not there is infestation or damage caused by wood-destroying organisms. The damage and infestation may have occurred in the past or may be current.
- **Inspection Report.** If the inspector finds evidence of damage or infestation, the buyer has five business days from the date of the inspection to give a copy of the inspector’s report to the seller. If the inspector finds no evidence of damage or infestation, the seller has no obligation to treat or repair.
- **Treatment and Repair Estimates.** If the inspection report reveals damage caused by wood-destroying organisms, the seller must obtain a repair estimate from a licensed building or general contractor. If the inspection report reveals evidence of infestation, the seller must obtain a treatment estimate from a Florida licensed pest control business. The seller must obtain both estimates within five business days from the date the seller receives the inspection report.
- **Treatment and Repair Obligation.** The seller is obligated to treat and repair the property at a total cost not to exceed the WDO Repair Limit as stated in paragraph 5 (blank 28). The seller will not have to treat the property if the report either (1) shows no evidence of infestation or damage (the right to request treatment never arises), or (2) shows evidence of infestation without any evidence of live organisms, but the property has previously been treated for the type of wood destroying organism found; there is a current, transferable full treatment warranty for the type of wood destroying organism found; and the seller transfers the warranty to the buyer at closing. If the seller has treated the property but has no transferable warranty, additional treatment may be required under this provision.
- **Cost Exceeds Termite Repair Limit** Either party may choose to pay the amount over the 1.5 percent or other amount inserted in blank 28. If neither party wishes to do so, then either party may cancel the contract.
- **Treatment Warranty.** Sometimes, an inspector will find evidence of old infestation or damage caused by old infestation. If the property was treated for the type of wood destroying organism found, either by the current or a previous owner, and the seller has a current full treatment warranty for the type of wood destroying organism found, then the seller does not have to treat the property again so long as no current live infestation was observed.
- **Failure to Deliver Notice of Infestation or Damage.** If the buyer does not deliver the inspector’s written report of damage or infestation within five business days after the date specified in blank 34 in paragraph 6, the buyer is deemed to accept the property with any existing infestation and damage.

Property Condition

211 (c) Walk-through Inspection/Reinspection: Buyer, and/or Buyer’s representative, may walk through the Property solely
212 to verify that Seller has made repairs required by this Contract, has met the Maintenance Requirement and has met
213 contractual obligations. If Buyer, and/or Buyer’s representative, fails to conduct this inspection, Seller’s repair obligations
214 and Maintenance Requirement will be deemed fulfilled.

Explanation:

- **Walk-Through Inspection.** The buyer or buyer’s representative (including buyer’s inspector) must conduct the walk-through inspection the day before closing or at any other time upon which the parties agree, in accordance with paragraph 6. The only issues the buyer may raise on the walk through are:
 1. Failure by the seller to keep the property in the same condition as it was on the effective date excluding conditions considered to be normal wear and tear) or absence from the premises of items listed in paragraph 1 as included in the purchase.

2. Failure by the seller to have made all repairs that he/she was responsible to make.
 3. Removal of items that are included in the sale.
 4. Failure of the seller to disclose facts that materially affect the value of the property.
- **Failure to Conduct Inspection.** If the buyer fails to do so, the buyer loses the right to enforce the seller's warranties and repair obligations.
 - **Maintenance Requirement.** Sometimes, a warranted item will be working when the buyer's inspection is conducted but stops working before the closing. Even though the buyer did not specify the item as being in non-working condition in connection with the professional inspection, the seller will have to repair the item under the maintenance requirement. If the item worked on the effective date, it must still work on the closing date.
 - **Buyer's Representative.** Buyer may designate someone other than the buyer such as buyer's inspector or buyer's friend or family to conduct the walk-through. Though buyer may designate his/her Realtor® to conduct the walk-through it is not recommended for the Realtor® to conduct the walk-through for liability reasons.

Property Condition

215 **9. RISK OF LOSS:** If any portion of the Property is damaged by fire or other casualty before closing and can be restored by the
 216 Closing Date or within 45 days after the Closing Date to substantially the same condition as it was on Effective Date, **Seller**,
 217 will, at **Seller's** expense, restore the Property and deliver written notice to **Buyer** that **Seller** has completed the restoration, and
 218 the parties will close the transaction on the later of: (1) Closing Date; or, (2) 10 days after **Buyer's** receipt of **Seller's** notice.
 219 **Seller** will not be obligated to replace trees. If the restoration cannot be completed in time, **Buyer** may cancel this Contract
 220 and **Buyer's** deposit shall be refunded, or **Buyer** may accept the Property "as is", and **Seller** will credit the deductible and
 221 assign the insurance proceeds, if any, to **Buyer** at closing in such amounts as are (i) attributable to the Property and (ii) not yet
 222 expended in restoring the Property to the same condition as it was on Effective Date.

Purpose:

To establish procedures to follow in the event of a natural catastrophe, such as a fire, hurricane or other casualty.

Deadline:

- **Restoration of Property.** Property must be restored within 45 business days from the closing date.

Explanation:

- **Extended Closing Date.** This provision may extend the closing date of paragraph 4.
- **"Casualty."** This term means an identifiable event of a sudden, unexpected or unusual nature, such as a tornado, fire or hurricane, that causes complete or partial destruction of property.
- **Seller's Obligation to Restore.** If the property is damaged by a casualty before closing, the seller will be obligated to repair the property so that it is in essentially the same condition as it was and has the same features it had on the effective date. If the seller is able to repair the property in time, the buyer will be obligated to close. If not, the buyer may take the property with existing damage and insurance proceeds and close on the closing date. The seller is not obligated to replace trees; this does not negate any obligation to remove fallen or damaged trees.
- **Notice to Buyer.** Seller must provide written notice to the Buyer that the Seller has completed the restoration. The parties then have to close either on the Closing Date or within 10 days after Buyer's receipt of Seller's notice, whichever is later. In that case, the buyer will have time to perform inspection, obtain financing, etc. in order to close.
- **Time Limit to Decide Whether or Not to Accept Damaged Property.** Since there is no time limit imposed on the buyer by the contract to make the decision to take the damaged property with insurance proceeds, a reasonable time given the circumstances must be allowed before the seller may cancel the transaction.
- **Seller's Expense.** All repairs made pursuant to this clause are to be paid by the seller. The seller's hazard insurance normally covers post-casualty repairs.
- **Cancellation of Contract.** Buyer may cancel the contract if the repairs cannot be completed within 45 business days from the closing date given in paragraph 4 and the buyer chooses not to take the property as is with insurance proceeds.
- **Insurance Proceeds.** If the seller has received funds to make repairs and has expended some of the funds, e.g. as deposits on repair contracts, the unexpended portion should be assigned to the buyer at closing to be used in completing the repairs. The amount of the seller's deductible that has

not yet been expended and is attributable to the property should be credited to the buyer since payment of a deductible is the seller's responsibility under their insurance agreement.

• **Deductible and Proceeds Attributable to Property.** If the seller experienced damage to both the real property and personal belongings, a portion of the deductible and insurance payment may relate to property that is not being conveyed in the transaction. The deductible and proceeds should be prorated among damaged covered property that is and is not subject to the contract.

Title

223

TITLE

224 **10. TITLE:** Seller will convey marketable title to the Property by statutory warranty deed or trustee, personal representative or
225 guardian deed as appropriate to Seller's status.

Purpose:

To establish the state of the title the seller will convey to the buyer.

Explanation:

- **"Title."** The means by which a person has just possession of the property — the right of ownership. This term also describes the evidence of the right of ownership.
- **"Marketable Title."** This is a title free from doubt as to its validity, meaning that in the opinion of a Florida-licensed attorney, there is no reasonable probability that anyone would adversely claim ownership of all or part of the property. The buyer should consult an attorney to determine whether or not the seller's title is marketable.



Practice Tip. If you are the seller's agent, encourage the seller to ascertain the marketability of the title prior to receiving an offer. This gives the seller time to find out about and correct any problems affecting marketability.

- **Type of Deed.** The parties should consult with their attorneys regarding which type of deed to use and accept. The following types of deeds are acceptable under this contract:
 - 1. Statutory Warranty Deed.** This is a form of warranty deed that complies with the requirements of Section 689.02, *Florida Statutes*. It may be used in most circumstances.
 - 2. Trustee's, Personal Representative's Deed.** People who hold title in a representative capacity are not permitted to execute and deliver a statutory warranty deed. In this situation, people usually provide a deed containing some limited warranties.

Title

226

227 **(a) Title Evidence:** Title evidence will show legal access to the Property and marketable title of record in Seller in accordance with
228 current title standards adopted by the Florida Bar, subject only to the following title exceptions, none of which prevent residential
229 use of the Property: covenants, easements and restrictions of record; matters of plat; existing zoning and government regulations;
230 oil, gas and mineral rights of record if there is no right of entry; current taxes; mortgages that Buyer will assume; and
231 encumbrances that Seller will discharge at or before closing. Seller will, at least 2 days prior to closing, deliver to Buyer Seller's
232 choice of one of the following types of title evidence, which must be generally accepted in the county where the Property is located
(specify in Paragraph 5(c) the selected type). Seller will use option (1) in Palm Beach County and option (2) in Miami-Dade County.

Purpose:

Subparagraph (a) describes the type of title evidence the seller needs to provide.

Deadline:

Provision of Title Evidence. The seller must provide title evidence to the buyer at least 2 days before closing.

Explanation:

- **Permitted Encumbrances.** The contract allows exceptions to the title for listed matters that do not prevent using the property for residential purposes. The exceptions are: covenants, easements and restrictions that are recorded in the public documents of the county in which the property is located; matters of plat; existing zoning and government regulations (such as growth management plans); oil, gas and mineral rights, provided the holder of the rights has no right to enter the property; current taxes; mortgages that the buyer will assume as part of the purchase; and encumbrances that the seller will remove at or before closing.

- **Oil, Gas and Mineral Rights.** The only such rights permitted under this contract are those in which another person has the right to proceeds from any such substances found on the property, but has no independent right to go to the property and start digging or drilling.
- **Liens.** A construction lien may be filed anytime within 90 days from completion of the work. If the work is done within 90 days prior to closing, it is possible that a lien could be filed after the title is transferred. Under this contract, the seller is obligated to deliver the property free of such liens. To ensure compliance, require the seller to provide an affidavit, usually supplied by the closing agent, attesting to the absence of liens or potential lienors. If the work has been completed within 90 days from the closing date, the seller must provide releases and waivers of construction liens signed by all contractors, subcontractors, suppliers and materialmen along with an affirmation that the seller has paid, or will pay at closing, all charges that could serve as a basis for a construction lien or claim for damages. The closing agent should have these forms.
- **Seller's Choice of Title Evidence.** The seller has the choice as to which kind of title evidence he or she will provide the buyer. However, the seller is limited to only those options that are generally accepted in the county where the property is located.
- **Seller's Responsibility.** Since the contract language says that the seller will deliver the title evidence, the seller must ensure that the title evidence is provided to the buyer at least 2 days before closing. However, who pays for the title evidence is negotiable. Even if the buyer pays for the title evidence, the seller is still responsible for ensuring that the title evidence is delivered to the buyer.
- **Relationship to Paragraph 5.** The applicable title evidence paragraph should be indicated in paragraph 5(c) by checking the appropriate box.
- **Title Search.** The purpose of a title search is to verify that the seller actually owns the property. To verify ownership, an experienced abstractor or title company must search the public records for all documents that affect the title as well as look for unrecorded matters that may affect the title. When the search is finished, an abstract, title insurance policy or other title evidence can be issued.

Title

233	(1) A title insurance commitment issued by a Florida-licensed title insurer in the amount of the purchase price and
234	subject only to title exceptions set forth in this Contract.
235	(2) An existing abstract of title from a reputable and existing abstract firm (if firm is not existing, then abstract must be
236	certified as correct by an existing firm) purporting to be an accurate synopsis of the instruments affecting title to the
238	Property recorded in the public records of the county where the Property is located and certified to Effective Date.
239	However, if such an abstract is not available to Seller, then a prior owner's title policy acceptable to the proposed
240	insurer as a base for reissuance of coverage. Seller will pay for copies of all policy exceptions and an update in a format
241	acceptable to Buyer's closing agent from the policy effective date and certified to Buyer or Buyer's closing agent,
242	together with copies of all documents recited in the prior policy and in the update. If a prior policy is not available to
243	Seller then (1) above will be the title evidence. Title evidence will be delivered no later than 10 days before Closing Date.

Deadline:

- **Delivery of Title Evidence.** Under paragraph (2), title evidence is due 10 business days before closing (this deadline applies even if the parties end up using a title insurance commitment as title evidence). If the parties use paragraph (1) only, the title commitment must be delivered at least 2 days prior to closing.

Explanation:

- **Title Insurance Commitment.** A commitment is a promise, usually made before closing, to issue a title insurance policy to the new owner after closing. The commitment establishes the requirements that must be met before the title insurance policy will be issued and it lists the exceptions that will appear on the title policy. The exceptions can only be those listed in the contract or those that will be eliminated at or before closing.
- **Premium.** Florida Insurance Commission rules require that a premium be charged for a title insurance commitment or binder, regardless of whether or not a policy is issued. If a title insurance policy is issued pursuant to a commitment, there is no additional charge for the policy. Payment of the premium is negotiable under paragraph 5(c).
- **Owner's Title Insurance Policy.** An owner's policy protects the buyer up to the property's purchase price if the title is not as described in the title commitment or if there is a title defect or encumbrance on the title or property that was not disclosed in the title commitment. Since most policies have exclusions, the buyer should closely examine the policy or have his/her attorney explain what is and is not covered.

- **Abstract of Title.** A condensed history of the property's title. It contains a summary of the material portions of all recorded conveyances (such as transfers, assignments, leases, mortgages and encumbrances) of the property, along with a statement of all liens, charges or liabilities to which the property may be subject.
- **Delivery of Abstract.** If the seller is providing an abstract, it must be given to the buyer no later than 10 business days before the closing date. Also, it must be certified through the contract effective date.



Practice Tip. If the seller is providing an abstract as title evidence and the contract calls for seller financing, the seller may want to retain possession of the abstract for security purposes until the mortgage is paid in full (be sure to write this into the contract).

- **Existing or Prior Owner's Title Insurance Policy.** If the seller has a title insurance policy from when he/she bought the home, he/she may be able to supply the policy as a basis for re-issuance of the policy for the buyer. This type of title evidence is becoming more popular as more Florida property is covered with an owner's title insurance policy, as title examiners use computer-assisted title searches and as the time necessary for loan approval grows shorter. If the title company will accept the seller's policy, then the seller should give the buyer a copy of the policy, policy exceptions and other documents affecting the title. The seller must also update the policy as described below.
- **Updating the Existing or Prior Owner's Title Insurance Policy.** To update the current or prior owner's policy, the seller must pay for and provide, from the effective date of the policy, an abstract continuation, computer printout or other update format that is acceptable to the buyer's closing agent. This will enable the buyer to search encumbrances that have arisen since the seller bought the property. The title company must certify to the buyer or buyer's closing agent that the updated information is correct. The seller must also pay for copies of all documents listed in the prior policy and the update.

Purpose:

Subparagraph (b) outlines the buyer's right to examine the title and the seller's obligation to cure defects.

Title

244 (b) **Title Examination: Buyer** will examine the title evidence and deliver written notice to **Seller**, within 5 days from receipt of
 245 title evidence but no later than Closing Date, of any defects that make the title unmarketable. **Seller** will have 30 days from
 246 receipt of **Buyer's** notice of defects ("Curative Period") to cure the defects at **Seller's** expense. If **Seller** cures the defects
 247 within the Curative Period, **Seller** will deliver written notice to **Buyer** and the parties will close the transaction on Closing
 248 Date or within 10 days from **Buyer's** receipt of **Seller's** notice if Closing Date has passed. If **Seller** is unable to cure the
 249 defects within the Curative Period, **Seller** will deliver written notice to **Buyer** and **Buyer** will, within 10 days from receipt of
 250 **Seller's** notice, either cancel this Contract or accept title with existing defects and close the transaction.

Deadlines:

- **Extension of Closing Date.** This provision may extend the closing date.
- **Title Defects.** The buyer must give the seller written notice of title defects within 5 business days from receipt of the title evidence but no later than closing.
- **Curative Period.** The seller has 30 business days from receipt of written notice of defects to make corrections.
- **Closing the Transaction (Defects Cured).** The buyer must close either on the closing date or, if the closing date has passed, within 10 business days from having received written notice that the defects have been cured.
- **Canceling Contract or Closing Transaction (Defects Not Cured).** Within 10 business days from having received written notice that the defects cannot be cured within the curative period, the buyer must decide whether to close with the defects or cancel the contract.

Explanation:

- **Examination of Title Evidence.** When the buyer receives the seller's title evidence, the buyer should examine the evidence for problems that could jeopardize the buyer's ownership rights. Any defects must be noted in writing to the seller before closing.
- **"Cure."** This means to correct aspects (defects) of the title that render the title unmarketable or do not conform to the seller's promise of delivering a marketable title.

- **Seller's Obligation to Cure Title.** This contract requires the seller to deliver a marketable title. If the buyer discovers title defects and gives timely, written notice to the seller, the seller must attempt to correct the defects within the curative period.
- **Seller Able to Cure Defects Within Curative Period.** If the seller is able to cure the defects within the curative period, the seller should immediately send the buyer written notice of the correction. Once the buyer receives the written notice, the transaction can be closed.
- **Seller Unable to Cure Defects Within Curative Period.** If the seller is unable to cure the defects within the curative period, the seller should immediately deliver written notice to the buyer so the buyer can decide whether to cancel the contract or close the transaction in spite of the existing defects. The parties may also agree to extend the closing date. The buyer should consult an attorney when making this decision since his/her title may be at risk if a problem arises.

Title

251 (c) **Survey:** Buyer may, at Buyer's expense, have the Property surveyed and deliver written notice to Seller, within 5 days from
 252 receipt of survey but no later than closing, of any encroachments on the Property, encroachments by the Property's improvements
 253 on other lands or deed restriction or zoning violations. Any such encroachment or violation will be treated in the same manner as a
 254 title defect and Buyer's and Seller's obligations will be determined in accordance with subparagraph (b) above.

Purpose:

Subparagraph (c) outlines the buyer's right to obtain a survey and require the seller to cure encroachments and other defects revealed by the survey.

Deadlines:

- **Extension of Closing Date.** This provision may extend the closing date.
- **Surveying Property.** The buyer must survey the property prior to the closing date, if the buyer wishes to do so.
- **Delivering Notice of Encroachments.** The buyer must deliver written notice before the closing date.
- **Curative Period.** The seller has 30 business days from receipt of encroachment notice to cure encroachments.
- **Closing the Transaction (Encroachments Cured).** The buyer must close on closing date or, if closing date has passed, within 10 business days from having received written notice that encroachments have been cured.
- **Canceling Contract or Closing Transaction (Encroachment Not Cured).** Within 10 business days from having received written notice that the defects cannot be cured within the curative period, the buyer must decide whether to close with the defects or cancel the contract.

Explanation:

- **Buyer's Expense.** If the buyer wants a survey, the buyer must pay for it.
- **Survey.** A survey is the process by which a parcel of land is measured and its boundaries and contents ascertained. The survey should show property lines, all improvements, encroachments, violation of zoning and subdivision restrictions, quantity of land and the existence of water or street frontage, including public road access.



Practice Tip. If the buyer wants a survey, encourage him/her to have it done soon after the effective date to give the seller time to handle any defects without having to extend the closing date. Never discourage the buyer from obtaining a survey! It may also be advisable to encourage the seller to obtain a survey soon after listing the property in order to ascertain whether any encroachments exist and, if so, to start corrective procedures.

- **Encroachment.** An encroachment is a trespass on the lands or rights of another. This contract treats an encroachment by the seller's property onto the lands of a neighbor (e.g., the seller's fence stands on the neighbor's property) or an encroachment by a neighbor's property onto the seller's property (e.g., the neighbor built a shed that lies partially on the seller's property) as a title defect.
- **Violations of Deed Restrictions.** The deed to the property may be subject to one or more restrictions regarding the use of the property. If the survey shows that a violation of the restrictions, the violation will be treated as a title defect.
- **Zoning Violations.** If the survey shows that the property violates existing zoning regulations, the violation will be treated as a title defect.

- **Seller's Expense.** The seller is responsible for the expense of correcting any encroachments.
- **Seller's Obligation to Cure Title.** This contract requires the seller to deliver a marketable title. If the buyer discovers an encroachment and gives timely, written notice to the seller, the seller must attempt to correct the problem within the curative period.
- **Seller Able to Cure Defects Within Curative Period.** If the seller is able to correct the encroachment, deed restriction or zoning violation within the curative period, the seller should immediately send the buyer written notice of the correction. Once the buyer receives written notice, the transaction can be closed.
- **Seller Unable to Cure Defects Within Curative Period.** If the seller is unable to correct the encroachment, deed restriction or zoning violation within the curative period, the seller should immediately deliver written notice to the buyer so the buyer can decide whether to cancel the contract or close the transaction in spite of the existing defect. The parties may also agree to extend the closing date. The buyer should consult an attorney when making this decision since the ability to resell the property may be hampered by a defect.

Miscellaneous

MISCELLANEOUS

255

256 11. EFFECTIVE DATE; TIME; FORCE MAJEURE:

257 (a) **Effective Date:** The "Effective Date" of this Contract is the date on which the last of the parties initials or signs and
258 delivers the final offer or counteroffer. **Time is of the essence for all provisions of this Contract.**

259 (b) **Time:** All time periods will be computed in business days (a "business day" is every calendar day except Saturday, Sunday
260 and national legal holidays). If any deadline falls on a Saturday, Sunday or national legal holiday, performance will be due the
261 next business day. All time periods will end at 5:00 p.m. local time (meaning in the county where the Property is
262 located) of the appropriate day.

263 (c) **Force Majeure:** **Buyer** or **Seller** shall not be required to perform any obligation under this Contract or be liable to
264 each other for damages so long as the performance or non-performance of the obligation is delayed, caused or prevented
265 by an act of God or force majeure. An "act of God" or "force majeure" is defined as hurricanes, earthquakes, floods, fire,
266 unusual transportation delays, wars, insurrections and any other cause not reasonably within the control of the **Buyer** or
267 **Seller** and which by the exercise of due diligence the non-performing party is unable in whole or in part to prevent or
268 overcome. All time periods, including Closing Date, will be extended (not to exceed 30 days) for the period that the force
269 majeure or act of God is in place. In the event that such "act of God" or "force majeure" event continues beyond the 30
270 days in this sub-paragraph, either party may cancel the Contract by delivering written notice to the other and Buyer's
271 deposit shall be refunded.

Purpose:

To establish time standards.

Explanation:

• **Effective Date.** This is the date on which the final version of the contract is signed or initialed and delivered by the last party who needs to sign it. A box is located on page eight of the contract just below the signature lines for the purpose of noting the effective date in a convenient, readily noticeable place. Once the contract is final, the appropriate date may be inserted.



Practice Tip. As counter offers are made back and forth, remind the parties that, if they accept the counter offer without making any changes, they need to indicate the date they signed or initialed and delivered the counter in this blank. Even if the Effective Date box on page eight is not completed, the Effective Date is still the date on which they signed or initialed and delivered the final counter offer. Make sure the parties keep a receipt of when the last offer or counter offer(s) are delivered as the effective date is calculated not only from the date the last party signs or initials the last offer or counter offer but also from the date the last signed/initialed offer or counter offer is delivered. Use facsimile receipt, certified mail with return receipt to establish date of delivery.

• **Contract Deadlines Dependent on Effective Date.** The following deadlines are measured in terms of business days from the effective date unless a specific date is inserted in the appropriate blanks:

1. Paragraph 3(b) Commitment Period (the earlier of 30 days after effective date or 5 days prior to Closing Date unless a specific date is inserted in blank 24)
2. Paragraph 3(b) Application (5 business days from effective date unless a different number of days is specified in blank 23)
3. Paragraph 6 Inspection Period (the earlier of 10 business days from effective date or 5 days prior to closing date unless a specific date is inserted in blank 33) (this covers the Paragraph 7(a) Energy Efficiency Rating Determination, Paragraph 7(b) Radon Testing and Paragraph 8(a)(2) Professional Inspection)

4. Paragraph 7(c) Buildings Below Minimum Elevation in Special Flood Hazard Zone or Coastal High Hazard Zone (20 business days from effective date)

• **Comprehensive Addendum Deadlines Dependent on Effective Date.** The following deadlines are measured in terms of business days from the effective date:

1. Paragraph A(1) Condominium Documents (3 business days from effective date)
2. Paragraph A(2) Condominium Association Approval (insert number of business days in blank 60)
3. Paragraph B(1) Homeowners' Association Approval (insert number of business days in blank 71)
4. Paragraph C Seller Financing (10 business days from effective date)
5. Paragraph H As Is with Right to Inspect (within 10 days from effective date unless a specific date is inserted in blank 108)
6. Paragraph I(2) Right to Cancel Based on Inspection Report. (10 business days from effective date unless a specific date is inserted in blank 33)
7. Paragraph K(2) Lead-based Paint Assessment (unless a specific date is inserted in blank 33 of the contract or the buyer waives the right to have a lead paint inspection)
8. Paragraph L Insurance (the earlier of 30 days after effective date or 5 days prior to closing date unless a specific date is inserted in blank 121 and/or blank 123)
9. Paragraph N Lease Purchase/Lease Option (within 3 days from effective date)
10. Paragraph R(3) Existing Tenant Document Delivery (negotiable number of business days from effective date) and Buyer's Notice of Termination (negotiable number of business days from effective date)
11. Paragraph V Property Disclosure Statement (3 business days from effective date)

• **Time is of the Essence.** Performance by one party at the time or within the time period specified is essential to enable him/her to require performance by the other party. If one party fails to meet a deadline, the other party may be excused from performing his/her obligations or may waive the time requirement, in which case a reasonable amount of time will be allowed for performance.

• **Time Periods.** This contract measures all time periods in terms of business days. Saturdays, Sundays and national legal holidays (to ensure uniformity among in- and out-of-state parties) are not counted when computing contract deadlines. National legal holidays are as follows:

- | | |
|-------------------------------|-----------------|
| 1. New Year's Day | 6. Labor Day |
| 2. Martin Luther King Jr. Day | 7. Columbus Day |
| 3. Washington's Birthday | 8. Veterans Day |
| 4. Memorial Day | 9. Thanksgiving |
| 5. Independence Day | 10. Christmas |



Practice Tip. To calculate deadlines in this contract, start counting business days beginning on the day after the trigger date. For example, if the deadline is "within five days from effective date" and the effective date is Saturday, July 1, the deadline would have to be met by 5 p.m. on Monday, July 10. Here's why:

- | | |
|--------------------------------|--|
| Saturday, July 1 — not counted | Thursday, July 6 — Day 3 |
| Sunday, July 2 — not counted | Friday, July 7 — Day 4 |
| Monday, July 3 — Day 1 | Saturday, July 8 — not counted |
| Tuesday, July 4 — not counted | Sunday, July 9 — not counted |
| Wednesday, July 5 — Day 2 | Monday, July 10 — Day 5, performance due by 5:00 p.m. local time |

• **End of Time Periods.** To clarify the terms of performance this contract provides that all time periods end at 5:00 p.m. in the county where the property is located.

• **Force Majeure.** The purpose of this paragraph is to excuse non-performance of any obligation under this contract if the non-performance is a result of an act of God or force majeure which the non-performing party cannot prevent or overcome. Closing date is extended (not to exceed 30 days) for the period the force is in place. If the force or act of God event continues beyond the 30 day extension, then either party may cancel the contract.

Miscellaneous

272 **12. NOTICES:** All notices shall be in writing and will be delivered to the parties and Broker by mail, personal delivery or electronic
273 media. Except for the notices required by Paragraph 3 of this Contract, **Buyer's failure to deliver timely written notice to**
274 **Seller, when such notice is required by this Contract, regarding any contingencies will render that contingency null and**
275 **void and the Contract will be construed as if the contingency did not exist. Any notice, document or item delivered to**
276 **or received by an attorney or licensee (including a transaction broker) representing a party will be as effective as if**
277 **delivered to or by that party.**

Purpose:

To provide standards regarding the delivery of notices and the consequences of failure to deliver notices on time.

Explanation:

- **Delivery of Notices.** Delivery is the act by which the notice is placed within the actual or constructive control or possession of another. All notices in this contract must be in writing and may be delivered directly to a party or to the party's attorney or to the licensee who is acting as an agent or transaction broker for the party. Delivery to a non-representative who is working with a party will not meet the delivery requirement.



Practice Tip. Monitor deadlines closely to ensure that notices are delivered on time. Use certified mail with a return receipt if unable to personally deliver a required notice.

- **Electronic Media.** Notices may be delivered by facsimile, wire, telephone, e-mail or other electronic means.
- **Failure to Deliver Notices on Time.** When a duty required by this contract depends on another action, such as obtaining financing or selling a home, all required notices related to the contingency must be delivered on or before the specified deadline. If a notice is delivered late or not at all, the party who failed to deliver the notice is deemed to have waived contingencies relating to the noticed matter unless it is the financing contingency and in that case the financing contingency is not waived but the buyer will forfeit the deposit. This means that the party is obligated to fulfill his/her duties stated in the contract even if the circumstances upon which the contract was contingent do not arise.

Miscellaneous

278 **13. COMPLETE AGREEMENT:** This Contract is the entire agreement between **Buyer** and **Seller. Except for brokerage**
279 **agreements, no prior or present agreements will bind Buyer, Seller or Broker unless incorporated into this Contract.**
280 Modifications of this Contract will not be binding unless in writing, signed or initialed and delivered by the party to be bound.
281 Signatures, initials, documents referenced in this Contract, counterparts and written modifications communicated electronically
282 or on paper will be acceptable for all purposes, including delivery, and will be binding. Handwritten or typewritten terms
283 inserted in or attached to this Contract prevail over preprinted terms. If any provision of this Contract is or becomes invalid or
284 unenforceable, all remaining provisions will continue to be fully effective. **Buyer** and **Seller** will use diligence and good faith in
285 performing all obligations under this Contract. This Contract will not be recorded in any public records.

Purpose:

To provide "housekeeping" provisions.

Explanation:

- **Contract Terms Express the Agreement Between the Parties.** When a buyer and seller sign a written contract, a court that is called upon to subsequently interpret the contract will not look beyond what is written in the "four corners" of the contract. If the parties or the brokers verbally agreed to terms that were not written into the contract, the verbal terms will not be enforceable.



Practice Tip. Make sure each party's intent is clearly expressed in the contract. Put every negotiated item in the contract. Do not let verbal agreements between the parties go unwritten. If the buyer is purchasing personal property such as furniture under separate agreement and the purchase is dependent on the sale of the real property, the separate agreement should be referenced in paragraph 21.

- **Contract Modifications.** Any change made to the contract must be written and signed by the party who will be required to perform in accordance with the change.



Practice Tip. All parties should initial every change to the preprinted words of the contract to indicate their consent to the modification. Lengthy changes should be written in paragraph 21, paragraph Y of the comprehensive addendum or on a separate addendum.

- **Conflicting Provisions.** Under general contract interpretation rules, if a preprinted contract term conflicts with a handwritten or typed term, the handwritten or typed term will prevail because it presumably shows the last intent of the parties.
- **Electronic Communications.** Florida Statutes section 668.50 gives legal recognition to contracts formed by electronic means. It provides that persons who have agreed to conduct a transaction by electronic means may do so as long as the information is provided, sent or delivered in an electronic record capable of retention by the recipient at the time of receipt, i.e. the recipient can print or store the electronic record. This contract includes an agreement that the contract, signatures, modifications, etc., may be communicated electronically.
- **Electronic Signatures.** Florida law defines an electronic signature as "an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record." This does not require that special security measures be used to authenticate the signature; an electronic signature can be created by simply having the parties type in their names (or other mark) on the signature lines. As with paper agreements, brokers are advised not to sign on behalf of a party without specific agency authority to do so, e.g. under a power of attorney to convey property.

Practice Tip. With the advent of contracting via e-mail, the conduct of electronic transactions and use of electronic signatures will become more commonplace. Adding a measure of security to ensure that signatures or documents have not been altered once they left the sender's control may be beneficial if needed to enforce the contract at some future date. There are several ways to add security, including the use of digital signatures from third parties such as VeriSign or the Electronic Postmark® offered by the U.S. Postal Service.

- **Severability.** If a court decides that a particular provision of the contract is unenforceable, the parties and court must still honor the other terms of the contract.
- **Public Record.** Since any document recorded on the public records becomes a cloud on the property's title, this contract may not be recorded.

Miscellaneous

²⁸⁶ **14. ASSIGNABILITY; PERSONS BOUND:** Buyer may not assign this Contract without Seller's written consent. The terms
²⁸⁷ "Buyer," "Seller," and "Broker" may be singular or plural. This Contract is binding on the heirs, administrators, executors,
²⁸⁸ personal representatives and assigns (if permitted) of Buyer, Seller and Broker.

Purpose:

To provide for assignment of the contract and to indicate that the contract will bind the seller's, buyer's and broker's successors.

Explanation:

- **Assignment.** This contract is not assignable unless the seller gives written consent. The seller may give a general consent or consent for assignment to "a corporation to be named" or to a named assignee (the person to whom the contract is assigned). The buyer may use paragraph U of the comprehensive addendum to assign the contract. The assignee will be bound to perform the contract as written and cannot change any provision without the seller's consent.



Practice Tip. The seller should seek legal advice prior to allowing the buyer to assign the contract if the seller is relying on the buyer's financial ability to meet the payments specified in the contract, make purchase money mortgage payments to the seller or assume an existing mortgage from which the seller is not released from liability.

- **Liability of Buyer After Assignment.** Unless the contract specifies otherwise, the buyer remains liable for full performance of the contract if the assignee fails to perform. If the parties intend for the buyer to not remain bound, check the "will not" box in the comprehensive addendum (property claus-

es addendum) or insert a clause such as “Buyer will be relieved of all liability under this contract upon seller’s receipt of a copy of the assignment.”



Practice Tip. Do not add the words “and/or assigns” at any point in the contract. This phrase may create ambiguity as to whether or not the buyer remains liable for performance.

- **Death of Party.** This contract will continue to be in effect even if a party passes away. The deceased party’s estate will assume responsibility for performance.

Default and Dispute Resolution	
289	DEFAULT AND DISPUTE RESOLUTION
290	15. DEFAULT: (a) Seller Default: If for any reason other than failure of Seller to make Seller’s title marketable after diligent effort, Seller
291	fails, refuses or neglects to perform this Contract, Buyer may choose to receive a return of Buyer’s deposit without waiving the right to
292	seek damages or to seek specific performance as per Paragraph 16 . Seller will also be liable to Broker for the full amount of the
293	brokerage fee. (b) Buyer Default: If Buyer fails to perform this Contract within the time specified, including timely payment of all deposits,
294	Seller may choose to retain and collect all deposits paid and agreed to be paid as liquidated damages or to seek specific performance as
295	per Paragraph 16 ; and Broker will, upon demand, receive 50% of all deposits paid and agreed to be paid (to be split equally among
296	Broker) up to the full amount of the brokerage fee.
297	

Purpose:

To provide remedies to be used in the event that one of the parties defaults on the contract.

Explanation:

- **Unmarketable Title.** If a defect in the title causes it to be considered unmarketable and the seller has tried to correct the defect or is unable to because of time restraints (e.g., the correction would require a lawsuit that is reasonably expected to last longer than the curative period), the inability to correct the defect should not be treated as default.
- **Seller Default.** If the seller fails to fulfill any duty required by the contract, the buyer may declare a default, cancel the contract and choose only one of the following remedies:
 1. The buyer may demand that all deposits be returned. The buyer still has the legal right to arbitrate with the seller for actual damages incurred.
 2. The buyer may request that the escrow agent continue to hold the deposit as a sign of good faith while the buyer tries to compel the seller to perform by bringing a specific performance suit in arbitration.
- **Actual Damages.** This is the amount the buyer actually lost by relying on the seller’s promise to perform the agreement. Even if the buyer’s deposit is returned, the buyer may seek reimbursement from the seller for expenses incurred in connection with the transaction.
- **Liquidated Damages.** This is the amount of money both parties agree the buyer will pay to the seller for breach of contract by the buyer. The seller should make a good faith estimate when entering into the contract as to the amount of actual damages he/she may suffer if the buyer fails to perform. The amount set as liquidated damages is determined in advance of the buyer’s default in lieu of actual damages.
- **Specific Performance.** Either party may ask the arbitrator to compel the defaulting party to fully perform the contract.
- **Buyer Default.** If the buyer fails to fulfill any duty required by the contract, the seller may declare a default, cancel the contract and choose only one of the following remedies:
 1. The seller may demand that all deposits be forfeited as liquidated damages. The seller does not have the legal right to seek actual damages incurred.
 2. The seller may request that the escrow agent continue to hold the deposit as a sign of good faith while the seller tries to compel the buyer to perform by seeking specific performance in arbitration.
- **Brokerage Fee.** If the seller defaults, he/she is responsible for paying the broker’s fee, because the broker performed the task for which he/she was hired — to produce a buyer who was ready, willing and able to buy the property. If the buyer defaults, the listing or selling broker (or both) may demand up to one-half of the buyer’s deposit, whether or not the seller keeps it as liquidated dam-

ages. The broker's share of the deposit must then be split equally with the cooperating broker. However, a broker may not receive more than the amount of the commission that he/she would have received if the transaction had closed.



Practice Tip. If it looks like a party has defaulted on the contract, advise both parties to seek legal advice regarding their rights and remedies. Even if you think one party is clearly entitled to the deposit, it should not be released without proper authorization from both parties. See the explanation to paragraph 17.

Default and Dispute Resolution

298 **16. DISPUTE RESOLUTION:** This Contract will be construed under Florida law. All controversies, claims and other matters in
299 question arising out of or relating to this transaction or this Contract or its breach will be settled as follows:
300 (a) **Disputes concerning entitlement to deposits made and agreed to be made:** Buyer and Seller will have 30 days from the
301 date conflicting demands are made to attempt to resolve the dispute through **mediation**. If that fails, Escrow Agent will
302 submit the dispute, if so required by Florida law, to Escrow Agent's choice of arbitration, a Florida court or the Florida Real
303 Estate Commission ("FREC"). Buyer and Seller will be bound by any resulting award, judgment or order. A broker's
304 obligation under Chapter 475, FS and the FREC rules to timely notify the FREC of an escrow dispute and timely resolve the
305 escrow dispute through mediation, arbitration, interpleader or an escrow disbursement order, if the broker so chooses,
306 applies to brokers only and does not apply to title companies, attorneys or other escrow companies.

Purpose:

To establish a method and procedure for resolving contract disputes.

Subparagraph (a) allows the escrow agent to choose a method available under the applicable license law to resolve the conflict in demands.

Deadline:

- **Mediation.** The parties have 30 business days from the date a dispute arises to attempt to resolve the matter by mediation. For contract purposes, this deadline is met if, within the 30 business days, either a mediation takes place or has been scheduled to occur at a later date.

Explanation:

- **Florida Law.** No matter what state(s) the parties reside in, all disputes arising in connection with the contract or the transaction must be resolved in accordance with the laws of Florida and the provisions of this paragraph.
- **Conflicting Demands.** A dispute over a deposit occurs when both the buyer and seller demand the deposit be given to them. They do not have to put their demands in writing; under the real estate license law, a verbal demand is enough to trigger the conflict. For calculation of time periods, the dispute is considered to arise on the day the last party demands the deposit. For example, Day 1 - the buyer demands the deposit and the escrow agent informs the seller of the demand, but the seller doesn't respond. Day 2 - the seller tells the escrow agent that he/she is entitled to the deposit. Day 2 would be the date used for calculation of time periods. The law regarding conflicting demands is found in Section 475.25 (1)(d), *Florida Statutes*, and 61J2-10.032 of the FREC rules.
- **Resolving Escrow Deposit Disputes.** Subparagraph (a) covers deposit disputes. The first step is to try to mediate the dispute (see explanation below). Within 30 business days from the date the conflicting demands arose, mediation should be scheduled or held, if possible. If the parties are unable to come up with a date on which they can mediate, and the deadline passes, another dispute resolution method may be tried.
- **Escrow Agent Dispute Resolution Rules.** The escrow agent is usually an attorney, real estate brokerage or title company, each of which has its own set of rules to be followed in the event of an escrow dispute. For example, if an attorney is the escrow agent, he/she may be under no legal duty to try to resolve the dispute if mediation does not work and therefore would not be required to timely notify FREC of an escrow dispute or timely resolve the dispute.
- **Real Estate Licensee Dispute Notification Requirements.** Rule 61J2-10.032 imposes the following requirements on real estate licensees who act as escrow agents:
 1. Notify FREC in writing within 15 business days from the date of the last party's demand that there is a conflict in demands. Include a description of the property involved, the names of the parties and the amount of money at stake. Send the notice by certified mail with return receipt requested to the Division of Real Estate, 400 West Robinson Street, Orlando, Florida 32801. You may use FAR form NED-6, Notice of Escrow Dispute (available through FAR's licensing program or online).

2. Select one of the four settlement procedures outlined below and notify FREC of the method chosen within 30 business days from the date of the last party's demand.
3. Notify FREC within 10 business days from the date on which the matter is settled. Include specifics on the amount of money disbursed to each party.

Often, the escrow agent is able to get the parties to resolve a dispute by negotiation before 15 business days have passed. If so, there is no need to report the dispute to FREC.



Practice Tip. This contract authorizes you to submit the matter to mediation. If you do so within 15 business days from the date of the last party's demand (either you or the parties have contacted the mediator to schedule the mediation), you may combine notification steps 1 and 2 by telling FREC in one letter that the conflict exists and has been submitted to mediation in accordance with the contract provisions. This will save a step and a certified mail charge.

• **Methods of Resolution Available to Real Estate Licensees.** Under real estate license law, a licensee who acts as escrow agent may be responsible for starting a formal dispute resolution process if the parties cannot settle their differences. Unless an exception applies, the licensee must select one of four methods described below and notify FREC of the chosen method within 30 business days from the date of the last party's demand.

1. Mediation. This contract requires the parties to try to mediate the escrow dispute within 30 business days from the date of the last party's demand for the money. This can be accomplished as follows:

- Remind the parties that they agreed in the contract to mediate escrow disputes.
- Decide whether you will try to schedule a mediation on the parties' behalf or give them the phone number for the American Arbitration Association (AAA) or other mediator so that they can schedule it themselves.
- If the mediation occurs before 15 business days have passed and results in a written settlement of the dispute, disburse the funds without having to notify FREC of the conflict.
- If the mediation occurs before 15 business days have passed and the parties did not resolve the conflict, select one of the remaining three methods of dispute resolution and notify FREC of both the conflict and the selected resolution method.
- If, within the 15 business day time period, the parties schedule a mediation to take place sometime after that time period expires, notify FREC that the dispute exists. Then, try to get the dispute submitted to mediation within the next 15 business days as per the contract. If you are successful, notify FREC that the matter was submitted to mediation. If unsuccessful, choose another dispute resolution method and notify FREC of the method chosen. Under Florida license law, any attempt to mediate must be completed within 90 calendar days from the date of the last party's demand. If the mediation results in a written settlement before the 90 day period expires, disburse the funds and notify FREC of the results within 10 business days from settlement. If the mediation does not result in a timely written settlement, select another method and notify FREC.

2. Escrow Disbursement Order (EDO). FREC will, based on a recommendation from the Division of Real Estate, decide who is entitled to the deposit. If you disburse the funds in accordance with FREC's decision, you'll be protected from any disciplinary action by FREC relating to the disbursement. However, you may still have to defend the disbursement in court or arbitration. An EDO is free. If FREC notifies you in writing that it will not issue an EDO, you must choose another procedure and give FREC written notice of your intentions within 15 business days.

3. Arbitration. The escrow agent may choose to submit the matter to arbitration. Arbitration services can be found in the Yellow Pages business listings. See the explanation of arbitration below.

4. Litigation. The escrow agent may choose to file an interpleader or other civil action with a court (small claims court if the disputed amount is \$5,000 or less, county court if it is \$5,000.01 through \$15,000 and circuit court if it is more than \$15,000, excluding costs and interest). Or, the parties may sue each other over the deposit, in which case the escrow agent must notify FREC that the matter has been submitted to court. The funds should be held until the court issues a disbursement order.

• **Transferring Disputes From Litigation to Arbitration.** One method available to the real estate licensee to resolve a conflict in demands is to turn the money over to a court using an interpleader or civil action. Generally the escrow agent is out of the dispute at that point and the parties are left to plead their causes before the judge. However, sometimes a party will file a claim against the escrow agent alleging some type of fault on the escrow agent's part. If this happens, the judge should consent to transfer the whole matter to an arbitration proceeding in accordance with the contract's terms.

• **Exceptions to Dispute Resolution Requirement.** Florida license law does not require a broker who is holding a deposit in escrow to follow the usual path of the dispute resolution process in the following circumstances:

1. If the buyer of a residential condominium unit delivers to the broker written notice of the buyer's intent to cancel the sales contract pursuant to the buyer's statutory three day right of rescission, the broker may release the funds to the buyer.
2. If the buyer after using good faith (in the broker's opinion) fails to satisfy the terms in the financing clause of the sales contract, the broker may release the funds to the buyer.
3. If one of the parties to a failed real estate sales transaction does not respond to the broker's inquiry as to whether that party is placing a demand on the trust funds or is willing to release them to the other party, the broker may send a certified notice letter, return receipt requested, to the non-responding party. This notice should include the information that a demand has been placed by the other party, that a response must be received by a certain date, and that failure to respond will be construed as authorization for the broker to release the funds to the other party. If the party fails to respond in accordance with the terms of the letter, the broker may release the funds to the other party.
4. If the broker received the deposit pursuant to a residential sales contract utilized by the Department of Housing and Urban Development (HUD) in the sale of HUD-owned property, the broker is not required to follow the notice or settlement procedures of the real estate license law but should instead follow HUD's Agreement to Abide, Broker Participation Requirements, and 24 C.F.R. s. 291.135 as they pertain to the proper disposition of deposits.

In these circumstances, the parties may still pursue contractual remedies against each other. They may also attempt to involve the broker if they disagree with the broker's action, but the broker would not have to worry about license discipline.

• **No Escrowed Property.** If the contract was executed without a deposit and contains a promise by the buyer to make a deposit but the buyer breaks that promise, the person who was to become the escrow agent should advise the parties about their agreement to try to mediate the dispute.

Default and Dispute Resolution

307 (b) All other disputes: Buyer and Seller will have 30 days from the date a dispute arises between them to attempt to
308 resolve the matter through mediation, failing which the parties will resolve the dispute through neutral binding **arbitration**
309 in the county where the Property is located. The arbitrator may not alter the Contract terms or award any remedy not
310 provided for in this Contract. The award will be based on the greater weight of the evidence and will state findings of fact
311 and the contractual authority on which it is based. If the parties agree to use discovery, it will be in accordance with the
312 Florida Rules of Civil Procedure and the arbitrator will resolve all discovery-related disputes. Any disputes with a real
313 estate licensee or firm named in Paragraph 19 will be submitted to arbitration only if the licensee's broker consents in
314 writing to become a party to the proceeding. This clause will survive closing.

Purpose:

Subparagraph (b) requires the parties to submit all disputes other than deposit disputes to arbitration rather than litigating their claims.

Deadline:

• **Mediation.** This must be attempted within 30 business days from the date the dispute arises. For contract purposes, this deadline is met if, within the 30 business days, either a mediation takes place or has been scheduled to occur at a later date.

Explanation:

- **Non-deposit Disputes.** This includes conflicts over any performance (or lack thereof) other than the payment of deposits.
- **Location of Arbitration.** The arbitration may be held anywhere in the county where the real property is located. Always try to choose a neutral site such as the arbitrator's office.
- **Specific Enforcement of Arbitration Agreement.** If any party files a lawsuit or otherwise refuses to arbitrate any dispute covered under subparagraph (b), the other party may ask the court to compel the arbitration of the dispute.
- **Arbitrator's Power.** The arbitrator cannot rewrite the contract. He/she must review the evidence in light of the contract's terms and determine which side presents the most compelling evidence. The award must state findings of fact (those facts which the arbitrator found to be true or most likely to be

true) as well as the contractual authority on which the award is based. The arbitrator also has the authority to solve any questions related to discovery, if any.

- **Arbitration Award.** The award must be in line with the provisions of the contract, such as paragraph 15. If a party fails to comply with the arbitrator's decision, the other party can file the decision with a court. The court's decision has the same legal effect as any judgment issued by a court.
- **Discovery.** "Discovery" is the process by which attorneys and parties learn more about the other side's case. If discovery is used, each party may compel the other to turn over copies of relevant documents or other evidence so as to be more thoroughly prepared to argue his/her own case. Depositions, interrogatories and subpoenas are all part of the discovery process. If the parties have attorneys, they are likely to want to utilize discovery procedures.
- **Claims Against Licensees.** If any party wants to arbitrate a dispute with a real estate licensee, the licensee's broker must decide whether to arbitrate or to let the matter go to court. If the broker decides to arbitrate, he/she should give written consent to become a party to the proceeding. The brokerage, like the other parties, will be responsible for paying its own fees and for bearing an equal share of the arbitrator's fees and administrative fees. Brokers cannot compel the parties to arbitrate if they have agreed to waive the arbitration clause and take their claims to court

Default and Dispute Resolution

315 (c) **Mediation and Arbitration; Expenses:** "Mediation" is a process in which parties attempt to resolve a dispute by
316 submitting it to an impartial mediator who facilitates the resolution of the dispute but who is not empowered to impose a
317 settlement on the parties. Mediation will be in accordance with the rules of the American Arbitration Association ("AAA") or
318 other mediator agreed on by the parties. The parties will equally divide the mediation fee, if any. "Arbitration" is a process in
319 which the parties resolve a dispute by a hearing before a neutral person who decides the matter and whose decision is
320 binding on the parties. Arbitration will be in accordance with the rules of the AAA or other arbitrator agreed on by the
321 parties. Each party to any arbitration will pay its own fees, costs and expenses, including attorneys' fees, and will equally
322 split the arbitrators' fees and administrative fees of arbitration.

Purpose:

Subparagraph (c) explains what is meant by mediation and arbitration and allocates the parties' expenses.

Explanation:

- **Mediation.** The process by which a third person tries to persuade two contending parties to adjust or settle their dispute. The mediator first meets with both parties together so that each side can explain its point of view. Next, the mediator meets with one party individually to try to explain the strengths of the other side's argument and to persuade that party to agree to a settlement. Then, the mediator meets with the other party and follows the same procedure. Finally, the mediator brings the parties back together to conclude the proceeding.



Practice Tip. The mediator should not allow the parties to remain together too long once they have reached a settlement via their individual meetings with the mediator — the mediation agreement may be too fragile to survive a lengthy face-to-face confrontation.

- **Cost of Mediation.** Mediation may or may not be free, depending on who mediates. If the mediator charges a fee or if there is a cost for using the facilities, the parties must split the fees equally.
- **Who Can Mediate.** Currently there is no licensure requirement — anyone can facilitate a mediation. A real estate licensee involved in the transaction may initially act as a mediator as part of the normal negotiation process. However, a neutral mediator should be obtained if the parties become deadlocked, if they appear to not work well with the licensee or if the licensee wants to avoid the appearance of favoritism, especially if he/she is the agent of one of the parties.



Practice Tip. Some local Boards/Associations of REALTORS, some local bar associations and the AAA currently offer mediation services. There is also an online mediator, the National Arbitration Forum (NAF), <http://www.arb-forum.com>, which may be useful when the parties are in different locations.

- **Arbitration.** This is the dispute resolution process by which the parties to a dispute choose an impartial person to hear their arguments and to issue a decision to which the parties will adhere.

This process is intended to avoid the formalities, delay, expense and aggravation of ordinary litigation. Chapter 682, *Florida Statutes*, provides the right to have the arbitration decision reviewed by a court in limited circumstances.

- **Arbitrator.** The arbitration must be conducted in accordance with the rules of the AAA or those of another arbitrator mutually agreed upon by the parties. Providers of arbitration services can be found in the Yellow Pages business listings.



Practice Tip. The local bar association or NAF may offer arbitration services at a less expensive rate than the AAA, so it could pay to shop around.

- **Costs of Arbitration.** Each party pays his/her own costs, fees and expenses. All the parties to the arbitration pay an equal share of the arbitrator's costs and administrative fees.

Escrow Agent and Broker

323 **ESCROW AGENT AND BROKER**
324 **17. ESCROW AGENT:** Buyer and Seller authorize Escrow Agent to receive, deposit and hold funds and other items in escrow and,
325 subject to clearance, disburse them upon proper authorization and in accordance with Florida law and the terms of this Contract,
326 including disbursing brokerage fees. The parties agree that Escrow Agent will not be liable to any person for misdelivery of escrowed
327 items to Buyer or Seller, unless the misdelivery is due to Escrow Agent's willful breach of this Contract or gross negligence. If Escrow
328 Agent interpleads the subject matter of the escrow, Escrow Agent will pay the filing fees and costs from the deposit and will recover
329 reasonable attorneys' fees and costs to be paid from the escrowed funds or equivalent and charged and awarded as court costs in
330 favor of the prevailing party. All claims against Escrow Agent will be arbitrated, so long as Escrow Agent consents to arbitrate.

Purpose:

To establish the role and authority of the escrow agent.

Explanation:

- **Escrow Agent's Authority.** The escrow agent may receive funds and property, deposit them promptly into an escrow account, hold them in escrow and disburse them after the funds have cleared and proper authorization for disbursement has been given.
- **Non-cash Escrow Property.** If the parties give the escrow agent an item of personal property such as a bond or a car, the escrow agent should make sure the items are held in a safe location. Examples of possible locations would be a safety-deposit box or a personal storage room.



Practice Tip. In paragraph 21, describe the location and manner in which the item is being held and have the parties initial to indicate consent.

- **Location of Escrow Agent.** FREC rule 61J2-14.008 currently requires that when escrow funds are placed with a title company or an attorney, the licensee shall indicate on the sales contract the name and address of said entity. Consequently, the name, address and phone number of the escrow agent should be filled in blanks 15 and 16.
- **Misdelivery of Escrowed Items.** The escrow agent should follow the rules established by his/her state licensing authority with regard to disbursement of escrowed items. The real estate license law requires proper authorization by all interested parties. If the escrow agent delivers the items to the wrong person without proper authorization, the escrow agent may be liable for gross negligence or willful breach of contract. However, if the agent receives proper authorization and releases the funds accordingly, the escrow agent should not be liable to either party even if a court later determines that the funds should have been distributed differently.
- **Proper Authorization for Disbursement.** Depending on what type of license the escrow agent holds, "proper authorization" could have different meanings. For a real estate licensee, proper authorization is the verbal or written consent to release the funds in a particular manner to a particular person (e.g., "Give the buyer his money back."). Proper authorization also occurs when FREC issues an escrow disbursement order directing the licensee to release the funds. If the licensee complies, FREC will not bring disciplinary action against him/her, even if a court later determines that the items should have been distributed differently. Also, the licensee can use disbursement in accordance with an EDO as a defense to charges of misdelivery because of gross negligence or willful breach of contract. See also the discussion of paragraph 16 (a), particularly Exceptions to Dispute Resolution Requirement.

- **Court Action.** If the escrow agent chooses to file the money with the court in an escrow dispute case, the escrow agent is authorized to deduct his/her filing fees and related expenses directly from the escrowed funds. The expenses and costs will then be paid by whomever loses the case.



Practice Tip. Ask the court for reimbursement of attorney’s fees and costs at the time the complaint is filed.

Escrow Agent and Broker

331 **18. PROFESSIONAL ADVICE; BROKER LIABILITY:** Broker advises **Buyer** and **Seller** to verify all facts and representations that are
 332 important to them and to consult an appropriate professional for legal advice (for example, interpreting contracts, determining the
 333 effect of laws on the Property and transaction, status of title, foreign investor reporting requirements, the effect of property lying
 334 partially or totally seaward of the coastal construction control line, etc.) and for tax, property condition, environmental and other
 335 specialized advice. **Buyer** acknowledges that Broker does not reside in the Property and that all representations (oral, written or
 336 otherwise) by Broker are based on **Seller** representations or public records. **Buyer agrees to rely solely on Seller, professional**
 337 **inspectors and governmental agencies for verification of the Property condition, square footage and facts that materially affect**
 338 **Property value.** **Buyer** and **Seller** respectively will pay all costs and expenses, including reasonable attorneys’ fees at all levels,
 339 incurred by Broker and Broker’s officers, directors, agents and employees in connection with or arising from **Buyer’s** or **Seller’s**
 340 misstatement or failure to perform contractual obligations. **Buyer** and **Seller** hold harmless and release Broker and Broker’s officers,
 341 directors, agents and employees from all liability for loss or damage based on **(1) Buyer’s** or **Seller’s** misstatement or failure to
 342 perform contractual obligations; **(2)** Broker’s performance, at **Buyer’s** and/or **Seller’s** request, of any task beyond the scope of
 343 services regulated by Chapter 475, F.S., as amended, including Broker’s referral, recommendation or retention of any vendor; **(3)**
 344 products or services provided by any vendor; and **(4)** expenses incurred by any vendor. **Buyer** and **Seller** each assume full
 345 responsibility for selecting and compensating their respective vendors. This paragraph will not relieve Broker of statutory obligations.
 346 For purposes of this paragraph, Broker will be treated as a party to this Contract. This paragraph will survive closing.

Purpose:

To clarify the broker’s role and protect the broker from liability for services rendered that are outside the scope of Chapter 475, *Florida Statutes*.

Explanation:

- **Broker Advice.** This notice serves to alert the parties that they are responsible for verifying any representations that they feel are material to the transaction and that if they need advice on legal, tax, environmental or foreign investor reporting requirements or other areas outside the scope of the broker’s expertise, they need to seek an appropriate professional.



Practice Tip. Buyers and sellers will often view the real estate licensee as their “free” source of any information they might desire. Learn your limitations and know when to refer the client or customer to an appropriate professional. Use caution when making statements about the property condition, square footage or other relevant facts. No representations should be made without personal knowledge of truth or, absent personal knowledge, a disclaimer such as “While I have no personal knowledge about _____, the seller says _____.”

- **Real Estate License Law.** The real estate license law allows a licensee to negotiate sales and direct or assist in the procuring of prospects, or the negotiation or closing of any transaction which does, or is calculated to, result in a sale, exchange or lease of real property.
- **Unlicensed Practice of Law.** The Florida Supreme Court regulates the practice of law. In a 1950 case, the Supreme Court examined the extent to which a real estate licensee could participate in a transaction before crossing the line into the practice of law. The Supreme Court decided that the real estate licensee’s role is generally preliminary to the actual conveyance. Since the licensee is retained to find ready, willing and able parties to a transaction or to procure a binding contract, the licensee is authorized to draft papers such as a memorandum, deposit receipt or contract which records his/her work in the real estate transaction. Work beyond this point must be handled by a lawyer. The licensee may not guide the parties through the steps that consummate the closing. For example, he/she may not give opinions concerning the state of the property’s title, predict the legal effect of a particular clause or interpret the parties’ rights in a specific situation.
- **Foreign Investor Reporting Requirements.** If the buyer or seller is a foreign person as defined by federal law, he/she should seek the advice of an international law/immigration law attorney to discuss the reporting obligations. This type of advice is especially crucial because the real estate licensees involved in the transaction could be held liable if the reporting requirements are not fulfilled.

- **Broker Representations.** Because real estate licensees do not live in the homes they are selling, they are not usually as familiar with the property as the homeowner. Yet, when the buyer moves in and discovers problems that were not disclosed, the broker is the first person the buyer contacts to fix the problems. This clause notifies and contains a promise by the buyer that he or she will look to those persons/entities most likely to have more detailed knowledge about the most frequently disputed areas -- property condition, square footage and facts that materially affect the property value. It will not relieve the licensee of liability for fraud or misrepresentations made in the course of the transaction.
- **Release.** This clause is intended to address the broker's civil liability for loss and damage incurred in connection with the performance of the task. It will not protect the broker from FREC disciplinary action.
- **Scope of Release.** This release only covers tasks a real estate licensee may be asked to do but is not required to do as part of fiduciary or other legal duties established by real estate license law. This is not authorization for the licensee to engage in activities that normally require specialized, professional expertise. However, if the buyer or seller asks the licensee to perform a task that is lawful and the licensee feels competent to complete the task, then this release may apply.

Escrow Agent and Broker

347 **19. BROKERS:** The licensee(s) and brokerage(s) named below are collectively referred to as "Broker." **Instruction to Closing**
 348 **Agent: Seller and Buyer** direct closing agent to disburse at closing the full amount of the brokerage fees as specified in separate
 349 brokerage agreements with the parties and cooperative agreements between the brokers, except to the extent Broker has
 350 retained such fees from the escrowed funds. In the absence of such brokerage agreements, closing agent will disburse
 351 brokerage fees as indicated below. This paragraph will not be used to modify any MLS or other offer of compensation made by
 352 **Seller** or listing broker to cooperating brokers.

354* _____ (36) _____ (37) _____ (38)
 355 *Selling Sales Associate/License No.* *Selling Firm/Brokerage Fee: (\$ or % of Purchase Price)*

356* _____ (36) _____ (37) _____ (39)
 357 *Listing Sales Associate/License No.* *Listing Firm/Brokerage fee: (\$ or % of Purchase Price)*

Purpose:

To name the real estate brokers involved in the transaction, and to reiterate that the brokers will be paid at closing.

Blanks:

- (36) Insert the name and FREC license number of the real estate licensees who worked with the parties.
- (37) Insert the names of each real estate licensee's brokerage.
- (38) If the listing office did not offer to compensate the selling office through the MLS or otherwise, insert the amount of commission that the buyer or seller has agreed to pay the selling office in the blank underneath the selling broker's name. Do not forget to indicate who is responsible for paying the fee.
- (39) If there is no separate listing agreement, insert the amount of commission that the seller has agreed to pay the listing office in the blank underneath the listing broker's name. Do not forget to indicate who is responsible for paying the fee.

Explanation:

- **"Broker."** In this contract, "broker" includes each person named in paragraph 19, as well as the named brokerages.
- **Brokerage Fee Payment.** The contract states that the brokers will be paid at closing the amount specified in the listing agreement and the MLS or other cooperative/compensation agreement between the listing and selling offices. If there are no separate agreements, the amount of the brokerage fee may be specified in blanks 38 and 39.
- **Procuring Cause.** Most listing agreements provide that the broker is considered the procuring cause if he/she finds a buyer who is ready, willing and able to purchase the property at the seller's price and terms. Some listing agreements provide that the contract must be closed for the broker to be considered procuring cause.

Addenda and Additional Terms

ADDENDA AND ADDITIONAL TERMS

358

359 **20. ADDENDA:** The following additional terms are included in the attached addenda and incorporated into this Contract (check if
360 applicable):

- | | | | |
|--|--|--|--|
| 361* <input type="checkbox"/> A. Condo. Assn. | <input type="checkbox"/> H. As Is w/Right to Inspect | <input type="checkbox"/> O. Interest-Bearing Account | <input type="checkbox"/> V. Prop. Disclosure Stmt. |
| 362* <input type="checkbox"/> B. Homeowners' Assn. | <input type="checkbox"/> I. Inspections | <input type="checkbox"/> P. Back-up Contract | <input type="checkbox"/> W. FIRPTA |
| 363* <input type="checkbox"/> C. Seller Financing | <input type="checkbox"/> J. Insulation Disclosure | <input type="checkbox"/> Q. Broker - Pers. Int. in Prop. | <input type="checkbox"/> X. 1031 Exchange |
| 364* <input type="checkbox"/> D. Mort. Assumption | <input type="checkbox"/> K. Pre-1978 Housing Stmt. (LBP) | <input type="checkbox"/> R. Rentals | <input type="checkbox"/> Y. Additional Clauses |
| 365* <input type="checkbox"/> E. FHA Financing | <input type="checkbox"/> L. Insurance | <input type="checkbox"/> S. Sale/Lease of Buyer's Property | |
| 366* <input type="checkbox"/> F. VA Financing | <input type="checkbox"/> M. Housing Older Persons | <input type="checkbox"/> T. Rezoning | <input type="checkbox"/> Other _____ |
| 367* <input type="checkbox"/> G. New Mort. Rates | <input type="checkbox"/> N. Lease purchase/Lease option | <input type="checkbox"/> U. Assignment | <input type="checkbox"/> Other 40 _____ |

368* **21. ADDITIONAL TERMS:** _____ **41** _____

369*

370*

371*

372*

373*

Purpose:

To provide a place to indicate that additional terms are included in addenda which is incorporated into the contract and to provide space to write in any additional terms that the parties want included.

Boxes:

Check the boxes that correspond to the particular clause of the Comprehensive Addendum the parties wish to incorporate into the contract.

Blanks:

- 40** Insert the name or number of any attached document other than the Comprehensive Addendum.
- 41** Insert any terms the parties want that are not covered in the preprinted contract.

Explanation:

• **Addenda.** When attaching addenda to the contract, you must either reference each addendum in the contract or reference the contract in the body of each addendum so that a person examining the documents would know they go together. Paragraph 20 specifically names the clauses included in the comprehensive addendum and provides a box and blank to identify any other attached document. Preprinted text in the Comprehensive Addendum makes reference to the contract.



Practice Tip. Number all addenda consecutively to make reference easy.

• **Additional Terms.** If any material terms are added in paragraph 21, make sure they clearly express the intent of the parties.

Offer

411 This is intended to be a legally binding contract. If not fully understood, seek the advice of an attorney prior to signing.

412

OFFER AND ACCEPTANCE

413* (Check if applicable: Buyer received a written real property disclosure statement from Seller before making this Offer.)

414 Buyer offers to purchase the Property on the above terms and conditions. Unless this Contract is signed by Seller and a copy

415* delivered to Buyer no later than 42 a.m. p.m. on 43, _____, this offer will be revoked

416 and Buyer's deposit refunded subject to clearance of funds.

417

COUNTER OFFER/REJECTION

418* Seller counters Buyer's offer (to accept the counter offer, Buyer must sign or initial the counter offered terms and deliver a copy

419 of the acceptance to Seller. Unless otherwise stated, the time for acceptance of any counteroffers shall be 2 days from the

420* date the counter is delivered. Seller rejects Buyer's offer.

421* Date: 44 Buyer: 45

422* Print name: 46

423* Date: 44 Buyer: 45

424* Phone: 47 Print name: 46

425* Fax: 48 Address: 49

426* E-mail: 50

427* Date: 44 Seller: 45

428* Print name: 46

429* Date: 44 Seller: 45

430* Phone: 47 Print name: 46

431* Fax: 48 Address: 49

432* E-mail: 50

Purpose:

To provide deadline information on the seller's acceptance and to provide space for the buyer to sign the contract. To provide space for the seller to indicate acceptance or rejection of the buyer's offer.

Boxes:

Check the box on the first line of this section if the seller gave the buyer a written disclosure concerning the property condition before the buyer signed the offer.

Check the box that correctly depicts the time when the seller's signed copy of the acceptance is due back to the buyer.

Check the first box after the seller signature section if the seller wants to counter the buyer's offer.

Check the second box after the seller signature section if the seller does not accept the buyer's offer and does not want to counter it.

Blanks:

42 Insert the time at which the seller's signed copy of the acceptance is due back to the buyer.

43 Insert the month, day and year on which the seller's signed copy of the acceptance is due back to the buyer.

44 Each party should insert the date on which he/she signs the offer.

45 Each party should sign his/her name.

46 Print the parties' names.

47 Insert the parties' telephone numbers.

48 Insert the buyer(s) facsimile numbers.

- 49 Insert the addresses at which the parties want to receive all notices under the contract.
- 50 Insert the parties' e-mail addresses.

Explanation:

- **Offer to Purchase.** When the buyer signs this contract and requests that it be delivered to the seller, he/she is making a revocable offer to the seller.
- **Withdrawal of Offer.** A revocable offer means that the buyer has the right to withdraw the offer at any time prior to the seller's valid acceptance. If the buyer wants to withdraw the offer, that fact should be communicated to the seller as quickly as possible.
- **Valid Acceptance.** For the seller's acceptance of this contract to be valid, the seller must sign the offer, inform the buyer that he/she signed the offer and return the signed copy of the contract to the buyer by the time stated in blanks 42 and 43.



Practice Tip. If the buyer is represented by a buyer's agent, timely delivery of the signed acceptance to the agent is the legal equivalent of timely delivery to the buyer. This is not true when the buyer is not represented but is working solely with a seller's agent or transaction broker. In that case, the signed acceptance must be delivered directly to the buyer.

- **Automatic Revocation of Offer.** In this contract, the buyer's offer will automatically be revoked on the date specified in blank 43 if not returned to the buyer or buyer's agent in time.
- **Refund of Deposit.** The buyer's deposit may be released upon (1) clearing of the funds if made by check and (2) proper authorization from all interested parties (i.e., the seller if he/she has acquired an interest in the funds). If the escrow agent is holding the buyer's deposit check for three business days as allowed under FREC rules, he/she may return the check to the buyer within those three business days if the seller rejects the offer or does not return it in time.
- **Rejection.** The seller may reject the offer either verbally or in writing, or may simply let the offer period expire without response. If the seller rejects the offer, try to encourage the seller to check the appropriate box. There is no legal requirement that the seller indicate rejection in writing, but it will help you explain the rejection to the buyer and determine whether or not the seller has acquired an interest in the buyer's deposit.
- **Counter Offer.** When the seller makes a counter offer, it is treated as both a rejection of the buyer's initial offer and as a new offer from the seller to the buyer. In practice, the seller will generally make any desired changes to the contract, initial them and sign the acceptance. At that point, the licensee should return the contract to the buyer for him/her to initial the seller's changes within 2 days from the time the counter is delivered unless otherwise stated. The counter offer may be written on FAR's Counter Offer (CO-2) form.

Effective Date

433* Effective Date: 51 (The date on which the last party signed or initialed and delivered the final offer or counteroffer.)

Purpose:

To have a convenient, easily noticed place to insert the contract effective date.

Blanks:

- 51 Indicate the date on which the last party signed or initialed and delivered the final offer or counter offer. Either that party or the real estate licensee may insert the correct date.

Explanation:

- **Effective Date.** As specified in paragraph 11, this is the date on which the final version of the contract is signed by the last party who needs to sign it and delivers the final version.
- **Deadlines.** For contract and comprehensive addendum deadlines dependent on the effective date, see the explanation to paragraph 11.
- **Mailbox Rule:** If the last party who signs/initials the final offer or counteroffer delivers through the mail, the date of delivery will be the date the final offer or counteroffer is placed in the mail thereby making the delivery effective upon dispatch in the mail.

FARA-9

**Comprehensive Addendum
to the Residential Sale and
Purchase Contract**

The following two items located on each page of the Comprehensive Addendum should be completed if any clause on the page is incorporated into the contract.

Comprehensive Addendum

Residential Sale and Purchase Contract: Comprehensive Addendum

FLORIDA ASSOCIATION OF REALTORS®

- 1* The clause below will be incorporated into the Contract between _____ **52** _____ (Seller)
2* and _____ **53** _____ (Buyer) concerning the Property described as _____ **54** _____
3* _____ only if initialed by all parties:

Purpose:

To identify the contract to which the addendum is attached.

Blanks:

- 52** Insert the seller's full name.
- 53** Insert the buyer's full name.
- 54** Enter the street address and unit number (if any) or the legal description of the property. Remember to include the city and zip code.

Explanation:

• **Incorporation of Clauses.** Each clause of the addendum must be included separately as part of the contract. To indicate that a particular clause is to be included, each party should initial the appropriate blanks.



Practice Tip. Remember to check the boxes in paragraph 20 of the contract and attach the addendum to indicate which of the optional clauses should be incorporated into the contract.

Comprehensive Addendum

54* Buyer (____) (____) and Seller (____) (____) acknowledge receipt of a copy of this page.

55* FARA-9 4/07 © 2007 Florida Association of REALTORS® All Rights Reserved

Page **55** of Addendum No. **56**

Purpose:

To provide a reference label for the addendum.

Blanks:

- 55** Insert the page number.
- 56** Insert the addendum number.

Explanation:

• **Addendum Number.** It is important to label each attachment to the contract with a consecutive number to make reference easy. This number indicates the addendum's placement in relation to the contract as a whole.

Association Disclosures

ASSOCIATION DISCLOSURES

4

5* () () - ()() **A. Condominium Association:** The Property is a condominium which is subject to the rules
6 and regulations of a condominium association ("Association"). If the condominium property is subject to a master
7 Homeowner's Association, also attach Homeowner's Association addendum B. **Seller's** warranty under Paragraph **8** of the
8 Contract and risk of loss under Paragraph **9** of the Contract or Paragraph **H** of the Comprehensive Addendum (if applicable)
9 extend to the unit and limited common elements appurtenant to the Property and not to any common elements or any other
10 property.

Purpose:

To indicate that the property is a condominium with specific considerations.

Blanks:

If the parties wish to include paragraph A in the contract, they must initial inside the brackets.

Explanation:

- **Condominium Association.** To be considered a condominium, there must be a Declaration of Condominium on the public record. The association has the powers specified in Chapter 718, *Florida Statutes*, and in the governing documents of the condominium. Every condominium owner is subject to the rules and regulations of his/her association.
- **Master Homeowner Association.** Sometimes, a condominium property is subject to a master homeowner association with its own governing documents and rules. If membership is required for such a homeowner association, also attach addendum B of this Comprehensive Addendum.
- **Common Elements.** This term includes condominium property outside of individual units, easements through units necessary to provide utility services, support easements inside units that sustain the building's structure and property or installations required for the provision of utilities and other services used by more than one unit or by the common elements.
- **Seller's Warranty.** Under this contract, the seller is not obligated to repair any items that are considered common elements of the condominium nor has an obligation to restore common elements in the event of fire or other casualty. However, the Seller is obligated to restore limited common elements appurtenant to the property in the event of fire or other casualty. The Seller remains obligated to repair listed items that are part of the actual residential unit.

Association Disclosures

11 **(1) Documents:** Seller will, at Seller's expense, deliver to Buyer the current and complete condominium documents (including question
12 and answer sheet, current year-end financial information and any recorded amendments) referenced in subparagraph (9) below no later
13* than 3 days from Effective Date (if Buyer has already received the required documents, indicate receipt by initialing here (**57**) (**57**)
14* Date received **58** , _____). If this Contract does not close, Buyer will immediately return the documents to Seller, failing
15* which Buyer authorizes Escrow Agent to reimburse Seller \$ **59** from the deposit for the cost of the documents.

Purpose:

Subparagraph (1) provides for delivery of the condominium documents.

Blanks:

- 57** Have the buyers initial here if they received the condominium documents before signing the offer.
- 58** Insert the day, month and year on which the buyers received the condominium documents.
- 59** Insert the amount it will cost the seller to reproduce the documents if the buyer fails to return them.

Deadlines:

- **Delivery of Documents.** Documents must be given to the buyer within three business days from the effective date.
- **Return of Documents.** Documents must be returned immediately upon termination of the transaction, if it is terminated.

Explanation:

• **Condominium Documents.** In accordance with state law, the contract requires the seller to provide the buyer with the following current documents including any recorded amendments within three business days from the effective date:

1. Declaration of Condominium
2. Articles of Incorporation
3. Bylaws
4. Association Rules
5. Question and Answer Sheet
6. A copy of the most recent year-end financial information.



Practice Tip. The question and answer sheet (along with the other listed documents) is an official record of the condominium association that must be made available to any unit owner within five business days from the board of directors or its designee having received the owner’s written request. If the association does not have a question and answer sheet, it should contact the Customer Contact Center of the Division of Land Sales, Condominiums and Mobile Homes at 850/488-1631 to obtain a sample. You may want to obtain copies of the documents soon after taking a listing, then check with the association to see if they are still current at the time an offer is accepted.

• **Seller’s Expense.** The condominium documents listed above must be provided to the buyer at the seller’s expense.

• **Failure of Transaction.** If the buyer exercises his/her legal right to void the contract pursuant to the provisions of subparagraph (9) or if the transaction fails to close for any other reason, the buyer is obligated to immediately return, at the buyer’s expense, the documents that the seller provided. If the buyer does not return the documents, the Escrow Agent may deduct from the deposit the amount inserted in blank 59.

• **Receipt of Documents.** Completing blanks 57 and 58 indicates that the buyer has been given the condominium documents. It does not necessarily mean that the time allowed to the buyer to review the documents has passed. The buyer legally has 3 days from the date on which he or she received the documents to cancel the contract.

• **Failure to Return Documents.** If the transaction does not close, the buyer is obligated to return to the seller all condominium documents procured from the seller. If the buyer does not do so, this paragraph provides written authorization to the Escrow agent to deduct from the buyer’s deposit the amount specified in blank 59. If the escrow agent is a real estate licensee, he or she must still obtain both the buyer’s and seller’s consent to disburse the funds. If the buyer does not consent, this clause gives the seller a basis on which to claim the money in the dispute resolution process.

Association Disclosures

16 (2) **Association Approval:** If the condominium declaration or bylaws give the Association the right to approve **Buyer** as a
 17* purchaser, this Contract is contingent on such approval by the Association. **Buyer** will apply for approval within 60 days from
 18 Effective Date and use diligent effort to obtain approval, including making personal appearances and paying related fees if
 19 required. **Buyer** and **Seller** will sign and deliver any documents required by the Association to complete the transfer. If **Buyer** is
 20 not approved, this Contract will terminate and **Seller** will return **Buyer’s** deposit unless this Contract provides otherwise.

Purpose:

Subparagraph (2) establishes procedures to follow if the buyer must be approved by the association.

Blank:

60 Insert the number of business days from the effective date the buyer has to apply for approval by the association.

Deadline:

• **Buyer’s Application for Approval.** The buyer must submit this within the number of business days indicated in blank 60.

Explanation:

• **Authority to Approve Buyers.** The association is legally authorized to approve the buyer’s purchase of the property only if the Declaration of Condominium or the bylaws give the association that right.

- **Contract Contingency.** If the association has the legal right to approve the buyer's purchase, then the contract is contingent on such approval being given.
- **Buyer Cooperation.** The buyer is obligated to apply for approval within the number of business days indicated in blank 60 and to use diligent effort to obtain the association's approval. This includes providing information and documents required by the association and making personal appearances as necessary.
- **Seller Cooperation.** If the association requires any documents from the seller as part of the approval or transfer process, the seller is obligated to provide them.
- **Buyer Approved.** If the association approves the buyer, this contingency is fulfilled.
- **Buyer Not Approved.** If the association rejects the buyer's application, the contract terminates and the buyer's refund should be returned after proper authorization is received from all interested parties.

Association Disclosures

- 21 **(3) Right of First Refusal:** If the Association has a right of first refusal to buy the Property, this Contract is contingent on the Association
 22 deciding not to exercise such right. **Seller** will, within 3 days from receipt of the Association's decision, give **Buyer** written notice of the
 23 decision. If the Association exercises its right of first refusal, this Contract will terminate, **Buyer's** deposit will be refunded unless this
 24 Contract provides otherwise and **Seller** will pay Broker's full commission at closing in recognition that Broker procured the sale.

Purpose:

Subparagraph (3) addresses the association's first right of refusal, if any.

Deadline:

• **Written Notice of Association's Decision.** This written notice must be given to the buyer within three business days from the seller's receipt of the decision.

Explanation:

- **Right of First Refusal.** This is the right to buy a specific property from the seller at the same price and on the same terms/conditions as those contained in a bona fide offer made by a third party. If the association has this right, it becomes effective when the seller indicates willingness to accept a third party's offer. The right of first refusal must be in writing and must be signed by the seller.
- **Time for Association to Consider Whether or Not to Exercise its Right.** The amount of time the association has to consider whether or not to exercise its right should be specified in the written document that created the right. If not, the association will have a reasonable amount of time considering all circumstances.
- **Contract Contingency.** The contract is contingent on the association not exercising its right to purchase the property. If the association passes, the contingency should be removed.
- **Exercise of Right.** If the association exercises its right of first refusal, the contract between the buyer and the seller will terminate. The buyer's deposit should be refunded after proper authorization is received from all interested parties.
- **Broker's Compensation.** If the association exercises its right of first refusal, the contract obligates the seller to pay the broker's fee even though the contract with the buyer procured by the broker terminates. This clause recognizes that the contract procured by the broker triggered the right of first refusal. The commission must be paid at closing.

Association Disclosures

- 25 **(4) Application/Transfer Fees:** Buyer will pay any application and/or transfer fees charged by the Association.

Purpose:

Subparagraph (4) requires the buyer to pay application and transfer fees.

Explanation:

- **Buyer's Expense.** The buyer must pay any application and/or transfer fee charged by the association. Florida law limits the amount that may be charged as a transfer fee as noted below.
- **Transfer Fees.** An association may only charge a fee (known as a "transfer fee," "approval fee" or "application fee") in connection with a sale if the fee is required to approve the transfer of the unit and the association's Declaration of Condominium, articles of incorporation or bylaws provide for such a fee. The fee may not exceed \$100 per applicant. A husband/wife or parent/dependent child pair is considered one applicant.

Association Disclosures

26* (5) Parking/Boat Slip/Storage Unit: Seller will assign to Buyer at closing parking space(s) # 61; boat slip(s)
27* # 62; and storage unit(s) # 63.

Purpose:

Subparagraph (5) provides for the assignment of parking spaces, boat slips, and storage units if any.

Blanks:

- 61 Insert the number of the parking space(s) to be assigned, if any.
- 62 Insert the number of the boat slip(s) to be assigned, if any.
- 63 Insert the number of the storage unit(s) to be assigned, if any.

Explanation:

• **Parking Spaces.** If the condominium has reserved parking, boat slips or storage units the seller must assign the space(s), boat slip(s) and/or storage unit(s) to the buyer at closing.

Association Disclosures

28 (6) Fees: Seller will pay all fines imposed against the Unit as of Closing Date and any fees the Association charges to provide information
29 about its fees or the Property, and will bring maintenance and similar periodic fees and rents on any recreational areas current as of
30 Closing Date. If, after the Effective Date, the Association imposes a special assessment for improvements, work or services, Seller will
31 pay all amounts due before Closing Date and Buyer will pay all amounts due after Closing Date. If special assessments may be paid in
32* installments Buyer Seller (if left blank, Buyer) shall pay installments due after Closing Date. If Seller is checked, Seller will pay the
33 assessment in full prior to or at the time of closing. Seller represents that he/she is not aware of any pending special or other
34* assessment that the Association is considering except as follows: 64
35* _____
36 Seller represents that he/she is not aware of pending or anticipated litigation affecting the Property or the common elements,
37* if any, except as follows: 65
38* _____
39 Seller represents that the current assessments, maintenance, and/or association fees are:
40* \$ 66 per 67 to 68
41* \$ 66 per 67 to 68
42* \$ 66 per 67 to 68
43* and that there is is not a recreation or land lease with the Property. If there is a recreation or land lease, the current
44* payment is \$ 69 per month.

Purpose:

Subparagraph (6) addresses who must pay condominium assessments.

Blanks:

- 64 Insert any special assessments the association (as opposed to the local government) is considering imposing.
- 65 Insert any current or anticipated litigation involving the association.
- 66 Insert the amount currently charged as a maintenance fee.
- 67 Insert the time period (month, quarter, etc.) for which the maintenance fee is due.
- 68 Insert the association to whom the payment must be made.
- 69 Insert the current monthly recreation or land-lease fee.

Boxes:

Indicate whether or not there is a recreation or land lease.

Indicate who is to pay special assessments due after closing if special assessment may be paid in installments.

Explanation:

- **Assessment.** This is a share of funds required for the payment of common expenses that the unit owner is charged periodically.
- **Association's Power to Make Assessments.** Florida law allows an association to assess unit owners as follows:
 1. in the manner stated in the bylaws,
 2. in amounts to be collected no less frequently than quarterly and
 3. in an amount not less than that required to provide funds in advance for payment of all anticipated current operating expenses and to pay operating expenses previously incurred.
- **Payment of Assessments.** Assessments imposed prior to the contract effective date are prorated pursuant to paragraph 5(d) of the contract. For assessments made after the effective date, the seller is responsible for making any payments that are due before the closing date. This means that if the Association sends an invoice or other notice that a payment is owed and must be paid by any date before the closing date, the seller is responsible for that payment. The payment due date is the key; if the payment due date is after the closing date, the buyer is responsible. If special assessments may be paid in installments, check buyer or seller to pay installments after the closing date. If the boxes are left blank, then buyer pays installments due after Closing Date.



Practice Tip. If the seller is given a choice between making a lump sum payment or paying an assessment in installments, the seller may choose either option (but would be wise to select installments and check the box for buyer or leave the box blank if any of those are due after the closing date).

- **Delinquent Payments.** The association may charge interest of up to 18 percent annually. Also, the bylaws may properly provide for a late fee up to the greater of \$25 or 5 percent of each delinquent installment. The association has a lien on each condominium unit for any unpaid assessments with interest and for reasonable attorney's fees incurred by the association in connection with collecting the assessment or enforcing the lien. The seller must pay all fines on the unit by the closing date.
- **Liability for Maintenance fees and Recreational Area Rent.** The seller is responsible for all rent payments due while he/she owns the unit. If a fee is due on April 1st and the transaction closes on March 31, the buyer must pay the fee. The buyer is responsible for all such payments due after the closing date.
- **Pending Assessments.** This includes assessments being contemplated by the association that have not yet been duly approved and assessed. The seller is obligated to reveal in blank 64 any pending assessments of which he/she is aware.
- **Difference from Government Assessments.** The assessments referred to in this paragraph are those imposed by the condominium association. Assessments made by local government are addressed in paragraph 5(e) of the contract.
- **Pending or Anticipated Litigation.** If the seller is aware of any lawsuits that have been or may be brought against the association, the seller must reveal what he/she knows in blank 65.
- **Maintenance Fee.** The association is responsible for maintaining the common elements. The Declaration of Condominium should state whether common elements will be maintained by the persons entitled to use them or by the association. If the association is responsible for maintenance, the declaration should state whether maintenance is a common expense or is the responsibility of the owners entitled to use the common elements.
- **Recreation or Land Lease.** This is a lease that allows unit owners to use recreational or other common elements. Common elements are the portions of the condominium property that are not included in the units.

Association Disclosures

45 **(7) Damage to Common Elements:** If any portion of the common element is damaged due to fire, hurricane or other casualty before
46 closing, either party may cancel the Contract and **Buyer's** deposit shall be refunded if (a) as a result of damage to the common
47 elements, the Property appraises below the purchase price and either the parties cannot agree on a new purchase price or **Buyer**
48 elects not to proceed, or (b) the Association cannot determine the assessment attributable to the Property for the damage at least 5
49 days prior to Closing Date, or (c) the assessment determined or imposed by the Association attributable to the Property for the
50* damage to the common element is greater than \$ **70** or % _____ of the purchase price (1.5% if left blank).

Purpose:

Subparagraph (7) addresses the parties' obligations when there is damage to common elements due to fire, hurricane or other casualty.

Blanks:

70 Insert the amount that the condominium association determines or imposes for damage to common elements, which if exceeded, would allow either the buyer or the seller to cancel the contract.

Explanation:

- **Damage to Common Elements.** The damage to any portion of the common element must be a result of a casualty such as fire or hurricane.
- **Buyer or Seller's Right to Cancel.** Either buyer or seller may cancel the contract if any of the following occurs: 1. The property appraises below the purchase price due to the damage and either the parties cannot renegotiate the purchase price or the buyer elects not to proceed. 2. The Association cannot determine (at least 5 days prior to closing date) how much each unit should be assessed for the damage to the common elements. 3. The unit assessment determined by the Association is greater than amount inserted in blank 70.

Association Disclosures

51 **(8) Sprinkler System: IF THE UNIT OWNERS VOTED TO FOREGO RETROFITTING EACH UNIT WITH A FIRE SPRINKLER**
52 **OR OTHER ENGINEERED LIFE SAFETY SYSTEM, SELLER SHALL PROVIDE THE BUYER, BEFORE CLOSING, A COPY**

53 (See Continuation)

54* **Buyer** (____) (____) and **Seller** (____) (____) acknowledge receipt of a copy of this page.

55* FARA-9 4/07 © 2007 Florida Association of REALTORS® All Rights Reserved

Page ____ of Addendum No. ____

56* (____) (____) - (____)(____) **A. Condominium Association (CONTINUATION)**

57 **OF THE CONDOMINIUM ASSOCIATION'S NOTICE OF THE VOTE TO FOREGO RETROFITTING.**

58 **(9) Buyer Acknowledgement / Seller Disclosure:** (Check whichever applies)

59* **THE BUYER** HEREBY ACKNOWLEDGES THAT **BUYER** HAS BEEN PROVIDED A CURRENT COPY OF THE DECLARATION OF
60 CONDOMINIUM, ARTICLES OF INCORPORATION OF THE ASSOCIATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY
61 OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT
62 MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, PRIOR TO EXECUTION OF THIS CONTRACT.

63* THIS AGREEMENT IS VOIDABLE BY **BUYER** BY DELIVERING WRITTEN NOTICE OF THE **BUYER'S** INTENTION TO CANCEL
64 WITHIN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS
65 AGREEMENT BY THE **BUYER** AND RECEIPT BY **BUYER** OF A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM,
66 ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END
67 FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF SO REQUESTED IN WRITING.
68 ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. **BUYER** MAY EXTEND THE TIME FOR
69 CLOSING FOR A PERIOD OF NOT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER
70 THE **BUYER** RECEIVES THE DECLARATION, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, AND
71 A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS
72 DOCUMENT IF REQUESTED IN WRITING. **BUYER'S** RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

Purpose:

Subparagraph (8) contains a required disclosure.

Subparagraph (9) contains a choice of required disclosures.

Boxes:

Indicate whether the buyer received the condominium documents more than three business days prior to contract or after the contract was executed by the buyer.

Deadline:

• **Notice of Intent to Cancel.** This must be given within three business days from the latter of the buyer’s having received the condominium documents or the buyer signing the contract.

Explanation:

- **Condominium Documents.** See the explanation under subparagraph (1).
- **Seller’s Expense.** The condominium documents listed in subparagraph (9) must be provided to the buyer at the seller’s expense.
- **Voidability Rights.** Florida law gives the buyer three business days to examine specified condominium documents and to terminate the sales contract. The buyer is not required to give a reason for cancelling the contract. The disclosure statement implies that the buyer should make a written request for the documents, but the contract states that the seller will provide the documents anyway since any attempted waiver of the buyer’s voidability rights has no effect because of the law.
- **Written Notice Required.** The buyer must give written notice to the seller if he/she intends to void the contract within the three-day voidability period.



Practice Tip. If the buyer cancels the contract within the 3 day period, the broker may release the buyer's deposit without getting the seller's authorization. Real estate license law provides an exception to the "proper authorization from all interested parties" rule under this particular circumstance.

- **Documents Given More Than Three Business Days Prior to Contract.** If the buyer is given the required documents more than three business days before signing the contract, check the first box (the buyer has no additional voidability rights).
- **Documents Not Given More Than Three Business Days Prior to Contract.** If the buyer is given the required documents less than three business days prior to signing the contract or anytime after signing the contract, check the second box. The buyer will have three business days from the latter of signing the contract or receiving the documents to exercise his/her voidability rights.
- **Failure of Transaction.** If the buyer exercises his/her legal right to void the contract pursuant to the provisions of subparagraph (9) or if the transaction fails to close for any other reason, the buyer is obligated to immediately return, at the buyer’s expense, the documents the seller provided.

Association Disclosures

4* (____) (____) - (____)(____) **B. Homeowners’ Association:** The Property is located in a community with a voluntary
5* mandatory (see the disclosure summary below) homeowners’ association (“Association”). **Seller’s** warranty under
6 Paragraph **8** of the Contract and risk of loss under Paragraph **9** or Paragraph **H** of the Comprehensive Addendum (if
7 applicable) extend only to the Property and does not extend to common areas or facilities described below.
8 **Notice:** Association documents may be obtained from the county record office or, if not public record, from the developer or
9 Association manager. The Property may be subject to recorded restrictive covenants governing the use and occupancy of
10 properties in the community and may be subject to special assessments.

Purpose:

To provide the disclosure language required under Florida law to be given to a buyer who purchases property where homeowners’ association membership is mandatory and to include provisions that may apply in a mandatory or voluntary association situation.

Blanks:

If the parties wish to include paragraph B in the contract, they must initial inside the brackets.

Boxes:

Indicate whether the property is in a mandatory or voluntary association.

Explanation:

- **Common Areas.** This includes the association property that is not part of the seller’s lot and improvements.
- **Seller’s Warranty.** Under this contract, the seller is not obligated to repair or maintain common areas of the association. The seller is also not obligated to restore the common areas of the association in the event of damage due to casualty.

Association Disclosures

11 **(1) Association Approval:** If the Association documents give the Association the right to approve **Buyer** as a purchaser, this
12* Contract is contingent on such approval by the Association. **Buyer** will apply for approval within 71 days from Effective
13 Date (5 days if left blank) and use diligent effort to obtain approval, including making personal appearances and paying
14 related fees if required. **Buyer** and **Seller** will sign and deliver any documents required by the Association to complete the
15 transfer. If **Buyer** is not approved, this Contract will terminate and **Seller** will return **Buyer's** deposit unless this Contract
16 provides otherwise.

Purpose:

Subparagraph (1) establishes procedures to follow if the buyer must be approved by the association.

Blanks:

- 71** Insert the number of business days from the effective date the buyer has to apply for approval by the association.

Deadline:

• **Buyer's Application for Approval.** The buyer must submit this within the number of business days specified in blank 71.

Explanation:

- **Authority to Approve Buyers.** If the association has authority within its documents to approve the buyer's purchase, then the contract is contingent on such approval being given.
- **Buyer Cooperation.** The buyer is obligated to apply for approval within the number of business days indicated in blank 71 and to use diligent effort to obtain the association's approval. This includes providing information and documents required by the association and making personal appearances as necessary.
- **Seller Cooperation.** If the association requires any documents from the seller as part of the approval or transfer process, the seller is obligated to provide them.
- **Buyer Approved.** If the association approves the buyer, this contingency is fulfilled.
- **Buyer Not Approved.** If the association rejects the buyer's application, the contract terminates and the buyer's deposit should be refunded after proper authorization is received from all interested parties.

Association Disclosures

17 **(2) Right of First Refusal:** If the Association has a right of first refusal to buy the Property, this Contract is contingent on the
18 Association deciding not to exercise such right. **Seller** will, within 3 days from receipt of the Association's decision, give
19 **Buyer** written notice of the decision. If the Association exercises its right of first refusal, this Contract will terminate, **Buyer's**
20 deposit will be refunded unless this Contract provides otherwise and **Seller** will pay Broker's full commission at closing in
21 recognition that Broker procured the sale.

Purpose:

Subparagraph (2) addresses the association's right of first refusal, if any.

Deadline:

• **Written Notice of Association's Decision.** This written notice must be given to the buyer within three business days from the seller's receipt of the decision.

Explanation:

See the explanation under Condominiums, paragraph A(3) of the Comprehensive Addendum.

Association Disclosures

22 (3) **Fees:** Buyer will pay any application, transfer and initial membership fees charged by the Association. Seller will pay all
23 fines imposed against the Property as of Closing Date and any fees the Association charges to provide information about its
24 fees or the Property, and will bring maintenance and similar periodic fees and rents on any recreational areas current as of
25 Closing Date. If, after the Effective Date, the Association imposes a special or other assessment for improvements, work or
26 services, Seller will pay all amounts due before Closing Date and Buyer will pay all amounts due after Closing Date. If special
27* assessments may be paid in installments Buyer Seller (if left blank, Buyer) shall pay installments due after Closing Date. If Seller
28 is checked, Seller will pay the assessment in full prior to or at the time of Closing. Seller represents that he/she is not aware of any
29 pending special or other assessment that the Association is considering except as follows:

30* \$ 72 per 73 to 74
31 The following dues/maintenance fees are currently charged by the homeowners' association:
32* \$ 75 per 76 to 77
33* \$ 75 per 76 to 77
34* \$ 75 per 76 to 77

Purpose:

To apportion payment of and disclose fees and assessments.

Blanks:

- 72 Insert the amount of the anticipated assessment if known.
- 73 Insert the payment period for which such fee is assessed.
- 74 Insert the name of the association to which the payment must be made.
- 75 Insert the amount of the dues or maintenance fees that are payable.
- 76 Insert the payment period for which such fee is assessed.
- 77 Insert the name of the association to which the payment must be made.

Boxes:

Indicate who is to pay special assessments due after closing if special assessment may be paid in installments.

Explanation:

- **Buyer's Expense.** The buyer must pay any application, transfer fees and initial membership fees charged by the association.
- **Association Document Fees.** Official documents must be available for photocopying by members or their authorized agents at reasonable times and places within 10 business days after receipt of a written request for access. If the association charges a fee to copy and/or provide association documents and official records, the seller will be responsible for paying the fee. According to Florida law, the association may charge up to 50 cents per page for copies made on the association's photocopier, but is not required to copy more than 25 pages. For requests that exceed 25 pages or if the association has no photocopy machine available, the association can have copies made by an outside vendor and charge the actual cost of copying.
- **Assessment.** This is a share of funds required for the payment of common expenses that the unit owner is charged periodically.
- **Association's Power to Make Assessments.** Homeowners' associations are permitted to impose assessments in an amount proportionate to the member's share of expenses as outlined in the governing documents. The share may differ among classes of parcels based on the state of parcel development, levels of services received by the applicable members or other relevant factors.
- **Payment of Assessments.** Assessments imposed prior to the contract effective date are prorated pursuant to paragraph 5(d) of the contract. For assessments made after the effective date, the seller is responsible for making any payments that are due before the closing date. This means that if the Association sends an invoice or other notice that a payment is owed and must be paid by any date

before the closing date, the seller is responsible for that payment. The payment due date is the key; if the payment due date is after the closing date, the buyer is responsible. If special assessments may be paid in installments, check buyer or seller to pay installments after the closing date. If the boxes are left blank, then buyer pays installments due after Closing Date.



Practice Tip. If the seller is given a choice between making a lump sum payment or paying an assessment in installments, the seller may choose either option (but would be wise to select installments and check the box for buyer or leave box blank if any of those are due after the closing date).

- **Pending Assessments.** This includes assessments being contemplated by the association that have not yet been duly approved and assessed. The seller is obligated to reveal in blanks 72-74 any such assessments of which he/she is aware.
- **Dues Obligations.** The homeowner may be obligated to pay dues to cover common area maintenance, recreational lands and facilities and other purposes to one or more associations. Associations are given the power under Florida law to file a lien and foreclose against a property if the homeowner fails to pay the dues.
- **Association Dues.** Most associations charge a membership fee of some sort collected on an annual, quarterly or monthly basis. This type of fee should be disclosed to the buyer in blanks 75-77.



Practice Tip. To protect yourself from negligently misrepresenting the facts relating to subparagraphs (3) and (5), try to get the association to place that information in writing for you. Then, you can notify the buyer that you are relying on information provided by the association to complete the required information. Then, write a note in the margin of the contract such as “Based on information provided by the community association.”

Association Disclosures

35 (4) **Damage to Common Elements:** If any portion of the common element is damaged due to fire, hurricane or other casualty before
36 closing, either party may cancel the Contract and **Buyer's** deposit shall be refunded if (a) as a result of damage to the common
37 elements, the Property appraises below the purchase price and either the parties cannot agree on a new purchase price or **Buyer**
38 elects not to proceed, or (b) the Association cannot determine the assessment attributable to the Property for the damage at least 5
39 days prior to Closing Date, or (c) the assessment determined or imposed by the Association attributable to the Property for the
40 damage to the common element is greater than \$ **78** or % _____ of the purchase price (1.5% if left blank).

Purpose:

Subparagraph (4) addresses the parties' obligations when there is damage to common elements due to fire, hurricane or other casualty.

Blanks:

78 Insert the amount that the homeowner's association determines or imposes for damage to common elements, which if exceeded, would allow either the buyer or the seller to cancel the contract.

Explanation:

- **Damage to Common Elements.** The damage to any portion of the common element must be a result of casualty such as fire or hurricane.
- **Buyer or Seller's Right to Cancel.** Either buyer or seller may cancel the contract if any of the following occurs: 1. The property appraises below the purchase price due to the damage and either the parties cannot renegotiate the purchase price or the buyer elects not to proceed. 2. The Association cannot determine (at least 5 days prior to closing date) how much each unit should be assessed for the damage to the common elements. 3. The unit assessment determined by the Association is greater than amount inserted in blank 78.

Association Disclosures

41 (5) **Disclosure Summary for Mandatory Associations:** IF THE DISCLOSURE SUMMARY REQUIRED BY SECTION 720.401,
42 FLORIDA STATUTES, HAS NOT BEEN PROVIDED TO THE PROSPECTIVE PURCHASER BEFORE EXECUTING THIS
43 CONTRACT FOR SALE, THIS CONTRACT IS VOIDABLE BY **BUYER** BY DELIVERING TO **SELLER** OR SELLER'S AGENT OR
44 REPRESENTATIVE WRITTEN NOTICE OF THE **BUYER'S** INTENTION TO CANCEL WITHIN 3 DAYS AFTER RECEIPT OF THE
45 DISCLOSURE SUMMARY OR PRIOR TO CLOSING, WHICHEVER OCCURS FIRST. ANY PURPORTED WAIVER OF THIS
46 VOIDABILITY RIGHT HAS NO EFFECT. **BUYER'S** RIGHT TO VOID THIS CONTRACT SHALL TERMINATE AT CLOSING.

47* **Disclosure Summary For** (Name of Community) _____:
48 (1) AS A PURCHASER OF PROPERTY IN THIS COMMUNITY, YOU WILL BE OBLIGATED TO BE A MEMBER OF A
49 HOMEOWNERS' ASSOCIATION.
50 (2) THERE HAVE BEEN OR WILL BE RECORDED RESTRICTIVE COVENANTS GOVERNING THE USE
51 AND OCCUPANCY OF PROPERTIES IN THIS COMMUNITY.
52 (3) YOU WILL BE OBLIGATED TO PAY ASSESSMENTS TO THE ASSOCIATION. ASSESSMENTS MAY BE SUBJECT TO
53* PERIODIC CHANGE. IF APPLICABLE, THE CURRENT AMOUNT IS \$ _____ 79 _____ PER _____ 80 _____.
54 YOU WILL ALSO BE OBLIGATED TO PAY ANY SPECIAL ASSESSMENTS IMPOSED BY THE ASSOCIATION. SUCH
59 SPECIAL ASSESSMENTS MAY BE SUBJECT TO CHANGE. IF APPLICABLE, THE CURRENT AMOUNT IS
60* \$ _____ 81 _____ PER _____ 82 _____.
61 (4) YOU MAY BE OBLIGATED TO PAY SPECIAL ASSESSMENTS TO THE RESPECTIVE MUNICIPALITY, COUNTY, OR
62 SPECIAL DISTRICT. ALL ASSESSMENTS ARE SUBJECT TO PERIODIC CHANGE.
63 (5) YOUR FAILURE TO PAY SPECIAL ASSESSMENTS OR ASSESSMENTS LEVIED BY A MANDATORY HOMEOWNERS'
64 ASSOCIATION COULD RESULT IN A LIEN ON YOUR PROPERTY.
65 (6) THERE MAY BE AN OBLIGATION TO PAY RENT OR LAND USE FEES FOR RECREATIONAL OR OTHER COMMONLY
66 USED FACILITIES AS AN OBLIGATION OF MEMBERSHIP IN THE HOMEOWNERS' ASSOCIATION. IF APPLICABLE, THE
67* CURRENT AMOUNT IS \$ _____ 83 _____ PER _____ 84 _____.
68 (7) THE DEVELOPER MAY HAVE THE RIGHT TO AMEND THE RESTRICTIVE COVENANTS WITHOUT THE APPROVAL
69 OF THE ASSOCIATION MEMBERSHIP OR THE APPROVAL OF THE PARCEL OWNERS.
70 (8) THE STATEMENTS CONTAINED IN THIS DISCLOSURE FORM ARE ONLY SUMMARY IN NATURE, AND, AS A
71 PROSPECTIVE PURCHASER, YOU SHOULD REFER TO THE COVENANTS AND THE ASSOCIATION GOVERNING
72 DOCUMENTS BEFORE PURCHASING PROPERTY.
73 (9) THESE DOCUMENTS ARE EITHER MATTERS OF PUBLIC RECORD AND CAN BE OBTAINED FROM THE RECORD
74 OFFICE IN THE COUNTY WHERE THE PROPERTY IS LOCATED, OR ARE NOT RECORDED AND CAN BE OBTAINED
75 FROM THE DEVELOPER.

76 Buyer acknowledges receipt of this summary before signing this Contract.

77* _____ 85 _____ Date _____ 86 _____
78 *Buyer* _____ *Buyer* _____
Date Date

Purpose:

To meet the requirements of Florida law where the buyer will have to join the homeowners' association upon purchasing the property.

Blanks:

- 79 Insert the amount of any assessment levied pursuant to the annual budget that is currently being made by the association.
- 80 Indicate the payment period associated with such assessment.
- 81 Insert the amount of any current special assessment.
- 82 Indicate the payment period associated with such assessment.
- 83 Insert the amount of any rent or land use fee.
- 84 Indicate the payment period associated with such fee.
- 85 Have the buyer(s) sign in the space provided.
- 86 Have the buyer(s) date the paragraph.

Deadline:

• **Notice of Intent to Cancel.** The buyer may cancel the contract within 3 days after receipt of the disclosure summary or prior to closing, whichever occurs first, if the Disclosure Summary is not given to the buyer before signing the contract.

Explanation:

- **Legal Requirement.** Florida law requires this disclosure to be made if the buyer will be required to join a homeowners' association as a condition of owning the property.
- **Restrictive Covenants.** These are provisions in a deed limiting the use of the property and prohibiting certain uses.
- **Amending Restrictive Covenants.** The association's governing documents should provide a method for changing restrictive covenants. Homeowner approval may or may not be required.
- **Public Record.** Homeowners' association documents are filed with the county public records division. Buyers may be prudent to check these records to get a clear picture of the actual covenants and restrictions that will apply to them as home owners.

Financing

FINANCING

4

5* () () - () () C. **Seller Financing:** Buyer will execute a purchase money note and mortgage to **Seller** that

6* is is not subordinate to any third party financing in the amount of \$ **87**, bearing annual interest

7* at **88**% and payable as follows: **89**

8*

9 The mortgage, note, and any security agreement will be in a form acceptable to **Seller** and following forms generally accepted in

10 the county where the Property is located; will provide for a late payment fee and acceleration at the mortgagee's option if **Buyer**

11 defaults; will give **Buyer** the right to prepay without penalty all or part of the principal at any time(s) with interest only to date of

12 payment; will be due on conveyance or sale; and will require **Buyer** to keep Property insured, with **Seller** as additional named

13 insured, against loss by fire (and flood, if Property is in a flood zone) with extended coverage in an amount not less than the

14 greater of the amount of the purchase money mortgage and note or full replacement value for the real property. **Buyer** will

15 provide **Seller** by March 1 each year with written evidence that the real property taxes have been paid in full for the previous

16 year. **Buyer** authorizes **Seller** to obtain credit, employment and other necessary information to determine creditworthiness for

17 the financing. **Seller** will provide written notice to **Buyer** within 10 days from Effective Date if **Seller** will not make the loan. If no

18 notice is provided, **Seller** will provide the requested **Seller** financing.

Purpose:

To establish the parameters of the seller's purchase money financing.

Blanks:

If the parties wish to include paragraph C in the contract, they must initial inside the brackets.

- 87** Insert the amount of financing the seller will provide.
- 88** Insert the annual interest charge for the financing.
- 89** Insert the payment terms.

Boxes:

Indicate whether the priority of the purchase money mortgage to the seller is lower (check "is") or higher (check "is not") than the third party financing.

Deadlines:

- **Application.** This must be submitted to the seller within five business days from the effective date unless another number of business days is inserted in blank 23 in paragraph 3(b) of the contract.
- **Written Rejection Notice.** This is due within 10 business days from the effective date if the seller will not make the loan.

Explanation:

• **Coordination With Paragraph 3(b) of the Contract.** When incorporating paragraph C into the contract, be sure to make the application period short enough to give the seller time to determine if he/she will make the loan.

- **Purchase Money Mortgage.** This is a mortgage taken by a lender (either the seller or a third party) to finance the buyer's acquisition of the property. In many cases, the buyer will request seller financing because he/she is unable to obtain financing from an institutional lender (because of a poor credit history, divorce, bankruptcy, etc.). In other cases, the buyer requests seller financing simply to avoid closing costs, or the seller may want to provide financing for income tax reasons.
- **Payment Terms.** Indicate the following information:
 1. Amount of each periodic principal and interest payment (e.g., \$500 including interest).
 2. The date the first payment is due.
 3. Due date for subsequent payments.
 4. Amortization and whether or not a balloon payment is due. If a balloon payment will be paid, specify the due date and the amount to be paid.
 5. To whom the payment check should be made (i.e., John and Mary Seller).
 6. Method of payment (e.g., personal check, cash, etc.).



Practice Tip. Be sure to request the buyer's social security number so that the seller will be able to obtain credit information from the major credit bureaus.

Financing

4* () () - () () **D. Mortgage Assumption:** Buyer will take subject to and assume and pay existing first mortgage
 5* to _____ LN# _____ in the approximate amount of
 6* \$ _____ currently payable at \$ _____ per month including principal, interest, taxes and insurance
 7* and having a fixed other (describe) _____ interest rate of
 8* _____% which will will not escalate upon assumption. Any variance in the mortgage will be adjusted in the balance due at
 9 closing with no adjustment to purchase price. Buyer will pay assumption/transfer fee and purchase Seller's escrow account dollar for
 10* dollar. If the lender disapproves Buyer, or the interest rate upon transfer exceeds _____% or the assumption/transfer fee exceeds
 11* \$ _____, this agreement will terminate and Buyer's deposit(s) will be returned unless either party elects to pay the excess.

Purpose:

To describe the mortgage the buyer will assume and to establish the contingency and assumption procedure.

Blanks:

If the parties wish to include paragraph D in the contract, they must initial inside the brackets.

- 90 Insert the name of the first mortgage lender.
- 91 Insert the loan reference number assigned by the lender.
- 92 Insert the approximate amount remaining to be paid on the mortgage as of the date the offer is written.
- 93 Insert the monthly payment.
- 94 Describe the characteristics of the loan if it is a variable or adjustable loan.
- 95 Insert the interest rate.
- 96 Insert the maximum interest rate the buyer will agree to pay on the assumed mortgage.
- 97 Insert the maximum amount the buyer will pay for an assumption or transfer fee.

Boxes:

Taxes and Insurance. If the amount quoted in blank 93 includes tax and insurance payments, check this box.

Interest Rate. Indicate whether the mortgage has a fixed or variable/adjustable interest rate.

Escalation. Indicate whether or not the lender will increase the interest rate quoted in blank 95 upon the buyer's assumption of the loan.

Deadlines:

- **Application.** If required to do so, the buyer must apply with the lender within five business days from the effective date unless another number of business days is inserted in blank 23 in paragraph 3(b) of the contract.
- **Commitment.** In order to obtain the commitment, the lender's approval of the assumption (if required) must be obtained by the date specified in blank 24 in paragraph 3(b) of the contract or, if no date is specified in blank 24, then, the earlier of 30 business days from the effective date or 5 days prior to closing date.

Explanation:

- **Mortgage Form.** The mortgage must be prepared by an attorney, who may incorporate terms consistent with those specified in paragraph C and other terms commonly found in mortgage agreements used in the county where the real property is located.
- **Contract Provisions.** The terms which paragraph C requires to be included in the mortgage may be modified to express the intent of the parties.
- **Credit Information.** The buyer authorizes the seller to obtain whatever information the seller deems necessary to determine the buyer's creditworthiness for the loan.
- **Assumable Mortgages.** This is a mortgage that may be taken over or acquired from a prior holder. Permission from the lender may or may not be required, depending on the terms of the mortgage.
- **Requirements for Assumption.** The requirements are found in the mortgage document. If the mortgage has no provision relating to sale or assumption, it is assumable without any additional requirements, such as having to notify the lender. If it has an assumption clause or a "due-on-sale" clause (as do most form mortgages created after 1975), the lender has the right to control assumptions. Even loans promoted as "assumable nonqualifying" may have assumption conditions, such as completing transfer and insurance forms, escalating the interest rate or paying a fee for assumption or transfer of the loan.
- **Monthly Payment.** The payment may be stated as either a principal and interest payment (in which case you should not check the taxes and insurance box) or as a PITI which stands for principal, interest, taxes and insurance (in which case you should check the taxes and insurance box). Make sure the buyer understands which type the payment is.
- **Interest Rate.** Check the mortgage to determine whether there is a fixed or variable interest rate.



Practice Tip. Do not rely on the seller's statements regarding rates, payments or conditions of assumption. Instead, verify the amount by looking at a copy of the mortgage and note or by requesting the information in writing from the lender (which is the best way). Inaccurate information could result in the transaction failing to close, the seller being held civilly liable and you being held liable for misrepresentation.

- **Contract Contingency.** This paragraph makes the contract contingent on:
 1. the lender approving the buyer (if required as a condition of assumption);
 2. the interest rate not exceeding the amount stated in blank 96 (if the interest rate is subject to escalation upon assumption) and neither party being willing to pay the difference between the amount stated in blank 96 and the amount the lender wishes to charge; and
 3. the cost of the transfer or assumption fee not exceeding the amount stated in blank 97 and neither party being willing to pay the difference between the amount stated in blank 97 and the amount the lender wishes to charge.
- **Contract Cancellation.** If the contract is canceled because of a contingency, the buyer's deposit should be returned upon proper authorization from the seller.
- **Escrow Account Purchase.** Any escrow deposits held by the lender should be credited to the seller and charged to the buyer at closing.
- **Mortgage Variance.** The contract provides that the mortgage amount stated in blank 92 is an approximate amount. If the actual amount of the loan the buyer assumes on the closing date differs, the buyer does not have the right to alter the purchase price to make up the difference.

Financing

1* The clause below will be incorporated into the Contract between _____ (Seller)
2* and _____ (Buyer) concerning the Property described as _____
3* _____ only if initialed by all parties:
4* (____)(____) - (____)(____) **E. FHA Financing:** (Buyer will be referred to as “purchaser” in the following statement) “It is
5 expressly agreed that notwithstanding any other provisions of this contract, the purchaser shall not be obligated to complete
6 the purchase of the property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise
7 unless the purchaser has been given in accordance with HUD/FHA or VA requirements a written statement by the Federal
8 Housing Commissioner, Department of Veterans Affairs, or a Direct Endorsement lender setting forth the appraised value of the
9* property of not less than \$____98____. The purchaser shall have the privilege and option of proceeding with
10 consummation of the contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to
11 determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the
12 value nor the condition of the property. The purchaser should satisfy himself/herself that the price and condition of the property
13 are acceptable.” If Buyer elects to proceed with the Contract without regard to the amount of reasonable value established by
14 the Federal Housing Commissioner, U.S. Department of Veterans Affairs, or Direct Endorsement lender, such election must be
15 made in writing within 3 days from Buyer’s receipt of the appraisal.

Purpose:

To comply with federal law regarding contracts involving FHA financing.

Blanks:

If the parties wish to include paragraph E in the contract, they must initial inside the brackets.

98 Insert the purchase price as stated in paragraph 2 (blank 10) of the contract.

Deadline:

• **Buyer’s Election to Proceed With the Contract Despite Low Appraisal.** This election must be made in writing within three business days from the date the buyer receives the written appraisal.

Explanation:

- **Coordination With Paragraph 3(b) of the Contract.** When incorporating paragraph E into the contract, be sure to ensure you provide enough time in the deadlines of blanks 23 and 24 of the contract.
- **Reference to the Buyer as “Purchaser.”** The statement the FHA requires to be in all contracts concerning property for which FHA insurance is sought refers to the buyer as the “purchaser.”
- **FHA Amendatory Clause.** The statement appearing in quotes must be part of the sales contract anytime the buyer is not provided a copy of HUD form 92900.5B, Conditional Commitment/DE Statement of Appraised Value or VA-CRV prior to signing the contract. The quoted statement complies with guidelines established by HUD in the latest edition of its handbook as of the October 2004 publication date of the comprehensive addendum.
- **Appraiser.** HUD will accept a written appraisal of the property from the Federal Housing Commissioner, the VA or a direct endorsement lender.
- **Appraised Value.** This amount establishes the maximum mortgage that HUD will insure.
- **Appraised Value Lower Than Purchase Price.** If the appraisal comes in lower than the purchase price, the buyer has the option to either proceed with the contract regardless of the low appraisal or cancel the contract and receive a refund of his/her deposit upon proper authorization from the seller. If the buyer wants to renegotiate the purchase price, the seller may agree but is not obligated to do so.



Practice Tip. According to the “HUD Handbook,” if the parties decide to lower the purchase price as a result of a low appraisal, they do not have to sign a new amendatory clause. Instead, just submit both the original sales contract with the same price shown in the amendatory clause along with the amended sales contract showing the new sales price in the buyer’s loan application package.

^{16*} (1) Fees, Prepayments: Seller will pay all required fees under FHA regulations up to a maximum cost of \$ **99**
¹⁷ (\$250.00 if left blank).

Purpose:

Subparagraph (1) lists the parties' expenses in addition to those specified in paragraph 5 of the contract.

Blanks:

99 Insert the maximum amount the seller is willing to pay for loan expenses that FHA prohibits the buyer from paying.

Explanation:

- **HUD Regulations.** HUD regulates which costs an FHA borrower (the buyer) may and may not pay.
- **Costs That the Buyer May Not Pay.** HUD regulations forbid the FHA borrower from paying unearned fees to the lender. This means the lender cannot mark up fees charged by its service providers - if the lender passes the cost of third party services such as appraisals, credit reports or attorneys fees on to the buyer, the buyer should not be charged more than the amount the service provider charged the lender. The buyer may not pay a tax service fee or courier and wire fees on new purchases. Also, the purchaser may not be charged an origination fee greater than 1% on forward mortgages nor more than 2% on FHA home equity conversion mortgages.
- **Costs That the Buyer May Pay.** HUD regulations allow the FHA borrower to pay the following fees:
 1. Appraisal and inspection fees
 2. AUS (automated underwriting service) fee - limited to one AUS fee
 3. Credit report (actual cost)
 4. Verification charges
 5. Origination fee
 6. Home inspection fees up to \$300 or the actual cost
 7. Other inspection fees
 8. Doc prep fees if prepared by a third party who is not controlled by the lender
 9. Survey fees
 10. Title examination fee
 11. Title insurance fee
 12. Attorney's fees, if the attorney is not an employee of the lender
 13. Settlement fees, if the closing agent is not an employee of the lender
 14. Real estate broker's fees (buyer brokers), if the buyer engaged the broker independently and the fees are reasonable and customary
 15. Recording fees and taxes
 16. Test or treatment fees for tests of water supplies, soil percolation tests for individual septic systems or testing and treatment of insect infestation
 17. Notary fees if state law requires notarization and the notary is not an employee of the lender
 18. Discount points
 19. Lock-ins/rate locks
 20. Other charges approved by the HOC and considered reasonable and customary in the area



Practice Tip. As these regulations could change, be sure to verify with your local HUD office which costs the buyer may or may not pay.

- **Limit on Seller's Obligation to Pay Buyer's Loan Expenses.** The seller may limit the amount that he or she will pay to help the buyer obtain FHA financing. If the actual amount of fees exceeds the amount specified in blank 99, the seller will not be bound to pay the excess; since the buyer is prohibited from paying the excess, try to negotiate the fees with the lender to keep the transaction from failing.

Financing

18 (2) **Repairs:** In the event a lender, as a result of the FHA appraisal, requires repairs to items not covered by Seller's
19 warranty in Paragraph 8 of the Contract or Paragraph H of the Comprehensive Addendum (if applicable), Seller will make
20* required repairs up to a maximum cost to Seller of _____ 100 (\$500.00 if left blank). Required repairs to
21 warranted items are subject to the Repair Limit defined in the Contract. If the cost of repairs to warranted or unwarranted
22 items exceeds the respective limit, Seller will, within 3 days after receiving notice of the excess cost, deliver to Buyer
23 written notice of Seller's intent to pay some, all, or none of the excess amount. If Seller pays less than the full amount of the
24 excess cost, Buyer may pay the balance or cancel the Contract. Buyer's election must be in writing and provided to Seller
25 within 3 days after receipt of Seller's notice.

Purpose:

Subparagraph (2) addresses repairs required pursuant to an FHA appraisal.

Blank:

100 Insert the maximum additional amount (above and beyond the seller's repair limit established in paragraph 5 of the contract) the seller is willing to spend to make repairs required by the FHA appraiser to items or conditions that the seller did not warrant in paragraph 8 of the contract.

Deadlines:

- **Seller's Notice of Intent to Pay Excess Repair Costs.** This notice is due within three business days from having received notification that the repairs will cost more than the seller is obligated by contract to pay.
- **Buyer's Notice of Intent to Pay Balance of Excess Repair Costs.** This notice is due within three business days from having received the seller's notice.

Explanation:

- **Repairs.** HUD may require, as a result of the appraisal, that cosmetic conditions be repaired or that repairs be made to some items not covered by the seller's warranty in paragraph 8 of the contract. The seller may state in this subparagraph that he/she will make such repairs up to a specified cost limitation.
- **Applicability of Seller's Obligations in Paragraph 8 of the Contract.** All items covered by the seller's warranty, detailed in paragraph 8, must be up to the standard promised unless the cost to repair those items exceeds the seller's repair limit stated in paragraph 8.
- **Applicability of Seller's Obligations in this Subparagraph.** If the seller fills in an amount in blank 100, the seller is creating additional liability for himself/herself to make repairs. The seller's obligation in this subparagraph extends to conditions and items not covered by the warranty and repair limit given in paragraph 5 of the contract. The seller may insert "0" in blank 100.
- **Repair Costs Exceed Limit Given in Paragraph 5 or Blank 100.** The seller is not obligated to spend more on repairs than the amounts established in paragraph 5 and blank 100. HUD regulations allow the buyer to pay for repairs that HUD requires. Therefore, the seller may choose whether he/she wants to pay none, some or all of the excess amount.
- **Canceling the Contract.** If the seller chooses to pay some or none of the excess costs, then the buyer may choose to pay the remaining cost and continue the contract or to cancel the contract. The buyer does not have the option to cancel the contract if the seller pays for all the repairs.

Financing

26 (3) **Home Inspection:** Buyer has received and signed the "For Your Protection: Get a Home Inspection" notice.

Explanation:

- **Home Inspection Notice.** The HUD form entitled "For Your Protection: Get a Home Inspection" must be signed and dated by purchasers on or before the date that the sales contract is executed (or re-executed if necessary) for all transactions involving FHA mortgage insurance on existing property. New construction is exempt since the house was recently inspected during construction. This new form replaces the previously required "Importance of Home Inspections" form.

Financing

27 (4) **FHA Certification: Buyer** and **Seller** are signatories to the Contract. The selling real estate agent or broker involved in
28 this transaction states: I certify that the terms of this Contract for Sale and Purchase are true and correct to the best of my
29 knowledge and belief and that any other agreements entered into by any of these parties in connection with this
30 transaction are part of, or attached to, the Contract.

31* _____
32 Selling Sales Associate or Broker

101

_____ Date

101

_____ Listing Sales Associate or Broker

102

_____ Date

102

Purpose:

Subparagraph (4) provides a broker certification statement.

Blanks:

101 Have the selling agent sign and date the certification.

102 Have the listing agent sign and date the certification.

Explanation:

- **Purpose of Certification.** HUD requires that the borrower, seller and selling real estate agent or broker involved in the sales transaction certify the truth of the language contained in this subparagraph. However, HUD's regulations state that if all parties have signed a contract that contains a provision that there are no other agreements between the parties and that the terms of the sales contract constitute the entire agreement between the parties, then separate certification is not needed. Since the buyer and seller sign the contract which contains the necessary provisions in paragraph 13, only the selling real estate broker or agent needs to sign under this subparagraph.

Financing

4* (____) (____) - (____)(____) **F. VA Financing:** "It is expressly agreed that, notwithstanding any other provision of this
5 Contract, the **Buyer** will not incur any penalty by forfeiture of earnest money or otherwise be obligated to complete the
6 purchase of the property described herein, if the Contract purchase price or cost exceeds the reasonable value of the
7 property as established by the U.S. Department of Veterans Affairs. The **Buyer** will, however, have the privilege and option of
8 proceeding with the consummation of this Contract without regard to the amount of reasonable value established by the U.S.
9 Department of Veterans Affairs." If **Buyer** elects to proceed with the Contract without regard to the amount of reasonable
10 value established by the U.S. Department of Veterans Affairs, such election must be made in writing within 3 days from
11 **Buyer's** receipt of the appraisal.

12* **Seller** will pay all required fees under the VA regulations up to \$ _____ (103) (\$250.00 if left blank) toward **Buyer's**
13 loan and closing costs. In the event a lender, as a result of the VA appraisal, requires repairs to items not covered by **Seller's**
14 warranty in Paragraph 8 of the Contract or Paragraph H of the Comprehensive Addendum (if applicable), **Seller** will make
15* required repairs up to a maximum cost to **Seller** of \$ _____ (104) (\$500.00 if left blank). Required repairs to warranted
16 items are subject to the Repair Limit defined in the Contract. If the cost of repairs to warranted or unwarranted items exceeds
17 the respective repair limit, **Seller** will, within 3 days from receipt of notice of the excess cost, deliver to **Buyer** written notice of
18 **Seller's** intent to pay the excess cost or cancel the Contract.

Purpose:

To provide required language for VA contracts and to establish the parties' rights and obligations when VA financing is part of the transaction.

Blanks:

If the parties wish to include paragraph F in the contract, they must initial inside the brackets.

103 Insert the maximum amount the seller is willing to pay for loan expenses that VA prohibits the buyer from paying.

104 Insert the maximum additional amount (above and beyond the seller's repair limit established in paragraph 5 of the contract) the seller is willing to spend to make repairs required by the VA appraiser to items or conditions that the seller did not warrant in paragraph 8 of the contract.

Deadline:

- **Buyer's Election to Proceed With the Contract Despite Low Appraisal.** This must be made within three business days from the date the buyer receives the written appraisal.
- **Seller's Notice of Intent to Pay Excess Repair Costs or Cancel Contract.** This is due within three business days from having received notice that the repairs will cost more than the seller is obligated by contract to pay.

Explanation:

- **Coordination With Paragraph 3(b) of the Contract.** When incorporating paragraph F into the contract, be sure to check the VA financing box under paragraph 3(b) of the contract.
- **Amendatory Clause.** The clause enclosed in quotation marks is language required by the VA to be included in every sales contract involving VA financing.
- **Appraiser.** The VA will only accept VA appraisals.
- **Appraised Value.** This amount establishes the maximum mortgage that the VA will insure.
- **Appraised Value Lower Than Purchase Price.** Under federal law, if the appraisal comes in lower than the purchase price, the buyer has the option to either proceed with the contract regardless of the low appraisal or cancel the contract and receive a refund of his/her deposit upon proper authorization from the seller. If the buyer wants to renegotiate the purchase price, the seller may agree but is not obligated to do so.
- **Personal Property.** The VA will not finance the purchase of personal property. The only personal property that may be included in the purchase price is property that's value is not factored into the overall purchase price but is merely being left for the seller's convenience.
- **Costs That the Buyer May Not Pay.** Currently, a VA borrower may not pay the following expenses:
 1. Attorney's fees (except that the borrower may obtain and pay for their own independent legal advice)
 2. Brokerage fees
 3. HUD/FHA inspection fees for builders
 4. Notary fees
 5. Commitment or marketing fees of secondary purchaser of the mortgage, or preparation or recording of assignment of mortgage to such purchaser
 6. Trustee's fees or charges
 7. Loan application or processing fees
 8. Fees for preparation of truth-in-lending disclosure statement
 9. Fees charged by loan brokers, finders or other third parties
 10. Tax service fees
- **Costs That the Buyer May Pay.** Currently, a VA borrower may pay a maximum of the reasonable and customary amounts for any of the below "itemized fees and charges" plus a 1% flat charge by the lender plus reasonable discount points. The itemized fees and charges applicable to new purchases are:
 1. Appraisal and compliance inspections
 2. Recording fees and taxes
 3. Credit report
 4. Prepaid items
 5. Hazard insurance
 6. Flood zone determination
 7. Survey
 8. Title examination
 9. Title insurance
 10. VA funding fee
 11. Other fees authorized by VA based on local custom
- **Lender's 1% Flat Charge.** The VA allows lenders to charge veterans up to 1% of the loan amount to cover all of the lender's costs and services that are not reimbursable as "itemized fees and charges." If the veteran is paying the funding fee by adding it to the loan amount, the lender's 1% charge may be calculated on the amount including the funding fee.
- **Seller Concessions.** A seller concession is anything of value the seller adds to the transaction for which the buyer pays nothing additional and the seller is not customarily expected or required to provide. Concessions are often offered as a competitive tool, but if excessive, may induce unwary and unqualified veterans into home mortgages they cannot afford. Therefore, the VA prohibits seller con-

cessions in excess of 4% of the reasonable value of the property. Examples of seller concessions include but are not limited to:

- payment of the buyer's funding fee,
- gifts such as a TV or microwave oven,
- prepayment of the buyer's property taxes and insurance,
- payment of extra discount points to permanently buy down the borrower's interest rate,
- provision of escrowed funds to provide temporary interest rate buydowns, and
- payoff of credit balances or judgments on the buyer's behalf.

Seller concessions do not include payment of discount points appropriate to the market or payment of the buyer's closing costs.

• **VA Funding Fee.** To defray the cost of foreclosures, the VA began charging a funding fee on loans that closed on or after March 1, 1988. The amount of the fee varies depending on the type of service, loan-to-value ratios and whether the buyer is using VA funding for the first or subsequent time. The fee must be paid in cash at closing but may be financed by the lender.



Practice Tip. As these regulations can change, be sure to verify with your local VA office which costs the buyer may or may not pay.

- **Repairs.** The VA may require, as a result of the appraisal, that cosmetic conditions be repaired or that repairs be made to some item not covered by the seller's warranty in paragraph 8 of the contract. The seller may state in this subparagraph that he/she will make such repairs up to a specified cost limitation.
- **Applicability of Seller's Obligations in Paragraph 5 of the Contract.** All items covered by the seller's warranty, detailed in paragraph 8, must be up to the standard promised unless the cost to repair those items exceeds the seller's repair limit stated in paragraph 5.
- **Applicability of Seller's Obligations in this Subparagraph.** If the seller fills in an amount in blank 104, the seller is creating additional liability for himself/herself to make repairs. The seller's obligation in this subparagraph extends to conditions and items not covered by the warranty and repair limit given in paragraph 8 of the contract. The seller may insert "0" in blank 104.
- **Repair Costs Exceed Limit Given in Paragraph 5 or Blank 104.** The seller is not obligated to spend more on repairs than the limits established in paragraph 5 and blank 104. If the seller does not want to pay the additional cost, he/she may cancel the contract.
- **Canceling the Contract.** If the seller chooses to cancel the contract because the cost of VA-required repairs exceeds the maximum amount the seller agreed to pay under paragraphs 5 of the contract and F of the addendum, the seller should provide written notice to the buyer within three business days from having received notice of the excess cost. The buyer's deposit may be refunded upon proper authorization from all interested parties.

Financing

4* () () - ()() **G. New Mortgage Rates:** Buyer will not be obligated to complete the purchase unless
5* Buyer is able to obtain the financing at a fixed interest rate not exceeding 105% or a variable/adjustable interest rate not
6* exceeding 106% at origination, with no more than 107 discount points charged. Buyer will will not accept a
7 balloon mortgage.

Purpose:

To provide language by which the buyer can limit the amount of interest or loan charges he/she will pay and indicate whether or not he/she will accept a balloon mortgage.

Blanks:

If the parties wish to include paragraph G in the contract, they must initial inside the brackets.

105 Insert the maximum amount of interest the buyer is willing to pay for a fixed-rate home loan.

106 Insert the maximum amount of interest the buyer is willing to pay in the first year of a variable rate loan.

107 Insert the maximum number of points the buyer is willing to pay for a home loan.

Boxes:

Indicate whether or not the buyer will agree to close a balloon mortgage at or below the rate and discount points specified.

Explanation:

- **Coordination with Paragraph 3(b) of the Contract.** The terms of this paragraph will prevail over the requirement of paragraph 3(b) that the buyer close a loan at the prevailing interest rate.
- **Interest Rate Limitation.** The contract provides that the buyer must obtain a commitment for financing at the prevailing rates and loan costs, which binds the buyer to accept any rate and loan costs for which he/she qualifies. If the buyer does not want to pay more than a certain interest rate or amount of discount points, use this clause to indicate that condition.

Property

4 PROPERTY

5* () () - () () **H. As Is With Right to Inspect:** This clause replaces Paragraphs 6 and 8 of the Contract but
 6 does not modify or replace Paragraph 9. Paragraph 5(a) Repair, WDO and Permit Limits are 0%. **Seller** makes no warranties
 7 other than marketability of title. **Seller** will keep the Property in the same condition from Effective Date until closing, except for
 8 normal wear and tear ("Maintenance Requirement"), and will convey the Property in its "as is" condition with no obligation to
 9* make any repairs. **Buyer** may, at **Buyer's** expense, by _____ 108 _____, _____ ("Inspection Period") (within 10 days
 10 from Effective Date if left blank) make any and all inspections of the Property. The inspection(s) will be by a person who
 11 specializes in and holds an occupational license (if required by law) to conduct home inspections or who holds a Florida license
 12* to repair and maintain the items inspected. **Buyer** may cancel this Contract by delivering written notice to **Seller** within _____ 109 _____ days
 13 (within 5 days if left blank) from the end of the Inspection Period if the cost of treatment and repairs estimated by **Buyer's**
 14* inspector(s) is greater than \$ _____ 110 _____ (\$250.00 if left blank) or if **Buyer's** inspection(s) reveal open permits or that
 15 improvements have been made to the Property without required permits. For the cancellation to be effective, **Buyer** must include
 16 in the written notice a copy of the portions of the inspector's written report dealing with the items to be repaired, and treatment
 17 and repair estimates from the inspector or person(s) holding an appropriate Florida license to repair the items inspected or any
 18 written documentation of open permit(s) or permit(s) that have not been obtained if a permit is required. Any conditions not
 19 reported in a timely manner will be deemed acceptable to **Buyer**. If **Buyer** fails to timely conduct any inspection which **Buyer** is
 20 entitled to make under this paragraph, **Buyer** waives the right to the inspection and accepts the Property "as is." **Seller** will
 21 provide access and utilities for **Buyer's** inspections. **Buyer** will repair all damages to the Property resulting from the inspections
 22 and return the Property to its pre-inspection condition. **Buyer** and/or **Buyer's** representative may, on the day before Closing Date
 23 or any other time agreeable to the parties, walk through the Property solely to verify that **Seller** has fulfilled the Maintenance
 24 Requirement and the contractual obligations.

Purpose:

To establish procedures to follow in the event the seller does not want to warrant the property's condition or have any obligation to make repairs. The buyer's initial inspection rights and final walk-through inspection are addressed.

Blanks:

If the parties wish to include paragraph H in the contract, they must initial inside the brackets.

- 108 Insert the date by which the buyer must complete all inspections of the property. If this space is left blank, the time will be within 10 days from the effective date.
- 109 Insert the number of days the buyer will have to cancel. If left blank, it will be 5 days
- 110 Insert the maximum amount the buyer is willing to pay to repair the property. If the space is left blank, it will be \$250.00

Deadlines:

- **Professional Inspection.** This must be conducted by the date specified.
- **Walk-Through Inspection.** This must be conducted the day before the closing date or at another mutually agreeable time.

Explanation:

- **Contract Contingency.** The contract is contingent on the cost of repairs or treatment estimated by the Buyer's inspector not exceeding the amount specified in blank 110.

- **Coordinating with Paragraphs 8 and 9.** Paragraph 8 of the contract provides for a seller's warranty and repair obligations. The purpose of addendum clause H is to allow the seller to sell the property "as is" (subject of course to the seller's obligation to disclose material defects). However, this clause does not alter the parties' duties under Paragraph 9.
- **Repair Limits.** Paragraph 5 allows the parties to negotiate a Repair Limit, WDO Limit, and Permit Limit failing which 1.5% amounts are specified. In case the parties forget to fill in the blanks with "0", this clause provides that all such limits are 0%.
- **Seller's Maintenance Obligation.** The seller must keep the property in the same condition as it is on the effective date, excluding normal wear and tear. This does not guarantee that items work, it simply ensures that the buyer receives the same "as is" condition that the buyer saw at the time of offer.
- **"As is."** The buyer assumes the entire risk as to the property's quality.
- **Buyer's Expense.** The buyer must pay for inspections.
- **Effect of Failure to Conduct an Inspection on Time.** If the buyer or buyer's representative does not conduct the professional or walk-through inspection in the specified time period, the buyer forfeits the right to conduct the inspection and is deemed to accept any condition that could have been discovered by the inspection.
- **Effect of Failure to Send Cancellation Notice on Time.** If the buyer does not deliver written notice of intent to cancel to the seller within the specified time period, the buyer forfeits the right to cancel the contract.
- **Repair of Damages Caused by Inspections.** The buyer is obligated to repair any damage to the property that occurred during the course of and as a result of any inspection, putting the property back into the condition it was in prior to the inspection.
- **Who May Conduct Professional Inspection.** Only a home inspector (who specializes in home inspections and who holds an occupational license to do so, if an occupational license is required by local law) or a person who possesses a Florida license to repair and maintain the items inspected.
- **Who May Make Treatment and Repair Estimates.** Either the inspector or a person who holds a Florida license to repair and maintain the items inspected.
- **Inspection Results.** The inspection under this clause is intended to uncover all conditions that may make the property unacceptable to the buyer. The buyer has the right to examine the inspector's report and to obtain an estimate of the cost to repair items. If the estimate exceeds the amount that the buyer indicated he/she was willing to spend (blank 110), then the buyer may cancel the contract or waive the contingency.
- **Notice of Cancellation.** If the amount specified in blank 110 is "\$0", the clause practically becomes one that is contingent on buyer satisfaction. If the buyer's inspector finds that any repairs need to be made, the buyer may cancel the contract by simply informing the seller of that desire. However, if the buyer inserted any amount greater than \$0, the paragraph's cancellation provision applies. If the buyer's inspector estimates the repair cost will exceed the limit set in blank 110, the buyer must deliver a written notice to the seller of the buyer's intent to cancel the contract. The buyer must give the seller a copy of the written repair estimates and, if the professional inspector made a written report, a copy of the portion of the inspector's report dealing with the items to be repaired also. The buyer may also cancel the contract if the buyer's inspection reveals open permits or that improvements were made without required permits. Buyer must give seller any written documentation of open permits or unpulled required permits in order to cancel pursuant to the results of permit search.
- **Walk-Through Inspection.** The buyer or buyer's representative must conduct the walk-through inspection on the day before closing or at any other time upon which the parties agree. The only issues the buyer may raise on the walk through are:
 1. Property to be included in the purchase is missing from the premises.
 2. Discovery of a condition that materially affects the value of the property and that was not disclosed to the buyer and was not readily observable when the offer was made or when the professional inspection was conducted.
 3. Property was maintained in the same condition it was in on the effective date of the contract (this covers risk of loss repair obligations).
 4. Failure of the seller to disclose facts that materially affect the value of the property.

Property

4* () () - () () I. Inspections (check as applicable)

5* (1) **Self-Inspection: Buyer and Seller** agree that unlicensed persons, including the parties themselves, may conduct
6 the inspections (except for **Buyer's** wood-destroying organism inspection) permitted in Paragraph **8** of the Contract or
7 Paragraph **H** of this Addendum. However, if the inspection findings differ and the parties cannot resolve the differences,
8 **Buyer and Seller** together will choose, and will equally split the cost of, a professional inspector as defined in Paragraph **8**
9 of the Contract whose report will be binding on the parties.

Purpose:

To provide inspection-related options for the buyer. To allow for the parties to conduct inspections themselves instead of using a professional inspector.

Blanks:

If the parties wish to include paragraph I in the contract, they must initial inside the brackets.

Boxes:

Check box (1) if the buyer wants to include this clause as part of the contract.

Explanation:

- **Inspection Period.** Inspections must be conducted by the date specified in paragraph 6 of the Contract.
- **Conduct of Inspections.** By checking this clause, the parties agree that anyone, including themselves, may conduct any of the inspections except for the wood-destroying organism inspection.
- **Conflicting Opinions.** If the parties or their inspectors disagree about the property condition, the parties must choose and pay for a final inspection by a person who holds an occupational license as a home inspector (if the law requires such a license) or by a person who is licensed to repair and maintain the items inspected.

Property

10* (2) **Right to Cancel Based on Inspection Results:** Within the Inspection Period provided in Paragraph **6** of the
11 Contract, **Buyer** will, at **Buyer's** sole expense, complete any desired inspections of the Property in addition to those
12 referenced in Paragraphs 7 and 8(a)(2). If **Buyer** is for any reason unhappy with a condition of the Property noted in the
13 inspection results, **Buyer** may cancel the Contract by delivering written notice to **Seller** along with a copy of the
14 inspection results within 2 days from the end of the Inspection Period, and **Buyer** will, at **Buyer's** sole expense,
15 immediately repair all damage resulting from **Buyer's** inspections and restore the Property to its pre-inspection condition;
16 this obligation will survive termination of the Contract. If the Contract is not cancelled, the parties' obligations remain as
17 specified in the Contract. This Paragraph does not modify or replace the rights and obligations of the parties under
18 Paragraph **9** of the Contract.

Purpose:

To allow the buyer to cancel the contract if unsatisfied with inspection results.

Boxes:

Check box (2) if the buyer wants to include this clause as part of the contract.

Deadlines:

- **Inspections.** All inspections must be conducted within the Inspection Period provided in Paragraph 6 of the contract.
- **Written Cancellation Notice.** This must be delivered to the seller no later than 2 days after the end of the Inspection Period.
- **Inspection Damage Repairs.** Repairs and restorations of the property must be made immediately if the buyer cancels the contract.

Explanation:

- **Contract Contingency.** The contract is contingent on the buyer being satisfied with the inspection results and deciding not to cancel the contract.
- **"Unhappy" Standard.** The buyer may cancel the contract if he or she is "unhappy" with any condi-

tion noted during the inspections. This of course is a wide open standard that is subjective, meaning that the buyer's unhappiness does not have to be reasonable or justified. This clause basically offers the buyer a "free look" period.



Practice Tip. Use this clause with caution since this is basically a free look clause. The inspection period should be relatively short so as to allow the seller to quickly begin remarketing the property if the buyer cancels, and so the buyer can move on to other properties, if desired, without having to make or amend multiple financing applications.

- **Inspection Scope.** This clause allows the buyer to inspect for non-warranted items, mold and other property conditions, along with the inspections allowed under sections 7 and 8(a)(2), within the inspection period.
- **Inspection Damage Repairs.** If the property was damaged in any way during the buyer's inspections, the buyer is obligated to repair and restore the property to the condition it was in before the inspections occurred. This obligation does not arise unless the contract is cancelled, and it remains in effect after the termination of the agreement.
- **Coordination With Risk of Loss Clause.** If the inspection period has passed and the buyer accepted the property, but the property is later damaged by a hurricane, fire or other casualty, the parties should look to Paragraph 9, the Risk of Loss clause, to determine their rights and obligations.

Property				
4*	() () - () () J. Insulation Disclosure (New Homes Only): Insulation has been or will be installed in the new residence as follows:			
6	<u>Location</u>	<u>Type</u>	<u>Thickness</u>	<u>Manufacturer R-Value</u>
7*	Interior Walls			
8*	Flat Ceiling Area	111	112	113
9*	Sloped Ceiling Area			
10*	Common Walls Between House & Garage			
11*	Exterior Walls			
12*	Other _____	114		

Purpose:

To fulfill state and federal legal requirements about informing new-home buyers that they have the right to have the home's energy-efficiency rating determined and to know what kind of insulation is installed in the new home.

Blanks:

If the parties wish to include paragraph J in the contract, they must initial inside the brackets.

- 111 For each location, insert the type of insulation installed.
- 112 For each location, insert the thickness of the insulation installed.
- 113 For each location, insert the manufacturer's R-value.
- 114 If there is any location that differs from those specified or any other variation in the insulation's characteristics, insert a description.

Explanation:

• **Insulation Disclosure.** Under the Federal Trade Commission's regulations, prospective buyers must be given written disclosure of the type, thickness and R-value of each different type of insulation used in a new home. This information must be disclosed at or prior to the time the buyer signs a contract. Unfortunately, Florida's energy performance level display card does not indicate the type of insulation installed so it does not meet the federal disclosure requirements.

Property

4* () () - () () **K. Pre-1978 Housing Lead-Based Paint Warning Statement:** “Every purchaser of any interest
5 in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present
6 exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in
7 young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient,
8 behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any
9 interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk
10 assessments or inspections in the seller’s possession and notify the buyer of any known lead-based paint hazards. A risk
11 assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.” For purposes of this
12 addendum, lead-based paint will be referred to as “LBP” and lead-based paint hazards will be referred to as “LBPH.”

Purpose:

To meet federal disclosure requirements regarding lead-based paint in houses that were built before 1978. The above paragraph may not be modified, as the portion in quotes is specified by law.

Blanks:

If the parties wish to include paragraph K in the contract, they must initial inside the brackets.

Explanation:

- **Lead-based Paint.** This is paint that contains lead as an ingredient. Lead-based paint was commonly used to paint homes built before 1978, when federal limitations on the use of lead in paint took effect. When properly maintained, the paint poses little risk; but if improperly managed, lead-based paint and paint dust can pose a particular threat to children and pregnant women.
- **Lead-based Paint Hazards.** These are any conditions that cause exposure to lead from lead-contaminated dust, soil or paint that is deteriorated or present in surfaces that are accessible, in surfaces that rub together (such as windows that can be raised and lowered) or in surfaces that impact (such as doors and door jambs) and that would result in adverse health in humans.
- **Federal Legal Requirements.** Beginning in 1996, sellers of a home built in 1977 or earlier, and any real estate licensee who enters into a contract with such sellers to sell or lease the home, are required to make certain disclosures regarding lead-based paint and its associated hazards. The disclosures include :
 1. Giving the buyer a copy of the EPA brochure entitled “Protect Your Family From Lead in Your Home”
 2. Giving the buyer a specific lead-based paint warning statement written by Congress giving the buyer a 10 day or other contractually agreed-upon amount of time in which to conduct a lead-based paint assessment of the property, along with the right to cancel the contract if unsatisfied with the results of the assessment
 3. Disclosing to the buyer all lead-based paint hazards on the property of which the seller is aware.

The penalties for failing to comply with the law are very stiff, and may be imposed upon the seller, broker or both. However, failure to make the disclosures will not void the sales contract.

Property

13 **(1) LBP/LBPH in Housing: Seller** has no knowledge of LBP/LBPH in the housing and no available LBP/LBPH records or
 14 reports, except as indicated: (describe all known LBP/LBPH information, list all available documents pertaining to
 15* LBP/LBPH and provide documents to **Buyer** before accepting **Buyer’s** offer) _____
 16* _____
 17* _____
 18* _____

Purpose:

To disclose the presence of lead-based paint and related hazards that the seller knows are present on the property.

Blanks:

Insert any known lead-based paint hazards that the seller is aware exists on the premises.

Deadline:

All documents in the seller’s possession or in the possession of someone whom the seller can contact and receive a copy must be given to the buyer before the seller accepts the buyer’s offer.

Explanation:

- **No Knowledge of Lead-Based Paint and/or Lead-Based Paint Hazards in the Property.** This paragraph presumes that the seller is not aware of any lead-based paint or hazards on the property. The seller is not required to guess as to such conditions. For example, if the seller has not painted the property in 25 years, the paint may contain lead but the seller does not have to say that the paint contains lead unless the seller knows for sure that it does. The seller could instead simply state that the property has not been painted in 25 years.
- **Knowledge of Lead-Based Paint and/or Lead-Based Paint Hazards in the Property.** If the seller is aware that any surfaces in the property or structures attached to the property (patios, porches, fences, garages, etc.) are painted with lead-based paint or contain other lead-based paint hazards, the seller must disclose this knowledge to the buyer.
- **Details of Knowledge.** The seller must describe the condition in detail, telling where the paint or hazard is located, how the seller found out that the paint or hazard existed and the condition of the painted or hazardous surface (e.g. paint is peeling, painted area is not peeling, etc.).
- **Documents.** If the seller has ever had the property inspected and the inspection report mentioned the presence or lack of presence of lead-based paint and/or lead-based paint hazards, the seller must list the reports and provide them to the buyer. All such documents must be given to the buyer to review before the seller accepts the buyer’s offer.



Practice Tip. If the seller has available documents regarding lead-based paint and/or lead-based paint hazards on the property, list the documents and add a clause giving the buyer a reasonable number of days to examine them. The number of days you allow should depend on how extensive the documents are and how long it would take the buyer to review them. A sample clause could be: “Buyer will have 5 days from receipt of the documents to review them and provide Seller with written notice as to whether Buyer wants to modify, withdraw or continue with the offer as written. If Buyer wants to modify the offer, Buyer will include the terms of modification in the written notice, and Seller will have 5 days from receipt of Buyer’s written notice to decide whether or not to accept the offer as modified.”

- **Availability of Documents.** For purposes of the federal law, documents are only considered available to the seller if the seller has them in his or her possession or if they are reasonably obtainable by the seller. For example, if the seller threw his copy away but can contact the inspector and the inspector still has a copy of the report, the report would be considered “available” to the seller. Or, if the only report is in the hands of the seller’s property manager, it would be considered “available.”

Property

19	(2) Lead-Based Paint Hazards Inspection: Buyer waives the opportunity to conduct a risk assessment or inspection for the presence of LBP/LBPH unless this box is checked (<input type="checkbox"/> Buyer may, within the Inspection Period, conduct a risk assessment or inspection for the presence of LBP/LBPH in accordance with the provisions of paragraph 8(a) or H. LBP/LBPH conditions that are unsatisfactory to Buyer will be treated as “warranted items” for purposes of paragraphs 8(a)(2) and (3) only).
20*	
21	
22	

Purpose:

To address whether or not the buyer will conduct an inspection for lead-based paint and/or lead-based paint hazards in the property.

Boxes:

Check this box if the buyers want to inspect the property for lead-based paint and lead-based paint hazards. If the box is not checked, the buyers will not have the right to conduct the inspection later unless the seller consents.

Deadlines:

- **Lead-Based Paint Inspection.** If the buyer wants to conduct an inspection for lead-based paint on the property, it must be done within the inspection period specified in paragraph 6 of the contract.

- **Method of Inspection.** The buyer may use any method desired to determine whether lead-based paint is present on the property.

Explanation:

- **Waiver of Lead-Based Paint Inspection.** A buyer may waive the right to conduct the inspection, provided the waiver is made in writing. This clause contains that waiver as the default situation. It was written that way because of the lack of inspectors qualified to conduct lead-based assessments in Florida. At such time as the federal inspection certification program is developed and takes effect, this clause will probably be changed.
- **Inspectors.** At this time, Florida has no certification program for lead-based paint inspectors. HUD and EPA are developing a certification program that will be offered nationwide. Until that time, some inspectors are attending programs in other states to learn how to properly test for lead-based paint and related hazards. A certified inspector is not required to conduct the inspection.



Practice Tip. Home test kits are available, but HUD warns that such kits have not been proven reliable for detecting low levels of lead. Anyone who uses a home test kit or who otherwise inspects for the presence of lead-based paint on the property, may be held responsible for conducting the test in a non-negligent manner and for the truthfulness of any representations made in connection with the test or test results.

- **Buyer's Expense.** The buyer is responsible for the cost of performing the lead-based paint investigation. The buyer must repair all damage to the property that results from the buyer's investigation.



Practice Tip. The buyer can find an environmental consultant to perform radon and lead-based paint testing by looking in the phone book under the heading "Environmental Consulting" or a similar heading.

- **Integration of Inspection With Clause H.** In an "as is" contract, the seller has no repair obligation. Therefore, if the buyer finds lead-based paint conditions that are unsatisfactory, the buyer may either accept the property with the existing conditions or may cancel the contract if the amount needed to repair the conditions exceeds the amount specified in paragraph H.
- **Integration of Inspection With Clause 8.** The buyer's right to inspect for lead-based paint is connected to the buyer's right to inspect warranted items in the property. Federal law gives the buyer the right to inspect, but allows the parties to determine the terms of that inspection and how its results will be treated. All applicable aspects of paragraph 8(a), including the buyer's responsibility to repair damage to the property caused by the testing, apply to the lead-based paint inspections and repairs.
- **Timing of Inspection.** Clause K provides that the lead-based paint inspection will be conducted during the inspection period specified in paragraph 6.
- **Notice of Unsatisfactory Conditions.** Since unsatisfactory lead-based paint conditions are treated as warranted items, refer to paragraph 8(a)(2) for the buyer's obligations and rights with regard to the inspection. The buyer must submit a list of unsatisfactory lead-based paint conditions along with the list of items not in warranted condition and provide the list to the seller within 5 days from the end of the inspection period, in accordance with paragraph 8(a)(2).
- **Repair of Unsatisfactory Conditions.** The seller has the right to repair listed lead-based paint conditions in accordance with paragraph 8(a)(3). The buyer may decide not to have the seller repair those conditions if the cost to make the repairs exceeds the repair limit and the seller will not pay the excess. In this event, the buyer may either cancel the contract or proceed, in which case the buyer would waive the right to have repairs made.
- **Contract Cancellation.** Under this contract, the buyer does not have an unconditional right to cancel the contract based on the results of the lead-based paint inspection. Instead, this contract allows the seller to correct the unsatisfactory conditions. The seller may choose not to correct such conditions if the cost of correction, added with the cost of repairing warranted items, exceeds the repair limit specified in paragraph 5(a). If the seller chooses not to pay for repairs in excess of the repair limit, then the buyer may cancel the contract. This is acceptable under the federal law (which was not intended to provide the buyer with a "free look") since it provides the buyer with a way out of the contract if the seller will not repair unsatisfactory lead conditions.
- **Waiver of Contingency.** The contract provides that if the buyer fails to deliver timely written notice of the unsatisfactory lead-based paint conditions, the buyer will waive the right to have the unsatisfactory conditions repaired.

Property

23 (3) **Certification of Accuracy:** Buyer has received the pamphlet entitled "Protect Your Family From Lead in Your Home" and
24 all of the information specified in paragraph (1) above. Licensee has notified **Seller** of **Seller's** obligations to provide and
25 disclose information regarding lead-based paint and lead-based paint hazards in the property as required by federal law
26 (42 U.S.C. 4852d) and is aware of his or her obligation to ensure compliance with federal lead-based paint law. **Buyer,**
27 **Seller** and each licensee has reviewed the information above and certifies, to the best of his or her knowledge, that the
28 information he or she has provided is true and accurate.

29*	_____ 116	_____ 116	_____ 117	_____ 117
30	Buyer	Date	Seller	Date
31*	_____ 116	_____ 116	_____ 117	_____ 117
32	Buyer	Date	Seller	Date
33*	_____ 118	_____ 118	_____ 119	_____ 119
34	Selling Licensee signature	Date	Listing Licensee signature	Date

Purpose:

To comply with federal law regarding certification of information.

Blanks:

- 116 Have the buyer(s) sign and date this provision.
- 117 Have the seller(s) sign and date this provision.
- 118 Have the selling licensee sign and date this provision, unless the selling licensee is a buyer's agent paid solely by the buyer and not by the listing office or seller.
- 119 Have the listing licensee sign and date this provision.

Explanation:

- **Certification.** The law requires that the buyer(s), seller(s) and licensees involved in the transaction (except for buyer's agents who are compensated solely by the buyer and not by the listing office or seller) to sign a certification evidencing compliance with the law.
- **Protect Your Family From Lead in Your Home.** This pamphlet was written by the Environmental Protection Agency ("EPA"). It is designed to inform homebuyers about the risks associated with lead-based paint and lead-based paint hazards. The federal law requires that the seller and agent provide buyers with this pamphlet prior to the buyer signing the certification. The certification must be signed before the seller accepts the offer. If it is not given until after the buyer makes the offer, the buyer must be allowed to review the pamphlet and revise or revoke the offer, if desired.



Practice Tip. To obtain the EPA pamphlet, check with your local board/association of Realtors or call the National Lead Information Center at 800/424-LEAD. Since the brochure is a public document, you may reproduce it as needed.

- **Licensee Obligation to Inform Seller of Duties.** Each licensee in the transaction, even a buyer's agent (unless he or she is paid solely by the buyer and not by the seller or listing office), is obligated to inform the seller of the seller's disclosure duties under the federal law. This can be accomplished verbally, by telling the seller about his or her duties, or in writing, by giving the seller a copy of the law and regulations or a form such as FAR form LBPL-1x, *Complying With the Lead-Based Paint Law: Licensee Notice to Seller/Landlord*, which describes the seller's duties.



Practice Tip. Both the selling and listing licensees are required to inform the seller of the seller's duties. For liability purposes, the selling office may wish to inform the seller directly, rather than by giving a written form to the listing office. There is no prohibition in Florida against a selling office contacting a listing office. However, when contacting the seller, limit the discussion so as not to run afoul of the National Association of Realtors' *Code of Ethics* prohibition against Realtors interfering with another Realtors' relationship with the seller.

Property

4* () () - () () L. Insurance: (check all that apply)

- 5* (1)(a) Homeowners Insurance: If Buyer is unable to obtain comprehensive homeowner's insurance coverage (including
6 windstorm) from a standard carrier or the Citizen's Property Insurance Corporation at a first year annual premium not to exceed
7* \$ 120 or _____% of the purchase price by 121, _____ (the earlier of 30 days after Effective
8 Date or 5 days prior to Closing Date if left blank), Buyer may cancel the Contract by delivering written notice to the Seller.
9* (1)(b) Flood insurance: If Buyer is unable to obtain flood insurance through the National Flood Insurance Program at a first
10* year premium not to exceed \$ 122 or _____% of the purchase price by 123, _____ (the
11 earlier of 30 days after Effective Date or 5 days prior to Closing Date if left blank), Buyer may cancel the Contract by delivering
12 written notice to the Seller.
- 13* (2) Flood Insurance: Buyer is notified that the Property is located in an area that: is a defined floodable area and
14* flood insurance is required. was declared a flood disaster area after September 23, 1994 and received federal disaster
15 relief assistance on the condition that flood insurance be obtained in accordance with applicable federal law. Buyer is
16 required to obtain such flood insurance if the Property is not so insured as of the date of transfer and will be required to
17 maintain flood insurance in accordance with applicable federal law with respect to the Property.
- 18 (3) Flood damage to 1st floor: Buyer acknowledges that there have been no representations or guarantees made by
19 the Seller or Broker regarding the usability of the first floor of the subject property. Buyer is aware that any flood damage
20 to the first floor may result in difficulty in obtaining flood insurance and/or may result in adverse enforcement proceedings
21 by local authorities.

Purpose:

To provide the parties with options regarding flood and homeowners' insurance. To give the buyer the opportunity to ascertain insurance costs for the property and cancel the contract if the amount exceeds given limits. To help the seller meet state and federal disclosure requirements regarding the need for flood insurance. To provide an acknowledgement to the buyer that if the first floor of the property is damaged by flood, the buyer may have difficulty obtaining flood insurance and there may be some adverse enforcement proceedings by local authorities.

Blanks:

If the parties wish to include paragraph L(1)(a) and/or L(1)(b) and/or L(2) in the contract, they must initial inside the brackets.

- 120 Insert the dollar amount or percentage of the purchase price that is the maximum the buyer would want to pay for homeowner's insurance.
- 121 Enter the month, day and year by which the buyer may cancel the contract if he or she cannot get homeowners insurance within the specified limits.
- 122 Insert the dollar amount or percentage of the purchase price that is the maximum the buyer would want to pay for flood insurance.
- 123 Enter the month, day and year by which the buyer may cancel the contract if he or she cannot get flood insurance within the specified limits.

Boxes:

Check box (1)(a) to allow the buyer to cancel the contract if unable to obtain homeowner's insurance at the specified rates. Check box (1)(b) to allow the buyer to cancel the contract if unable to obtain flood insurance at the specified rate.

Check box (2) to address flood insurance requirements.

Under subparagraph (2), check the first box if the property must be insured for flood hazards; check the second box if the property received federal disaster relief (such properties have unique disclosure requirements).

Deadline:

• **Written Cancellation Notice.** In order for buyer to cancel under (1)(a) or (1)(b), the buyer must provide the seller with written notice of cancellation by the date specified or the earlier of 30 days after effective date or 5 days prior to closing date if no date is specified.

Explanation:

• **Premium Limits.** Note that the amounts inserted as caps on the price the buyer is willing to pay for homeowners and flood insurance are for first year premiums only. The caps do not apply to premiums charged in subsequent years.

- **Premiums.** The rate that is charged for homeowners and flood insurance is determined by looking at both the property and the insured person. Caution should be exercised when using this clause as the buyer may have a different risk assessment than the seller or than property owners in general in the area.
- **Federal Requirement.** This clause is a notice to the buyer that he/she is required by US law to maintain flood insurance on the property. The clause only applies if the property is in an area that was declared a flood disaster area after September 23, 1994 and if its owner received federal disaster relief assistance on the condition that he/she obtain flood insurance. All subsequent owners will also be required to keep flood insurance on the property.
- **Acknowledgement.** Subsection (3) provides a disclosure to the buyer that if the first floor (assuming the property is built on pilings and has more than one floor) is flooded, the buyer may have difficulty obtaining homeowner insurance or may not be able to use the first floor as the buyer wishes without having fines, penalties or restrictions imposed by local authorities. Buyer should check local authorities to determine whether adverse enforcement proceedings have been or may be instituted.

Property

4* () () - ()() M. Housing for Older Persons: Buyer acknowledges that the owners' association, developer
 5 or other housing provider intends the Property to provide housing for older persons as defined by federal law. While Seller
 6 and Broker make no representation that the Property actually qualifies as housing for older persons, the housing provider has
 7* stated that it provides housing for persons who are 62 years of age and older. 55 years of age and older.

Purpose:

To provide an acknowledgement by the buyer that he/she is aware that the property is alleged to be housing for older persons.

Blanks:

If the parties wish to include paragraph M in the contract, they must initial inside the brackets.

Boxes:

Check the first box if everyone who resides in the housing must be age 62 or over.

Check the second box if at least one person age 55 or over must reside in at least 80% of the units.

Explanation:

- **Fair Housing Act.** The federal Fair Housing Act and the National Association of Realtors Code of Ethics prohibit Realtors and other real estate licensees from discriminating in the provision of housing on the basis of age or against families with children. However, housing developments that are intended to provide housing for older persons are exempt from the prohibition against discrimination. There are two ways to meet the housing for older persons exemptions — 62 and older or 55 and over.
- **62 and Older.** To meet the requirements of this exception, every person who resides in the housing development must be age 62 or older. The governing documents of the housing must state the intent to provide housing for older persons and must prohibit anyone under the age of 62 from residing in the property. When showing properties that claim this exemption, ask the association for an affidavit or resident list showing the ages of the residents as being 62 or older.
- **55 and Over.** This exemption requires that one person age 55 or older reside in at least 80% of the community's housing units and that the community publishes and adheres to policies and procedures that demonstrate its intent to provide housing for persons 55 and over. Real estate licensees who market such property will not be held personally liable for violation of the Fair Housing Act if they have no actual knowledge that the community is not or will not be eligible for the exemption and the community has stated formally in writing that it complies with the requirements for the exemption.



Practice Tip. When working with persons who have children under the age of 18, FAR attorneys advise that you show them all properties that meet their needs, even if the properties are intended as housing for older persons. But, be sure to explain that the housing provider has expressed an intent that the housing is intended for older persons and there may be restrictions on who can reside there.

MISCELLANEOUS CLAUSES

4

5* () () - () () **N. Lease Purchase/Lease Option:** This Contract is contingent upon **Buyer** and **Seller** executing a
 6* lease purchase lease option agreement containing mutually agreeable terms within 3 days from Effective Date. Attorney's fees for
 7* preparation of the lease purchase or lease option shall be paid by **Buyer** **Seller** split equally by the **Buyer** and **Seller** (split
 8 equally if left blank). If the lease purchase or the lease option agreement is not executed within the 3 days, this Contract shall be
 9 terminated and **Buyer's** deposit refunded.

Purpose:

To provide a contingency for the buyer and seller to execute a lease purchase/lease option agreement.

Blanks:

If the parties wish to include paragraph N in the contract, they must initial inside the brackets.

Boxes:

Check the box indicating who is to pay for preparation of lease purchase/lease option agreement.

Check the box indicating whether the contract is contingent upon buyer or seller executing a lease purchase or lease option agreement.

Deadline:

- **Execution of Lease Purchase/Lease Option Agreement.** The buyer and seller must execute a lease purchase or lease option agreement within 3 days from effective date.

Explanation:

This addendum provides a contingency for buyer and seller to execute a lease purchase or lease option agreement.

- **Lease Purchase.** A lease purchase is one where the buyer and seller agree that the buyer would occupy the property prior to closing for a specific duration. The buyer would then purchase the property and close the transaction upon the expiration of the lease term. A lease purchase agreement may contain terms such as the amount of lease payments to be contributed to the sales price, whether default under the lease constitutes default under the purchase and sale agreement and prohibition on seller encumbering the property during the lease term.
- **Lease Option.** A lease option is an agreement allowing the buyer to occupy the property while giving the buyer the option to purchase the property. The buyer/tenant may be required under the lease option agreement to pay a specified deposit amount in order to exercise the option. Unlike the buyer under a lease purchase agreement, the buyer, under this type of agreement, is not obligated to purchase the property unless the buyer chooses to exercise the option by performing the required act under the agreement to exercise the option.



Practice Tip. The Supreme Court of Florida has stated that real estate licensees may only fill in the blanks of a Supreme Court approved lease. A real estate licensee may not draft a lease nor draft any addendum to a lease. To do so would constitute the unauthorized practice of law which is a third degree felony. For this reason, the buyer and seller (not the real estate licensees involved) must prepare the lease purchase or lease option agreement.

Miscellaneous

4* () () - () () **O. Interest-Bearing Escrow Account:** All deposits will be held in an interest bearing escrow
5* account with all accrued interest to be paid to ¹²⁴ at
6 closing. Deposits will accrue interest only from the date the bank receives and credits them through the date Escrow Agent is
7 notified that the transaction is scheduled for closing and the funds are transferred. Escrow Agent is authorized to deduct a
8 \$ ¹²⁵ service charge from the earned interest before disbursing the funds.

Purpose:

To provide for the deposit to be placed in an interest-bearing account.

Blanks:

If the parties wish to include paragraph O in the contract, they must initial inside the brackets.

¹²⁴ Insert the name of the person who will receive the interest earned on the deposit.

¹²⁵ Insert the amount charged by the broker for maintaining the interest-bearing account.

Explanation:

- **FREC Requirements.** FREC rules require interest-bearing accounts to be handled somewhat differently from non-interest bearing accounts. The parties must agree in writing to place the funds in an interest-bearing account and the written agreement must specifically state who will earn the interest and when the interest will be disbursed.
- **Who May Earn Interest.** The parties may designate anyone to earn the accrued interest, including the broker, themselves or a third person or charity.
- **Service Charge.** This contract provides a blank in which the broker may insert the amount charged to it by the bank to establish and close out the account. The broker may add its own administrative fees to the charge, as well.
- **Setting Up the Account.** The easiest way to set up the account is to have an individual account for each transaction. That way, when the transaction is due to close, you can close the account and write a check for the deposit and a check for the interest. Or, you may place the funds in an interest-bearing escrow account that contains funds of other parties. If this is done, you must be careful to transfer the deposit and the interest attributed to it to a noninterest-bearing account before writing the checks; otherwise, you could end up with an unlawful escrow account overage if the parties don't cash the checks right away.

Miscellaneous

4* () () - () () **P. Back-up Contract/Kick-out Clause:** (Check whichever applies)
5* **(1) Back-up Contract:** This back-up Contract is subject to the termination of a prior executed contract between **Seller**
6 and a third party for the sale of the Property. If **Seller** terminates the prior executed contract, and **Seller** delivers written
7* notice of the termination to **Buyer** before 5:00 p.m. on ¹²⁶, _____, this contingency will be
8 removed and this back-up Contract will move into first position. The "Effective Date" of the back-up contract will be the
9 date **Seller** delivers written notice of the termination of the prior executed contract. If **Buyer** does not receive notice of the
10 prior executed contract's termination by the above deadline, **Buyer** may cancel this back-up Contract by delivering written
11* notice to the **Seller** within 3 days after the time provided above and **Buyer's** deposit will be refunded. **Buyer** may cancel
12 this back-up Contract by delivering written notice to the **Seller** prior to the date **Seller** delivers written notice of the
13 termination of the prior executed Contract.
14* **(2) Kick-out Clause:** **Seller** will have the right to continue to show the Property and solicit and enter into bona fide
15 back-up purchase contracts with third parties that are subject to the termination of this primary Contract. Upon entering
16 into a back-up contract, **Seller** will give **Buyer** a copy of the back-up contract with the third parties' identification and
17 purchase price information obliterated. To continue with this primary Contract, **Buyer** must make an additional deposit of
18* \$ ¹²⁷ within 72 hours (to be computed as consecutive hours, not business days) from receipt of the back-up
19 contract. By giving the additional deposit to Escrow Agent within the 72 hour period, **Buyer** waives all contingencies for
20 financing and sale of **Buyer's** property and the parties will close on Closing Date. The additional deposit will be credited to
21 **Buyer** at closing. If **Buyer** fails to timely make the additional deposit, this primary Contract will terminate and **Buyer's**
22 deposit will be refunded.

Purpose:

Subparagraph (1) is used to place this contract in a back-up position to another contract binding the seller.

Subparagraph (2) is used to provide for the removal of specific contingencies if the seller accepts a back-up contract to purchase the property.

Blanks:

If the parties wish to include paragraph P in the contract, they must initial inside the brackets.

- 126 Insert the month, day and year by which the seller expects to know if he/she can be released from the prior-executed contract.
- 127 Insert the amount of the additional deposit that the buyer must make if the seller accepts a back-up contract to the buyer's contract.

Boxes:

Check the box in subparagraph (1) if the buyer will be allowed to cancel the back-up contract before the seller notifies the buyer that the primary contract has been terminated.

Deadlines:

- **Subparagraph (1) Notification of Termination of Prior Executed Contract.** This notice is due before 5:00 p.m. local time on the date specified in blank 126.
- **Subparagraph (2) Additional Deposit and Removal of Contingencies.** The buyer has 72 hours from the time he/she receives a copy of the back-up contract to make the specified deposit, waiving all contingencies for financing and sale of the buyer's property. The time in subparagraph 2 is not computed in business days like all of the other provisions of the contract and addendum.

Explanation:

- **Back-Up Contract.** This is a contract that is contingent on the termination of prior executed contract on the property. In any transaction, the seller has the right to continue marketing the property and to enter into a back-up contract. The seller may have many reasons for doing so, including discomfort with the ability of the buyer to close a contract dependent on contingencies such as financing or sale of the buyer's property. Or, the seller may believe that he/she can make a better deal with a different buyer. So, when another offer comes in, the seller may accept it as a back-up contract. The back-up contract will normally be contingent on the seller being released from the prior executed contract.
- **Prior Executed Contract.** This is an existing sales agreement between the seller and a buyer. It is referred to as a prior executed contract because it is already fully executed at the time a later offer is presented. All offers submitted to a seller who is already bound by a prior executed contract take a back-up position if accepted.
- **Termination of a Prior Executed Contract.** The prior executed contract may contain financing or other contingencies in which the buyer's performance obligation depends on the occurrence of a specific event. If the contingency fails, the parties may release each other from performance and the seller will be able to perform the back-up contract. Or, the seller's attorney may advise him/her that breaching a prior executed contract and paying damages to the prior buyer would be advantageous in light of more favorable terms presented in the back-up offer. If the first contract is terminated, the seller can perform under the back-up contract.
- **Use of Subparagraph (1).** This clause is used when the offer being submitted is in the back-up position.
- **Use of Subparagraph (2).** This clause is most often used when a buyer submits an offer that is contingent on the sale of the buyer's property. The seller may be reluctant to accept such a contingency because its removal is dependent on forces outside the control of the parties. This clause allows the buyer to have the contingency while giving the seller some security that if he/she receives an offer he/she deems more solid, then either the first buyer will remove the troublesome contingencies or release the seller from his/her contractual obligations.
- **Written Notice of Back-Up Contract.** Upon accepting a back-up contract, the seller must notify the buyer in writing and give the buyer a copy of the back-up contract. The seller may obliterate the back-up buyer's identification or purchase price information.



Practice Tip. If the back-up buyer would like to be able to cancel the back-up contract at any time after the back-up buyer and seller execute the back-up contract but before the seller delivers the written notice to back-up buyer of the termination of the prior executed contract, then back-up buyer should check the box in subparagraph (1).

- **Removal of Contingency.** Upon receipt of the back-up contract, the buyer must choose whether he/she wants the property enough to remove all financing and sale of property contingencies or whether he/she wants to cancel the contract. The buyer must make his/her choice within 72 hours from the time he/she receives the seller's written notice. To remove the contingency, the buyer must make an additional deposit as specified in the contract.
- **Effect of Additional Deposit.** If the buyer deposits the amount specified in blank 127, the buyer is effectively choosing to continue with the contract without financing or sale-of-property contingencies. This means that not only does the buyer waive the right to insist that his/her property be sold before closing, but also that the buyer will close regardless of whether or not he/she was able to obtain financing pursuant to paragraph 3(b) of the contract.
- **Effect of Failure to Make Additional Deposit.** If the buyer does not make the additional deposit within the 72-hour period, the buyer effectively chooses to cancel the contract and receive a refund of his/her deposit, after proper authorization from all interested parties. The seller may then notify the back-up buyer and remove any pertinent contingency.
- **Effective Date.** Under the contract, the effective date is the date the last party signs or initials and delivers the final offer or counteroffer. Under the back-up contract, the effective date is the date the seller delivers written notice of the termination of the prior executed contract. Consequently, the time for the back-up buyer to perform the obligations (such as inspections and financing) under the back-up contract begins to run from the time the buyer receives notice that the seller's prior executed contract has been terminated and not from the time the back-up buyer and seller sign or initial and deliver the final offer or counteroffer.

Miscellaneous

4* (____) (____) - (____)(____) Q. Broker - Personal Interest in Property: _____¹²⁸ has an active or
 5 inactive real estate license and has a personal interest in the property: (specify if licensee is related to a party, is acting as **Buyer**
 6* or **Seller**, etc.) _____¹²⁹.

Purpose:

To provide space for the parties to acknowledge that one of the licensees or brokerages involved in the sale has an ownership interest in the property or that one of the parties is a real estate licensee.

Blanks:

If the parties wish to include paragraph Q in the contract, they must initial inside the brackets.

¹²⁸ Insert the name of the buyer or seller, if he/she has a real estate license, or the name of a real estate licensee who is involved in the transaction and has an ownership interest in the property or is related to the buyer or seller in some way.

¹²⁹ Describe the licensee's interest in the property.

Explanation:

- **Obligation to Reveal Ownership or Contemplated Interest.** The NAR *Code of Ethics* states:

ARTICLE 4

REALTORS® shall not acquire an interest in or buy or present offers from themselves, any member of their immediate families, their firms or any member thereof, or any entities in which they have any ownership interest, any real property without making their true position known to the owner or the owner's agent or broker. In selling property they own, or in which they have any interest, REALTORS® shall reveal their ownership or interest in writing to the purchaser or the purchaser's representative. (Amended 1/00)

Standard of Practice 4-1

For the protection of all parties, the disclosures required by Article 4 shall be in writing and provided by REALTORS® prior to the signing of any contract. (Adopted 2/86)

- **Legal Duty.** Real estate licensees owe a duty of honesty, candor and fair dealing to the public. FREC has interpreted case law to require that a real estate licensee who has or contemplates a personal interest in the property must reveal his/her license status and interest in the property to the other party.

Miscellaneous

- 1* The clause below will be incorporated into the Contract between _____ (Seller)
2* and _____ (Buyer) concerning the Property described as _____
3* _____ only if initialed by all parties:
- 4* (____)(____) - (____)(____) **R. Rentals:**(check whichever applies)
- 5* **(1) Pre-Occupancy Agreement:** If **Buyer** occupies the Property before closing, **Buyer** will accept the Property in its
6 existing condition on the date of occupancy, relieving **Seller** of any additional repair or treatment obligations, and will maintain
7 the Property and assume all liability for and risk of loss to it from the date of occupancy. Effective on the date of occupancy,
8 this clause replaces Paragraph **9** of the Contract. **Buyer** and **Seller** will sign and deliver a written lease containing mutually
9 agreeable terms concerning **Buyer's** pre-closing occupancy of the Property and prepared at **Buyer's** expense.
- 10* **(2) Post-Occupancy Agreement:** **Buyer** and **Seller** will sign and deliver a written lease, containing mutually agreeable
11 terms concerning **Seller's** occupancy of the Property after Closing Date and prepared at **Seller's** expense.
- 12* **(3) Existing Tenant:** The Property is currently used as a rental property and **Buyer's** rights will be subject to those of
13 existing tenants. **Seller** will, within **130** days from Effective Date and at **Seller's** expense, deliver to **Buyer** current copies
14 of the rent roll; leases; income and expense statements for the period January 1, **131** through December 31, **132**,
15 as evidence that the Property generated income of \$ **133** against expenses of \$ **134**;
16 and agreements with third parties that will remain in effect after closing. **Buyer** may terminate this Contract by written
17 notice to **Seller** within **135** days from Effective Date if the statements differ materially from **Seller's** representations. If
18 **Buyer** fails to provide timely written notice, **Buyer** will be deemed to waive this contingency. **Seller** will assign leases and
19 rental agreements, and transfer deposits and advance rents, to **Buyer** at closing.
- 20* **(4) Vacating Tenant:** The Property is currently used as a rental property. **Seller** will ensure that the existing tenant vacates
21 the Property prior to the time agreed upon for the Walk-Through Inspection.

Purpose:

To indicate the conditions for pre-occupancy or post-occupancy and to provide for a property that is occupied by a tenant.

Blanks:

If the parties wish to include paragraph R in the contract, they must initial inside the brackets.

- 130** Insert the number of days that the seller has to provide the buyer with the listed documents.
- 131** Insert the first year for which the buyer wants the income and expense statements.
- 132** Insert the last year for which the buyer wants the income and expense statements.
- 133** Insert the total amount of income the property generated between the dates specified.
- 134** Insert the total amount of expenses the seller had in connection with the property between the dates specified.
- 135** Insert the number of days the buyer has to provide written notice to seller if the statements differ materially from the seller's representations.

Boxes:

Check (1) to indicate that the buyer will move in early and execute a pre-occupancy agreement.
Check (2) to indicate that the seller will stay after closing and execute a post-occupancy agreement.
Check (3) to provide for a property that is occupied by a tenant who will be staying in the property.
Check (4) to provide for a property that is occupied by a tenant who will vacate the property.

Deadlines:

- **Delivery of Documents.** The seller must deliver the listed documents to the buyer within the time period specified in blank 130.
- **Notice of Contract Termination.** If the buyer finds that the documents differ materially from statements made by the seller to induce the buyer to enter the contract, the buyer may terminate the contract by delivering written notice to the seller within the time period specified in blank 135.
- **Assignment of Leases and Transfer of Tenant Money.** The seller must assign leases and rental agreements and transfer tenant deposits and advance rents to the buyer at closing.
- **Tenant to Vacate.** The seller must have the tenant out of the property by the date of the walk-through inspection.

Explanation:

- **Pre-Occupancy Agreement.** This is a lease containing terms under which the buyer may take possession of the property prior to closing. The Florida Bar views such an agreement as a lease that may only be prepared by an attorney or by the parties themselves. If the Supreme Court-approved lease is used, a nonlawyer such as a real estate licensee may prepare the form. Even if the buyer takes occupancy only a few days early, the parties should have some basic lease terms in writing to cover their rights if closing does not occur, however unlikely.
- **Assuming Risk of Loss.** Since the person who occupies the property is in the best position to protect it from casualty loss, the clause provides that the buyer will assume this risk upon occupancy. This means that if there is damage to the property, the buyer will be responsible for its repair.



Practice Tip. Be aware that most of the large insurance companies will not write a short term insurance policy for the buyer to cover losses to the improvements that occur prior to the buyer taking title. The clause regarding assumption of risk and the sentence deleting paragraph 9 should be crossed out if the buyer is not willing to accept that responsibility. The seller should check with his/her insurance company to verify whether the property will be covered once the seller vacates it and the buyer moves in.

- **Post-Occupancy Agreement.** This is a lease containing terms under which the seller may keep possession of the property after closing. The Florida Bar views such an agreement as a lease that may only be prepared by an attorney or by the parties themselves. If the Supreme Court-approved lease is used, a nonlawyer such as a real estate licensee may prepare the form.



Practice Tip. Be aware that the Supreme Court-approved lease forms contain language mirroring the residential landlord-tenant law that specifically does not apply to occupancy agreements pursuant to a sale and purchase contract. If this lease is used, the parties must abide by its terms even though they would not otherwise be legally obligated to do so. The parties should consult an attorney to determine if they should use a lease form governed by the Florida residential landlord-tenant law.

- **Terms of Lease Agreement.** The parties should negotiate the terms; this contract does not specify what terms must be included.
- **Expenses of Preparation.** The buyer is responsible for the cost of preparing the pre-occupancy agreement and the seller is responsible for the cost of preparing the post-occupancy agreement.
- **Current Tenant Will Remain.** If a tenant occupies the property and will continue to do so after the property's sale, clause (3) provides that the buyer's rights will be subject to those of the tenant.
- **Contract Contingency.** Clause (3) is contingent on the buyer verifying that seller properly represented the business aspects of the property.
- **Waiver of Contingency.** If the buyer fails to provide written notice of termination within the time specified in blank 134, the buyer will waive the right to terminate the contract based upon clause (3).
- **Income and Expense Verification.** Clause (3) requires the seller to give the buyer the opportunity to confirm that the property is rented and generates net income as the seller represents. When establishing deadlines, allow sufficient time for the seller to gather the records together and for the buyer to review and evaluate the documents provided by the seller as evidence of the leasing business.



Practice Tip. In clause (3), both the deadline for the seller to deliver the documents to the buyer and for the buyer to deliver written notice of termination after examination run from the effective date. To avoid a timing problem, add the number of business days the seller will have to deliver the documents to the amount of time you want to allow the buyer to examine the documents. Insert this total number of business days in blank 135.

- **Third Party Agreements.** The seller must also provide the buyer with any agreements between the seller and others where the agreements will remain in effect after the closing date. This is so the buyer can evaluate expenses and obligations to which he or she will be subject upon transfer of the property.
- **Seller's Expense.** All documents specified in the clause must be provided at the seller's expense.
- **Assignment and Transfers at Closing.** The seller must assign all leases and rental agreements to the buyer at closing, as well as transferring the tenants' security deposits and advanced rents to the buyer.

Miscellaneous

4* (____) (____) - (____)(____) **S. Sale/Lease of Buyer's Property:** This Contract is contingent on the lease or closing of
5* **Buyer's** property located at _____¹³⁶.
6* If **Buyer's** property is not closed or subject to a signed lease acceptable to **Buyer's** lender by _____¹³⁷;
7* _____, ("Deadline"), **Buyer** will, within 3 days from Deadline, provide **Seller** with written notice canceling this Contract, and
8 **Seller** will refund **Buyer's** deposit. If **Buyer** does not timely provide written notice of cancellation, **this contingency will be**
9 **deemed removed.**

Purpose:

To provide a contingency for the sale or lease of the buyer's property recognizing that the buyer will use proceeds from that sale to close on the property covered in this contract or will need the income and debt relief from a lease to secure financing under this contract.

Blanks:

If the parties wish to include paragraph S in the contract, they must initial inside the brackets.

¹³⁶ Insert the address of the buyer's property.

¹³⁷ Insert the date by which the buyer expects the property to have closed or leased.

Deadlines:

- **Sale and Closing of Buyer's Property.** This must occur by the date specified in blank 137.
- **Cancellation of Contract.** The buyer must deliver written notice of the intent to cancel the contract if his/her property does not close by the specified date.
- **Removal of Contingency.** The buyer may remove this contingency and all financing contingencies if his/her property does not close by the specified date.

Explanation:

- **Contract Contingency.** If the parties initial this clause, the contract becomes contingent on the sale and closing or lease of the buyer's currently owned property.
- **Termination of Contract.** If the buyer's property does not close or is not subject to a lease acceptable to the buyer's lender within the specified time period, the contract will terminate (unless the parties renegotiate) and the buyer's deposit may be refunded upon proper authorization from all interested parties.



Practice Tip. When the buyer wants to include this contingency, the seller will often want to include paragraph P(2).

Miscellaneous

4* () () - () () **T. Rezoning:** Buyer will have until _____¹³⁸, _____ to obtain the following
5* zoning for the Property from the appropriate government agency: Zoning _____¹³⁹ for use of the Property as
6* _____¹⁴⁰. Seller will sign all forms
7 required by the government agency. Buyer will pay all costs associated with the rezoning application and proceedings. If
8 rezoning is not obtained, this Contract will terminate and Buyer's deposit will be refunded.

Purpose:

To provide a contingency based upon the buyer's ability to obtain rezoning for the property.

Blanks:

If the parties wish to include paragraph T in the contract, they must initial inside the brackets.

- ¹³⁸ Insert the month, day and year by which, at 5:00 p.m. local time, the buyer's right to obtain rezoning will expire.
- ¹³⁹ Insert the type of zoning the buyer wishes to obtain.
- ¹⁴⁰ Insert the buyer's intended use of the property.

Deadline:

- **To Obtain Rezoning.** Rezoning must be obtained by the date inserted in blank 138.

Explanation:

- **Contract Contingency.** This clause requires the buyer to obtain a specific zoning class on the property by a certain date or the contract will terminate.
- **Cancellation of Contract.** If the contract is terminated because the buyer was unable to obtain rezoning in time, the buyer's deposit should be refunded upon proper authorization from all interested parties.
- **Seller's Cooperation.** The clause requires the seller to cooperate with the buyer in obtaining the new zoning classification. The seller must sign all forms that the zoning authorities require him/her to sign.
- **Buyer's Expense.** The buyer is responsible for paying all costs associated with the rezoning request and proceedings.

Miscellaneous

4* () () - () () **U. Assignment:** Seller agrees that Buyer may assign this Contract to _____¹⁴¹
5* _____
6* Buyer will deliver a copy of the assignment to Seller and will will not be released from the duty to perform this Contract.

Purpose:

To provide for the seller's written consent for the buyer to assign the contract, as required by paragraph 14 of the contract.

Blanks:

If the parties wish to include paragraph U in the contract, they must initial inside the brackets.

- ¹⁴¹ Insert the name of the person (if known) to whom the buyer intends to assign the contract; otherwise, insert "any person" or "a corporation to be formed."

Boxes:

Indicate whether or not the buyer will be released from responsibility to perform the contract if the assignee defaults.

Explanation:

- **Written Consent Required.** Paragraph 14 of the contract specifies that the buyer may not assign the contract without the seller’s written consent.
- **Corporation Not Yet Formed.** If the buyer intends to form a corporation prior to closing that will hold title to the property but does not exist at the time the offer is made, write “a corporation to be formed” in blank 141.
- **Assignment.** The assignment of the buyer’s rights and duties to perform the contract must be in writing to be valid. The buyer is required by contract to give a copy of it to the seller.
- **Buyer’s Liability.** Even though the buyer assigns his/her rights under the contract to another person, he/she may remain liable for performing the contract if the other person fails to do so. This clause gives the buyer and seller the option to release the buyer from future liability or to hold the buyer responsible to complete the transaction if the assignee defaults.

Miscellaneous

4* () () - ()() V. **Property Disclosure Statement:** This offer is contingent on **Seller** completing, signing and
5 delivering to **Buyer** a written real property disclosure statement within 3 days from Effective Date. If the statement discloses any
6 material information about the Property that is unacceptable to **Buyer**, **Buyer** may cancel this Contract by written notice to
7 **Seller** within 3 days from receipt of **Seller’s** written statement.

Purpose:

To allow the buyer to condition the offer on receipt and approval of a written disclosure of facts that materially affect the property’s value.

Boxes:

If the parties wish to include paragraph V in the contract, they must initial inside the brackets.

Deadlines:

Provision of Written Disclosure Statement. The seller must provide the statement to the buyer within three business days from the effective date of the contract.

Provision of Notice Canceling Contract. The buyer must provide the seller with a written cancellation notice within three business days from receipt of the seller’s written disclosure statement.

Explanation:

- **Written Property Disclosure Statement.** Currently, Florida law does not require the seller to provide a written statement of facts that materially affect the property’s value that are not readily observable by or known to the buyer (an oral disclosure is sufficient). However, many brokerage firms require, for risk management purposes, that the seller provide them with a statement that they can give to the buyer to fulfill the legal duty to make a disclosure. If the buyer has not had a chance to examine the seller’s statement or get an oral disclosure prior to making an offer, the parties may incorporate this clause in to the contract.



Practice Tip. This is almost a free look, since the buyer is able to cancel the contract if any material information is unacceptable. To gauge what is material and what is not, the subjective standard is whether or not the buyer would have purchased the property knowing about the existence of a particular fact. If the buyer would not have purchased, then the fact is material.

Miscellaneous

4* () () - () () **W. Foreign Investment in Real Property Tax Act ("FIRPTA"):** If a **Seller** is a "foreign person" as
5 defined by FIRPTA, Section 1445 of the Internal Revenue Code requires **Buyer** to withhold 10% of the amount realized by the
6 **Seller** on the transfer and remit the withheld amount to the Internal Revenue Service (IRS) unless an exemption applies. The
7 primary exemptions are (1) **Seller** provides **Buyer** with an affidavit that **Seller** is not a "foreign person", (2) **Seller** provides
8 **Buyer** with a Withholding Certificate providing for reduced or eliminated withholding, or (3) the gross sales price is \$300,000 or
9 less, **Buyer** is an individual who purchases the Property to use as a residence, and **Buyer** or a member of **Buyer's** family has
10 definite plans to reside at the Property for at least 50% of the number of days the Property is in use during each of the first two
11 12 month periods after transfer. The IRS requires **Buyer** and **Seller** to have a U.S. federal taxpayer identification number
12 ("TIN"). **Buyer** and **Seller** agree to execute and deliver as directed any instrument, affidavit or statement reasonably necessary
13 to comply with FIRPTA requirements including applying for a TIN within 3 days from Effective Date and delivering their
14 respective TIN or Social Security numbers to the Closing Agent. If **Seller** applies for a withholding certificate but the application
15 is still pending as of closing, **Buyer** will place the 10% tax in escrow at **Seller's** expense to be disbursed in accordance with
16 the final determination of the IRS, provided **Seller** so requests and gives **Buyer** notice of the pending application in accordance
17 with Section 1445. If **Buyer** does not pay sufficient cash at closing to meet the withholding requirement, **Seller** will deliver to
18 **Buyer** at closing the additional cash necessary to satisfy the requirement. **Buyer** will timely disburse the funds to the IRS and
19 provide **Seller** with copies of the tax forms and receipts.

Purpose:

To alert the parties to legal requirements that arise when the seller is a foreign person.

Blanks:

If the parties wish to include paragraph W in the contract, they must initial inside the brackets.

Deadlines:

- **Delivery of Information.** The parties must sign and deliver any documents reasonably necessary to comply with FIRPTA requirements within 3 days from the effective date.
- **Application for TIN.** If any party does not have a taxpayer identification number (TIN), he/she must apply for one within 3 days from the effective date.

Explanation:

- **Reference.** See the explanations of **Foreign Investment in Real Property Tax Act of 1980 (FIRPTA)**, **Seller is not a Foreign Person** and **Seller is a Foreign Person** in the section of this manual covering paragraph 7 of the contract.
- **Legal Requirements.** The obligations set forth in this paragraph reflect the requirements of section 1445 of the Internal Revenue Code and its implementing regulations. For additional information on the withholding rules that apply to individuals, corporations, trusts, estates, REITs and partnerships, refer to the Internal Revenue Code, the related regulations and IRS Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities, section U.S. Real Property Interest. This publication can be found at the IRS website, <http://www.irs.gov>.
- **Dispositions.** The disposition of a U.S. real property interest by a foreign person (the seller) is subject to income tax withholding under Section 1445 of the Internal Revenue Code. The buyer is the withholding agent and is obligated to determine if the seller is a foreign person. If the seller is a foreign person and the buyer fails to withhold, the buyer may be held liable for the tax.
- **Foreign Person.** A Foreign Person is a nonresident alien individual, foreign corporation that has not made an election under section 897(i) of the Internal Revenue Code to be treated as a domestic corporation, foreign partnership, foreign trust or foreign estate. It does not include a resident alien individual.
- **Amount Realized.** The Amount Realized by the transferor is the sum of:
 1. The cash paid or to be paid (principal only),
 2. The fair market value of other property transferred or to be transferred and
 3. The amount of any liability assumed by the buyer or to which the property is subject immediately before and after the transfer.
- **Taxpayer Identification Number (TIN).** The buyers' and sellers' TIN may be any of the following 3 numbers. (1) Social Security Number. An individual may have a social security number (SSN). If the individual does not have, and is eligible for, an SSN, he or she must use IRS Form SS-5 to get an SSN. The Social Security Administration will tell the individual if he or she is eligible to get an SSN. (2) Individual Taxpayer Identification Number. If an individual does not have, and is not eligible for, an

SSN, he or she must apply for an ITIN by using IRS Form W-7. (3) Employer Identification Number. Any person other than an individual, and any individual who is an employer or who is engaged in a U.S. trade or business as a sole proprietor, must have an employer identification number (EIN). IRS Form SS-4 is used to get an EIN.

• **Withholding Certificate.** The amount that must be withheld from the sale of the property can be adjusted pursuant to a withholding certificate issued by the IRS. The buyer, the buyer's agent or the seller may request a withholding certificate. The IRS will generally act on these requests within 90 days after receipt of a complete application including the TIN's of all the parties. The IRS requires that a seller that applies for a withholding certificate must notify the buyer in writing that the certificate has been applied for on the day of or the day prior to the transfer. A withholding certificate may be issued due to:

1. A determination by the IRS that reduced withholding is appropriate because either:
 - a. The amount that must be withheld would be more than the seller's maximum tax liability, or
 - b. Withholding the reduced amount would not jeopardize collection of the tax,
2. The exemption from U.S. tax of all gain realized by the seller, or
3. An agreement by the buyer or seller for the payment of tax providing security for the tax liability.

• **Broker/Associate Liability.** If the seller provides the buyer with a certification that he or she is not a foreign person, and the buyer's agent or seller's agent has actual knowledge that the certification is false, the agent must notify the buyer or the agent will be held liable for the tax. The agent's liability is limited to the amount of compensation the agent gets from the transaction. Under IRS rules, an "agent" for this purpose is any person who represents the buyer or seller in any negotiation with another person (or another person's agent) relating to the transaction, or in settling the transaction. A person is not treated as an agent if the person only performs one or more of the following acts related to the transaction:

- Receipt and disbursement of any part of the consideration,
- Recording of any document,
- Typing, copying, and other clerical tasks,
- Obtaining title insurance reports and reports concerning the condition of the property, or
- Transmitting documents between the parties.

Miscellaneous

4* () () - ()() X. 1031 Exchange: If either **Seller** or **Buyer** wishes to enter into a like-kind exchange (either
5 simultaneously with closing or after) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party will
6 cooperate in all reasonable respects to effectuate the Exchange including executing documents; provided, however, that the
7 cooperating party will incur no liability or cost related to the Exchange and that the closing shall not be contingent upon,
8 extended or delayed by the Exchange.

Purpose:

To recognize and facilitate using the property in a 1031 like kind exchange.

Blanks:

If the parties wish to include paragraph X in the contract, they must initial inside the brackets.

Explanation:

• **Like-Kind Exchanges.** The exchange of property for the same kind of property is the most common type of nontaxable exchange. To be a like-kind exchange, the property traded and the property received must be both (1) qualifying property and (2) like-kind property. If the like-kind exchange involves the receipt of money or unlike property or the assumption of liabilities, the exchanger may have to recognize gain.

• **Qualifying Property.** In a like-kind exchange, both the property given up and the property received must be held for investment or for productive use in a trade or business. Machinery, buildings, land, trucks and rental houses are examples of property that may qualify. The rules for like-kind exchanges do not apply to exchanges of the following property.

- Property used for personal purposes, such as a home and family car.
- Stock in trade or other property held primarily for sale, such as inventories, raw materials and real estate held by dealers.

- Stocks, bonds, notes, or other securities or evidences of indebtedness, such as accounts receivable.
- Partnership interests.
- Certificates of trust or beneficial interest.
- Choses in action.
- **Like-kind Property.** There must be an exchange of like-kind property. Like-kind properties are properties of the same nature or character, even if they differ in grade or quality. The exchange of real estate for real estate and the exchange of personal property for similar personal property are exchanges of like-kind property. For example, the trade of land improved with an apartment house for land improved with a store building, or a panel truck for a pickup truck, is a like-kind exchange. An exchange of personal property for real property does not qualify as a like-kind exchange. For example, an exchange of a piece of machinery for a store building does not qualify. Also, the exchange of livestock of different sexes does not qualify.
- **Real Property.** An exchange of city property for farm property, or improved property for unimproved property, is a like-kind exchange. The exchange of owned real estate for a real estate lease that runs 30 years or longer is a like-kind exchange. However, not all exchanges of interests in real property qualify. The exchange of a life estate expected to last less than 30 years for a remainder interest is not a like-kind exchange. An exchange of a remainder interest in real estate for a remainder interest in other real estate is a like-kind exchange if the nature or character of the two property interests is the same.
- **Foreign Real Property Exchanges.** Real property located in the United States and real property located outside the United States are not considered like-kind property under the like-kind exchange rules. If foreign real property is exchanged for property located in the United States, any gain or loss on the exchange will be recognized. Foreign real property is real property not located in a state or the District of Columbia. However, this foreign real property exchange rule does not apply to the replacement of condemned real property. Foreign and U.S. real property can still be considered like-kind property under the rules for replacing condemned property to postpone reporting gain on the condemnation.
- **Money Paid.** If, in addition to giving up like-kind property, the exchanger pays money in a like-kind exchange, the exchanger still has no recognized gain or loss. The basis of the property received is the basis of the property given up, increased by the money paid.
- **More Information.** Like-kind exchanges are regulated under section 1031 of the Internal Revenue Code and its implementing regulations. More information may also be found in Publication 544, available at the IRS website, <http://www.irs.gov>.

Miscellaneous

4* () () - () () Y. Additional Clauses: 142 _____

5* _____

6* _____

7* _____

Purpose:

To provide space to write in additional terms.

Blanks:

If the parties wish to include paragraph Y in the contract, they must initial inside the brackets.

142 Insert any additional terms the parties want to include in the contract.

Summary of Changes to the FAR Sale and Purchase Contract

Version FAR-9, Revised 4/07

Paragraph 1 - PROPERTY

- Added that existing improvements as of effective date are to be conveyed with the property.
- Changed built-in appliances to major appliances. Included a list of appliances to be included.
- Added a blank for number of ceiling fans to be conveyed.

Paragraph 2 - PURCHASE PRICE

- Added a line for the address and phone number of the escrow agent to comply with FREC rule.

Paragraph 3 - FINANCING

- Added check boxes for conventional, FHA and VA financing.
- Added a requirement that Buyer provide Seller with a Commitment by the earlier of 30 days after Effective Date or 5 days prior to Closing Date if left blank instead of 30 days if left blank.
- Added a requirement that Buyer provide Seller with written notice that Buyer is unable to obtain a Commitment by the earlier of 30 days after Effective Date or 5 days prior to Closing Date. Failure to provide notice will result in forfeiture of Buyer's deposit.
- Now Buyer would be able to get deposit back after giving Seller the Commitment if buyer was unable to meet the property related conditions of the Commitment.

Paragraph 4 - CLOSING DATE; OCCUPANCY

- The closing date now prevails over any other provision in the contract unless the Closing Date is specifically extended by any other provision of the Contract (like title, survey, insurance suspension etc.) or by agreement of the parties.

Paragraph 5 - CLOSING PROCEDURE

- Listed closing costs to be paid by the Buyer or Seller in list format rather than in sentence format for clarification purposes.
- Added a Permit Limit in 5(a) for Seller to pay up to 1.5% of purchase price if left blank to close out open permits and to obtain required permits for improvements.
- Added check boxes in 5(c) for Buyer to pay and select the title agent, box for seller to pay and select the title agent and a box for seller to pay and buyer to select the title agent to avoid a RESPA violation where the buyer pays and the seller selects the title agent.
- Added a pro-ration clause in 5(d). Taxes to be computed on prior year's millage and at an equitable assessment if improvements completed January 1 of year of the Closing Date. Also provided for a request to be made to the County Property Appraiser for an informal assessment if the parties cannot agree on an equitable assessment.
- Added check boxes in 5(e) for who pays for special assessments if the assessments may be paid in installments. Clarified that special assessments to a public body do not include homeowner or condominium association assessments.

Paragraph 6 - INSPECTION PERIODS

- Inspection periods under paragraph 7 and 8(a)(2) (radon gas etc. and home inspection will be the earlier of 10 days after the Effective Date or 5 days prior to Closing Date if left blank instead of 10 days from Effective Date.

Paragraph 7 - REAL PROPERTY DISCLOSURES

- Deleted the requirement to close out open permits in paragraph 7 and moved the requirement to paragraph 8.
- Added a Coastal Construction Control Line Disclosure in 7(g). Seller shall provide survey or affidavit unless Buyer waives. Added a check box for buyer to waive the CCCL affidavit or survey.

Paragraph 8 - MAINTENANCE, INSPECTION AND REPAIR

- Seller to provide Buyer with written documentation that all open permits have been closed out and that Seller has obtained required permits for improvements to the Property.
- 8(a) (1) doors and windows must now be structurally sound and watertight. Missing or torn screens (not only pool cage or screen room) must be repaired or replaced. Consequently, fogged windows and missing or torn window screens were deleted from the definition of cosmetic condition.
- Buyer to provide Seller with a copy of only the portion of the inspector's written report dealing with items not in condition warranted instead of providing the entire report.

- Added a seller warranty that all open permits have been closed out and that Seller has obtained required permits for improvements to the Property in new subsection 4. Seller has duty to close out open permits and remedy any violation of governmental entity including obtaining permits up to the Permit Limit 5 days prior to closing. If the cost exceeds Permit Limit, either party can pay excess, failing which, either party can cancel the contract.
- Under 8(a)(b) Seller must now transfer a full-treatment warranty only for the type of wood-destroying organisms found.
- Added that Buyer and/or Buyer's representative in addition to or instead of the Buyer may conduct the walk-through to see if repairs completed and that Seller met the maintenance requirement of the contract.

Paragraph 9 - RISK OF LOSS

- Seller to give buyer notice that restoration completed and Buyer to close the later of Closing Date or 10 days from Buyer's receipt of Seller's notice.

Paragraph 10 - TITLE

- 10(c) deleted Coastal Construction Control Line reference since it was moved to Paragraph 7.

Paragraph 11 - EFFECTIVE DATE, TIME

- Added a delivery component to the effective date wherein the effective date is now calculated as the date last party signs, initials and delivers the final offer or counteroffer.
- Added a Force Majeure clause which relieves the parties from performance of the obligations under the contract while the force majeure or act of God is in place and extends all time periods (not to exceed 30 days) for the time the force or act of God is in place.

Paragraph 12 - NOTICES

- All notices shall now be in writing.
- Excluded notice under paragraph 3 for waiver of the financing contingency if buyer fails to deliver timely written notice to the seller when required by the contract.

Paragraph 13 - COMPLETE AGREEMENT - No Change.

Paragraph 14 - ASSIGNABILITY, PERSONS BOUND - No change.

Paragraph 15 - DEFAULT AND DISPUTE RESOLUTION

- Deleted provision that deposit would be split equally among cooperating brokers except when closing does not occur due to Buyer not being able to secure Financing after providing a Commitment. If the seller retains the deposit, the listing and the cooperating broker can demand 50% of the deposit to be split equally among the listing and cooperating broker.

Paragraph 16 - DISPUTE RESOLUTION

- Added a statement clarifying the fact that a broker's obligation to notify FREC of an escrow dispute and mediate, arbitrate, interplead or request an escrow disbursement order within time required by statute and rule applies only to brokers and does not apply to title companies or attorneys.

Paragraph 17 - ESCROW AGENT - No change.

Paragraph 18 - PROFESSIONAL ADVICE; BROKER LIABILITY

- Added that Seller is to consult with appropriate professional regarding the effect of the property lying partially or totally seaward of the CCCL and not to rely on Broker for that advice.

Paragraph 19 - BROKERS - No change.

Paragraph 20 - ADDENDA AND ADDITIONAL TERMS

- Added Lease Purchase/Lease Option Addendum and deleted Unimproved Property to match the revised Comprehensive Addendum.

Paragraph 21 - ADDITIONAL TERMS - No change.

Offer/Acceptance and Counteroffer/Rejection:

- Moved the counter-offer section directly below offer and acceptance section to facilitate reading.
- Deleted the space for time period to accept the counteroffer. Now, unless otherwise stated, the time for acceptance of any counteroffer shall be 2 days from the date the counter is delivered.

Effective Date:

- Added delivery component to the effective date to match the change in paragraph 11.

Summary of Changes to the Comprehensive Addendum of the FAR Contract

Version FARA-9, Revised 4/07

A. CONDOMINIUM ASSOCIATION

- Added a clause indicating that Homeowner's Association Addendum B is to be attached if the condominium property is subject to a master homeowner association.
- Clarified that risk of loss under paragraph 9 of the contract applies only to the unit and limited common elements appurtenant to the property and not to common elements.
- Seller to assign boat slip and storage unit in addition to parking space
- Added check boxes for who pays if special assessment paid in installments.
- Added paragraph 7 allowing either party to cancel if any portion of the common element is damaged due to fire, storm or other casualty if (1) the property appraises below the purchase price and buyer elects not to proceed or cannot renegotiate or (2) the Association cannot determine the assessment attributable to the property for the damage or (3) the assessment determined or imposed by the Association attributable to the property is greater than blank amount (1.5% if left blank).

B. HOMEOWNERS ASSOCIATION

- Same changes as the Condominium Addendum except for the boat slip and storage unit.

C. SELLER FINANCING - No change.

D. MORTGAGE ASSUMPTION - No Change.

E. FHA FINANCING

- Seller to pay all required FHA fees up to a maximum of \$250 if left blank instead of listing all the fees that seller is required to pay which the buyer is not allowed to pay under FHA regulations.
- \$500 if left blank increase from \$250 if left blank for Seller repairs.
- Added a requirement that if buyer elects to proceed with the transaction without regard to the amount of reasonable value established by the Federal Housing Commissioner or Department of Veteran affairs, election must be made in writing.

F. VA FINANCING

- Same changes as the FHA Addendum.

G. NEW MORTGAGE RATES - No Change.

H. AS IS WITH RIGHT TO INSPECT

- Added that Permit Limit in paragraph 5 of the contract is 0%.
- Deleted reference that repairs determined to be necessary by buyer so that buyer would have to give a copy of repairs estimated by buyer's inspector rather than a copy of repairs determined to be necessary by buyer.
- Added a \$250.00 floor to the amount of estimated repairs, if the space is left blank, in order for buyer to cancel the contract.
- Added a clause allowing the buyer to cancel the contract if the buyer's search reveals open permits or if improvements have been made without a required permit.
- Added a requirement for buyer to give Seller written documentation that open permits exist on the property or that permits have not been obtained when required for improvements made.
- Added that buyer and/or buyer's representative in addition or instead of the buyer may conduct the walk-through inspection.

K. LEAD-BASED PAINT

- Added the word signature next to word licensee to re-enforce the federal legal requirement for the listing and selling licensee to sign the addendum.

L. INSURANCE

- Separated flood insurance from comprehensive homeowner's insurance including windstorm into (1) (a) and (1) (b).
- Added the requirement to obtain homeowner's insurance and/or flood insurance the earlier of 30 days after Effective Date or 5 days prior to Closing Date if space is left blank.
- Added an acknowledgement in subparagraph (3) to inform buyers not to rely on representations made by the seller or broker regarding the usability of the first floor in the event of flood damage to the first floor and that if there is flood damage to the first floor, the buyer may have difficulty in obtaining flood insurance or may suffer adverse enforcement proceedings by local authorities.

M. HOUSING FOR OLDER PERSONS - No Change

N. UNIMPROVED AND/OR AGRICULTURAL PROPERTY LEASE PURCHASE/LEASE OPTION

- Deleted the addendum. Added addendum for Lease Purchase/Lease Option contingency where buyer and seller would have to execute a Lease Purchase or Lease Option agreement within 3 days from Effective Date, and if the parties fail to do so within such time, the contract will terminate and buyer's deposit shall be refunded. Included check boxes for the parties to agree who is to pay for the preparation of the Lease Purchase or Lease Option agreement.

O. INTEREST-BEARING ESCROW ACCOUNT - No Change.

P. BACK-UP CONTRACT/KICK-OUT CLAUSE

- Titled subparagraph (2) Kick-Out Clause to facilitate reading.
- Effective Date of the back-up contract will be the date Seller delivers written notice of the termination of the prior executed contract. Buyer can cancel the back-up contract by delivering written notice to the seller within 3 days after the date inserted.
- Added a check box for buyer to cancel the back-up contract prior to the Effective Date of the back-up Contract (the date the Seller delivers written notice of the termination of the prior executed contract).

Q. BROKER-PERSONAL INTEREST IN PROPERTY - No Change.

R. RENTALS - No Change.

S. SALE/LEASE OF BUYER'S PROPERTY - No Change.

T. REZONING - No Change.

U. ASSIGNMENT - No Change.

V. PROPERTY DISCLOSURE STATEMENT - No Change.

W. FOREIGN INVESTMENT REAL PROPERTY TAX ACT ("FIRPTA") - No Change.

X. 1031 EXCHANGE - No Change.

Y. ADDITIONAL CLAUSES - No Change.