

CBA/CBR Real Estate Purchase Contract, Revised July 2014
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The CBR/CBA purchase contract shall be printed in 11 point Arial font, and all deviations in the standard form must be printed in **12 point or larger courier font in bold**. Use of **courier font in bold** denotes deviation from the standard CBR/CBA purchase contract. All deletions from the standard form are to be noted by "strike-out".



Real Estate Purchase Contract

It is recommended that all parties be represented by a



REALTOR® and an Attorney

Date: _____

Upon the following terms, the undersigned Buyer agrees to buy and the undersigned Seller agrees to sell, through the Broker referred to below, the premises, described as being located in the State of Ohio, County of _____, Tax parcel no(s) _____ and further described as:

Be careful to insert all of the parcel numbers for the subject premises. Most, but not all homes located in platted subdivisions have only one parcel number. Condominium properties often have two parcel numbers, one for the residence and another for the garage. Rural properties and homes located outside of platted subdivisions may have several parcel numbers. Information on parcel numbers is available in the MLS system and, in most counties, on the county auditor's website.

1. Terms:

1.1 Purchase price shall be \$ _____.

1.2 Lender Pre-Approval:

Buyer shall deliver a written lender's pre-approval letter for said premises to the Seller and/or Seller's Broker within _____ (not applicable if the number of days is not inserted) calendar days after acceptance of this contract. The lender's pre-approval letter shall state that the Buyer's credit report has

been reviewed and all information provided meets lender's guidelines necessary for approval, subject to an appraisal, standard qualifications, and final underwriting approval.

The Buyer's delivery of said lender's pre-approval letter is confirmation that the Buyer has made a loan application and that the loan terms are acceptable to the Buyer.

If the Buyer does not deliver the lender's pre-approval letter within the stated time period, Seller may terminate this contract by delivering written notice of termination to the Buyer or Buyer's Broker within five (5) calendar days following the stated time period and the earnest money deposit shall be returned to the Buyer pursuant to paragraph 10. Failure of the Seller to timely deliver the written notice of termination constitutes a waiver of Seller's right to terminate pursuant to this provision.

This provision is designed to give the Seller some assurance regarding the Buyer's ability to obtain financing. Note that a letter that fully conforms to this provision qualifies its approval subject ONLY to the items stated in the second sentence of the first paragraph. Also Note that the Seller has a right to terminate based on the failure of the Buyer to deliver a conforming pre-approval letter which is waived if not exercised within the stated time limit. I recommend that the Seller give the Buyer a minimum of five calendar days to deliver the pre-approval letter. Otherwise, intervening weekends and/or holidays may place undue time pressure on the parties. In a similar vein, it is good practice for buyers' agents to obtain a preapproval letter before submitting an offer on a property.

Regarding the term "calendar days", this term for time measurement is used throughout the contract. Paragraph 12.6 governs the date when the contract is deemed accepted. The first calendar day is the day after acceptance. Therefore, if, for example, the contract was accepted on January 1, 2013, and the Buyer is given 5 calendar days to deliver the lender's pre-approval letter, the letter must be delivered on or before January 6, 2013. If the letter is not delivered, or does not conform as discussed above, the Seller can terminate the contract anytime through January 11, 2013.

1.3 Loan Commitment:

The Buyer's obligations are contingent upon the Buyer obtaining a (write in type of loan: Conventional, FHA, VA) _____ loan commitment within _____ (not applicable if the number of days is not inserted) calendar days after acceptance of this contract. Buyer shall use good faith and reasonable efforts to obtain the loan commitment. Within the stated time period, the Buyer shall deliver to the Seller and/or Seller's Broker a written notification from the Buyer's lender that the loan commitment has been obtained. The delivery of the written notification to the Seller and/or Seller's Broker that a loan commitment has been obtained shall satisfy this contingency.

If, at the expiration of the stated time period, the Buyer has not delivered the written notification referenced above, or has not waived this contingency in writing, this contract shall terminate and the earnest money deposit shall be returned to the Buyer pursuant to paragraph 10.

It is important for the Seller and Buyer to agree upon the type of loan the Buyer wants to use to finance the purchase, as FHA and VA loans place constraints on the parties and financial liabilities on the Seller that vary from time to time. Note that, absent a subsequent signed waiver to the contrary, a Buyer's failure to deliver a loan commitment within the agreed time period automatically terminates the contract.

Premises Address: _____

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1.4 Attorney Approval Clause

The Buyer or Seller may terminate this contract if the party's attorney disapproves this contract, by providing written notice of said disapproval, along with changes proposed by that party's attorney to remedy the disapproval, within _____ calendar days after acceptance hereof, (this provision is not applicable if number of days is not inserted). If the other party accepts the proposed changes in writing within 2 days after delivery thereof, this contract shall continue in full force and effect, as amended by the

changes. The party requesting the changes may waive the request in writing prior to the expiration of the 2-day period. In the event of termination, the earnest money deposit shall be returned to the Buyer pursuant to paragraph 10.

This provision obligates an attorney who disapproves the contract to propose changes that would allow him/her to approve the contract as amended. I recommend that the parties allow at least five calendar days for attorney approval. Otherwise, intervening weekends and/or holidays may place undue time pressure on the parties to timely obtain counsel, and on the attorneys to review the contract and propose corrective language as may be necessary.

1.5 Additional Terms and Conditions:

If additional terms and conditions are included that exceed the space allotted in this section, put the terms and conditions on a separate addendum page and have your Buyer/Seller sign both the contract and the addendum. Whenever possible, agents should use the supplemental terms and conditions available through the CBR instead of drafting new language. If none of the pre-drafted terms and conditions apply, agents should strongly consider advising their client to retain counsel for the purpose of drafting supplemental language.

2. Taxes and Assessments:

2.1 The real estate taxes for the premises for the current year may change as a result of the transfer of the premises or as a result of a change in the tax rate and valuation. Buyer and Seller understand that real estate valuations may be subject to retroactive change by governmental authority.

Seller shall pay or credit at closing:

- (a) all delinquent taxes, including penalty and interest;
- (b) all assessments which are a lien on the premises as of the date of the contract;
- (c) all agricultural use tax recoupments for years prior to the year of closing;
- (d) all other unpaid real estate taxes and community development charges imposed pursuant to Chapter 349 of the Ohio Revised Code which are a lien for years prior to closing; and
- (e) a portion of such taxes and community development charges for the year of closing shall be prorated through the date of closing based on a 365 day year. If taxes are undetermined for the year of closing, the proration shall be based on the most recent available tax rate and valuation, giving effect to applicable exemptions, recently voted millage, change in valuation, etc., whether or not certified.

These adjustments shall be final, except for the following: (none if nothing inserted)

Note that in Ohio real property taxes are paid in arrears. For example, in Franklin County tax bills for taxes incurred for the period January through June 2012 were mailed out in late December 2012, and were payable on or before January 21, 2013.

Sellers' agents should obtain information regarding special assessments that may be applicable to the premises as soon as possible following listing and before setting an asking price for the property. Subsection (b) of this provision obligates the seller to pay or credit to the Buyer all assessments in full at closing. For example, if the premises are subject to a \$10,000.00 assessment payable over 20 years, beginning January 2012, and the transaction is closed on January 1, 2014, the Seller will be obligated to pay the remaining \$9,000.00 balance of the assessment, or credit the Buyer \$9,000.00 at closing. The Seller needs to be aware of this information when setting the asking price.

Subsection (c) relates to agricultural property that the Buyer will no longer be using for agricultural purposes. Ohio law permits agricultural property to be taxed at a substantially lower rate than property used for other purposes. When such property is converted to a non-agricultural use, the state imposes the full tax rate for the three years immediately preceding the conversion. The Seller needs to take this into account when pricing the property if the Seller knows the

property will not be used for agricultural purposes by any prospective buyer. Alternatively, if the Seller has not made this determination, he/she may wish to negotiate an alternative arrangement for the payment of the recoupment should the Buyer choose to discontinue the agricultural use.

2.2 The community development charge, if any, applicable to the premises was created by a covenant in an instrument recorded at (insert county) _____, Vol. _____, Page number _____ or Instrument number _____. **(Note: If the foregoing blanks are not filled in and a community development charge affects the premises, this contract may not be enforceable by the Seller or binding upon the Buyer pursuant to Section 349.07 of the Ohio Revised Code.)**

Information regarding the applicability of this provision to the premises is available through the county auditor. However, caution is advised, as community development charges have occasionally been misindexed by auditor's offices as assessments, which are treated very differently in section 2.1 of this contract. If you have any doubt, a title agent or real estate attorney will be able to assist you in distinguishing between a community development charge and an assessment listed on the county auditor's website.

2.3 Seller warrants that no improvements or services (site or area) have been installed or furnished, nor notification received from public authority or owner's association of future improvements or which any part of the costs may be assessed against the premises, except the following: (none if nothing inserted)

_____.

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3. Fixtures and Equipment:

3.1 The consideration shall include any fixtures, including but not limited to built-in appliances; heating, central air conditioning, and humidifying equipment and their control apparatuses; stationary tubs; pumps; water softening equipment; roof antennae; attached wall-to-wall carpeting and attached floor coverings; curtain rods and window coverings (excluding draperies and curtains); attached mirrors; all light fixtures; bathroom, lavatory and kitchen fixtures; storm and screen doors and windows, awnings, blinds and window air conditioners, whether now in or on the premises or in storage; garage door openers and controls; attached fireplace equipment; security systems and controls; smoke alarms, satellite TV reception system and components; all exterior plants and trees, all landscaping lights and controls; and the following:

3.2 The following shall be excluded: (none if nothing inserted)

3.3 The following leased items shall be excluded: (none if nothing inserted)

There are several important issues to consider when discussing this provision with your Buyer or seller. First, the legal definition of the term "fixture" with respect to real property is subject to interpretation, and therefore possible disagreement between the parties. A good rule of thumb is that if it takes a tool to remove an item from a wall, cabinet, etc., it could be considered a fixture by a buyer, or a court of law. If the seller wants to keep such item, he/she should list the item in section 3.2.

Second, it is not good practice to use this contract to sell personal property (i.e. flat screen TVs, lawn tractors, and the like), as this is likely to cause trouble when a lender appraises the property. Sales of personal property should be completed outside closing. Finally, the listing agent should make inquiry with the Seller regarding any leased items that

are to remain with the premises. Possible leased items include, but are not limited to electric hot water tanks, propane tanks, and water softeners.

4. Inspections And Tests:

4.1 The Broker strongly recommends that the Buyer conduct inspections and/or tests. The Buyer and the Seller understand and agree that the Broker neither warrants nor assumes responsibility for the physical condition of the premises.

IT IS NOT THE INTENTION OF THIS PROVISION TO PERMIT THE BUYER TO TERMINATE THIS AGREEMENT FOR COSMETIC OR NON-MATERIAL CONDITIONS.

Buyer shall be responsible for the repair of any damages caused by the Buyer's inspections and tests; repairs shall be completed in a timely and workmanlike manner at Buyer's expense.

4.2 Seller shall cooperate in making the premises reasonably available for inspections and/or tests.

4.3 **Specified Inspection Period:** Buyer shall have _____ (not applicable if the number of days is not inserted) calendar days after the date of acceptance of the contract by both parties to have inspections, environmental inspections, and/or tests completed. This time period shall be known as the Specified Inspection Period. The number of days for the Specified Inspection Period is a specific time frame agreed upon by the Seller and the Buyer. The number of days cannot be modified or waived except by a written agreement signed by both parties.

All requests to remedy shall be submitted to the Seller or Seller's Broker within the Specified Inspection Period. Time is of the essence in completing any of the inspections, tests, and/or reports.

The Buyer, at Buyer's expense, shall have the right and is strongly encouraged to have any and all inspections, tests, and/or reports conducted, including but not limited to the following:

- (a) Inspection or testing for **radon**
- (b) Inspection or testing for mold, and any other environmental test.
- (c) Inspection or testing for lead-based paint
- (d) Confirmation of the insurability of the premises with an insurance company of the Buyer's choice.
- (e) Inspection of the premises and all improvements, fixtures, and equipment.
- (f) A pest inspection for termite and wood destroying insects with a report provided on a FHA/VA approved form by a licensed Ohio Certified Pest (Termite) Control Applicator.
- (g) Inspection of the gas lines on the premises.
- (h) Inspection of the waste treatment systems and/or well systems by a local health authority or state EPA approved laboratory of the Buyer's choice.

Note that the variety of tests that may be performed is entirely within the Buyer's discretion, subject only to the Buyer's obligation to repair any damage caused by such testing and/or the Buyer's access to the premises for such purposes.

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With respect to housing constructed prior to January 1, 1978, the Buyer must be provided with the pamphlet entitled "Protect Your Family from Lead in Your Home" and the "Lead-Based Paint and Lead-Based Hazard Disclosure Form." Every Buyer of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning.

Lead poisoning in young children may produce permanent neurological damage including learning disability, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The Seller of any interest in residential real property is required to provide the Buyer with any information on lead-based paint hazards from risk assessments or inspections in the Seller's possession and notify the Buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

4.4 If the Buyer is **not**, in good faith, satisfied with the condition of the premises as disclosed by the Buyer's inspections, tests, and/or reports provided for in paragraph 4.3, then the Buyer may elect to proceed under one of the following provisions, 4.4(a) or 4.4(b):

4.4(a) Agreement to Remedy Period: On or before the end of the Specified Inspection Period, the Buyer shall deliver to the Seller or the Seller's Broker a written request to remedy, signed by the Buyer, stating the unsatisfactory conditions, along with a written copy of the inspections, tests, and/or reports, specifying the unsatisfactory conditions.

The Buyer and Seller shall have _____ calendar days, **after the end of the Specified Inspection Period**, to reach a written agreement regarding remedying the unsatisfactory conditions. This time period shall be known as the Agreement to Remedy Period. The number of days for the Agreement to Remedy Period is a specific time frame agreed upon by the Seller and the Buyer. The number of days cannot be modified or waived except by a written agreement signed by both parties. In the event the Buyer and Seller do **not** reach a written agreement regarding remedying the unsatisfactory conditions within the Agreement to Remedy Period, and the Buyer and Seller have **not** executed a written extension of the Agreement to Remedy Period, this contract shall terminate. Upon termination of the contract under this provision, the earnest money deposit shall be returned to the Buyer pursuant to paragraph 10.

OR

Prior to the end of the Agreement to Remedy Period, the Buyer can, in writing, waive such request to remedy and proceed with the contract.

The commencement of the Agreement to Remedy Period does not obligate the Seller to reach an agreement with the Buyer.

The delivery by the Buyer of a written request to remedy any unsatisfactory conditions does not preclude the Buyer from later delivering a notice of termination as contemplated by paragraph 4.4(b) below during the Agreement to Remedy Period, unless the Buyer and Seller have reached a signed agreement regarding the Buyer's written request to remedy.

OR

4.4(b) Notice of Termination: Within the Specified Inspection Period or as provided in paragraph 4.4(a), the Buyer may terminate this contract by delivering written notice of termination to the Seller or Seller's Broker, along with a written copy of the inspections, tests, and/or reports, specifying the unsatisfactory conditions. Upon termination, the earnest money deposit shall be returned to the Buyer pursuant to paragraph 10.

FAILURE OF THE BUYER TO DELIVER WRITTEN NOTICE PURSUANT TO PARAGRAPHS 4.4(a) OR 4.4(b) CONSTITUTES ACCEPTANCE OF THE CONDITION OF THE PREMISES AND SHALL BE A WAIVER OF THE BUYER'S RIGHT TO TERMINATE PURSUANT TO THIS PROVISION.

As stated in section 4.3, time is of the essence when dealing with inspections and tests, repair requests, and responses/negotiations regarding such requests and responses. This is true of all deadlines stated in the contract, but is especially true with respect to paragraph 4. Failure of the Buyer to deliver a request to remedy in a timely manner constitutes a WAIVER of the Buyer's right to make the request. Regarding the measurement of time under this provision,

note that the Specified Inspection Period is not shortened if the Buyer delivers a request to remedy before the end of the Specified Inspection Period. For example, if the contract is accepted on January 1, 2013, the Specified Inspection Period is 10 calendar days, and the Agreement to Remedy Period is 5 days, the last day of the Agreement to Remedy Period would be January 16, 2013 regardless of when the Buyer delivers a request to remedy.

Based on my experience and that of the many agents and brokers I have worked with, I recommend that the parties allow a minimum of 10 calendar days for the Specified Inspection Period, and 5 calendar days for the Agreement to Remedy Period.

Section 4 is probably the most important provision in this contract, and is the provision most likely to cause conflict between the parties, or even be the subject of legal action. The following examples illustrate the operation of this provision (all examples assume the parties have not agreed to extend or modify the time limits or any other aspect of section 4):

- 1) Buyer fails to deliver a request to remedy within the Specified Inspection Period -- Buyer is deemed satisfied with the condition of the premises and the contract remains in effect.
- 2) Buyer timely delivers a request to remedy, and the Seller does not respond prior to the end of the Agreement to Remedy Period -- the contract is terminated.
- 3) Buyer timely delivers a request to remedy, the Seller responds with a counter-proposal, and the parties fail to reach agreement prior to the end of the Agreement to Remedy Period -- the contract is terminated.
- 4) Same as #3, except the Buyer delivers a timely waiver of the request to remedy -- Buyer is deemed satisfied with the condition of the premises and the contract remains in effect.

Note that in all cases the Buyer controls the entire process under this section. As long as the Buyer proceeds in a timely manner, the Seller's rights are limited to not agreeing on a remedy to the Buyer's concerns as set forth in the request to remedy and/or any subsequent communication made by the Buyer within the relevant time frame. Finally, note the phrase "in good faith" used in the beginning sentence of section 4.4. Under Ohio law, good faith and fair dealing are implied terms of all contracts, and courts of law strongly disfavor practices that fail to meet this standard.

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5. Warranties:

5.1 Home Maintenance Plan: The Seller, at the Seller's expense not to exceed \$ _____, shall provide a home maintenance plan from _____ (not applicable if plan name not inserted). The Broker may receive compensation in connection with the sale of the home maintenance plan.

5.2 Gas Line Warranty: The Seller at the Seller's expense not to exceed \$ _____ (not applicable if the dollar amount is not inserted) shall provide a gas line warranty from a gas line repair company. Seller may obtain the gas line warranty from a vendor of the Seller's choice, unless Buyer specifies a specific vendor hereafter: _____.

6. Deed:

6.1 The Seller shall convey to the Buyer marketable title in fee simple by transferable and recordable general warranty deed, with release of dower, if any, or fiduciary deed, as appropriate, free and clear of all liens and encumbrances not excepted by this contract, and except the following:

- (a) those created by or assumed by the Buyer;
- (b) those specifically set forth in this contract;
- (c) zoning ordinances;
- (d) legal highways;

- (e) covenants, restrictions, conditions and easements of record that do not unreasonably interfere with present lawful use; and
- (f) all coal, oil, gas and other mineral rights and interests previously transferred or reserved of record.

6.2 Seller has not transferred, conveyed, or reserved, nor does Seller have any knowledge of any prior transfers, conveyances or reservations of any coal, oil, gas, or other mineral rights or interests in the premises, except for the following (none if nothing inserted):

Oil and natural gas interests have become a subject of concern among real estate attorneys since the commencement of oil and gas extraction through hydraulic fracturing processes ("fracking") in the last few years. Beginning in 2011, most, if not all major title insurance underwriters inserted provisions into their standard residential title insurance policies denying coverage for previously conveyed coal, oil, gas or other mineral rights or interests. Prior to the insertion of section 6.1(f) into the contract, this placed the Seller in the position of warranting title to underground mineral interests without title insurance protection in the event such interests, or a portion thereof, were held by a third party.

Section 6.1(f), combined with section 6.2, protects the Seller in the event that the premises are subject to a coal oil, gas or other mineral interest that is unknown to the Seller. Certain of these interests can be quite old, and can easily escape detection by a title searcher, particularly since the typical residential title search only covers a period approximately 50 years prior to the date of the projected closing. Buyers of rural property, particularly east and north of the Columbus metropolitan area, are strongly encouraged to obtain an in depth title search for such interests performed by a qualified title searcher.

The exceptions stated in section 6.1(a) through (e) have been contained in most deeds supplied by central Ohio title agents and attorneys for a number of years.

7. Title Insurance:

7.1 The Seller shall furnish and pay for an ALTA Homeowner's Commitment and Policy of Title Insurance (latest revision) in the amount of the purchase price with a copy of the subdivision or condominium plat.

In the event that an ALTA Homeowner's Policy is not applicable for issuance on the premises, the Seller shall furnish and pay for an ALTA Owner's Commitment and Policy of Title Insurance (latest revision) with a copy of the subdivision or condominium plat.

Seller shall provide the base policy coverage for the applicable ALTA policy. Buyer is responsible for the cost of any coverage that requires additional premium for endorsements or the deletion of any standard exceptions.

The title evidence shall be certified to within thirty (30) calendar days prior to closing with endorsement as of 8:00 AM on the business day prior to the date of closing, all in accordance with the standards of the Columbus Bar Association, and shall show in Seller marketable title, in fee simple, free and clear of all liens and encumbrances subject to all matters listed in Paragraph 6.1.

7.2 Seller shall deliver, or cause to be delivered, to Buyer or Buyer's Broker, a copy of the Commitment referenced in Paragraph 7.1 above no later than fifteen (15) calendar days prior to the date of closing pursuant to this agreement. If the Seller does not deliver the Commitment within the stated time period, Buyer may, by delivering written notice to Seller or Seller's Broker, either terminate this contract, or extend the date of closing to the tenth day following Seller's delivery of the Commitment. Upon termination pursuant to this provision, the earnest money deposit shall be returned to the Buyer pursuant to paragraph 10.

It is extremely important for the Seller's agent to deliver the fully executed purchase contract to the title agent who will be closing the transaction as soon as possible following acceptance, as section 7.2 provides the Buyer with an opportunity to terminate the contract should the Seller fail to deliver a copy of the title commitment in a timely manner. Absent language

to the contrary inserted into the contract by one or both parties, the Seller, who is paying for the Buyer's title insurance policy, will select the title insurance agent.

7.3 Buyer may object if the Commitment indicates that title to all or part of the premises is unmarketable, as determined by Ohio law with reference to the Ohio State Bar Association's Standards of Title Examination, or if Buyer, in good faith, objects to liens, encumbrances, easements, conditions, restrictions, conveyances or encroachments that are disclosed in, or excepted by, the Commitment, including, without limitation, all matters listed in Paragraph 6.1(c) through 6.1(f). Buyer must notify the Seller or Seller's Broker in writing of the objection by the earlier of: (i) the Closing date, or (ii) ten (10) days after Buyer receives the Commitment. Upon receipt of Buyer's written notice of an objection permitted herein, the Seller shall, within thirty (30) calendar days, remedy or remove any such defect, lien, encumbrance, easement, condition, restriction or encroachment, or obtain title insurance without exception therefor. The date of closing shall be extended to the extent necessary to accommodate Seller's efforts to remedy or remove items subject to the objection. Failure of the Seller to cure the Buyer's objection shall result in termination of this contract. Seller is not obligated to incur any expense in curing Buyer's objection. In the event that the cure of an objection will subject the Seller to additional expense, Seller shall have the option to either cure the objection at Seller's expense or to terminate the Contract by delivering a written Notice of Termination to the Buyer or Buyer's Broker. Upon termination, the earnest money deposit shall be returned to the Buyer pursuant to paragraph 10. Buyer's failure to object as permitted herein constitutes a waiver of Buyer's right to object.

This provision has been substantially amended to provide the Buyer with an opportunity to review the title commitment prior to closing and make good faith objections as may be warranted. The "liens, encumbrances, easements, conditions, restrictions, conveyances or encroachments" that may be the subject of a good faith objection to title are too numerous to discuss here. Certain of these items, such as a clause contained in a subdivision's restrictive covenants that conflicts with the Buyer's intended use of the property, can't be cured, and may cause the contract to be terminated. Others, such as a large federal tax lien, may not be curable as a practical matter. Many of these items will cause a lender to refuse to lend on the premises unless cured. A title agent, through its attorney, may inform the parties of a problem with title, and may also be able to recommend a course of action to remove the defect. When there is any doubt whatsoever regarding provisions contained in a title insurance commitment, counsel should be retained by the parties. In any event, the analysis/interpretation of a title insurance commitment constitutes the practice of law, and real estate broker and agents should avoid expressing an opinion on such matters.

7.4 If required by the Buyer's lender, the Buyer shall pay any expense incurred in connection with the mortgagee title insurance issued for the protection of the Buyer's lender. If the Buyer or Buyer's lender desires a current survey, the Buyer shall furnish and pay for such survey.

7.5 At closing, the Seller shall sign and deliver to Buyer and title insurer an affidavit with respect to off record title matters in accordance with the community custom.

8. Utility Charges, Condominium Charges, Interest, Rentals, and Security Deposits:

8.1 Through the date of possession, the Seller shall pay all accrued utility charges and any other charges that are or may become a lien on the premises.

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8.2 Adjustments shall be made through the date of closing for (a) rentals, (b) interest on any mortgage assumed by the Buyer, and (c) condominium or other association periodic charges.

8.3 Security deposits shall be transferred to the Buyer.

8.4 Any fees, except any initial reserves or capital contributions, including but not limited to any processing, expedite, delivery, or statement fees by any owner's association (condominium or otherwise), management company, or civic association that are charged in connection with the sale or transfer of the premises shall be paid by the Seller at closing.

9. Damage or Destruction of Premises:

9.1 Risk of loss to the premises and appurtenances occurring prior to closing shall be borne by the Seller. If any part of the premises covered by this contract shall be substantially damaged or destroyed from the date of written acceptance of this contract through the date and time of closing, the Seller shall give a written notice to the Buyer and/or Buyer's Broker that the damage or destruction has occurred. Such notice must include all pertinent information regarding insurance policies and claims covering the premises that has been damaged or destroyed. The written notice shall be delivered within two (2) calendar days from the date of the discovery of the damage or destruction. The Buyer may (a) proceed with the transaction and be entitled to all insurance money, if any, payable to Seller under all policies covering the premises, or (b) rescind the contract by giving written notice to Seller and/or Seller's Broker within ten (10) calendar days after the Seller and/or Seller's Broker has delivered written notice to the Buyer and/or Buyer's Broker of such damage or destruction and thereby release all parties from liability, in which event the earnest money deposit shall be returned to the Buyer pursuant to paragraph 10.

9.2 Failure by the Buyer to so notify the Seller and/or Seller's Broker in writing within the ten (10) calendar days, shall constitute an election by the Buyer to proceed with the transaction.

9.3 Failure by the Seller to provide the required written notice to the Buyer and/or Buyer's Broker shall result in the Buyer, upon discovery of the damage or destruction, having the right to insurance proceeds, reimbursement for repairs, or rescind this contract, in which case the earnest money deposit shall be returned to the Buyer pursuant to paragraph 10.

Real estate agents rarely encounter the circumstances described in this provision, and therefore tend to lack the experience and expertise to deal with the situation. This provision contains deadlines, and consequences for failure to meet such deadlines, that may be quite damaging to the interests of either party. It is therefore important that, upon being informed of damage to or destruction of the premises occurring when in contract and prior to closing, the agents for all parties recommend to their clients that counsel be retained.

Note that under section 9.1(a) the Buyer has the option to rescind the contract. Rescission differs from termination in that when a contract is rescinded, the Buyer must be compensated by the Seller for any expenses incurred up to the time of rescission. Such expenses may include, without limitation, attorney fees and the cost of tests and inspections.

10. Earnest Money Deposit:

<u>Earnest Money Deposit Receipt</u>
Broker acknowledges receipt of the sum of \$_____ (not applicable if the dollar amount is not inserted) by cash or check (check #_____) as the Earnest Money Deposit, which shall be held, deposited and disbursed pursuant to paragraph 10.
Brokerage _____, By _____, Date _____

10.1 The Buyer has deposited with a Broker the sum receipted for in the Earnest Money Deposit box in paragraph 10.

10.2 If no contract shall have been entered into, the earnest money deposit shall be returned to the Buyer.

10.3 Upon acceptance of this contract by both parties in writing, the Broker shall deposit the earnest money in its trust account.

Agents need to be aware that it is a violation of Ohio law to hold a deposit without promptly depositing the deposit in the broker's escrow account.

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10.4 If any written contingency is not satisfied or waived, or if the Seller fails or refuses to perform or if the Buyer rescinds this contract pursuant to paragraph 9.1(b), all earnest money deposited hereunder shall be returned to the Buyer. If the Buyer fails or refuses to perform, the earnest money deposited hereunder shall be paid to the Seller. In any event, subject to collection by the Broker's depository, the earnest money deposits are to be disbursed as follows:

- (a) The transaction closes and the Broker disburses the earnest money deposited hereunder to the Buyer or to the closing or escrow agent to be applied to the purchase price.
- (b) The parties provide the Broker with written instructions that both parties have signed that specify how the Broker is to disburse the earnest money deposited hereunder and the Broker acts pursuant to those instructions.
- (c) The Broker receives a copy of a final court order that specifies to whom all earnest money deposited hereunder is to be awarded and the Broker acts pursuant to the court order.
- (d) All earnest money deposited hereunder becomes unclaimed funds as defined in division (M)(2) of section 169.02 of the Revised Code, and, after providing the notice that division (D) of section 169.03 of the Revised Code requires, the Broker has reported the unclaimed funds to the director of commerce pursuant to section 169.03 of the Revised Code and has remitted all of the earnest money to the director.
- (e) In the event of a dispute between the Seller and Buyer regarding the disbursement of any earnest money deposited hereunder, the Broker is required by Ohio law to maintain such funds in his trust account until the Broker receives (1) written instructions signed by the parties specifying how the earnest money is to be disbursed or (2) a final court order that specifies to whom the earnest money is to be awarded. If within two years from the date the earnest money was deposited in the Broker's trust account, the parties have not provided the Broker with such signed instructions or written notice that such legal action to resolve the dispute has been filed, the Broker shall return the earnest money to the Buyer with no further notice to the Seller.

10.5 The return or payment of the earnest money deposit shall in no way prejudice the rights of the Seller, Buyer, or Broker in any action for damages or specific performance.

Sections 10.4 and 10.5 normally become an issue only when there is a dispute between the parties regarding an attempted termination or rescission. The first paragraph of section 10.4 is aspirational, in that it tells the parties what should happen in the event the transaction fails to close. The remainder of section 10.4 provides the broker with specific instructions regarding the disposition of the earnest money deposit. Also note that the parties can resolve the issue of disposition of the earnest money deposit without relinquishing any right to proceed with legal action at a later time. Agents should be careful to use the appropriate form depending on whether the parties intend to distribute the earnest money deposit as part of a full and final settlement/release, or intend to preserve their legal rights.

11. NOTICES TO THE PARTIES:

11.1 Professional Advice and Assistance: The parties acknowledge and agree that the purchase of real property encompasses many professional disciplines. While the Broker possesses considerable general knowledge, the Broker is not an expert on matters of law, tax, financing, surveying, structural conditions, hazardous materials, environmental conditions, inspections, engineering, etc. The Broker hereby advises the parties, and the parties acknowledge that they should seek professional expert assistance and advice in these and other areas of professional expertise.

In the event the Broker provides to the parties names of companies or sources for such advice and assistance, the parties additionally acknowledge and agree that the Broker does not warrant, guarantee, or endorse the services and/or products of such companies or sources.

11.2 Ohio Fair Housing Law: It is illegal, pursuant to the Ohio Fair Housing Law, Division (H) of Section 4112.02 of the Revised Code, and the Federal Fair Housing Law, 42 U.S.C.A. 3601, as amended, to refuse to sell, transfer, assign, rent, lease, sublease, or finance housing accommodations; refuse to negotiate for the sale or rental of housing accommodations; or otherwise deny or make unavailable housing accommodations because of race, color, religion, sex, familial status as defined in Section 4112.01 of the Revised Code, ancestry, military status as defined in that section, disability as defined in that section, or national origin or to so discriminate in advertising the sale or rental of housing, in the financing of housing, or in the provision of real estate brokerage services.

It is also illegal, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry into the neighborhood of a person or persons belonging to one of the protected classes.

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11.3 Residential Property Disclosure Form: With respect to the sale of real property that has from one to four dwelling units, most Sellers will be required to provide the Buyer with a completed Property Disclosure Form complying with the requirements of Ohio law. If such disclosure is required but is not provided by the time the Buyer enters into this agreement, the Buyer may be entitled to rescind this agreement by delivering a document of rescission to the Seller or the Seller's Broker, provided such document of rescission is delivered prior to all three of the following dates: (a) The date of closing, (b) 30 days after the Seller accepted the Buyer's offer, and (c) within 3 business days following the receipt by the Buyer or the Buyer's Broker of the Property Disclosure Form or amendment of that form.

As stated in this provision, most, but not all Sellers must provide a completed and signed Residential Property Disclosure Form to the Buyer. It is best practice for all Sellers to provide the form, even if they never lived on the premises and have no knowledge of the condition of the premises. It is also best practice for agents to have Sellers fill the form out upon listing the property, and to have the completed form available for examination by all potential buyers. If, in the course of marketing the property, a defective condition is revealed by a professional inspection or otherwise, the Sellers should amend and re-execute the form. Agents should not involve themselves in a seller's decision regarding whether to disclose any particular condition, except to remind their clients that, when in doubt, it is always best to disclose!

11.4 Ohio's Sex Offender Registration and Notification Law: If a sex offender resides in the area, Ohio's Sex Offender Registration and Notification Law requires the local sheriff to provide written notice to certain members of the community. The notice provided by the sheriff is a public record and is open to inspection under Ohio's Public Records Law.

The Buyer acknowledges that any information disclosed may no longer be accurate. The Buyer assumes responsibility to obtain accurate information from the sheriff's office. The Buyer shall rely on the Buyer's own inquiry with the local sheriff's office and shall **not** rely on the Seller or any Broker involved in the transaction.

11.5 Concessions: Buyer and Seller authorize the Broker to report sales and financing concessions data to the MLS membership and MLS sold database as applicable and to provide this information to state licensed appraisers researching comparables, upon inquiry, to the extent necessary to adjust price to accurately reflect market value.

12. Miscellaneous:

12.1 This contract constitutes the entire agreement and there are no representations, oral or written, which have not been incorporated herein. Any amendment to this Contract shall be made in a writing signed by the Buyer and Seller. All notices given in connection with this contract shall be made in a writing signed by the party giving such notice.

It is crucial that ALL agreements between the parties regarding the real estate transaction be contained in the contract and any subsequent amendments or addendums. The last two sentences of section 12.1 are a statement of Ohio law on the subject of contracts for the conveyance of real property.

12.2 Time is of the essence regarding all provisions of this contract. Whether or not so stated elsewhere in this contract, no deadline or time period under this contract can be modified or waived except by written agreement signed by both parties. Repetition of this provision in any given paragraph of this contract is intended for emphasis only, and shall not reduce the effect of this paragraph as to any other provision of this contract.

This provision is an instruction to the parties and, if needed, a court of law that all of the deadlines in the contract are to be fully enforced unless the parties agree otherwise in writing.

12.3 All representations, covenants, and warranties of the parties contained in this contract shall survive the closing.

12.4 Term Definition: The term "Broker" shall include, without limitation, Broker and/or Broker's agents and shall include collectively, except where the context clearly indicates otherwise, both the Seller's Broker and the Buyer's Broker, if different.

12.5 Signatures: Only manual or electronic signatures on contract documents, transmitted in original or facsimile (which includes photocopies, faxes, PDF, and scanned documents sent by any method) shall be valid for purposes of this contract and any amendments or any notices to be delivered in connection with this contract. Only original, manual signed documents shall be valid for deeds or other documents to be delivered at closing. For the purposes of this provision, "contract documents" do not include voice mail or email messages.

Section 12.5 permits the use of electronic signatures, provided that the electronic signature appears on the face of the contract, addendum, amendment, or notice. Agents and brokers are strongly cautioned to avoid using their clients' e-signatures to sign contract documents, even with their clients' permission. Agents/brokers are encouraged to use commercially available e-signature systems with security features that make it difficult or impossible for clients' e-signatures to be appropriated by brokers, agents or any third parties.

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12.6 The date of acceptance of this Contract, counter offers, amendments or modifications thereto shall be when the final writing signed by the parties is delivered to the offering party. Notices delivered in connection with this contract shall be effective upon delivery. Delivery of all such documents shall be made by fax, email, or hand delivery.

(NOTE: It is strongly recommended that the delivering party verify that delivery has been received by the other party.)

It is extremely important that the parties and their agents agree on the date of acceptance, as many of the deadlines in this contract are calculated from the date of acceptance. As with all contract documents, agents are strongly advised to confirm receipt of delivery by return email, phone call, or other reliable method, and to keep a record of such confirmation in the client file. Note that using the U.S. mail is NOT an acceptable delivery method.

13. Closing and Possession:

13.1 Closing: This contract shall be performed and this transaction closed on or before _____ unless the parties agree in writing to an extension.

Buyer shall have the right to conduct a walk-through inspection of the premises within _____ (not applicable if the number of hours is not inserted) hours before the transaction closing. However, this shall impose no additional obligations to the Seller provided the premises are in the same condition as they were on the date of this contract, or as otherwise agreed.

13.2 Possession: Seller is entitled to possession through _____. At the time the Seller delivers possession, the premises will be in the same condition as the date of acceptance of this contract, normal wear and tear excepted, and except as provided in paragraph 9.

Buyers are advised to obtain a signed lease agreement from the Seller if the Seller is to remain in possession of the premises for more than a few days beyond closing. Also, responsibility for damage or destruction of the premises transfers to the Buyer at closing, so Sellers who remain on the premises after closing are encouraged to obtain insurance coverage for their possessions.

13.3 Debris and Personal Property: The Seller shall remove all debris and personal property not included in this contract by the date and time of the Buyer's possession.

14. Duration of Offer:

This offer shall be open for acceptance through _____.

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The undersigned Buyer agrees to the terms and acknowledges the receipt hereof:

Signature: _____
Print Name: _____
Date Signed: _____

Signature: _____
Print Name: _____
Date Signed: _____

The undersigned Seller agrees to the terms and acknowledges the receipt hereof:

Address: _____
Phone #: _____
Deed to: _____

Attorney: _____
Ofc. #: _____

Fax #: _____
Email: _____

Alternate Phone #: _____
Fax #: _____
Email: _____

Broker: _____
Broker Number: _____
Ofc. #: _____
Fax #: _____
Address: _____

Agent: _____
Agent File Number: _____
Phone #: _____
Alternate Phone #: _____
Fax #: _____
Email: _____

Signature: _____
Print Name: _____
Date Signed: _____

Signature: _____
Print Name: _____
Date Signed: _____
Address: _____

Phone #: _____

Attorney: _____
Ofc. #: _____
Fax #: _____
Email: _____

Broker: _____
Broker Number: _____
Ofc. #: _____
Fax #: _____
Address: _____

Agent: _____
Agent File Number: _____
Phone #: _____

FOR INSTRUCTIONAL PURPOSES ONLY