

# The 2018 OREF Residential Real Estate Sale Agreement

*What Sellers and Buyers  
Need to Know*



**THE RESIDENTIAL REAL ESTATE SALE AGREEMENT FORM CONTAINS PRINTED PROVISIONS APPLICABLE TO MOST STANDARD PURCHASE AND SALE TRANSACTIONS INVOLVING RESIDENTIAL REAL ESTATE. IT IS INTENDED TO BECOME A LEGALLY BINDING DOCUMENT. UNWRITTEN UNDERSTANDINGS OR ORAL AGREEMENTS AFFECTING LEGAL RIGHTS IN REAL ESTATE CAN BE VERY DIFFICULT TO ENFORCE, SO ALL OF THE IMPORTANT TERMS OF THE TRANSACTION SHOULD BE CONTAINED IN THIS DOCUMENT. IF YOU WANT TO CHANGE OR ADD OTHER PROVISIONS TO THE SALE AGREEMENT, IT SHOULD BE DONE BY A WRITTEN ADDENDUM WHICH IS ALSO SIGNED AND DATED. YOU SHOULD OBTAIN LEGAL COUNSEL IF NECESSARY. WHAT FOLLOWS IS A SHORT SUMMARY OF A FEW OF THE IMPORTANT SECTIONS OF THE SALE AGREEMENT. THERE MAY BE OTHER PROVISIONS WHICH ARE NOT COVERED BELOW THAT MAY AFFECT YOUR LEGAL RIGHTS AND DUTIES.**

**IT IS IMPORTANT TO THOROUGHLY READ AND UNDERSTAND THE ENTIRE SALE AGREEMENT BEFORE SIGNING. THIS BROCHURE IS NOT A**

***SUBSTITUTE FOR OBTAINING COMPETENT LEGAL ADVICE, IF NEEDED.***

## **FINAL AGENCY ACKNOWLEDGMENT**

This section of the Sale Agreement, located at the top of the form, is intended as final acknowledgement by the parties that they understand who is representing them in the transaction. The name of the real estate broker and company representing the seller and buyer should be disclosed here. The seller and buyer should then sign this acknowledgement confirming that they are aware of, and consent to, the disclosed representation.

*Sellers are expected to sign the Final Agency Acknowledgement even though they may intend to reject their buyer's offer, or submit a counteroffer.*

**CONTINGENCIES** A "contingency" is an event that must occur (e.g. loan approval, satisfactory professional inspection, etc.) before the transaction becomes binding on all parties. There are several standard contingencies in the Sale Agreement. All of them are for the benefit of the buyer. If a contingency fails to occur through no fault of the buyer (e.g. failure to obtain loan approval or unsatisfactory professional inspection), it means the buyer has the right (but not the obligation) to terminate the transaction and obtain a full refund of the earnest money deposit.

*All contingencies (except financing) provide that they are deemed waived if the buyer does not exercise them within a fixed period of time. For this reason, it is very important for buyers to make sure they know exactly how long each period is for each contingency.*

**FINANCING** If a new loan is required, the transaction is contingent upon the buyer and the property qualifying for the loan and the property appraising out for at least the agreed-upon sale price. Buyer represents that they will submit a completed loan application to their lender within an agreed-upon amount of time, e.g. 5 business days. The phrase "completed loan application" means that the following information must be submitted to the lender: (1) Buyer's name(s); (2) Buyer's income(s); (3) Buyer's social security number(s); (4) The property address; (5) Estimate of the value of the property (i.e. agreed-upon sale price); and (6) The loan amount. Note also, the Sale Agreement contains the following buyer requirements when financing the purchase of a home: (a) Buyer's loan application is to



be submitted to the same lender that provided the Pre-Approval Letter; (b) Upon receipt of the lender's Loan Estimate, the buyer has a fixed period of time within which to respond if they intend to proceed with the offered loan; (c) The buyer is to timely complete all loan paperwork; (d) The buyer is to keep the seller timely informed regarding the loan status; (e) Significantly, a buyer may *not* replace the lender or the loan program identified in their Pre-Approval Letter (e.g. conventional, DVA, FHA, USDA loan programs) without seller's consent; and (f) Lastly, the Sale Agreement also contains a provision stating that the source of buyer's funds (i.e. for earnest money, and down payment) are *not contingent*, unless disclosed in the document. This means that if the buyer is obtaining any funds from third-party sources (e.g. relatives, or withdrawals from IRAs, 401-Ks, 529s, or proceeds from another closing, etc.), it must be disclosed in the Sale Agreement.

*The failure to disclose this information can result in the loss of buyer's deposit if the sale does not close on account of the failure to obtain that funding.*

**TITLE INSURANCE** The Sale Agreement makes the buyer's approval of the condition of title another contingency in the transaction. Although there is no law requiring that the seller pay for the buyer's title policy, this is the standard practice in Oregon, and the Sale Agreement provides for this. If the parties want to vary from that procedure, it should be contained in a written Addendum to the Sale Agreement, and signed by seller and buyer. Shortly after escrow is opened, the title insurance company will provide the parties and their brokers with a *preliminary title report* identifying all deed restrictions, easements, liens, taxes, judgments, mortgages, etc. and other matters appearing on the public record, together with actual copies of these recorded documents. Buyers should closely review the preliminary title report and the recorded documents, especially the deed restrictions (also known as "Conditions, Covenants and Restrictions" or "CC&Rs") as soon as they are received. Again, if timely exercised, this contingency permits buyers to terminate their transaction if they do not approve of the preliminary title report.

*If there are questions, or if further information is required, buyers should check with the title company, or a real estate attorney. Real estate brokers are not title insurance experts. In almost all cases, buyers should always obtain a title insurance policy when*

*acquiring real estate, regardless of whether the property is new or used, or whether bank financing is involved.*

**PROFESSIONAL(S) INSPECTIONS** Having the property thoroughly inspected by a licensed professional is probably the single most important thing buyers can do to protect themselves from surprises when purchasing a home, new or used. The Sale Agreement provides that buyers have the right, at their expense, to have the home and all systems thoroughly inspected. The Sale Agreement also provides that the buyer has the right, within the agreed-upon contingency period, to reject the inspection report(s), terminate the transaction, and obtain a complete refund of their earnest money deposit. Prior to expiration of this deadline, a buyer is completely free to negotiate with the seller regarding the repair of any adverse conditions that are noted in the professional inspection report.

*However, since the Sale Agreement provides that "time is of the essence," buyers must be extremely vigilant, since the failure to timely reject the inspection report(s) can mean that the buyer has accepted the condition of the property, with all defects, apparent or not apparent. Failing to give timely notice of withdrawal within the inspection contingency period means that if the buyer wants out of the transaction on account of the condition of the home, they may have to forfeit their earnest money deposit in order to do so.*

*See: <https://oregonrealtors.org/resources/membership-resources/buyer-seller-advisories>*

**OTHER IMPORTANT CONTINGENCIES** There are other important buyer contingencies in the Sale Agreement regarding such things as lead-based paint, wells, well water, and septic systems. If the property contains any of these conditions or systems, buyers must make sure they have timely inspections and/or testing conducted within the applicable contingency period. If there is concern about completing the work before the end of the contingency period, buyers should either provide for a longer period before signing the Sale Agreement, or after signing, try to obtain an extension of time from the seller.

**AS-IS CONDITION** The Sale Agreement provides that the buyer is accepting the property in its "AS-IS" condition. This is a standard provision, and generally means the buyer assumes all risks of adverse