



GRI 405

Mastering Forms
and Contracts

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Course Introduction

This one-day course will cover the ins and outs of all of the standard forms (in their current versions) most often needed and used in residential transactions, as well as the most frequent forms-related pitfalls that REALTORS® encounter in using them. The goal here is mastery of – and comfort with – the paperwork, as well as sufficient knowledge to explain various forms to customers and clients.

GRI 405 Learning Objectives

Upon completion of this course, we want every participant to leave much better equipped to:

1. Learn how to use the latest version of the Purchase and Sale Agreement, all disclosures and relevant forms including counter offers, agency documents and to recognize the importance and benefits of each form. Identify and handle Special Stipulations correctly
2. Understand the paragraphs in each form where most complaints/lawsuits arise
3. Demonstrate the value and navigation of the *inFORM* tool
4. Identify elements of terms that create a contract

Course Content

Part 1 Timelines, Dates, Etc.

Part 2 Inspections and Repairs

Part 3 Disclosures & Disclaimers

Part 4 Special Stipulations

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Appendix

Checking What We Already Know

Choose the best answer to the following questions.

1. When should you review and explain the Purchase and Sale Agreement with buyers?
 - a. After the offer is submitted
 - b. Before they make an offer
 - c. When the offer is accepted

2. Which of the following statements is TRUE?
 - a. It's most important to be familiar with the Purchase and Sale Agreement (F9) form because you can address every issue by altering the boilerplate language.
 - b. Most forms are rarely used.
 - c. It's important to be familiar with the function of all forms so you understand how they work together to address different issues.

3. Which of the following is NOT an example of ambiguous language?
 - a. Seller to provide Buyer with \$500 credit
 - b. Seller will provide Buyer with \$500 credit at closing towards Buyer's closing costs
 - c. Portion of closing costs to be paid by Seller
 - d. Buyer to take possession as determined prior to closing

4. Which of the following is the most acceptable method of delivering an offer?
 - a. In person
 - b. By fax
 - c. By email
 - d. All of the above equally acceptable, with proper documentation –

5. Which of the following inspections is NOT legally permissible and not permitted under the Inspection Section?
 - a. Performed by a licensed home inspector
 - b. Performed by a licensed contractor
 - c. Performed by Buyer

- 6.** One primary function of the Purchase and Sale Agreement is to
- a.** Reduce risk/liability for REALTORS®/brokers
 - b.** Confuse REALTORS® and brokers
 - c.** Address every possible situation that might arise during a transaction
- 7.** The Counter Offer states, “all terms and conditions proposed in previous counter offers, if any, are not included in this counter offer unless restated herein.”

True
False

- 8.** Which of the following statements are TRUE?
- a.** The Buyer always gets to select the Title Company
 - b.** The Seller always gets to select the Title Company
 - c.** In situations where the sale is being funded by a federally insured loan, the Buyer gets to choose the Title Company if the Buyer is paying for the title insurance policy.
 - d.** In situations where the seller is paying closing costs for the Buyer including title insurance, the Seller gets to choose the title company.

Part 1: Timelines, Dates, Etc.

Talking Points: The What and When

1. Preprinted deadlines are just as important as those you write in! If it's in the contract, it must be done by the date specified. Failing to meet deadlines may constitute a breach. An agent that allows a deadline to pass unnoticed may have a complaint filed against them with TREC and/or the local board as well as possibly facing a lawsuit.

It is imperative to discuss the pre-printed deadlines in the Purchase and Sale Agreement with buyer clients BEFORE submitting an offer. If, for any reason, they will be unable to meet a required pre-printed deadline, this should be noted clearly BEFORE an offer is made or counteroffer is submitted. For seller clients, you must discuss pre-printed deadlines and filled in dates. If, for any reason, they will be unable to meet a required date or deadline, this should be noted clearly in a counter offer. Failure to meet a contractual deadline may result in a breach of contract, forfeiture of earnest money, unenforceable performance and, in some cases, liability for civil damages. When a preprinted deadline needs to be changed, you should first check to see if the issue is addressed by another form. If not, the EXACT verbiage should be copied with only the number of days for performance changed. By altering the verbiage within the attorney-approved Purchase and Sale Agreement, you could end up making the party's performance unenforceable.

2. The Purchase and Sale Agreement states: "the term day(s) used throughout this Agreement shall be deemed to be calendar day(s) ending at 11:59 p.m. local time unless otherwise specified in this Agreement. Local time shall be determined by the location of the Property. **In the event a performance deadline**, other than the Closing Date, Day of Possession, and Offer Expiration date occurs on a Saturday, Sunday or legal holiday, the performance deadline shall be extended to the next following business day. In calculating any time period under this Agreement, the commencement day shall be the day following the initial date (e.g. the binding agreement date)."

Example: The Buyer must make application for the loan, pay for the credit report and immediately notify Seller or Seller's representative of having applied for the loan, that the Buyer has paid for the credit report and provide Lender's name and contact information within three (3) days after the binding agreement date.

If the binding agreement date is Thursday, then Friday is Day 1, Saturday is Day 2, Sunday is Day 3 meaning the performance deadline is Monday. This means the Buyer

needs to have made the loan application paid for the credit report and notified the seller of the Lender's name and contact information before 11:59 p.m. on Monday.

The Purchase and Sales Agreement defines when the Binding Agreement Date will be: "This instrument shall become a "Binding Agreement" on the date ("Binding Agreement Date") the last offeror, or licensee of the last offeror receives notice of offeree's acceptance. Notice of acceptance of the final offer was received on ____ day of _____, _____ at _____ ☐ am/ ☐ pm by _____ (Name).

3. If it's in the contract, it must be done by the date specified. Failing to meet deadlines may constitute a breach – "we don't do it like that in my area," "no one pays attention to that," and "no one else does it" are all WRONG answers, none of which will hold up in court or make your breaching client resent you any less. These can also result in a lawsuit against an agent or a complaint with the local board and/or TREC.
4. The Notification form serves as a notification form for all notices required in the Purchase and Sale Agreement. This form assists licensees in creating a paper trail of their compliance.
5. You must be aware of your client's options in the case of the other party's failure to meet a specific deadline, perform a required action and/or deliver a required notice.
 - a) Loan Obligations
 - b) Appraisal Issues
 - c) Finance Issues
 - d) Earnest Money Issues
 - e) Closing Issues
 - f) Title Issues
 - g) Inspection Issues
 - h) Risk of Loss
 - i) Survey Issues
 - j) Flood Issues
 - k) Restrictions
 - l) Others...
6. The Purchase and Sale Agreement Timeline Checklist offers to assist licensees in meeting contractual deadlines. Filling this out as soon as an offer is accepted is a great way to stay on top of deadline dates and timelines.

Exercise: What Happens Next

For the following situations, explain what might happen next, including the parties' options.

1. The parties execute the Purchase and Sale Agreement. Fifteen (15) days later, the seller's agent still has not received notification that the buyer has applied for the loan. The Lender's contact information or that the buyer secured evidence of hazard insurance which will be effective at closing, notified Lender of an Intent to Proceed and has available funds to close per the signed Loan Estimate and requested that appraisal be ordered and affirms that the appraisal fee has been paid.
2. The buyer has an inspection completed that reveals some problems with the property. The buyer's agent mentions to the listing agent that a repair proposal is coming. Five days after expiration of the inspection period, the listing agent still has not received the repair proposal.
3. The Purchase and Sale Agreement states that the buyer has paid or will pay \$5000 earnest money/trust money to the listing agent (Holder) within 2 days after Binding Agreement Date. At the end of the third day, the listing agent (Holder) has not received the check.
4. Two days before closing, the Lender contacts the buyer and says there's a small problem with the loan documents and the closing needs to be pushed back three days so new disclosures can be sent out. The seller is livid as this will delay the closing of the new home they are purchasing.

5. Appraisal comes in \$3000 below contract sales price. What are the buyer and seller options?
6. The Buyer has checked the box "Financing Contingency Waived" and indicated that they will furnish proof of available funds to close in the following manner, "Bank Statement". It is six (6) days after the Binding Agreement Date and you have received nothing from the Buyer or their agent as agreed in the contract between the Buyer and the Seller.
7. The Buyer has tried to obtain financing in "good faith" and has failed to do so.
8. During the title search, a material defect is found and it is discovered that the current Seller purchased the property from a real estate licensee who bought the house on the courthouse steps as a foreclosure. The new Buyer will not receive a General Warranty Deed as stated in the Purchase and Sale Agreement, but a Special Warranty Deed instead. What are the options of the Buyer and Seller?
9. Your buyer is concerned about parking their motor home in the yard beside their house and would like to look at the subdivision restrictions to make sure this is possible. How do you handle this?
10. The Seller, afraid to move all of their belonging out of the house due to the Buyer's previous financing issue, asks to remain in the house for seven (7) days after the closing.

Part 2: Inspections & Repairs

Talking Points: Inspections and Repairs

1. “Inspections” includes ALL inspections and reports related to the property. The termite inspection is included and if the buyer waives the inspections, they have waived the termite inspection. All inspections are performed at the expense of the buyer unless otherwise specified in the Special Stipulations Paragraph 19
2. The Resolution Period allows the Buyer and Seller to mutually agree upon a certain number of days to resolve repairs and replacements. There can be an unlimited amount of Repair/Replacement Proposals between the Buyer and the Seller. If they do not meet a mutual written resolution in the agreed upon time frame (or an extension of the timeframe using the Amendment to the Purchase and Sale Agreement) the Purchase and Sale Agreement terminates. The Buyer and Seller agree to negotiate the repairs in “good faith”. Once the Buyer submits a Repair/Replacement Proposal the Seller must respond. Failure to respond could give the Buyer a claim for breach of contract and failure to act in good faith. The Seller does not have to agree to fix anything, but the Seller must respond. Once the Seller submits a Repair/Replacement Proposal the Buyer must respond. Failure to respond could give the Seller a claim for breach of contract and failure to act in good faith.
3. Home Inspectors are licensed and regulated by a regulatory board of the Tennessee Department of Commerce & Insurance. Tennessee Code Annotated §62-6-301(5) defines a home inspector as “any person who is licensed under this part as a home inspector and who engages in the business of performing home inspections and writing home inspection reports.” Licensed General Contractors should not conduct home inspections as they would be acting in the capacity of a “Contractor” when conducting a home inspection as defined by Tennessee state law and may be in violation of Tennessee Code Annotated §62-6-301(5). The contract between the Buyer and the Seller states, “The parties hereto agree that in the event the Buyer shall elect to contract with a third party inspector to obtain a “Home Inspection” as defined by Tennessee law, said inspection shall be conducted by a licensed home inspector. Although buyers may inspect the property themselves, this may not carry the same weight in the eyes of the seller as a report from a licensed inspector.
4. When purchasing properties are offered “as is,” buyers are still entitled to make any and all desired inspections – they can and should do so! Buyers may still attempt to negotiate any needed repairs. Purchasing a property “as is” does not limit a buyer’s options under the Purchase and Sale Agreement, although, in practice, an “as is” seller may be less likely to complete or negotiate needed repairs.

5. Sellers offering a property “as is” are still required to fully disclose any property defects of which they have knowledge via the Tennessee Residential Property Condition Disclosure, unless exempt. (Discussed in Lesson 3) It is especially important that sellers answer honestly when a buyer inquires about a specific issue, i.e. plumbing or wiring. In practice, sellers may offer a property “as is” because they don’t wish to make any repairs or because they are unaware of what problems may exist. *Offering* a property “as is” does not obligate buyers to *accept* the property “as is” until they’ve completed all desired evaluations and inspections.
6. It is important to familiarize yourself with lender practices and requirements in your area related to appraisals and inspections. Know what lenders require to be fulfilled and that they are aware of the Buyer’s loan obligations.
7. In Tennessee, a wood destroying insect infestation inspection report is a warranty for 90 days of the accuracy of any representations made in the report. After 90 days, a new report must be obtained to reduce the liability for the parties involved. Be advised that Lenders may require a wood destroying insect infestation inspection report that is no older than 30 days. With a VA Buyer, a wood destroying insect infestation inspection is a “non-allowable” expense for a Buyer. Therefore with a veteran buyer, the Seller will pay the cost of the wood destroying insect infestation inspection report. The Buyer is allowed to choose the wood destroying insect infestation inspector in accordance with the terms of the Purchase and Sale Agreement,

Workshop: Inspections and Repairs

Students will workshop the following situations, using the Purchase and Sale Agreement and other related forms, if applicable.

Scenario 1: You are the listing agent for the Chamberlains. The next-door-neighbor of your listing at 123 Riverside Drive calls you and says, “There are about 15 people with their cars at the Chamberlains and I know they are out of town this week. Do you know what is going on”? The Buyer’s agent called a few days ago and made an appointment for the home inspection to take place this morning, but there should not be that many people involved. You have a few minutes on your way to go show a house so you stop by 123 Riverside Drive. The buyer’s agent, buyers, the buyer’s parents and an uncle who is a builder - along with his two sons are in the house performing the home inspection.

How would you address this situation?

Scenario 2: You live in Chattanooga and you represent the Ledford’s in the sale of her parent’s home. The Ledford’s have never lived in the house and are exempt from completing the Residential Property Condition Disclosure. The house goes under contract. The buyer’s agent calls to schedule the home inspection and it is scheduled for Wednesday at 10:00am. The inspection is completed and you drive by just to make sure all the doors are locked and lights are off – since the house is vacant. When you enter the house you notice the gas fireplace logs sitting in the middle of the living room. You know they were not there before, so you check the rest of the house and you notice the attic stairs are hanging away from the ceiling when you go upstairs. You take pictures of each of these items and return to your office, calling your broker and asking to see her when you get back to the office. Once at the office you show your broker the pictures and the two of you place a call to the buyer’s agent. The buyer’s agent acts strange on the phone and asks if she can talk to her broker and call you back. When she calls you back you are shocked to hear that this Tennessee agent allowed a non-licensed Georgia home inspector into the house and the inspector admitted that he removed the gas logs and did not know how to put them back in place and that the attic stairs broke when he went into the attic.

Does the Purchase and Sale Agreement address an issue like this? What are the options for the Seller and the Buyer?

Scenario 3: You are under contract with your buyers, Sam and Linda on the house of their dreams at 7416 Crawford Drive. They have 5 days to get the home inspection completed. You have previously given them a RF711 Vendor List with ten different home inspector names and are just waiting to hear from them about the home inspection. Time is running out so you place a call to them, but have to leave a message. On day 5, the last day for the initial home inspection to be completed, Linda calls and says they know they are down to the wire, but the home inspection was done today and they will email you the items they want to ask the seller to repair or replace. You wait all day and evening but do not receive anything from them until 9:54am on day 6.

Does the Purchase and Sale Agreement address what happens if the inspection time is missed? What are the options of the Buyer? What are the options of the Seller? Is there anything that could have happened to alleviate this issue?

Scenario 4: John and Jane Thomas have completed their initial inspection on the house they are under contract on which is located at 1246 Cooper Lane. Jane emails you (their agent) a list of items they would like to ask the seller to repair. In the email you notice they are asking for the Seller to install six GFCI outlets. The house they are buying was built in 1979 and it was not in the building code at that time to have GFCI outlets near places where water is used. You read the contract to the Thomas' and explained each line to them, but because the home inspector noted the installation related to safety, they would like to ask for them to be installed. Along with the GFCI outlet installation, they would like the bathroom to be painted around the vanity where it looks like water has removed the paint, the gutters cleaned out, a vapor barrier installed in the crawl space, the HVAC serviced and there was a water leak under the downstairs bathroom sink.

What forms do you use to make the repair request and how would you write these items up for the Seller to consider?

Scenario 5: Buyers Patricia and Sam Shepherd have completed their home inspection on 7897 Cove Road and wish to terminate the Agreement with the Seller due to a roof leak.

What is the process to terminate the Agreement? What form is used? Who gets the earnest/trust money?

Scenario 6: Agent Angie represents buyer Bob in purchasing 123 Main Street in Dyersburg, TN. The contract sales price is \$200,000, and the contract is contingent upon Bob's ability to obtain financing, and is subject to purchaser's approval of the home inspection report, however, the box making the contract contingent upon appraisal is not checked. The buyer has asked the seller to pay \$3,000 of his closing costs, and/or prepaid items. Bob is preapproved through Bank of Northwest Tennessee for more than the sales price, and his qualification is not an issue. After the home inspection is completed, Bob, through his agent Angie, negotiates repairs to the property with the seller Diane, and her agent, Linda. All parties agree on the repairs during the resolution period, and the seller agrees to make repairs in the approximate amount of \$2,500.00. All is moving forward towards a closing, until the Bank of Northwest Tennessee completes the appraisal. The appraised value of the home comes back at \$198,000, AND the appraisal is requiring replacement of the heating/AC unit, even though the purchaser did not request any repairs during the repair negotiation period. When the buyer's realtor Angie conveys this information to the seller's REALTOR® Linda, the listing agent is livid. She demands the contact information for the appraiser, so that she can "talk some sense into him/her." In addition, Linda states that the seller would not be replacing the heating and AC unit, since it was never requested in the repair amendment, and also mentions that since the appraisal contingency box was not checked on the contract, the seller expected the buyer to close the deal, as written, and that the buyer would have to make up the difference between the loan amount and the sales price.

What are the obligations of each realtor in the transaction? Has anyone done anything wrong at this point? How do these matters usually get resolved? What are the other potential issues in this scenario???

Part 3: Disclosures & Disclaimers

Talking Points: Disclosures and Disclaimers

1. In accordance with Tennessee Code Annotated §66-5-201 Sellers are required to fill out the Tennessee Residential Property Condition Disclosure form (RF201) (unless they are exempt) so it can be presented to buyers before they submit an offer. The law states it must be submitted “prior to the acceptance of a real estate purchase contract” Tenn. Code Ann. §66-5-203. The disclosure must include any defects known to the owner (see Tenn. Code Ann. §66-5-202). It is required for the seller to disclose any adverse facts about the property – better to have it all out in the open beforehand and reduce their post closing liability. (See §66-5-208)
2. In practice, if the question is “Should I disclose this?” the answer is almost always “YES.”
3. Buyers should review and sign the Disclosure form before making an offer – otherwise they cannot make an informed decision! In accordance with §66-5-201 and Paragraph 6 of the Purchase and Sale Agreement (RF401) the Seller has a legal obligation to provide the Disclosure prior to the acceptance of a contract.
4. The Tennessee Residential Property Condition Disclosure Disclaimer Statement is used ONLY after a buyer has waived their statutory right to the Tennessee Residential Property Condition Disclosure. This is true regardless of whether the property is being offered “as-is.” Sellers offering a property “as is” are still legally required to complete the Tennessee Residential Property Condition Disclosure form in the event that the Buyers will not accept the Disclaimer form. The Disclaimer form should NOT be used unless the buyers have already agreed to waive their statutory right to the disclosure.
5. The Tennessee Residential Property Condition Exemption Notification form is used by licensees to create a “paper trail” of compliance ONLY when the property and/or transaction is exempt (under Tennessee law) from the required disclosures.
6. Please keep in mind that the SELLER should be completing these forms, not the agent. Under no circumstances should an agent complete a Tennessee Residential Property Condition Disclosure for any Seller. If the Seller has questions about what they should disclose, they should speak with their own attorney. This information is legal advice. To tell a Seller what does not have to be disclosed can bring liability to an agent if the Seller relies upon that advice and is then sued by a Buyer.

7. Sellers are required to disclose any “changed circumstances” that result from any act, occurrence or information received after the initial required disclosure. See Tennessee Code Annotated 66-5-205.
8. Sellers are not required to disclose that the “dwelling” was occupied by anyone with HIV, if the dwelling was the site of a homicide, felony or suicide or an act or occurrence which had no effect on the physical structure, its physical environment or the improvements.
9. Real estate licensees representing the owner of residential real property have a duty to inform the Seller of their rights and obligations under the Tennessee Property Conveyance Law. Real estate licensees representing a Buyer have a duty to inform the Buyer of their rights and obligations under the Tennessee Property Conveyance Law. If the real estate licensee performs those duties, the licensee will have no further duties. However, a real estate licensee can be subject to a cause of action for intentionally misrepresenting or defrauding a purchaser by failing to disclose any adverse fact of which the licensee has actual knowledge or notice.

Workshop: Proper Disclosures

For the following items, identify which form(s) should be used to make the disclosure.

Issue	Form
1. Lead-based paint was found and removed from the basement of the seller's home.	
2. The seller knows the roof has a minor leak.	
3. The buyer has agreed to waive their right to the seller's property disclosure.	
4. The seller added a room to the rear of the house without a permit.	
5. The home has four bedrooms but the seller admits the septic permit only allows for three.	
6. During periods of heavy rain, the backyard tends to have a great deal of standing water.	
7. The home was previously treated for radon.	
8. The seller's home was previously treated twice for termite damage.	
9. A neighbor's fence encroaches two feet onto the left side of the seller's property but they have refused to move it.	
10. During the contract period, the seller discovers a significant amount of water damage in the rear wall of an upstairs closet.	
11. The developer of a vacant lot of land now listed for sale has paid a \$400 impact fee to the city with the installation of utilities.	
12. The seller has never occupied the property.	

Part 4: Special Stipulations

Talking Points: Special Stipulations

1. The preprinted portions of the Purchase and Sale Agreement (RF401) have been approved by the forms committee and several attorneys. Do NOT try to reinvent the wheel!
2. Handwritten provisions prevail! When you write something in the special stipulations section, it should be consistent with the rest of the Purchase and Sale Agreement (RF401) . Whenever possible, use the same verbiage included in the preprinted portion, referencing the specific line number(s), only changing what is absolutely necessary!
3. Before writing something into the special stipulations section, you should FIRST check to make sure the issue is not addressed by another form or found elsewhere in the Purchase and Sale Agreement (RF401).
4. NEVER include phrases such as TBD, actual costs, negotiable, etc. – these phrases are your enemies and should be avoided at all costs! Always be as specific as possible, especially when it comes to dates, amounts and actions required of either party. If you do not, then the contract may not be enforceable.
5. If you're using the special stipulations section to write in a contingency, there is likely another more appropriate form. The Special Stipulations Library (RF707) exists to assist you in addressing special stipulations. The special stipulations section is appropriately used to make simple changes to a preprinted item, such as a required deadline, if the line number is referenced and exact verbiage reprinted, with only the number of days changed.
6. The special stipulations section should NEVER be used to write a new contract. Repeat after me: I am NOT an attorney, I am NOT an attorney, I am NOT an attorney...unless, of course, you actually *are* an attorney.

Exercise: Stipulation Identification

Students will identify whether the item might appropriately be addressed in the special stipulations section.

1. The buyer submits an offer. The seller wants to change the deadline for submitting the termite letter.
2. The buyer is obtaining a VA loan.
3. The buyer wants to change the number of days required to submit their loan application.
4. The buyer's offer is contingent on the sale of their existing home.
5. The buyer wants the seller to make sure the house is swept clean and free of debris.
6. The buyer wants the seller to replace the damaged front door.
7. The property includes a large parcel of land and the buyer wants to make the offer contingent on a survey.
8. The buyer wants to ask the seller to purchase an owner's title policy and pay closing costs. NO – See Purchase and Sale Agreement Paragraph 2.D.3. Example 1: Cost of title search, mortgagee's policy and owner's policy shall be paid as follows: by the Seller. Example 2: Not all of the above items are applicable to every transaction and may be modified as follows: Seller shall pay buyer expenses not to exceed \$4500.00.
9. The buyer wants the seller to have the exterior of the home pressure washed prior to closing.
10. The buyer is purchasing a foreclosed home. The bank (seller) has agreed to allow the buyer to replace three broken windows prior to closing.
11. The buyer would like to have a specific radon contingency.

Part 5: Contract Construction

Talking Points: Contract Construction

1. The biggest lesson you can learn related to filling out contracts is one you learned a long time ago – color inside the lines! Your goal is to fill in the existing picture, NOT draw a new one! You should complete the form in its entirety and do not leave any blanks. INSTRUCTOR NOTE: TN Realtors® Hotline has advised us numerous times over the years not to leave any blank, blank. They have also advised us not to use phrases such as “to be determined”, “TDB”, “negotiable”, “actual costs”, etc. If you have nothing to go into a blank, draw a line through it or place “N/A” in the blank.
2. The preprinted portions of the Purchase and Sale Agreement create obligations for the parties. To correctly explain them to clients and customers, you must understand them yourself! ALL preprinted items should be thoroughly explained to buyers and sellers, especially when the item requires action on their part. INSTRUCTOR NOTE: See the Inform Tool under the Members area at www.net.com.
3. Do NOT strike through ANY portion of preprinted language. You should address any changes in the Special Stipulations section or another appropriate form.
4. Some fixtures are preprinted as included in the sale. If your seller does not wish to include them, you must note this specifically in writing – never assume anything. Please note that items included in the Listing Agreement or MLS information are NOT part of the binding agreement between the parties.
5. Pay special attention to notices required in the preprinted language and be sure to use the appropriate Notice form, if applicable.
6. When asking a Seller to contribute to Buyer Expenses (closing costs) write this in Paragraph 2.D.3., not in Special Stipulations.
7. If you have a same sex couple who are both buying the property, and want survivorship rights, I have used the following language: Steve Jones and Jim Smith, Married to each other, as joint tenants with rights of survivorship.
8. How purchasers take title determine inheritance rights. A Realtor® should always refer their client to an attorney to discuss title vesting options

Skill Practice: Completing the Offer

After reviewing the Purchase and Sale Agreement, students will divide into groups. Using the following set of circumstances, each group will fill out the Purchase and Sale Agreement AND reference any other additional forms if needed. A representative from each group will be asked to present a portion of the offer as they would assist the buyer in filling it out.

After working with Steve and Dottie Anderson for some time showing them property, they have decided to purchase Col. David Nelson's 20 year old home at 428 Main, which is a three bedroom, two bath brick home in Anytown, USA. They are willing to offer \$145,000 for the home, assuming that they successfully close on the sale of their home at 428 E. Main in Your town, USA, upon which they have a contract scheduled to close in two weeks. They would like to purchase the home using the VA entitlement that was earned by Mrs. Anderson while serving in the Navy. They would like to put down as little as possible and prefer to have the current owner pay for all their costs from the lender.

They need a response on this offer by tomorrow, as they like the house at 528 E. Main equally as well and want to make sure that they are able to secure one of these two homes. Although, they are particularly interested in the swing set that Col. Nelson has in his back yard, as well as the gas grill.

The Andersons are unfamiliar with the typical arrangements that agents make for clients for appraisals, inspections, etc. and are leaving those things up to your judgment. However, they very much want to have possession at time of closing and would like to close in thirty days.

The name of your company is ABC Realty. You suggest – and your client agrees – to offer 1% of the offered price as earnest money, with your firm holding it in an escrow account.

Part 6: A Brief Discussion About Agency

Agency Disclosure/Confirmation Forms

When do you make agency disclosures and which form(s) do you use?

Is there a difference between Agency Disclosure and Confirmation of Agency Status?

When writing an offer, whom do you represent?

What if you are the listing agent and an unrepresented buyer wants to make an offer?

Seller's Agent vs. Facilitator

Commission:

Liability:

Scope of Work

Appendix A: Job Aid – Major Timelines and Deadlines for Purchase and Sale Agreement

Day(s) are CALENDAR days(s) ending at 11:59 p.m. local time

Local time is determined by the location of the property

The **Binding Agreement Date (BAD)** is the date and time at which both Buyer and Seller have reached an agreement on the terms of the sale of real property. This date and time shall be that point at which the last offeror, or licensee of the offeror, received notice of the offeree's acceptance.

1 day after the BAD, begin counting the days. In calculating any time period under this Agreement, the commencement day shall be the day following the initial date (e.g. the Binding Agreement Date).

In the event of a **performance deadline** other than the Closing Date, Date of Possession, and Offer Expiration Date, occurs on a Saturday, Sunday, or legal holiday, the performance deadline shall be extended to the next business day.

Inspection

The Buyer is responsible for obtaining the “**Wood Destroying Insect Infestation Report**” and shall cause it to be delivered to the other party **simultaneously with delivery of the Buyer Inspection Contingency Removal Notification or equivalent written notice.**

Buyer's Inspection Resolution Period is an agreed upon number of days after the Binding Agreement Date.

At the time of closing, if title examination, mortgage loan inspection, boundary line survey, or other information discloses material defects the Buyer may:

1. Accept the property with the defects
2. Require seller to **remedy such defects prior to closing**. *See Purchase and Sale Agreement and Notification Form*

Financial Obligation

Within 5 days after the Binding Agreement Date (BAD) the buyer shall:

- Make application for the loan
- Pay fees necessary to complete full loan processing and approval, as soon as permissible as established by governmental regulations
- Instruct lender to order credit report and appraisal

See Purchase and Sale Agreement and Notification Form

OR

Within 20 days after BAD, obtain proof of available funds. *See Purchase and Sale Agreement and Notification Form*

Trust Money must deposited by the Buyer on an agreed number of days after BAD. *See Purchase and Sale Agreement and Notification Fo*

Appendix B: Job Aid – Inspections and Repairs

Buyers have a right to inspect the property they are buying and are responsible for the costs of these inspections. Home Inspectors are now required to be licensed in the state of Tennessee. However, the buyer still has the right to perform inspections on their own behalf.

State law defines a home inspection as "a visual analysis for the purpose of providing a professional opinion of the condition of a residential building, ancillary building, any reasonably accessible installed components, and the operation of the building systems, including any controls normally operated by the owner of the building, for the following components:

- (i) Heating systems; (ii) Cooling systems; (iii) Electrical systems; (iv) Plumbing systems; (v) Structural components; (vi) Foundations; (vii) Roof covering; (viii) Exterior and Interior components; and (ix) Any other site aspects that affect the residential dwelling." *Tenn. Code Ann. §62-6-302(3a)*

Therefore, if the buyer is receiving an inspection that covers ALL of the above mentioned components, ***then it must be performed by a licensed home inspector***. However, a buyer is permitted to get an inspection of individual systems without using a licensed home inspector. In this case, the person performing the limited inspection must still meet state requirements for licensure and/or experience (**e.g.** a licensed electrician to inspect the electrical, a licensed plumber to inspect the plumbing, an experienced roofer to inspect the roof, etc.).

Termite Inspection and Termite Report:

Who will pay for the wood inspection report?

The buyer.

Important Points:

- The wood infestation report is an "inspection". Therefore, all inspections are placed under one time frame to avoid conflicts and/or confusion.
- The inspection report defines many different wood destroying insects. Any active infestation will be shown on the report and must be treated at the seller's expense. There is NO treatment cap. IF the seller wants a CAP for the treatment costs OR does not want to pay for treatment, they should address it in a COUNTER OFFER.

- Per Tennessee law, the wood infestation report is good for 90 days. The Lender/Mortgage Co. may have different time/age requirements. Most commonly, people think that these reports are only good for 30 days. Again, consult your Lender - you may find that they'll adjust this time. You could also address the termite inspection time frame separately outside of the INSPECTION paragraph by addressing it in Special Stipulations. This is not recommended but can be done.
- A Wood Infestation Report is not required by law but may be required by Lender / Buyer / Contract.
- The seller is to treat at their expense.
Treatment is not damage.
- Pay close attention to timeline.

Appendix C: Forms Resource Guide

In 2015, the Forms Committees looked at the various forms that are offered to its members and determined that they could be made a bit more user friendly. One of the main issues which members have is quickly finding the form to suit their particular needs. When Tennessee REALTORS® began providing forms to its members a little over fifteen years ago, there were far fewer forms than there are today. Early in the forms' history, a numbering system was developed where in similar forms were grouped together in a numerical sequence, preceded with an "F". However, over the years, new forms were introduced and others were deleted from the form library. As a result, the numerical sequence was no longer indicative of where a form might be found. In addition, commercial forms were located sporadically throughout the numbering system rather than being grouped together.

Both the residential and the commercial forms committees decided to introduce a new numbering sequence to make using the forms a bit easier for its members. There are two different sets of forms – one for residential forms (which will include residential, lots and lands, and farms) and will begin with the letters "RF". The other will be for commercial forms and will begin with the letters "CF".

Within both the residential and commercial forms, the individual forms are organized within one of seven different categories, depending upon the forms' use. The different categories are:

- **100 Series**. This series includes the agency forms and agreements between a real estate firm and its clients/customers such as listing agreements, buyer's representation agreements, terminate of agency agreements, and agreements to show property.
- **200 Series**. This includes disclosures made by the client/customer. Documents in this series include property condition disclosure forms, impact fees/adequate facilities tax disclosures, lead based paint disclosures, etc.
- **300 Series**. This series includes disclosures from the real estate firm to clients and customers. Documents in this series include confirmation of agency status, disclaimer notices, personal interest disclosures, referral for services, etc.
- **400 Series**. This series contains contracts between parties in a real estate transaction. Documents in this series include the purchase and sale agreements, lease agreements, confidentiality agreements, earnest money disbursement and release agreements, etc.
- **500 Series**. This series includes exhibits to contracts.
- **600 Series**. This series contains addenda, amendments, counter offers, notifications, etc. This includes back up agreements, right to continue to market property forms, FHA/VA addenda, counter offers, amendments, repair/replacement forms, final inspection documents, notifications, multiple offer disclosures, etc.
- **700 Series**. This series is comprised of miscellaneous documents. It includes things such as referral agreements, compensation agreements, interpleader documents, information sheets, etc.

Within each series of numbers, forms are assigned a three-digit number and grouped together with similar forms. For example, the standard listing agreements have numbers in the low 100s. The lot/land listing agreements have numbers in the 130s. Buyer's representation agreements are in the 140s. In addition, documents that are the same for both residential and commercial have the same three-digit number. For example, the standard purchase and sale agreement for residential property is form RF 401 and for commercial property, it is CF 401. This should make things much easier for those practitioners who engage in both residential and commercial transactions. The committees believe that this new system make things much easier to locate needed forms and allow enough flexibility so that additional forms can be added without altering the numbering system for years to come.

Below you will find several charts that list both the old and new numbers for the residential and commercial forms. If you have any questions concerning the forms themselves or the new numbering system, please contact the Legal Hotline at (800) 899-5297 or via email at hotline@net.com.

When to Use a Form

	Is Used...
RF302 – Confirmation of Agency Status	To confirm the required agency disclosures have been made – this is NOT the same as an agency agreement!
RF303 – Notification of Change in Status or Agency Relationship	To confirm a change in agency status
RF144 – Non-Exclusive Buyer Representation Agreement (Buyer Agency)	As a non-exclusive agency agreement for buyer agency
RF142 – Exclusive Buyer Representation Agreement (Buyer Agency)	As an exclusive agency agreement for buyer agency
RF654 – Repair/Replacement Proposal	When the sale is contingent on the buyer completing inspections during the inspections period
RF655 – Repair/Replacement Amendment	When the parties are negotiating repairs
RF657 – Closing Date/Possession Amendment	To make a change to the closing date and/or possession date specified in the F9
RF 651 – Counter Offer	To submit a counter offer – this form should ALWAYS be used instead of scratching out portions of the original offer!
RF401 – Purchase and Sale Agreement	As the standard offer to purchase for residential properties
RF 304 – Disclaimer Notice	By licensees to notify parties they are NOT experts on property condition/inspection
RF 209 – Lead-Based Paint Disclosure	To fulfill statutory requirements for lead-based paint disclosures

RF201 – Tennessee Residential Property Condition Disclosure	By the seller to disclose all material facts about a property
RF202 – Tennessee Residential Property Condition Disclosure Update	To update the property condition disclosure
RF305 – Personal Interest Disclosure and Consent	To verify disclosure and obtain written consent when the licensee has a present or contemplated personal interest in the property
RF706 – Interpleader	When a broker must interplead an earnest money dispute
RF161 – Agreement to Show Property	To obtain a seller's written consent to market and show their property
RF656 – Notification	To adhere to requirements for notice for certain items within the F9
RF658 – Buyer Authorization to Make Repairs and Improvements prior to Closing Amendment	When the buyer wants to obtain the seller's consent to have access to the property prior to closing for the purpose of completing repairs
RF481 – Earnest Money/Trust Money Disbursement and Mutual Release of Purchase and Sale Agreement	To establish how earnest money will be dispersed
RF707 – Contract Language for Special Stipulations	To provide examples of appropriate language to use in the special stipulations sections for common issues
RF711 – Vendor List	When the licensee recommends vendors such as inspectors, lenders, etc.

RF660 – Buyer’s Final Inspection Amendment	To properly document Buyer’s final inspection
RF203 – Tennessee Residential Property Condition Exemption Notification	When a property or transaction is exempt from statutory disclosure requirements
RF204 – Tennessee Residential Property Condition Disclaimer Statement	When the buyer waives their right to receive the Property Condition Disclosure form
RF625 – FHA/VA Loan Addendum	When the buyer is obtaining a FHA or VA
RF714 – Water Supply and Waste Disposal Notification	When a property is served by a well, septic or other water or waste system
RF708 – Purchase and Sale Agreement Timeline Checklist	As a worksheet to keep up with timelines and deadlines within the RF401
RF208 – Subsurface Sewage Disposal System Permit Disclosure	To request information from governmental agency charged with keeping septic records
RF205– Additional Required Residential Disclosures	These are disclosures that generally fall outside of the Property Condition Disclosure Act but are required by law.
RF101 – Exclusive Right to Sell Listing Agreement (Designated Agency)	As an exclusive right to sell listing agreement for designated seller agency
RF102 – Exclusive Right to Sell Listing Agreement (Seller Agency)	As an exclusive right to sell listing agreement for traditional seller agency
RF707 Special Stipulations – Exclusive Agency Listing Agreement (Seller Reserves Right to Sell - Seller Agency)	As a listing (employment) agreement for traditional seller agency where the seller retains the right to sell. Use the verbiage in Tennessee REALTORS RF707.
RF707 Special Stipulations – Exclusive Agency Listing Agreement (Seller Reserves Right to Sell – Designated Agency)	As a listing (employment) agreement for designated seller agency where the seller retains the right to sell. Use the verbiage in Tennessee REALTORS RF707.

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RF 101 Exclusive Right to Sell Listing Agreement (Designated Agency)
 RF 102 Exclusive Right to Sell Listing Agreement (Seller Agency)
 RF 131 Lot/Land Exclusive Right to Sell Listing Agreement (Designated Agency)
 RF 132 Lot/Land Exclusive Right to Sell Listing Agreement (Seller Agency)
 RF 141 Exclusive Buyer Representation Agreement (Designated Agency)
 RF 142 Exclusive Buyer Representation Agreement (Buyer Agency)
 RF 143 Non-Exclusive Buyer Representation Agreement (Designated Agency)
 RF 144 Non-Exclusive Buyer Representation Agreement (Buyer Agency)
 RF 151 Listing/Agency Mutual Release Agreement
 RF 161 Agreement to Show Property
 RF 201 Tennessee Residential Property Condition Disclosure
 RF 202 Tennessee Residential Property Condition Disclosure Update
 RF 203 Tennessee Residential Property Condition Exemption Notification
 RF 204 Tennessee Residential Property Condition Disclaimer Statement
 RF 205 Additional Required Residential Disclosures
 RF 206 Lot/Land Seller's Property Disclosure
 RF 207 Impact Fees or Adequate Facilities Taxes Disclosure
 RF 208 Subsurface Sewage Disposal System Permit Disclosure
 RF 209 Lead Based Paint Disclosure for Purchase
 RF 210 Lead Based Paint Disclosure for Rental Property
 RF 211 Green Features System Checklist
 RF 301 Working with a Real Estate Professional
 RF 302 Confirmation of Agency Status
 RF 303 Notification of Change in Agency Status
 RF 304 Disclaimer Notice
 RF 305 Personal Interest Disclosure and Consent
 RF 307 Referral for Service Disclosure
 RF 401 Purchase and Sale Agreement
 RF 403 New Construction Purchase and Sale Agreement
 RF 404 Lot/Land Purchase and Sale Agreement
 RF 421 Residential Lease Agreement for Single Family Dwelling
 RF 461 Real Estate Offer Confidentiality Agreement
 RF 481 Earnest Money Disbursement and Release of Purchase and Sale Agreement
 RF 482 Escrow Agreement
 RF 483 Option Agreement
 RF 501 Condominium Legal Exhibit
 RF 505 Pre-Construction Specification Exhibit
 RF 506 Legal Description Exhibit to Lot/Land Purchase and Sale Agreement
 RF 601 Amendment to the Listing Agreement
 RF 602 Short Sale Amendment to the Listing Agreement
 RF 621 Addendum
 RF 622 Back-Up Agreement Contingency Addendum
 RF 623 Seller's Right to Continue to Market Property Addendum
 RF 624 Seller's Notice to Buyer of Receipt of Acceptable Offer
 RF 625 FHA/VA Addendum
 RF 626 Temporary Occupancy Agreement for Buyer prior to Closing
 Addendum/Amendment
 RF 627 Temporary Occupancy Agreement for Seller After Closing Addendum/Amendment
 RF 628 Assumption Agreement Addendum
 RF 629 Resolution of Disputes by Mediation Addendum/Amendment

RF 630 New Construction Allowance Addendum
 RF 631 Tenant Information for Residential Lease Agreement Addendum
 RF 641 Amendment to Buyer's Representation Agreement
 RF 651 Counter Offer
 RF 652 Counter Offer to Residential Lease Agreement
 RF 653 Amendment to Purchase and Sale Agreement
 RF 654 Repair/Replacement Proposal
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 RF 656 Notification
 RF 657 Closing Date / Possession Date Amendment
 RF 658 Buyer Authorization to Make Repairs and Improvements prior to Closing
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 RF 659 Short Sale Amendment to Purchase and Sale Agreement
 RF 660 Buyer's Final Inspection Amendment
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 RF 662 New Construction Walk Through List
 RF 663 Multiple Offer Disclosure Notification
 RF 664 Amendment to Lease Agreement
 RF 701 Referral Agreement
 RF 702 Compensation Agreement between Listing and Selling Broker
 RF 706 Interpleader
 RF 707 Special Stipulations
 RF 708 Timeline Compliance Checklist for Purchase and Sale Agreement
 RF 709 Request for Condominium Association Information
 RF 710 Request for Information form the Tennessee Department of Environment and
 Conservation Division of Ground Water Protection
 RF 711 Vendor List
 RF 712 Get a Home Inspection and Property Survey
 RF 713 Disclosure of Short Sale Information to Buyers and Sellers
 RF 714 Water Supply and Waste Disposal Notification
 RF 715 Additional Signature Blocks for Residential Documents
 RF 716 Additional Signature Blocks for Purchase and Sale Agreement and Counter Offers
 CF 101 Commercial Exclusive Seller Listing Agreement
 CF 103 Commercial Exclusive Agency Listing Agreement
 CF 104 Commercial Exclusive Open Listing Agreement
 CF 121 Commercial Exclusive Leasing Agreement
 CF 124 Commercial Open Listing Agreement (for Lease)
 CF 141 Commercial Exclusive Buyer / Tenant Representation Agreement
 CF 151 Commercial Listing Mutual Release
 CF 161 Agreement to Show Commercial Property
 CF 201 Commercial/Industrial Real Property Disclosure
 CF 209 Commercial Lead Based Paint Disclosure (for purchase)
 CF 305 Commercial Personal Interest Disclosure
 CF 307 Commercial Referral for Service Disclosure
 CF 401 Commercial Purchase and Sale Agreement
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 CF 421 Commercial Lease Agreement (Single Tenant)
 CF 422 Commercial Lease Agreement (Mult-Tenant)
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CF 443 Commercial Lease Guaranty
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 CF 461 Commercial Mutual Non-disclosure and Confidentiality Agreement
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 CF 510 NEW Exhibit C to Commercial Lot/Land Purchase and Sale Agreement (Additions to Seller's Closing Documents)
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 CF 601 Amendment to Commercial Listing Agreement
 CF 603 Amendment to Commercial Lease Agreement
 CF 621 Addendum to Commercial Purchase and Sale Agreement
 CF 623 Commercial Right to Continue to Market Property Addendum
 CF 624 Commercial Seller's Notice to Buyer of Receipt of Acceptable Offer
 CF 632 Addendum to Commercial Lease Agreement
 CF 651 Counter Offer to Commercial Purchase and Sale Agreement
 CF 652 Counter Offer to Commercial Lease Agreement
 CF 653 Amendment to Commercial Lease Agreement
 CF 657 Commercial Closing Date / Possession Date Amendment
 CF 664 Amendment to Commercial Lease Agreement
 CF 701 Commercial Referral Agreement
 CF 702 Commercial Compensation Agreement between Listing and Selling Broker
 CF 703 Commercial Lease Commission Assumption Agreement
 CF 704 Notice of Agreement to Pay Leasing Commission
 CF 705 Release of Notice of Agreement to Pay Leasing Commission on Commercial Property
 CF 706 Commercial Interpleader
 CF 707 Commercial Special Stipulations Language
 CF 711 Commercial Vendor List
 CF 715 Additional Signature Blocks for Commercial Documents
 CF 716 Additional Signature Blocks for Commercial Purchase and Sale Agreement and Counter Offers

Appendix D: Supplemental Case Studies

Case Study: An Appliance Dispute

Drake Manufacturing Co., operating out of three major cities, had given Sharon a lot of business since she began in real estate. Over the last several years, whenever they transferred one of their corporate employees to the Shady Valley plant, they always recommended her. Truly appreciative of their business, she tried hard to keep them happy.

Troy Peterson was the vice president of marketing for Drake. He'd worked for them for 12 years and loved his job. When his wife was killed suddenly in a car accident months before, they'd been helpful and understanding, giving him plenty of time off to spend with his two young boys. A few months after his wife's death, Troy asked to be transferred to Shady Valley. He told his boss he felt like the boys needed a change, that the memories were just too painful. He hoped the move would be a fresh start for all of them.

Sharon felt horrible for Troy when he told her about losing his wife so suddenly. She couldn't imagine the courage it took to pick up and try to move on after experiencing that kind of loss. She could see how stressed out he was and admired him for holding it together. After spending considerable time with Troy explaining the various options for working arrangements for a real estate agent and covering her role as his buyer's agent, he signed an Exclusive Buyer Agency Agreement with her.

Connie Farrell was finally getting the house of her dreams. After two years of trying to convince her husband, Doug, that they needed a bigger place, he'd finally given in. Though she liked the home they had, her friends were always buying bigger and better, and she figured it was her turn. After all, with their youngest daughter finally getting a place of her own, she and Doug had earned the right to treat themselves. She called REALTOR® Maria Perez, whom she'd been friends with for three years, to list the house.

The Farrell's' house immediately caught Troy's eye because they were leaving their appliances. The ones he had in Atlanta were really too old to be worth moving, and he'd decided just to trash them. They'd come with the house when the family had originally purchased it and had definitely seen better days. Plus, it would be one thing he could scratch off what was becoming a very long To Do list.

Sharon sat down with Troy to write the offer. They double-checked the listing agreement, which clearly stated that the washer, dryer, and refrigerator were offered with the property. The house was listed for \$171,500 and Troy's offer was for \$170,000.

The Farrell's' accepted Troy's offer, though they thought they should've gotten full price. They were proud of their home and had hoped it would be listed for more, but Connie was ready to move and Doug was tired of hearing her complain.

When the day of closing arrived, Troy felt relieved. Two hours before closing, he went to do the final walk through. When he noted the absence of the appliances, he was told he wouldn't be getting them. Maria told him they weren't listed in the offer to purchase at the reduced price Sharon had sent. Maria said the Farrell's' had insisted that at the reduced price, they couldn't afford to let the appliances stay.

Troy went outside to calm down and call Sharon. He was extremely upset and indicated he might not close on the house. He demanded to know how this could've happened, couldn't he insist on receiving them since they were offered in the MLS?

Did both agents behave ethically and within MLS policy guidelines in this situation?

Does the buyer have a legal claim to these appliances?

Does Sharon, as the buyer's agent, have any responsibility here?

Case Study: Basement Bayou

Cindy Smart was a friend of Mark's wife. The two had met on the fundraising committee for their kids' school a few years before.

Since Cindy's husband had died of cancer a year ago, they'd grown closer. Mark often went over and cut the grass for her and invited her kids to the park.

When Cindy decided to move to a smaller house, she asked Mark to represent her. She was doing fine financially but she was tired of the upkeep necessary to maintain such a large house. She felt she'd be better equipped to deal with something smaller and she knew the kids could use a change.

Mark took Cindy to look at several houses in a popular neighborhood not far from her current home. She saw one in particular she thought the kids would really like. 239 Sycamore Street was an 1800 square foot house only five years old. The exterior was painted a charming green and the freshly-painted white shutters made it look picture perfect. Cindy loved the large, airy family room and the spacious kitchen. When she brought the kids to see it, they took to it instantly.

When Mark saw that the seller was also a REALTOR®, he felt encouraged. He hoped they wouldn't be delayed over the simple miscommunications that sometimes occurred before closing. He knew Cindy was ready to move and get the kids settled in the new place.

Mark submitted an offer to Adam Hines, the seller/agent, for \$175,000. At \$2000 below list price, it was a fair offer. Adam accepted and they set a closing date 30 days away.

When Mark received the Property Condition Disclosure Report, he noticed some notations Adam had made. He called Cindy and they went over it together. Adam had noted that occasionally after very heavy rains there was a small amount of water that collected in the basement. He indicated that, because the sump pump carried the water away, it really wasn't a big issue.

Cindy accepted the report. She appreciated Adam's apparent honesty and felt confident that the house was in good condition. She opted not to have her own inspection done because she felt she could trust Adam's representations. Between packing up her house and preparing for the move, she was glad she was dealing with a professional she felt she could trust.

Cindy and her kids moved into their new house just days after closing. One week later, they received two days' worth of heavy rainfall. Much to her dismay, she found water in the basement up to her shins. She waited a few days but the sump pump didn't take the water away. She decided to call Mark.

Mark was able to recommend somebody to do the work but the repairs to fix the flooding problem ended up costing over \$14,000. Cindy was furious and felt she'd been taken advantage of. Mark was disappointed that a professional like Adam would deliberately try to cover-up the fact that costly repairs were needed on the house. Cindy filed suit against Adam for the damages.

Once the parties appeared in court, Adam argued that Cindy had not only accepted the report but also declined her own inspection. He said she was clearly buying the property "AS IS" and he wasn't responsible for the cost of the repairs.

Could this situation have been avoided and how? Explain.

Did Cindy buy the property "AS IS"? How is this determined?

Case Study: Ties That Bind

Mark had known Steve Cooper since high school. They'd gone to the same college and even gotten married only a couple of years apart. Steve and Ellen were often invited to the Ellis' house for dinner. When they decided to buy a bigger house, they called Mark to represent them.

The Coopers began looking early the next week. They really wanted a large backyard for their dogs to have space to run. They found the perfect farmhouse about 15 minutes outside the city limits. It had been restored several years before and they loved the contrast of the modern appliances and the dated architecture. The fields behind the house provided ample space for their dogs. Although it was slightly higher than what they wanted to spend, they decided to make a lower offer and see what happened.

Mark wrote the offer for them and delivered it to the listing agent. She called Mark the next day and said her clients had decided not to take the offer. They were going to wait, she told him, to see if they could get closer to their asking price. Because the Coopers had told Mark they couldn't go that high, he told the agent to let him know if the sellers decided to come down.

Once again, the Coopers and Mark began to look at more houses. After two more weeks, they found something else they liked. They didn't like it as much as the farmhouse but they decided it was the next best thing. They went back to Mark's office to write up an offer.

By the time they began discussing the contract, the Coopers were more excited. Mark was pleased they'd found something they'd be happy with. Because they were busy talking, he forgot to fill in the binding agreement date on the contract. Nonetheless, the contract was signed by both parties and delivered with a check for \$5000 from the Coopers as earnest money.

A few days later, Mark got a call from the agent representing the sellers of the farmhouse the Coopers were originally interested in. She told him the sellers were ready to move and were willing to accept the Coopers' original offer. Mark reluctantly called Steve and Ellen and explained the situation.

Steve and Ellen decided they definitely wanted the farmhouse. They told Mark that even if they lost the earnest money they'd put down on the other offer, they still wanted out of the contract. They did ask Mark to please go through it again and see if there was any way they could get out of it with their earnest money returned.

How could this situation have been prevented?

If you were Mark, what would you say? At what point is the contract binding?

PURCHASE AND SALE AGREEMENT

1. Purchase and Sale. For and in consideration of the mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned buyer

_____ (“Buyer”) agrees to buy and the undersigned seller _____ (“Seller”) agrees to sell all that tract or parcel of land, with such improvements as are located thereon, described as follows:

All that tract of land known as: _____
 (Address) _____ (City), Tennessee, _____ (Zip), as recorded in _____ County Register of Deeds Office, _____ deed book(s), _____ page(s), and/or _____ instrument number and as further described as:

_____ together with all fixtures, landscaping, improvements, and appurtenances, all being hereinafter collectively referred to as the “Property.”

A. INCLUDED as part of the Property (if present): all attached light fixtures and bulbs including ceiling fans; permanently attached plate glass mirrors; heating, cooling, and plumbing fixtures and equipment; all doors, storm doors and windows; all window treatments (e.g., shutters, blinds, shades, curtains, draperies) and hardware; all wall-to-wall carpet; range; all built-in kitchen appliances; all bathroom fixtures and bathroom mirrors; all gas logs, fireplace doors and attached screens; all security system components and controls; garage door opener and all (at least _____) remote controls; an entry key; swimming pool and its equipment; awnings; permanently installed outdoor cooking grills; all landscaping and all outdoor lighting; mailbox(es); attached basketball goals and backboards; TV mounting brackets (but excluding flat screen TVs); antennae and satellite dishes (excluding components); and central vacuum systems and attachments.

B. Other items that REMAIN with the Property at no additional cost to Buyer:

C. Items that WILL NOT REMAIN with the Property:

D. LEASED ITEMS: Leased items that remain with the Property: (e.g., security systems, water softener systems, fuel tank, etc.): _____.

Buyer shall assume any and all lease payments as of Closing. If leases are not assumable, the balance shall be paid in full by Seller at or before Closing.

☐ Buyer does not wish to assume a leased item. **(THIS BOX MUST BE CHECKED IN ORDER FOR IT TO BE A PART OF THIS AGREEMENT.)**

Buyer does not wish to assume Seller’s current lease of _____; therefore, Seller shall have said lease cancelled and leased items removed from Property prior to Closing.

E. FUEL: Fuel, if any, will be adjusted and charged to Buyer and credited to Seller at Closing at current market prices.

2. Purchase Price, Method of Payment and Closing Expenses. Buyer warrants that, except as may be otherwise provided herein, Buyer will at Closing have sufficient cash to complete the purchase of the Property under the terms of this Purchase and Sale Agreement (hereinafter “Agreement”). The purchase price to be paid is:

\$ _____ U.S. Dollars, (“Purchase Price”) which shall be disbursed to Seller or Seller’s Closing Agency by one of the following methods:

- i. a Federal Reserve Bank wire transfer;
- ii. a Cashier’s Check issued by a financial institution as defined in 12 CFR § 229.2(i); OR
- iii. other such form as is approved in writing by Seller.

A. Financial Contingency – Loan(s) To Be Obtained. This Agreement is conditioned upon Buyer’s ability to obtain a loan(s) in the principal amount up to _____ % of the Purchase Price listed above to be secured by a deed of trust on the Property. “Ability to obtain” as used herein means that Buyer is qualified to receive the loan described

herein based upon Lender's customary and standard underwriting criteria. In consideration of Buyer, having acted in good faith and in accordance with the terms below, being unable to obtain financing by the Closing Date, the sufficiency of such consideration being hereby acknowledged, Buyer may terminate this Agreement by providing written notice via the Notification form or equivalent written notice. Seller shall have the right to request any supporting documentation regarding loan denial. Upon termination, Buyer is entitled to a refund of the Earnest Money/Trust Money. Lender is defined herein as the financial institution funding the loan.

The loan shall be of the type selected below (**Select the appropriate boxes. Unselected items will not be part of this Agreement**):

- | | |
|---|--|
| <input type="checkbox"/> Conventional Loan | <input type="checkbox"/> FHA Loan; attach addendum |
| <input type="checkbox"/> VA Loan; attach addendum | <input type="checkbox"/> Other _____ |

Buyer may apply for a loan with different terms and conditions and also Close the transaction provided all other terms and conditions of this Agreement are fulfilled, and the new loan does not increase any costs charged to Seller. Buyer shall be obligated to Close this transaction if Buyer has the ability to obtain a loan with terms as described herein and/or any other loan for which Buyer has applied and been approved.

Loan Obligations: *The Buyer agrees and/or certifies as follows:*

- (1) Within three (3) days after the Binding Agreement Date, Buyer shall make application for the loan and shall pay for credit report. Buyer shall immediately notify Seller or Seller's representative of having applied for the loan and provide Lender's name and contact information, and that Buyer has instructed Lender to order credit report. Such certifications shall be made via the Notification form or equivalent written notice;
- (2) Within fourteen (14) days after the Binding Agreement Date, Buyer shall warrant and represent to Seller via the Notification form or equivalent written notice that:
 - a. Buyer has secured evidence of hazard insurance which will be effective at Closing and Buyer shall notify Seller of the name of the hazard insurance company;
 - b. Buyer has notified Lender of an Intent to Proceed and has available funds to Close per the signed Loan Estimate; and
 - c. Buyer has requested that the appraisal be ordered and affirms that the appraisal fee has been paid.
- (3) Buyer shall pursue qualification for and approval of the loan diligently and in good faith;
- (4) Buyer shall continually and immediately provide requested documentation to Lender and/or loan originator;
- (5) Unless otherwise stated in this Agreement, Buyer represents that this loan is not contingent upon the lease or sale of any other real property and the same shall not be used as the basis for loan denial; and
- (6) Buyer shall not intentionally make any material changes in Buyer's financial condition which would adversely affect Buyer's ability to obtain the Primary Loan or any other loan referenced herein.

Should Buyer fail to timely comply with section 2.A.(1) and/or 2.A.(2) above and provide notice as required, Seller may make written demand for compliance via the Notification form or equivalent written notice. If Buyer does not furnish Seller the requested documentation within two (2) days after such demand for compliance, Buyer shall be considered in default and Seller's obligation to sell is terminated.

- ☐ **B. Financing Contingency Waived (THIS BOX MUST BE CHECKED TO BE PART OF THIS AGREEMENT.)** (e.g. "All Cash", etc.): Buyer's obligation to close shall not be subject to any financial contingency. Buyer reserves the right to obtain a loan. Buyer will furnish proof of available funds to close in the following manner: _____ (e.g. bank statement, Lender's commitment letter) within five (5) days after Binding Agreement Date. Should Buyer fail to do so, Seller may make written demand for compliance via the Notification form or equivalent written notice. If Buyer does not furnish Seller with the requested notice within two (2) days after such demand for compliance, Buyer shall be considered in default and Seller's obligation to sell is terminated. Failure to Close due to lack of funds shall be considered default by Buyer.

In the event this Agreement is contingent upon an appraisal (See Paragraph 2.C. below), Buyer must order the appraisal and provide Seller with the name and telephone number of the appraisal company and proof that appraisal was ordered within five (5) days of the Binding Agreement Date. Should Buyer fail to do so, Seller may make written demand for compliance via the Notification form or equivalent written notice. If Buyer does not furnish Seller with the requested notice within two (2) days after such demand for compliance, Buyer shall be considered in default and Seller's obligation to sell is terminated.

C. Appraisal (Select either 1 or 2 below. The sections not checked are not a part of this Agreement).

- ☐ **1.** This Agreement **IS NOT** contingent upon the appraised value either equaling or exceeding the agreed upon Purchase Price.

- 2. This Agreement **IS CONTINGENT** upon the appraised value either equaling or exceeding the agreed upon Purchase Price. If the appraised value is equal to or exceeds Purchase Price, this contingency is satisfied. In consideration of Buyer having conducted an appraisal, the sufficiency of such consideration being hereby acknowledged, if the appraised value of the Property does not equal or exceed the Purchase Price, Buyer shall terminate this Agreement or waive appraisal contingency via the Notification form or equivalent written notice within two (2) days following Buyer's receipt of Appraisal; in the event Buyer fails to do so, this contingency is deemed satisfied. Thereafter, failure to appraise shall not be used as the basis for loan denial or termination of contract. Seller shall have the right to request any supporting documentation showing appraised value did not equal or exceed the agreed upon purchase price. Upon timely termination, Buyer is entitled to a refund of the Earnest Money/Trust Money.

D. Closing Costs and Discount Points.

1. **Seller Expenses.** Seller shall pay all existing loans and/or liens affecting the Property, including all penalties, release preparation costs, and applicable recording costs; any accrued and/or outstanding association dues or fees; fee (if any) to obtain lien payoff/estoppel letters/statement of accounts from any and all associations, property management companies, mortgage holders or other liens affecting the Property; Seller's closing fee, document preparation fee and/or attorney's fees; fee for preparation of deed; notary fee on deed; and financial institution (Bank, Credit Union, etc.) wire transfer fee or commercial courier service fee related to the disbursement of any lien payoff(s). Seller additionally agrees to permit any withholdings and/or to pay any additional sum due as is required under the Foreign Investment in Real Property Tax Act. Failure to do so will constitute a default by Seller.

In the event Seller is subject to Tax Withholding as required by the Foreign Investment in Real Property Tax Act, (hereinafter "FIRPTA"), Seller additionally agrees that such Tax Withholding must be collected from Seller by Buyer's Closing Agent at the time of Closing. In the event Seller is not subject to FIRPTA, Seller shall be required as a condition of Closing to sign appropriate affidavits certifying that Seller is not subject to FIRPTA. *It is Seller's responsibility to seek independent tax advice or counsel prior to the Closing Date regarding such tax matters.*

2. **Buyer Expenses.** Buyer shall pay all transfer taxes and recording fees on deed of conveyance and deed of trust; Buyer's closing fee, document preparation fee and/or attorney's fees; preparation of note, deed of trust, and other loan documents; mortgage loan inspection or boundary line survey; credit report; required premiums for private mortgage, hazard and flood insurance; required reserved deposits for insurance premiums and taxes; prepaid interest; re-inspection fees pursuant to appraisal; insured Closing Protection Letter; association fees as stated within paragraph 4.E.; and any costs incident to obtaining and closing a loan, including but not limited to: appraisal, origination, discount points, application, commitment, underwriting, document review, courier, assignment, photo, tax service, notary fees, and any wire fee or other charge imposed for the disbursement of the Seller's proceeds according to the terms of this Agreement.
3. **Title Expenses.** Cost of title search, mortgagee's policy and owner's policy (rates to be as filed with the Tennessee Department of Commerce and Insurance) shall be paid as follows:

Simultaneous issue rates shall apply.

Not all of the above items are applicable to every transaction and may be modified as follows:

Closing Agency for Buyer: _____

Closing Agency for Seller: _____

3. **Earnest Money/Trust Money.** Buyer has paid or will pay within _____ days after the Binding Agreement Date to _____ (name of Holder) ("Holder") located at _____ (address of Holder), a Earnest Money/Trust Money deposit of \$ _____ by check (OR _____) ("Earnest Money/Trust Money").

- A. **Failure to Receive Earnest Money/Trust Money.** In the event Earnest Money/Trust Money is not timely received by Holder or Earnest Money/Trust Money check or other instrument is not honored for any reason by the bank upon which it is drawn, Holder shall promptly notify Buyer and Seller of the Buyer's failure to deposit the agreed upon Earnest Money/Trust Money. Buyer shall then have one (1) day to deliver Earnest Money/Trust Money in immediately available funds to Holder. In the event Buyer does not deliver such funds, Buyer is in default and Seller shall have the right to terminate this Agreement by delivering to Buyer or Buyer's representative written notice via the Notification form or equivalent written notice. In the event Buyer delivers the Earnest Money/Trust

Money in immediately available funds to Holder before Seller elects to terminate, Seller shall be deemed to have waived his right to terminate, and the Agreement shall remain in full force and effect.

B. Handling of Earnest Money/Trust Money upon Receipt by Holder. Earnest Money/Trust Money is to be deposited promptly after the Binding Agreement Date or the agreed upon delivery date in this Earnest Money/Trust Money paragraph or as specified in the Special Stipulations paragraph contained at paragraph 19 herein. Holder shall disburse Earnest Money/Trust Money only as follows:

- (a) at Closing to be applied as a credit toward Buyer's Purchase Price;
- (b) upon a written agreement signed by all parties having an interest in the funds;
- (c) upon order of a court or arbitrator having jurisdiction over any dispute involving the Earnest Money/Trust Money;
- (d) upon a reasonable interpretation of the Agreement; or
- (e) upon the filing of an interpleader action with payment to be made to the clerk of the court having jurisdiction over the matter.

Holder shall be reimbursed for, and may deduct from any funds interpleaded, its costs and expenses, including reasonable attorney's fees. The prevailing party in the interpleader action shall be entitled to collect from the other party the costs and expenses reimbursed to Holder. No party shall seek damages from Holder (nor shall Holder be liable for the same) for any matter arising out of or related to the performance of Holder's duties under this Earnest Money/Trust Money paragraph. Earnest Money/Trust Money shall not be disbursed prior to fourteen (14) days after deposit unless written evidence of clearance by bank is provided.

4. Closing, Prorations, Special Assessments and Warranties Transfer.

A. Closing Date. This transaction shall be closed ("Closed") (evidenced by delivery of warranty deed and payment of Purchase Price, the "Closing"), and this Agreement shall expire, at 11:59 p.m. local time on the _____ day of _____, _____ ("Closing Date"), or on such earlier date as may be agreed to by the parties in writing. Such expiration does not extinguish a party's right to pursue remedies in the event of default. Any extension of this date must be agreed to by the parties in writing via the Closing Date/Possession Date Amendment or equivalent written agreement.

1. Possession. Possession of the Property is to be given (Select the appropriate boxes below. Unselected items will not be part of this Agreement):

- ☐ at Closing as evidenced by delivery of warranty deed and payment of Purchase Price;

OR

- ☐ as agreed in the attached and incorporated Temporary Occupancy Agreement;

B. Prorations. Real estate taxes, rents, dues, maintenance fees, and association fees on said Property for the calendar year in which the sale is Closed shall be prorated as of the Closing Date. In the event of a change or reassessment of taxes for the calendar year after Closing, the parties agree to pay their recalculated share. Real estate taxes, rents, dues, maintenance fees, and association fees for prior years and roll back taxes, if any, will be paid by Seller.

C. Special Assessments. Special assessments approved or levied prior to the Closing Date shall be paid by the Seller at or prior to Closing unless otherwise agreed as follows:

D. Warranties Transfer. Seller, at the option of Buyer and at Buyer's cost, agrees to transfer Seller's interest in any manufacturer's warranties, service contracts, termite bond or treatment guarantee and/or similar warranties which by their terms may be transferable to Buyer.

E. Association Fees. Buyer shall be responsible for all homeowner or condominium association transfer fees, related administration fees (not including statement of accounts), capital expenditures/contributions incurred due to the transfer of Property and/or like expenses which are required by the association, property management company and/or the bylaws, declarations or covenants for the Property (unless otherwise specifically addressed herein and/or unless specifically chargeable to Seller under applicable bylaws, declarations, and/or neighborhood covenants).

5. Title and Conveyance.

A. Seller warrants that at the time of Closing, Seller will convey or cause to be conveyed to Buyer or Buyer's assign(s) good and marketable title to said Property by general warranty deed, subject only to:

- (1) zoning;
- (2) setback requirements and general utility, sewer, and drainage easements of record on the Binding Agreement Date upon which the improvements do not encroach;
- (3) subdivision and/or condominium declarations, covenants, restrictions, and easements of record on the Binding Agreement Date; and

(4) leases and other encumbrances specified in this Agreement.

If title examination, closing or loan survey pursuant to Tenn. Code Ann. § 62-18-126, boundary line survey, or other information discloses material defects, Buyer may, at Buyer's discretion:

(1) accept the Property with the defects **OR**

(2) require Seller to remedy such defects prior to the Closing Date. Buyer shall provide Seller with written notice of such defects via the Notification form or equivalent written notice. If defects are not remedied prior to Closing Date, Buyer and Seller may elect to extend the Closing Date by mutual written agreement evidenced by the Closing Date/Possession Amendment form or other written equivalent. If defects are not remedied by the Closing Date or any mutually agreed upon extension thereof, this Agreement shall terminate, and Buyer shall be entitled to refund of Earnest Money/Trust Money.

Good and marketable title as used herein shall mean title which a title insurance company licensed to do business in Tennessee will insure at its regular rates, subject only to standard exceptions. The title search or abstract used for the purpose of evidencing good and marketable title must be acceptable to the title insurance agent and the issuing title insurance company. Seller agrees to execute such appropriate affidavits and instruments as may be required by the issuing title insurance company.

B. Deed. Deed is to be made in the name of _____.

The manner in which Buyer takes title determines ownership and survivorship rights. It is the Buyer's responsibility to consult the closing agency or attorney prior to Closing.

6. Seller's Property Disclosure. Pursuant to the requirements of the Tennessee Residential Property Condition Disclosure Act at Tenn. Code Ann. § 66-5-201, et seq. as amended, a Property Condition Disclosure Statement, Exemption, or if Buyer waives Disclosure, a Disclaimer, has been or will be provided prior to the Binding Agreement Date.

7. Lead-Based Paint Disclosure (Select the appropriate box. Items not selected are not part of this Agreement).

☐ does not apply. ☐ does apply (Property built prior to 1978 – see attached Lead-Based Paint Disclosure).

8. Inspections.

A. Buyer's Right to Make Inspection(s). All inspections/reports, including but not limited to the home inspection report, those required/recommended in the home inspection report, Wood Destroying Insect Infestation Inspection Report, septic inspection and well water test, are to be made at Buyer's expense, unless otherwise stipulated in this Agreement. The parties hereto agree that in the event Buyer shall elect to contract with a third party inspector to obtain a "Home Inspection" as defined by Tennessee law, said inspection shall be conducted by a licensed Home Inspector. However, nothing in this paragraph shall preclude Buyer from conducting any inspections on his/her own behalf, nor shall it preclude Buyer from retaining a qualified (and if required by law, licensed) professional to conduct inspections of particular systems or issues within such professional's expertise or licensure, including but not limited to inspection of the heating/cooling systems, electrical systems, foundation, etc., so long as said professional is not in violation of Tenn. Code Ann. § 62-6-301, et seq. as may be amended. **Seller shall cause all utility services and any pool, spa, and similar items to be operational so that Buyer may complete all inspections and tests under this Agreement.** Buyer agrees to indemnify Seller from the acts of himself, his inspectors and/or representatives in exercising his rights under this Purchase and Sale Agreement. Buyer's obligations to indemnify Seller shall also survive the termination of this Agreement by either party, which shall remain enforceable. **Buyer waives any objections to matters of purely cosmetic nature (e.g. decorative, color or finish items) disclosed by inspection. Buyer has no right to require repairs or alterations purely to meet current building codes, unless required to do so by governmental authorities. In the event Buyer fails to timely make such inspections and respond within said timeframe as described herein, the Buyer shall have forfeited any rights provided under this Paragraph 8, and in such case shall accept the Property in its current condition, normal wear and tear excepted.**

B. Initial Inspections. Buyer and/or his inspectors/representatives shall have the right and responsibility to enter the Property during normal business hours, for the purpose of making inspections and/or tests of the Property. Buyer and/or his inspectors/representatives shall have the right to perform a visual analysis of the condition of the Property, any reasonably accessible installed components, the operation of the Property's systems, including any controls normally operated by Seller including the following components: heating systems, cooling systems, electrical systems, plumbing systems, structural components, foundations, roof coverings, exterior and interior components, any other site aspects that affect the Property, and environmental issues.

C. Wood Destroying Insect Infestation Inspection Report. If desired by Buyer or required by Buyer's Lender, it shall be Buyer's responsibility to obtain **at Buyer's expense** a Wood Destroying Insect Infestation Inspection Report (the "Report"), which shall be made by a Tennessee licensed and chartered pest control operator.

The foregoing expense may be subject to governmental guidelines relating to VA Loans (See VA/FHA Loan Addendum if applicable).

The inspection shall include each dwelling, garage, and other permanent structure on the Property excluding _____ for evidence of active infestation and/or damage. Buyer shall cause such Report to be delivered to Seller simultaneously with any repairs requested by the Buyer or the end of the Inspection Period, whichever is earlier. If the Report indicates evidence of active infestation, Seller agrees to treat infestation at Seller's expense and provide documentation of the treatment to Buyer prior to Closing. Requests for repair of damage, if any, should be addressed in the Buyer's request for repairs pursuant to Subparagraph 8.D., Buyer's Inspection and Resolution below.

D. Buyer's Inspection and Resolution. Within _____ days after the Binding Agreement Date ("Inspection Period"), Buyer shall cause to be conducted any inspection provided for herein, including but not limited to the Wood Destroying Insect Infestation Inspection Report AND shall provide written notice of such to Seller as described below. **In said notice Buyer shall either:**

(1) In consideration of Buyer having conducted Buyer's good faith inspections as provided for herein, the sufficiency of such consideration being hereby acknowledged, Buyer shall furnish Seller with a list of written specified objections and immediately terminate this Agreement via the Notification form or equivalent written notice. All Earnest Money/Trust Money shall be returned to Buyer upon termination.

OR

(2) accept the Property in its present "AS IS" condition with any and all faults and no warranties expressed or implied via the Notification form or equivalent written notice. Seller has no obligation to make repairs.

OR

(3) furnish Seller a written list of items which Buyer requires to be repaired and/or replaced with like quality or value in a professional and workmanlike manner. Seller shall have the right to request any supporting documentation that substantiates any item listed.

a. Resolution Period. Seller and Buyer shall then have a period of _____ days following receipt of the above stated written list ("Resolution Period") to reach a mutual agreement as to the items to be repaired or replaced with like quality or value by Seller, which shall be evidenced by the Repair / Replacement Amendment or written equivalent(s). ***The parties agree to negotiate repairs in good faith during the Resolution Period.*** In the event Seller and Buyer do not reach a mutual written resolution during such Resolution Period or a mutually agreeable written extension thereof as evidenced in an Amendment to this Agreement signed by both parties within said period of time, this Agreement is hereby terminated. If terminated, Buyer is entitled to a refund of the Earnest Money/Trust Money.

☐ **E. Waiver of All Inspections. THIS BOX MUST BE CHECKED TO BE PART OF THIS AGREEMENT.**

Buyer, having been advised of the benefits of inspections, waives any and all Inspection Rights under this Paragraph 8 (including but not limited to the Wood Destroying Insect Infestation Inspection Report).

9. Final Inspection. Buyer and/or his inspectors/representatives shall have the right to conduct a final inspection of Property on the Closing Date and/or within ____ day(s) prior to the Closing Date only to confirm Property is in the same or better condition as it was on the Binding Agreement Date, normal wear and tear excepted, and to determine that all repairs/replacements agreed to during the Resolution Period, if any, have been completed. Property shall remain in such condition until Closing at Seller's expense. Closing of this sale constitutes acceptance of Property in its condition as of the time of Closing, unless otherwise noted in writing.

10. Buyer's Additional Due Diligence Options. If any of the matters below are of concern to Buyer, Buyer should address the concern by specific contingency in the Special Stipulations Paragraph of this Agreement.

A. Survey and Flood Certification. Survey Work and Flood Certifications are the best means of identifying boundary lines and/or encroachments and easements or flood zone classifications. Buyer may obtain a Mortgage Inspection or Boundary Line Survey and Flood Zone Certifications.

B. Insurability. Many different issues can affect the insurability and the rates of insurance for property. These include factors such as changes in the Flood Zone Certifications, changes to the earthquake zones maps, the insurability of the buyer, and previous claims made on the Property. It is the right and responsibility of Buyer to determine the insurability, coverage and the cost of insuring the Property. It is also the responsibility of Buyer to determine whether any exclusions will apply to the insurability of said Property.

C. Water Supply. The system may or may not meet state and local requirements. It is the right and responsibility of Buyer to determine the compliance of the system with state and local requirements. [For additional information on this subject, request the "Water Supply and Waste Disposal Notification" form.]

This form is copyrighted and may only be used in real estate transactions in which _____ is involved as a TAR authorized user. Unauthorized use of the form may result in legal sanctions being brought against the user and should be reported to the Tennessee Association of Realtors® at (615) 321-1477.

D. Waste Disposal. The system may or may not meet state and local requirements. It is the right and responsibility of Buyer to determine the compliance of the system with state and local requirements. In addition, Buyer may, for a fee, obtain a septic system inspection letter from the Tennessee Department of Environment and Conservation, Division of Ground Water Protection. [For additional information on this subject, request the "Water Supply and Waste Disposal Notification" form.]

E. Title Exceptions. At Closing, the general warranty deed will be subject to subdivision and/or condominium declarations, covenants, restrictions and easements of record, which may impose obligations and may limit the use of the Property by Buyer.

11. Disclaimer. It is understood and agreed that the real estate firms and real estate licensee(s) representing or assisting Seller and/or Buyer and their brokers (collectively referred to as "Brokers") are not parties to this Agreement and do not have or assume liability for the performance or nonperformance of Seller or Buyer. Buyer and Seller agree that Brokers shall not be responsible for any of the following, including but not limited to, those matters which could have been revealed through a survey, flood certification, title search or inspection of the Property; the insurability of the Property or cost to insure the Property; for the condition of the Property, any portion thereof, or any item therein; for any geological issues present on the Property; for any issues arising out of the failure to physically inspect Property prior to entering into this Agreement and/or Closing; for the necessity or cost of any repairs to the Property; for hazardous or toxic materials; for the tax or legal consequences of this transaction; for the availability, capability, and/or cost of utility, sewer, septic, or community amenities; for any proposed or pending condemnation actions involving Property; for applicable boundaries of school districts or other school information; for the appraised or future value of the Property; for square footage or acreage of the Property; for any condition(s) existing off the Property which may affect the Property; for the terms, conditions, and availability of financing; and/or for the uses and zoning of the Property whether permitted or proposed. Buyer and Seller acknowledge that Brokers are not experts with respect to the above matters and that they have not relied upon any advice, representations or statements of Brokers (including their firms and affiliated licensees) and waive and shall not assert any claims against Brokers (including their firms and affiliated licensees) involving same. Buyer and Seller understand that it has been strongly recommended that if any of these or any other matters concerning the Property are of concern to them, that they secure the services of appropriately credentialed experts and professionals of Buyer's or Seller's choice for the independent expert advice and counsel relative thereto.

12. Brokerage. As specified by separate agreement, Seller agrees to pay Listing Broker at Closing the agreed upon compensation. The Listing Broker will direct the closing agency to pay the Selling Broker, from the compensation received, an amount in accordance with the terms and provisions specified by separate agreement. The parties agree and acknowledge that the Brokers involved in this transaction may receive compensation from more than one party. All parties to this Agreement agree and acknowledge that any real estate firm involved in this transaction shall be deemed a third party beneficiary only for the purposes of enforcing their commission rights, and as such, shall have the right to maintain an action on this Agreement for any and all compensations due and any reasonable attorney's fees and court costs.

13. Default. Should Buyer default hereunder, the Earnest Money/Trust Money shall be forfeited as damages to Seller and shall be applied as a credit against Seller's damages. Seller may elect to sue, in contract or tort, for additional damages or specific performance of the Agreement, or both. Should Seller default, Buyer's Earnest Money/Trust Money shall be refunded to Buyer. In addition, Buyer may elect to sue, in contract or tort, for damages or specific performance of this Agreement, or both. In the event that any party hereto shall file suit for breach or enforcement of this Agreement (including suits filed after Closing which are based on or related to the Agreement), the prevailing party shall be entitled to recover all costs of such enforcement, including reasonable attorney's fees. In the event that any party exercises its right to terminate due to the default of the other pursuant to the terms of this Agreement, the terminating party retains the right to pursue any and all legal rights and remedies against the defaulting party following termination. The parties hereby agree that all remedies are fair and equitable and neither party will assert the lack of mutuality of remedies, rights and/or obligations as a defense in the event of a dispute.

14. Home Protection Plan. This is not a substitution for Home Inspection. Exclusions to coverage may apply. (Select the appropriate box below. Items not selected are not part of this Agreement).

☐ **Home Protection Plan.** _____ to pay \$ _____ for the purchase of a limited home protection plan to be funded at Closing. Plan Provider: _____.
Ordered by: _____ (Real Estate Company)

☐ **Home Protection Plan waived.**

15. Other Provisions.

A. Binding Effect, Entire Agreement, Modification, Assignment, and Binding Agreement Date. This Agreement shall be for the benefit of, and be binding upon, the parties hereto, their heirs, successors, legal representatives and

assigns. This Agreement constitutes the sole and entire agreement between the parties hereto and no modification of this Agreement shall be binding unless signed by all parties or assigns to this Agreement. No representation, promise, or inducement not included in this Agreement shall be binding upon any party hereto. It is hereby agreed by both Buyer and Seller that any real estate agent working with or representing either party shall not have the authority to bind the Buyer, Seller or any assignee to any contractual agreement unless specifically authorized in writing within this Agreement. Any assignee shall fulfill all the terms and conditions of this Agreement. The parties hereby authorize either licensee to insert the time and date of receipt of the notice of acceptance of the final offer and further agree to be bound by such as the Binding Agreement Date following the signatory section of this Agreement, or Counter Offer, if applicable.

- B. Survival Clause.** Any provision contained herein, which by its nature and effect is required to be performed after Closing, shall survive the Closing and delivery of the deed and shall remain binding upon the parties to this Agreement and shall be fully enforceable thereafter.
- C. Governing Law and Venue.** This Agreement is intended as a contract for the purchase and sale of real property and shall be governed by and interpreted in accordance with the laws and in the courts of the State of Tennessee.
- D. Time of Essence.** Time is of the essence in this Agreement.
- E. Terminology.** As the context may require in this Agreement: (1) the singular shall mean the plural and vice versa; (2) all pronouns shall mean and include the person, entity, firm or corporation to which they relate; (3) the masculine shall mean the feminine and vice versa; and (4) the term day(s) used throughout this Agreement shall be deemed to be calendar day(s) ending at 11:59 p.m. local time unless otherwise specified in this Agreement. Local time shall be determined by the location of Property. **In the event a performance deadline**, other than the Closing Date (as defined in paragraph 4 herein), Date of Possession (as defined in paragraph 4 herein), Completion of Repair Deadline (as defined in the Repair/Replacement Amendment), and Offer Expiration Date (as defined in paragraph 20 herein), occurs on a Saturday, Sunday or legal holiday, the performance deadline shall extend to the next following business day. Holidays as used herein are those days deemed federal holidays pursuant to 5 U.S.C. § 6103. In calculating any time period under this Agreement, the commencement shall be the day following the initial date (e.g. Binding Agreement Date).
- F. Responsibility to Cooperate.** Buyer and Seller agree to timely take such actions and produce, execute, and/or deliver such information and documentation as is reasonably necessary to carry out the responsibilities and obligations of this Agreement. Except as to matters which are occasioned by clerical errors or omissions or erroneous information, the approval of the closing documents by the parties shall constitute their approval of any differences between this Agreement and the Closing. Buyer and Seller agree that if requested after Closing, they will correct any documents and pay any amounts due where such corrections or payments are appropriate by reason of mistake, clerical errors or omissions, or the result of erroneous information.
- G. Notices.** Except as otherwise provided herein, all notices and demands required or permitted hereunder shall be in writing and delivered either (1) in person; (2) by a prepaid overnight delivery service; (3) by facsimile transmission (FAX); (4) by the United States Postal Service, postage prepaid, registered or certified, return receipt requested; or (5) Email. **NOTICE** shall be deemed to have been given as of the date and time it is actually received. Receipt of notice by the real estate licensee or their Broker assisting a party as a client or customer shall be deemed to be notice to that party for all purposes under this Agreement as may be amended, unless otherwise provided in writing.
- H. Risk of Loss.** The risk of hazard or casualty loss or damage to Property shall be borne by the Seller until transfer of title. If casualty loss prior to Closing exceeds 10% of the Purchase Price, Seller or Buyer may elect to terminate this Agreement with a refund of Earnest Money/Trust Money to Buyer.
- I. Equal Housing.** This Property is being sold without regard to race, color, sex, religion, handicap, familial status, or national origin.
- J. Severability.** If any portion or provision of this Agreement is held or adjudicated to be invalid or unenforceable for any reason, each such portion or provision shall be severed from the remaining portions or provisions of this Agreement, and the remaining portions or provisions shall be unaffected and remain in full force and effect. In the event that the contract fails due to the severed provisions, then the offending language shall be amended to be in conformity with state and federal law.
- K. Contract Construction.** This Agreement or any uncertainty or ambiguity herein shall not be construed against any party but shall be construed as if all parties to this Agreement jointly prepared this Agreement.

429 **16. Seller's Additional Obligations.** If Seller has any knowledge of an exterior injection well, a sinkhole as defined
430 pursuant to Tenn. Code Ann. § 66-5-212(c), and/or a percolation test or soil absorption rate on the Property, Seller shall be
431 obligated to counter this offer by disclosure of the existence of the above including any tests and reports unless disclosure has
432 already been received and acknowledged in writing by Buyer. Seller shall also disclose in the same manner whether any
433 single family residence located on the Property has been moved from an existing foundation to another foundation where
434 such information is known to the Seller. Seller shall also be obligated to counter this offer to disclose if the Property is
435 located in a Planned Unit Development (PUD) as defined pursuant to Tenn. Code Ann. § 66-5-213 unless said disclosure has
436 already been received in writing and acknowledged by Buyer. If the Property is in a PUD, Seller agrees to make available
437 copies of the development's restrictive covenants, homeowner bylaws, and master deed to Buyer upon request.

438 **17. Method of Execution.** The parties agree that signatures and initials transmitted by facsimile, other photocopy
439 transmittal, or by transmittal of digital signature as defined by the applicable State or Federal law will be acceptable and
440 may be treated as originals and that the final Purchase and Sale Agreement containing all signatures and initials may be
441 executed partially by original signature and partially on facsimile, other photocopy documents, or by digital signature as
442 defined by the applicable State or Federal law.

443 **18. Exhibits and Addenda.** All exhibits and/or addenda attached hereto, listed below, or referenced herein are made a part
444 of this Agreement:

445 _____
446 _____
447 _____

448 **19. Special Stipulations.** The following Special Stipulations, if conflicting with any preceding paragraph, shall control:

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20. Time Limit of Offer. This Offer may be withdrawn at any time before acceptance with Notice. Offer terminates if not countered or accepted by _____ o'clock ☐ a.m./ ☐ p.m.; on the _____ day of _____, _____.

LEGAL DOCUMENTS: This is an important legal document creating valuable rights and obligations. If you have any questions about it, you should review it with your attorney. Neither the Broker nor any Agent or Facilitator is authorized or qualified to give you any advice about the advisability or legal effect of its provisions.

NOTE: Any provisions of this Agreement which are preceded by a box "☐" must be marked to be a part of this Agreement. By affixing your signature below, you also acknowledge that you have reviewed each page and have received a copy of this Agreement.

IMPORTANT NOTICE: Never trust wiring instructions sent via email. Cyber criminals are hacking email accounts and sending emails with fake wiring instructions. These emails are convincing and sophisticated. Always independently confirm wiring instructions in person or via a telephone call to a trusted and verified phone number. Never wire money without double-checking that the wiring instructions are correct.

Buyer hereby makes this offer.

BUYER

BUYER

_____ at _____ o'clock ☐ am/ ☐ pm
Offer Date

_____ at _____ o'clock ☐ am/ ☐ pm
Offer Date

Seller hereby:

- ☐ **ACCEPTS** – accepts this offer.
☐ **COUNTERS** – accepts this offer subject to the attached Counter Offer(s).
☐ **REJECTS** this offer and makes no counter offer.

SELLER

SELLER

_____ at _____ o'clock ☐ am/ ☐ pm
Date

_____ at _____ o'clock ☐ am/ ☐ pm
Date

Binding Agreement Date. This instrument shall become a "Binding Agreement" on the date ("Binding Agreement Date") the last offeror, or licensee of the offeror, receives notice of offeree's acceptance.

Notice of acceptance of the final offer was received on the _____ day of _____, _____ at _____ o'clock ☐ am/ ☐ pm by _____ (Name).

For Information Purposes Only:

Listing Company: _____
 Listing Firm Address: _____
 Firm License No.: _____
 Firm Telephone No.: _____
 Listing Licensee: _____
 Licensee License Number: _____
 Licensee Email: _____
 Home Owner's / Condominium Association ("HOA/COA"):

Selling Company: _____
 Selling Firm Address: _____
 Firm License No.: _____
 Firm Telephone No.: _____
 Selling Licensee: _____
 Licensee License Number: _____
 Licensee Email: _____

HOA / COA Phone: _____
 Property Management Company: _____
 Phone: _____

HOA/COA Email: _____
 Email: _____

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