

# COMMERCIAL PURCHASE AND SALE AGREEMENTS REVEALED



Developed by:  
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## What is a Contract?

- An Agreement between two or more persons to do, or not do, certain things
- Express vs Implied
- Unilateral vs Bilateral
- Executory vs Executed
- Valid vs Void

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## Essential Elements of a Contract

- Competent Parties
- Mutual Assent  
(Offer & Acceptance)
- Lawful Objective
- Valuable Consideration




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## Validity & Enforceability

Valid Contract	Void or Unenforceable Contract
<ul style="list-style-type: none"> <li>• Includes Essential Elements</li> <li>• Satisfy Statute of Frauds (In writing)               <ul style="list-style-type: none"> <li>▪ Sale of Real Property</li> <li>▪ Not performed within 1 year</li> <li>▪ Lend Money</li> <li>▪ Assume another's debts</li> <li>▪ Contracts of executors &amp; administrators of estates</li> <li>▪ Contracts for sale of goods ≥\$500</li> <li>▪ Contracts for marriage</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• No consideration</li> <li>• Party incompetent</li> <li>• Objective unlawful</li> <li>• Forged signature</li> <li>• No mutual consent</li> </ul>

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## Are You Practicing Law Without a License?

- Article 13 NAR Code of Ethics and Standards of Practice
- Tennessee Code 23-3-101
- DO NOT:
  - Write Contracts
  - Modify Contracts
  - Interpret Contracts

Code of Ethics and Standards of Practice  
NATIONAL ASSOCIATION OF REALTORS®

**U**nlike the legal profession, which is subject to the strictest public scrutiny, the real estate profession is not a profession. It is a business. The National Association of Realtors® (NAR) is a trade association of real estate professionals. The Code of Ethics and Standards of Practice is a set of guidelines for real estate professionals. It is not a license to practice law. Real estate professionals should not practice law without a license.

CODE OF ETHICS

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## Commercial Mutual Non-Disclosure and Confidentiality Agreement



HEY! CAN YOU  
KEEP A SECRET?!

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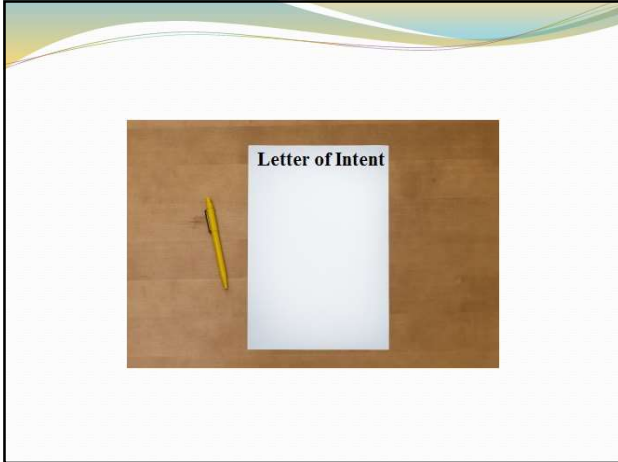
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### Commercial Purchase and Sale Agreement Clauses

- Purchase and Sale (1)
  - Parties
  - Property

FIGURE 2 - Section of land divided into quarters (one Section = 1 square mile, 640 acres)

		2,640 feet	
NW 1/4	80 acres	NE 1/4	160 acres
20 acres	20 acres	40 acres	
SW 1/4	160 feet	SE 1/4	
5 acres	10 acres		
100 feet			1,320 feet

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### Commercial Purchase and Sale Agreement Clauses

- Purchase Price (15)
- Earnest Money/Trust Money (19)
  - Failure to Receive (28)
  - Disputes (39)




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### Commercial Purchase and Sale Agreement Clauses

- Inspections (46)




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### Commercial Purchase and Sale Agreement Clauses

#### Issues

- Documents
- Commencement
- Rights
- Termination
- Costs

#### Due Diligence

- Land Use
- Site
- Building Code & Development
- Transactional/Business & Financing/Cost of Development
- Market

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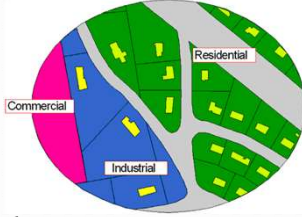
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## Commercial Purchase and Sale Agreement Clauses

### • Land Use Issues

- Zoning/Planning
- Buffers
- Signage
- Local Ordinances/Policies



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## Commercial Purchase and Sale Agreement Clauses

### • Site Issues

- Size and Shape
- Surveys
- Easements/Rights of Ways
- Traffic/Roads/Access/Ingress/Egress
- Environmental Issues
- Soil characteristics & Topography
- Other

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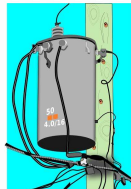
## Commercial Purchase and Sale Agreement Clauses

### • Building Code/Development Issues

- Engineering and Building Plans



- Utilities



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## Commercial Purchase and Sale Agreement Clauses

- **Transactional/Business & Financing /Costs of Development**
  - Transactional
  - Business & Financing
  - Costs of Development
- **Market Issues**

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## Commercial Purchase and Sale Agreement Clauses

- Title (60)
  - Warranties of Seller (61)
  - Issues and Objections (70)
- Closing (85)
  - Closing Date (86)
  - Possession (92)




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## Commercial Purchase and Sale Agreement Clauses

### Seller's Obligations at Closing (94)

- Closing Statement (95)
- Deed (96)
  - Statutory
  - General
  - Limited
  - Fiduciary
  - Quit Claim
- Buyer Title Policy (96)
- Additions to Seller's Closing Documents (100)

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### Commercial Purchase and Sale Agreement Clauses

- Conditions to Closing (106)
- Costs (117)
  - Seller Costs (118)
  - Buyer's Costs (130)
  - Additional Costs (134)



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### Commercial Purchase and Sale Agreement Clauses

- Taxes and Prorations (143)
- Representations and Warranties (151)



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### Commercial Purchase and Sale Agreement Clauses

- Agency and Brokerage (164)
  - Agency (165)
  - Agency Disclosure (184)
  - Brokerage (217)



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Name: \_\_\_\_\_

**Broker Relationships**

Write the letter of the correct match next to each problem.

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1. _____ No Agency	a. Chosen by Broker to represent party as an exclusive agent
2. _____ Client	b. No formal agency relationship/no fiduciary
3. _____ Customer	c. Seller pays commission only if Broker sells property
4. _____ Dual Agency	d. Used if Buyer & Seller not represented by Broker
5. _____ Designated Agent	e. Does not represent either party
6. _____ Transaction Broker	f. Exclusive relationship including fiduciary
7. _____ Exclusive Agency	g. Broker represents Buyer & Seller whose interests may not align
8. _____ Exclus Right to Sell	h. Relationship between Broker and owner or property
9. _____ Material Relationship	i. Sells pays commission no matter who sells property

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## Commercial Purchase and Sale Agreement Clauses

- Disclaimer (225)

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## Commercial Purchase and Sale Agreement Clauses

- Destruction of Property (247)




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### Commercial Purchase and Sale Agreement Clauses

- Other Provisions (256)
  - Exhibits, Binding Effect, Entire Agreement, Modification, Assignment and Binding Agreement Date (257)
  - Survival of Agreement (268)
  - Governing Law and Interpretation (273)

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### Commercial Purchase and Sale Agreement Clauses

- Other Provisions (cont'd)
  - Time of Essence (275)
  - Terminology (276)
  - Responsibility to Cooperate (286)
  - Notices (293)
  - Remedies (299)

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### Commercial Purchase and Sale Agreement Clauses

- Other Provisions (cont'd)
  - Equal Opportunity (309)
  - Termination by Buyer (311)
  - Severability (315)
  - Construction (318)

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## Commercial Purchase and Sale Agreement Clauses

- Exhibits and Addenda (320)
- Special Stipulations (334)
- Method of Execution (349)
- Time Limit of Offer (354)

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## Commercial Purchase and Sale Agreement Clauses

- Signature Block (363)

Buyer hereby makes this offer:

<b>BUYER</b>	<b>BUYER</b>
By: _____	By: _____
Title: _____	Title: _____
Entity: _____	Entity: _____
Offer Date: _____ at _____ o'clock _____ am/ _____ pm	Offer Date: _____ at _____ o'clock _____ am/ _____ pm

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.

<b>SELLER</b>	<b>SELLER</b>
By: _____	By: _____
Title: _____	Title: _____
Entity: _____	Entity: _____
Date: _____ at _____ o'clock _____ am/ _____ pm	Date: _____ at _____ o'clock _____ am/ _____ pm

**Binding Agreement Note:** This instrument shall become a "Binding Agreement" on the date ("Binding Agreement Date") the last offer or license of offer, makes notice of offer's acceptance. Notice of acceptance of the final offer was received on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ (Name).

For Informational Purpose Only:

Buying Company: _____	Selling Company: _____
Independent Licensee: _____	Independent Licensee: _____
Licensee Email: _____	Licensee Email: _____

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## Commercial Purchase and Sale Agreement Exhibits

- Exhibits
  - Exhibit A - Legal Description (CF501)
  - Exhibit B - Due Diligence Documents (CF502)
  - Exhibit C - Additions to Seller's Closing Documents (CF503)
  - Exhibit D - Seller's Warranties and Representations (CF504)

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**Thank you and Go Close Those Deals!!!**

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321-848-4835



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