

FAR-8
Residential Sale and
Purchase Contract

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Contract (FAR-8 Rev. 10/04)

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General Considerations for Completing Preprinted Contracts

- **Adequacy of Contract.** Any preprinted contract is only appropriate when its provisions adequately convey the intent of the parties in a particular transaction. If extensive modifications are required to conform the contract to the parties' intent, it may be advisable for the parties to retain legal counsel to draft a custom agreement.

- **Contract Formation.** To be valid and binding on the parties, the contract must be:
 1. **In Writing.** The Statute of Frauds requires that contracts for the sale of real property in Florida must be in writing (there is an exception for oral contracts that have been partially performed, but the exception rarely arises). Witnesses are not required.
 2. **Based on the Mutual Consent of the Parties to all its Material Terms.** A material term is generally one that substantially constitutes the consideration of the contract or without which the contract would not have been made. To be valid, the parties must agree on the material terms.
 3. **Supported by Sufficient Consideration.** Consideration is the reason the parties enter into the contract. Consideration is a right, interest, profit or benefit that accrues to one party, or it can be the forbearance, detriment, loss or responsibility given, suffered or undertaken by the other party. In most real property transactions, the seller's promise to convey the property to the buyer is sufficient consideration for the buyer's promise to pay the purchase price to the seller or forfeit the deposit in the event of breach.
 4. **Sufficiently Certain in its Terms.** Material terms (especially the descriptions of the property, parties and purchase price) must be clearly stated. A court called upon to interpret the contract will not look beyond the contract's "four corners" to determine the parties' intentions.

- **Responsibility of Licensee.** The contract contains terms negotiated by the parties. It defines each party's rights and obligations. Therefore, the licensee who prepares the contract must be thoroughly familiar with its terms and with the expressed intent of the parties. The licensee is liable for his/her mistakes. If the licensee is not sure that a clause expresses the intent of the parties, the licensee should suggest that legal counsel be retained to draft the clause.

- **Completing the Contract.** To ensure clarity:
 1. Fill in all blanks, using "N/A" or "-0-" if necessary.
 2. Check at least one box where a choice is given.
 3. If a particular sentence or clause does not apply to the transaction, either cross it out or state in an addendum that the particular clause has been deleted.
 4. If additional information relating to a particular clause is inserted into an addendum, be sure to write in a reference to the clause number in the addendum. For example, "This sentence modifies paragraph _____ of the contract." Also, number the addendum and reference it in paragraph 20.

Specific Considerations for Completing the FAR Residential Sale and Purchase Contract

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

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

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

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

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

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

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

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

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

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

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

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

Buyer (____) (____) and Seller (____) (____) acknowledge receipt of a copy of this page, which is Page 4 of ____ Pages.

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

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

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

b. Price and Financing. This section breaks down the purchase price and financing terms. It also includes a signature line for the escrow agent to sign indicating that he/she received the buyer's deposit.

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

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

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

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

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

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

i. Addenda and Additional Terms. This lists the clauses found in the comprehensive addendum with boxes to check to indicate whether the clauses are incorporated into the contract. It

also provides space for other addenda to be acknowledged and room to write in additional terms.

j. Offer and Acceptance. This establishes the exact time that the seller's response to the buyer's offer must be received and provides signature lines for the buyers. It also provides signature lines for the seller if he/she accepts the buyer's offer and initial spaces if he/she rejects the buyer's offer.

• **Business Days.** This contract computes all deadlines in terms of **business days**. All deadlines end at 5:00 p.m. in the county where the property is located.

• **Acknowledgment of Receipt of Pages.** At the bottom of each page, space is provided for each party to initial indicating that he/she received a copy of the page. The licensee should fill in the total number of pages that make up the contract and note any addenda.

• **Copyright Protection.** This contract is protected under federal copyright law. As a purchaser of a form contract, you are authorized to make copies for the purpose of completing a draft copy of the final agreement. You are also authorized to reproduce, by photocopy or facsimile, a completed draft or final copy of the contract. You are not authorized to duplicate this contract in any way on your computer or word processor or for any purpose not listed above. If you are interested in obtaining a license to reproduce the Contract with your firm's name or logo at the top, please contact FAR at 407-438-1400. Computerized versions of the contract are also available. For a list of vendors authorized to offer FAR forms on computer, log on to <http://planetrealtor.com>.

Organization of Manual

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

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



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

Parties and Description of Property

Residential Sale and Purchase Contract

FLORIDA ASSOCIATION OF REALTORS®



1* 1. SALE AND PURCHASE: **1** _____ (“Seller”)
2* and _____ **2** _____ (“Buyer”)
3 agree to sell and buy on the terms and conditions specified below the property described as:
4* Address: _____ **3** _____
5* _____ County: _____ **4** _____
6* Legal Description: _____ **5** _____
7* _____ Tax ID No: _____ **6** _____
8 together with all improvements and attached items, including fixtures, built-in furnishings, built-in appliances, ceiling fans, light
9 fixtures, attached wall-to-wall carpeting, rods, draperies and other window coverings. The only other items included in the
10* purchase are: _____ **7** _____
11* _____
12* _____
13* The following attached items are excluded from the purchase: _____ **8** _____
14* _____
15 The real and personal property described above as included in the purchase is referred to as the “Property.” Personal property listed
16 in this Contract is included in the purchase price, has no contributory value and is being left for **Seller’s** convenience.

Purpose:

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

Blanks:

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

Explanation:

- **Corporation.** Insert the complete corporate name including “Inc.,” “Corp.,” etc. Verify the exact name of the corporation with the Florida Department of State, Division of Corporations at <http://www.sunbiz.org>.
- **Estate.** Insert the name of the estate’s personal representative using the words, “as Personal Representative of the Estate of _____, deceased.” For example, “John Doe as Personal Representative of the Estate of Joe Smith, deceased.”
- **Trust.** Insert the name of the trustee and the title “Trustee,” e.g., “John Doe, Trustee.”
- **Power of Attorney.** If a person has a signed, written power of attorney authorizing him/her to buy or sell the property on behalf of another person (the “principal”), insert the name of the principal.



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

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



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

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

Price and Financing

17			
18*		PRICE AND FINANCING	
19*	2. PURCHASE PRICE:	\$ _____ 9	payable by Buyer in U.S. currency as follows:
20*	(a) \$ _____ 10	Deposit received (checks are subject to clearance) _____ 11	by _____ 12
21		_____ 13	("Escrow Agent")
22*	(b) \$ _____ 14	<i>Signature</i> _____ <i>Name of Company</i>	
23*		Additional deposit to be delivered to Escrow Agent by _____ 15	
24*	(c) _____ 16	_____ or _____ days from Effective Date. (10 days if left blank)	
25*	(d) \$ _____ 17	Total financing (see Paragraph 3 below) (express as a dollar amount or percentage)	
26*	(e) \$ _____ 19	Other: _____ 18	
27		Balance to close (not including Buyer's closing costs, prepaid items and prorations). All funds paid at closing must be paid by locally drawn cashier's check, official bank check, or wired funds.	

Purpose:

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

Blanks:

- 9** Indicate the total amount of purchase price. The buyer must pay the price in U.S. currency.
- 10** Insert the amount of initial earnest money deposit.
- 11** Insert the month, day and year the deposit was received.
- 12** The person who received the deposit from the buyer should sign his/her name here.
- 13** Insert the name of the firm that will hold the deposit.
- 14** Insert the amount of any additional deposit the buyer must make.
- 15** Insert the month, day and year by which the additional deposit must be made; or insert the number of days from the effective date by which the additional deposit must be made.
- 16** Insert either a dollar amount or a percentage representing the total amount of the mortgages the buyer will obtain to finance the purchase of the property.
- 17** Indicate any other amount the buyer will itemize separately from the deposits and mortgages.
- 18** Describe the amount in blank 17.
- 19** If you inserted a dollar amount in blank 16, insert the amount the buyer must bring to the closing table (in addition to closing costs), to be calculated by deducting the amounts in blanks 10, 14, 16 and 19 from the amount in blank 9. If you inserted a percentage amount in blank 16, insert the term "balance" in this blank.

Deadlines:

- **Additional Deposit.** This must be made by the date specified in blank 15.

Explanation:

- **Variable Price.** If the full purchase price cannot be expressed in monetary terms (e.g., when the price is based on acreage), you should note in paragraph 21 the manner in which the purchase price will be determined. Write "See paragraph 21" in blank 9.
- **Foreign Buyers.** You may want to clarify that the full amount of the purchase price is due on the day of closing regardless of the exchange rate.
- **Necessity of Deposit.** A deposit is not required to make a binding sale and purchase contract. The mutual promises of the seller to sell and the buyer to buy the property at a specific price and terms are sufficient.

- **Amount of Deposit.** This contract provides that, in the event the buyer defaults, all deposits made and agreed to be made may be claimed by the seller as liquidated damages. Therefore, the seller will want a deposit large enough to cover any contemplated damages.
- **Clearance of Funds.** In this contract, deposit receipt is subject to clearance of funds if paid by check.
- **Who May Hold the Deposit.** The deposit(s) may be held in or out of Florida and may be paid directly to the seller or to anyone else who the parties agree should act as the escrow agent. If the parties decide not to have an escrow agent, be sure to delete paragraph 17 and put an appropriate note in blank 13, such as “N/A” or “None - deposit paid to seller.” No matter who holds the deposit, the real estate licensees involved in the transaction are responsible to monitor deposit deadlines and notify the parties if a deposit is late.
- **Non-Cash Deposit.** If the deposit is in the form of non-cash property (such as a promissory note, securities, jewelry, art, a car, etc.), insert the value assigned to the property in blank 10 and write in the form of payment (“1985 Nissan 200SX,” “200 shares XYZ Corp. common stock”) in the space below the blank. If the deposit is a promissory note, the note should be in the seller’s name.
- **Postdated Checks.** Under license law escrow rules, a real estate brokerage acting as an escrow agent cannot accept a postdated check unless the check can be deposited within the three business days from the date of receipt and the seller consents to the post date. If someone else is receiving the deposit, the buyer may write a postdated check only with the seller’s full knowledge and consent. If a post-dated check is acceptable to the seller, insert the date of the check in blank 11.
- **Procedure Upon Receiving a Deposit Check.** A real estate licensee may receive and transmit a deposit check made out to a third person without having to deposit the check in the brokerage escrow account. However, if a real estate licensee is to hold the deposit, the license law requires the following:
 1. If you are a salesperson or broker/salesperson, you must give, pay over or deliver the deposit to your broker by the end of the next business day after you receive it.
 2. The broker must deposit the check by the end of the third business day from the day the broker received it from the salesperson; Saturdays, Sundays and national legal holidays are not counted as business days. Checks should be kept in a secure place, such as a safe, until deposited.
 3. Funds may be placed in an interest-bearing escrow account only if both the buyer and seller agree in writing to (a) place the funds in an interest-bearing escrow account, (b) who is to earn the interest (anyone can earn interest including the broker, a third party, etc., if mutually agreed by the buyer and seller) and (c) the time at which funds should be disbursed. You may use paragraph O of the comprehensive addendum (miscellaneous clauses addendum) to fix the terms of the interest-bearing account.
- **Payment of Additional Deposit.** In this contract, time is of the essence, so the date the additional deposit is due should be emphasized to the buyer and then monitored to ensure compliance. If the deposit is not made on time, the seller’s agent should immediately notify the seller.
- **Total Financing.** This amount should be “0” if paragraph 3(a) (no financing contingency) is checked. If paragraph 3(b) is checked, the amount inserted in blank 16 should be the total amount of all the institutional, third-party and seller financing and mortgage assumption that the buyer intends to procure.
- **Other Amounts.** Blank 17 is for the value of any other form of payment of the purchase price. For example, if the buyer will convey a recreational vehicle (RV) to the seller as part of the transaction, indicate the value of the RV in blank 17 and describe the RV in blank 18. This space may also be used if a third deposit is required.
- **Exclusions from Balance.** If you include a dollar amount, emphasize to the buyer that this amount does not include prepaid insurance, other prepaid items, closing costs or prorated items.
- **Payment of Purchase Price.** The purchase price must be paid in U.S. currency with the amount due at closing made in the form of a locally drawn cashier’s check, wired funds or official bank check. The seller may agree, in writing, to accept some other form of payment.

Price and Financing

28* **3. FINANCING:** (Check as applicable) (a) **Buyer** will pay cash for the Property with no financing contingency.
29* (b) **Buyer** will apply for the financing specified in paragraph 2(c) at the prevailing interest rate and loan costs based on
30* **Buyer's** creditworthiness (the "Financing") within 20 days from Effective Date (5 days if left blank) and provide **Seller** with a
31* written Financing commitment or approval letter ("Commitment") within 21 days from Effective Date (30 days if left blank)
32 ("Commitment Period"). **Buyer** will keep **Seller** and Broker fully informed about loan application status, progress and
33 Commitment issues and authorizes the mortgage broker and lender to disclose all such information to **Seller** and **Broker**. Once
34 **Buyer** provides the Commitment to **Seller**, the financing contingency is waived and **Seller** will be entitled to retain the deposits
35 if the transaction does not close by the Closing Date unless (1) the Property appraises below the purchase price and either the
36 parties cannot agree on a new purchase price or **Buyer** elects not to proceed, or (2) another provision of this Contract requires
37 the deposits to be returned. If **Buyer**, using diligence and good faith, cannot provide the Commitment within the Commitment
38 Period, this Contract will be terminated and **Buyer's** deposits refunded.

Purpose:

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

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

Subparagraph (b) provides terms for all financing contingencies.

Boxes:

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

Box (b) should be checked if the purchase is contingent on the buyer obtaining any kind of financing.

Blanks:

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

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

Deadlines:

• **Application.** The buyer must submit a financing application to a mortgage broker or lender within five business days from the effective date unless another number of business days is inserted in blank 20.

• **Commitment.** This must be obtained within 30 business days from the effective date unless a specific date is inserted in blank 21.



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

Explanation:

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



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

- **Buyer's Information.** This contract requires the buyer to give a lender the information it requests by the deadline the lender imposes in order to make the loan. Failure to do so may constitute a default under the contract, unless the failure was in spite of the buyer using good faith and diligence to timely provide the required information.
- **Financing Contingency.** Rather than being contingent on the buyer being able to meet all terms and conditions of a mortgage commitment by closing, this contract is contingent simply upon the buyer finding a lender who will issue a loan commitment or approval and providing a letter to that effect to the seller. The buyer will be expected to meet all terms and conditions of the commitment or approval by closing or lose their deposit.
- **Commitment or Approval Letter.** The buyer must provide the seller with a commitment or approval letter within the time specified in order to proceed with the contract. There is no requirement that the letter must be written by the lender - the buyer could write it themselves - or that all terms and conditions must be specified in the letter.
- **Buyer Disclosure of Loan Progress.** To alert the brokers and seller to any financing glitches that may impact the closing of the contract, the contract imposes a duty on the buyer to keep the seller and brokers informed of issues regarding the loan application status, progress and commitment issues. It also contains an authorization that will allow mortgage brokers and lenders with whom the buyer is working to answer questions posed by the seller and brokers with regard to the loan.
- **Financing Denied Because Property Fails to Appraise.** If the buyer qualifies for the financing but the property does not, the buyer has a choice. The buyer may go ahead with the contract at the stated purchase price, waiving the financing contingency and coming up with the additional cash at closing. Or, the buyer may try to renegotiate the price to an amount that the lender is willing to finance. If the buyer wants to renegotiate but cannot agree with the seller on a new price, the buyer may choose to proceed at the stated purchase price, failing which either party may cancel the contract.
- **Failure to Obtain Commitment or Approval.** Either party may cancel the contract, if the buyer has provided all necessary information to a lender in a timely manner but is turned down for financing and the Commitment Period has passed.
- **Other Provisions Requiring Deposit to be Returned.** The buyer may receive a return of deposit even after providing the commitment within the commitment period if another provision allows the buyer to cancel the contract on other than financing grounds. For example, paragraph 7(c) allows the buyer to cancel if the property is in a particular flood zone and the buildings are built below the minimum flood elevation. The buyer's deposit may also be returned if the seller is unable to fulfill contractual obligations on time.
- **Release of Deposit.** The escrow agent will be able to return the buyer's deposit in accordance with applicable law. If the escrow agent is a real estate licensee, "proper authorization" from both parties will be required. This means the consent, verbal or written, by all interested parties to disburse the funds in a particular way.
- **Conflict in Demands.** The seller may refuse to authorize release of the deposit, even when the buyer has demanded the deposit and, in the licensee's opinion, the situation clearly calls for the deposit to be returned to the buyer. If this happens, the real estate licensee must treat the situation as a conflict in demands. The conflict in demands procedure is thoroughly covered in the discussion about paragraph 16.
- **Loan Expenses.** Unless modified, paragraph 5(b) requires the buyer to pay all loan expenses.
- **Third-Party Financing.** If the buyer seeks third-party financing, check box (b). Complete blanks 20-21. The contract simply provides that the financing will be at the prevailing interest rate and loan costs based on the buyer's credit worthiness. The only preprinted variable is for the amount of the loan. If the buyer wants only a fixed or variable interest rate, or wants to cap the interest rate or loan costs to which he/she will be obligated, complete blanks 20-21 and use paragraph G of the comprehensive addendum (financing addendum).
- **FHA Financing.** If the buyer seeks mortgage insurance from the Federal Housing Administration (FHA), check box (b) and complete blanks 20-21. Then, complete paragraph E of the comprehensive addendum (financing addendum).
- **VA Financing.** If the buyer seeks mortgage insurance from the Department of Veterans Affairs (VA), check box (b) and complete blanks 20-21. Then, complete paragraph E of the comprehensive addendum (financing addendum).
- **Seller Financing.** If the buyer seeks a loan from the seller, check box (b) and complete blanks 20 and 21. Then, complete paragraph C of the comprehensive addendum (financing addendum). Blank 21

should be completed consistently with the terms of paragraph C of the addendum that require the seller to commit to the requested financing within 10 business days from the date the application period ends.

• **Mortgage Assumption.** If the buyer wants to assume the seller's mortgage, check box (b) and complete blanks 20 and 21. Then, complete paragraph D of the comprehensive addendum (financing addendum).

Closing

CLOSING

39
40 4. **CLOSING DATE; OCCUPANCY:** Unless extended by other provisions of this Contract, this Contract will be closed on
41* _____²² _____ ("Closing Date") at the time established by the closing agent, by which time **Seller** will (a) have removed all
42 personal items and trash from the Property and swept the Property clean and (b) deliver the deed, occupancy and possession, along with
43 all keys, garage door openers and access codes, to **Buyer**. If on Closing Date insurance underwriting is suspended, **Buyer** may
44 postpone closing up to 5 days after the insurance suspension is lifted. If this transaction does not close for any reason, **Buyer** will
45 immediately return all **Seller**-provided title evidence, surveys, association documents and other items.

Purpose:

To establish the closing date and related obligations.

Blanks:

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

22

Explanation:

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

Closing

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

50 (a) **Seller Costs:** **Seller** will pay taxes and surtaxes on the deed and recording fees for documents needed to cure title; up to
51* \$ 23 or _____% (1.5% if left blank) of the purchase price for repairs to warranted items ("**Repair Limit**");

52* **Buyer** (____) (____) and **Seller** (____) (____) acknowledge receipt of a copy of this page, which is Page 1 of 7 Pages.

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54* and up to \$ 24 or _____% (1.5% if left blank) of the purchase price for wood-destroying organism
55* treatment and repairs ("**WDO Repair Limit**"); Other: 25

56 (b) **Buyer Costs:** **Buyer** will pay taxes and recording fees on notes and mortgages; recording fees on the deed and financing
57* statements; loan expenses; lender's title policy; inspections; survey; flood insurance; Other: 26

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

59* (1) The title evidence will be a Paragraph 10(a)(1) owner's title insurance commitment. **Seller** **Buyer** will select the title
60* agent. **Seller** **Buyer** will pay for the owner's title policy, search, examination and related charges. Each party will
61* pay its own closing fees.

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

66 (d) **Prorations:** The following items will be made current (if applicable) and prorated as of the day before Closing Date: real
67* estate taxes, interest, bonds, assessments, association fees, insurance, rents and other current expenses and revenues of
68* the Property. If taxes and assessments for the current year cannot be determined, the previous year's rates will be used with
69* adjustment for exemptions and improvements. **Buyer** is responsible for property tax increases due to change in ownership.

70 (e) **Special Assessment by Public Body:** Regarding special assessments imposed by a public body, **Seller** will pay (i) the full
71* amount of liens that are certified, confirmed and ratified before closing and (ii) the amount of the last estimate of the assessment if
72* an improvement is substantially completed as of Effective Date but has not resulted in a lien before closing, and **Buyer** will pay all
73* other amounts.

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

76* (g) **Home Warranty:** **Buyer** **Seller** **N/A** will pay for a home warranty plan issued by 27 at a
77* cost not to exceed \$ 28. A home warranty plan provides for repair or replacement of many of a home's mechanical
78* systems and major built-in appliances in the event of breakdown due to normal wear and tear during the agreement period.

Purpose:

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

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

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

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

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

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

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

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

Boxes:

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

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

Under (g), indicate whether the buyer or seller will pay for a home warranty plan, or, if no plan will be purchased, check the box marked "N/A."

Blanks:

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

Explanation:

- **Place of Closing.** Unless the parties agree otherwise, the closing must occur in the county where the property is located. Therefore, a local closing agent should be used, though, of course, the documents can still be mailed to a remote seller for signature. The closing may be done by electronic methods.
- **Gap Insurance.** The title insurance will have a clause insuring the buyer for title defects that occur between the policy binder effective date (the closing date) and the date on which the deed is recorded (this period is known as the “gap”). As long as the buyer has gap insurance, the closing agent may disburse the proceeds at closing, rather than waiting until the deed is recorded.
- **Costs.** All closing costs may be negotiated by the parties. If FHA or VA financing is involved, subparagraphs (a) and (b) should be read in conjunction with paragraph E or F, whichever applies, of the comprehensive addendum (financing addendum). The terms of the FHA- or VA-specific provision prevail over any contrary information in subparagraphs (a) and (b).
- **Closing Cost Disclosure.** The state law requiring brokers to give buyers a separate list of known major closing costs prior to signing an offer to purchase property was *repealed* as being unnecessarily duplicative of the law that requires lenders to do so.
- **Special Assessment Liens.** A governmental authority may assess property owners for improvements such as paving roads, curbs, sidewalks, storm sewers, etc. The seller pays for all improvements that are substantially completed by the effective date because, presumably, the seller was able to get a higher price for the property because of the improvement. This clause does not cover special assessments by condominium or homeowners’ associations. Instead, such assessments are treated as provided for in paragraph A or B of the comprehensive addendum.
- **“Substantially Completed.”** This generally means that the work for which the property owner was (is) assessed has been essentially finished and the only incomplete work is strictly technical or unimportant to the functionality of the improvement.
- **Lender Policy.** If a mortgage lender requires a title insurance policy on its behalf, the buyer must provide the policy and pay the premium. The lender has the authority to approve the title agent who must be able to provide a policy that is issued at the same time as the owner’s policy for the buyer (policies cost less when issued simultaneously).
- **Title Evidence and Insurance.** This paragraph has check boxes that work in conjunction with paragraph 10. The seller must provide title evidence to the buyer. The type of title evidence provided must be generally accepted in the county where the real property is located. The provisions were written to take into account different practices that prevail in different parts of the state. Such differences are often attributable to the practices of the different insurance underwriters utilized by local title agents.
- **Title Commitment as Title Evidence.** If the prevailing practice is for a title insurance commitment to serve as title evidence, then box (c)(1) should be checked. The parties may then negotiate who will select the title agent and who will pay for the title policy and related charges.
- **Abstract, Prior Policy or Title Commitment as Title Evidence.** If the prevailing practice is to provide existing title evidence, such as an abstract or prior policy, if such is available, then box (c)(2) should be checked. The parties may then negotiate who will select the title agent and pay for the title policy, but related charges are pre-allocated to the buyer and seller.
- **Selection of Title Agent.** The Real Estate Settlement Procedures Act provides that the seller may

not require, as a condition of selling the property, that a buyer purchase title insurance from any particular title company when the buyer is obtaining a federally related mortgage loan to buy the property. HUD policy currently permits a seller to specify the title agent if the seller is paying **all** the costs associated with the title insurance policy. This policy could change at any time.

- **Title Search Expenses.** These are the fees charged for examining the title evidence to determine the marketability of the property.
- **Tax Searches and Lien Searches.** As more public records become readily available through computerized searching mechanisms, more searches relevant to the property title become practical. Since such searching involves time and effort, as well as possible direct expense, the parties will be expected to pay for them. These fees are allocated to the seller under paragraph (c)(2) and are readily negotiable under paragraph (c)(1).
- **Closing Agent.** In Florida, the title agent usually closes a transaction; however, the parties may negotiate this role if desired.
- **Prorations.** At the time of closing, the seller's payments must be up to date through the day before closing on the following items: all real estate taxes; interest, bond and assessment payments; rents, association fees, hazard and mortgage insurance premiums and interest owed on any mortgage the buyer will assume. The buyer will take over the payment of these items from the day of closing onward.
- **Foreign Investment in Real Property Tax Act of 1980 (FIRPTA).** If the seller is a foreign person (which includes a nonresident alien or a foreign corporation, partnership, trust or estate), U.S. tax law requires the buyer (usually acting through the closing agent) to withhold 10 percent of the total amount realized by the seller on the transaction. The "amount realized" is usually the purchase price.
- **Seller is not a Foreign Person.** The closing agent may ask the seller to complete an affidavit of non-foreign status. FAR's Seller's Certification of Non-foreign Status (SCNF-1) form (available only through FAR's forms licensing program or online) may be used for this purpose.
- **Seller is a Foreign Person.** The withholding may not be required if (a) the seller receives a qualifying statement from the IRS that a reduced amount or no withholding is required, or (b) the purchase price is not more than \$300,000 and the buyer acquires the property to use as his/her residence. FAR's Buyer's Affidavit For FIRPTA Withholding Exemption (BAWE-2) form (available only through FAR's forms licensing program or online) may be used to certify the buyer's intent to use an appropriately priced property as a residence. Other exemptions and reduced withholding are available.
- **Home Warranty Plan.** A home warranty plan may or may not be available on a particular property. If a warranty is available, the licensee should make the buyer aware of its price and benefits.

Property Condition

79	PROPERTY CONDITION
80*	6. INSPECTION PERIODS: Buyer will complete the inspections referenced in Paragraphs 7 and 8(a)(2) by _____ 29 _____,
81*	_____ (within 10 days from Effective Date if left blank) ("Inspection Period"); the wood-destroying organism inspection
82*	by _____ 30 _____, _____ (at least 5 days prior to closing, if left blank); and the walk-through inspection on the
83	day before Closing Date or any other time agreeable to the parties; and the survey referenced in Paragraph 10(c) by
84*	_____ 31 _____, _____ (at least 5 days prior to closing if left blank).

Purpose:

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

Blanks:

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

Deadlines:

Professional Inspections. This must be conducted within 10 business days from the contract effective date unless a specific date is inserted in blank 29.

Energy-Efficiency Rating Determination. This must be conducted within 10 business days from the contract effective date unless a specific date is inserted in blank 29.

Radon Gas Level Determination. This must be conducted within 10 business days from the contract effective date unless a specific date is inserted in blank 29.

Lead Hazards Assessment. Permitted under paragraph K of the comprehensive addendum (property clauses addendum), this inspection must be conducted within 10 business days from the contract effective date unless a specific date is inserted in blank 29.

Wood-destroying Organism Inspection. This may be conducted at least 5 business days before closing (the earlier the better) unless a specific date is inserted in blank 30.

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

Survey. This must be conducted at least 5 business days before closing unless a specific date is inserted in blank 31.

Explanation:

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



Practice Tip: Because of the increasing use of financing pre-approvals, the default timing of the home inspections is early in the transaction. Early inspections allow the seller time to complete repairs before closing, or, if the cost of repairs exceeds the Repair Limit, allows the buyer to quickly get back into the market for a more suitable property. However, if the buyer is not pre-approved, buyer's agents may want to time the home inspections to occur after the buyer is approved for financing (blank 21) but before closing (blank 22), and the wood-destroying organism inspection to coincide with lender requirements. Always try to set the inspection deadlines at least 10 business days before the closing date.

Property Condition

85 **7. REAL PROPERTY DISCLOSURES:** Seller represents that Seller does not know of any facts that materially affect the value
86 of the Property, including but not limited to violations of governmental laws, rules and regulations, other than those that Buyer
87 can readily observe or that are known by or have been disclosed to Buyer. Seller will have all open permits (if any) closed out,
88 with final inspections completed, no later than 5 days prior to closing.

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

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

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

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

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

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

Purpose:

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

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

Subparagraph (b) provides the required radon gas disclosure.

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

Deadlines:

Permits. Open permits must be closed, with final inspections completed, by closing.

Energy Efficiency Rating Determination. Refer to the deadline on page 17.

Radon Testing. Refer to deadline on page 17.

Building Elevation Determination. If the property is located in one of the specified flood area and the buyer finds out that the buildings are built below the minimum flood elevation, the buyer must, within 20 business days from the effective date, give written notice of intent to cancel the contract

Explanation:

- **Material Fact.** This is a fact that constitutes substantially the consideration of the contract, or without which the contract would not have been made. This duty only requires revealing facts that affect the property's value — it does not require revealing personal facts about the seller, such as impending divorce.

- **Disclosure of Material Facts.** The landmark case *Johnson vs. Davis* requires sellers to reveal all facts that are material to the property's value, except for those facts that the buyer can readily observe or already knows about. If the seller knows about a material fact and conceals it, the buyer can sue for rescission of the contract.



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

- **Licensee's Duty.** Another Florida court case, *Raynor vs. Wise*, extended to real estate licensees involved in a property's sale the duty to reveal known material facts.

- **Open Permits.** The seller must close out any open permits and have final inspections for those permits completed at least 5 business days before the Closing Date.

- **Energy Efficiency Rating.** According to Section 553.996, *Florida Statutes*, prospective buyers of real property on which a building for occupancy is located must be given a brochure provided by the Florida Department of Community Affairs (DCA) relating to energy efficiency ratings at or prior to the time he/she signs a contract: To order this free brochure, call the DCA at 850/488-8466 or visit <http://www.dca.state.fl.us>.

- **Radon Gas Disclosure.** The radon disclosure — the first three sentences of subparagraph 7(b) — is required to be made at or prior to signing any offer to purchase real property in Florida.

- **Radon Testing.** Within the time specified in blank 29 of paragraph 6, the buyer may have the property's radon level determined by an appropriately licensed person. Florida law does not allow any person performing a radon test to charge a fee or receive any other payment or reward as a benefit for providing the service unless that person is certified by the Department of Health and Rehabilitative Services (HRS). The buyer can find a professional radon tester by calling 800/543-8279 (or 850/488-1525 in Tallahassee).



Practice Tip. The Environmental Protection Agency (EPA) publishes an informative booklet entitled "Home Buyer's and Seller's Guide to Radon." You can obtain this free publication from your local Board/Association of REALTORS, from FAR or by calling the EPA at 800/767-7236.

- **Current EPA Standards.** As of October 1995, the EPA recommends repairing a home if the radon level is at or above 4 pCi/L or 0.02 WL.

- **Levels Exceeding EPA Standards.** If the radon test results exceed the above figures (which are subject to revision), the seller may choose to take corrective measures to reduce the radon presence to acceptable levels. The EPA estimates the average cost to reduce the radon level ranges from \$500 to \$2500. Since the seller is not required to reduce the radon level and the seller's responsibility under this paragraph is not limited to any particular dollar amount, the seller may decide not to

make the repair. In this case, either party may cancel the contract.

- **Flood Zones.** Topographic maps showing the location of flood zones are available for inspection where the county's public records are maintained. All Florida property is located in a flood zone and may be subject to periodic flooding.

- **Flood Insurance.** Only properties located in flood zones most likely to experience flooding are required to be covered by flood insurance. All flood insurance for U.S. real property is issued by the National Flood Insurance Program (NFIP) (800/638-6620) through local insurance agents. The seller's policy may or may not be transferable to the buyer. The buyer is advised to check with the lender regarding flood insurance requirements.

- **Restrictions on Rebuilding and Improvements.** The contract contains a notice to the buyer to investigate whether or not there are restrictions on constructing improvements or on rebuilding the property in the event of a casualty.



Practice Tip. Advise the buyer to obtain a survey in accordance with paragraph 10(c) to determine whether the property is in a flood zone. Flood zone areas can change, and a seller may not be aware that his or her property was remapped and included in a flood area.

- **Special Flood Hazard Area.** This is land in the flood plain that is subject to a 1 percent or greater chance of flooding annually. This area may be designated as zone A, AO, AH, A1-A30, AE, AR, AR/A, AR/AE, AR/AH, AR/AO, AR/A1-A30, A99, V1-V3, VE or V on the Flood Hazard Boundary Map.

- **What is the "100-year flood"?** The term "100-year flood" is misleading. It is not the flood that will occur once every 100 years. Rather, it is the flood elevation that has a 1- percent chance of being equaled or exceeded each year. Thus, the 100-year flood could occur more than once in a relatively short period of time. The 100-year flood, which is the standard used by most Federal and state agencies, is used by the NFIP as the standard for floodplain management and to determine the need for flood insurance. A structure located within a special flood hazard area shown on an NFIP map has a 26 percent chance of suffering flood damage during the term of a 30 year mortgage.

- **Coastal High Hazard Area.** This is the area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

- **Contract Contingency.** The contract is contingent on the property's buildings being built above the minimum flood elevation, but *only if* the property is located in a Special Flood Hazard Area or Coastal High Hazard Area. The burden is on the buyer to find out whether the buildings are above or below the line and to deliver written notice of the intent to cancel within 10 days from the effective date if the buildings are below the line.

- **Failure to Give Timely Written Notice.** If the buyer does not deliver to the seller written notice of the buyer's intent to cancel the contract because the buildings are built below the minimum flood elevation, the buyer is deemed to accept the property with the existing location of the buildings.

- **Homeowners' Association.** Legislation effective on October 1, 1998, requires that if the buyer will be required to join a homeowners' association, the contract must (1) reference and incorporate the disclosure summary (Comprehensive Addendum paragraph B), and (2) contain a conspicuous warning that the buyer should not sign the contract until he or she has received and read the disclosure summary.

- **Property Tax Disclosure Summary.** In the 2004 session, the Florida Legislature enacted section 689.261, *Florida Statutes*, which provides that a prospective purchaser of residential property must be presented with a required disclosure before signing a sales contract. This is the all capitals statement that appears in paragraph 7(e). The purpose is to alert buyers that their property tax amount may be substantially more than that paid by the seller. Buyers are directed to contact the county property appraiser's office if they want more information.

- **Mold.** The presence of mold in housing has become a very hot issue in the past couple of years. However, at press time, neither the state nor the federal government have established standards to determine what levels of mold infestation are harmful. Therefore, this contract includes just a disclosure directing the buyer to contact an appropriate professional to get more information about potential mold hazards.

- **Mold Inspection.** The contract by itself does not give the buyer the right to inspect specifically for mold, and if mold is discovered through allowable inspections, does not require the seller to make repairs unless the mold is interfering with a warranted item. If the buyer specifically wants a mold

inspection right, use paragraph 1(2) of the comprehensive addendum. This clause gives buyers the ability to make any desired inspections and requires them to repair the property after such inspections.



Practice Tip. If the buyer wants to include a specific mold clause in the contract language such as the following could be used:

“Buyer may, at Buyer's expense, have a qualified professional, such as a Certified Industrial Hygienist, Microbiologist, Mycologist or Registered Environmental Property Assessor, inspect the Property for mold within the Inspection Period. If the inspection reveals that the Property has a significant mold presence which requires professional removal at a cost exceeding \$_____, Buyer may cancel this Contract by written notice to Seller within 5 days from the end of the Inspection Period and Buyer's deposit will be refunded. If Buyer fails to conduct the inspection in a timely manner, or if the inspection does not reveal a level of mold that requires professional remediation costing more than the amount specified above, or if Buyer fails to properly notify Seller of the intent to cancel the Contract, Buyer may not terminate this Contract pursuant to this clause. In any event, within 5 days from the end of the Inspection Period, Buyer will repair all damages to the Property resulting from the inspection, return the Property to its pre-inspection condition and provide Seller with paid receipts for all work done on the Property upon its completion; this provision will survive termination of this Contract.”

Note to contract preparer: Instead of requiring a significant presence of mold that requires professional remediation, you may substitute language such as “If the inspection reveals levels of mold that are unacceptable to Buyer, Buyer may cancel ...” You would also want to change the next sentence to “If Buyer fails to conduct the inspection in a timely manner or fails to properly notify Seller of the intent to cancel the Contract, Buyer may not terminate this Contract pursuant to this clause.”

Property Condition

113 **8. MAINTENANCE, INSPECTIONS AND REPAIR:** Seller will keep the Property in the same condition from Effective Date until
114 closing, except for normal wear and tear (“maintenance requirement”) and repairs required by this Contract. Seller will provide
115 access and utilities for Buyer’s inspections. Buyer will repair all damages to the Property resulting from the inspections,
116 return the Property to its pre-inspection condition and provide Seller with paid receipts for all work done on Property upon its
117 completion. If Seller, using best efforts, is unable to complete required repairs or treatments prior to closing, Seller will give
118 Buyer a credit at closing for the cost of the repairs Seller was obligated to make. At closing, Seller will assign all assignable repair
119 and treatment contracts to Buyer and provide Buyer with paid receipts for all work done on the Property pursuant to the
120 terms of this Contract.

Purpose:

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

Subparagraph (a) addresses the seller’s warranty, the buyer’s inspection rights and the seller’s obligation to make repairs to the property. It also establishes which conditions the seller will repair.

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

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

Explanation:

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

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

- **Access and Utilities.** The seller is responsible to ensure that the buyer is given access and utilities to conduct the inspections.
- **Damages Caused by Inspections.** The buyer is responsible for repairing any property damage resulting from the inspections. The repairs should be to the extent that the property is in the same condition as it was before the inspections were made.
- **Requirement to Provide Receipts.** In an effort to avoid unforeseen contractors' demands or liens being placed on the property, the contract requires each party to provide to the other copies or originals of paid receipts for all work done on the property during the contract term. The buyer is required to provide receipts in case the contract is terminated before closing - the seller will still own the property and needs to know that any work the buyer ordered was paid for. The seller is required to provide receipts to the buyer so that after closing, the buyer (and more likely, the real estate licensees involved) is not faced with having to pay for work the seller (who may no longer be reachable) should have paid for.
- **Uncompleted Treatments and Repairs.** If the seller is required to make repairs or treatments under subparagraph 8(a)(3) or 8(b), and cannot complete them before closing, the buyer should be given a credit at closing for the amount necessary to complete the repairs. Some lenders will not accept a credit for uncompleted repairs. In this case, the parties should try to negotiate a later closing date to enable repairs to be completed so the loan can close. Since the seller will be assigning repair contracts to the buyer at closing, the buyer will be entitled to rely on the representations made by the contractor to the seller.
- **Assignment of Repair and Treatment Contracts.** Assigning the seller's rights in these contracts gives the buyer the contractual right to directly pursue the contractor if the repairs or treatments turn out to be inadequate.

Property Condition

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

122 (1) **Warranty:** Seller warrants that non-leased major appliances and heating, cooling, mechanical, electrical, security,
 123 sprinkler, septic and plumbing systems, seawall, dock and pool equipment, if any, are and will be maintained in working
 124 condition until closing; that the structures (including roofs) and pool, if any, are structurally sound and watertight; and
 125 that torn or missing pool cage and screen room screens and missing roof tiles will be replaced. Seller does not warrant
 126 and is not required to repair cosmetic conditions, unless the cosmetic condition resulted from a defect in a warranted
 127 item. Seller is not obligated to bring any item into compliance with existing building code regulations unless necessary
 128 to repair a warranted item. "Working condition" means operating in the manner in which the item was designed to
 129 operate and "cosmetic conditions" means aesthetic imperfections that do not affect the working condition of the item,
 130 including pitted marcite; missing or torn window screens; fogged windows; tears, worn spots and discoloration of floor
 131 coverings/wallpapers/window treatments; nail holes, scratches, dents, scrapes, chips and caulking in bathroom
 132 ceiling/walls/flooring/tile/fixtures/mirrors; cracked roof tiles; curling or worn shingles; and minor cracks in floor
 133 tiles/windows/driveways/sidewalks/pool decks/garage and patio floors.

Explanation:

- **Warranty.** A warranty is a promise by the seller that the specified items are or will be placed in the described condition.
- **"Working Condition."** This means operating in the manner in which the item was designed to operate.
- **"Cosmetic Condition."** This means aesthetic conditions that do not affect the working condition of an item. Pitted marcite, missing or torn screens, fogged windows and minor cracks in floor tiles were added as cosmetic conditions in the previous version of the contract. Under this contract, the seller does not have to repair cosmetic conditions unless the cosmetic condition resulted from a problem with a warranted item. For example, if the air conditioning system leaked and discolored the wallpaper and part of the carpet, the seller would be obligated to repair the wallpaper and carpet as well as the air conditioning leak.
- **Warranted Items.** Only the listed items (major appliances, heating system, cooling system, mechanical system, electrical system, security system, sprinkler system, plumbing and sewer system, seawall and pool equipment) carry the seller's warranty of working condition. Plus, these items must be owned, as opposed to leased, to be covered. All structures (including their roofs) and pool must be structurally sound and watertight. This standard includes structures such as detached garages and mother-in-law apartments, docks and boathouses, sheds, barns, gazebos and any other structures on the property unless specifically excluded. Finally, if a pool cage or screen room has missing or torn screens, or if the roof is missing tiles, these items will be replaced.



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

- **Unwarranted Items.** All cosmetic conditions and items not listed in subparagraph (a)(1) of the contract are required to be maintained only in the condition they were in on the effective date.
- **Building Code Violations.** The seller does not have to correct building code violations unless required by the building code to do so when repairing a warranted item.

Property Condition

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

Deadlines:

- **Professional Inspection.** This must be conducted by the date specified in blank 29 in paragraph 6.
- **Written Notice of Defects.** The notice must be delivered to seller, along with a copy of the professional inspector’s report, within 5 business days from the date specified in blank 29 in paragraph 6.

Explanation:

- **Buyer’s Expense.** The cost of all inspections conducted pursuant to subparagraph (2) are the buyer’s responsibility.
- **Option to Conduct Inspections.** The buyer may choose not to have a professional inspection. The consequence is that the buyer accepts the property in its existing condition with regard to any warranty violation that could have been discovered by the inspection.
- **Timing of Professional Inspection.** The buyer must conduct the professional inspection by the date specified in blank 29 in paragraph 6.
- **Who May Conduct Professional Inspection.** Only a home inspector (who specializes in home inspections and who holds an occupational license to do so, if an occupational license is required by local law) or a person who possesses a Florida license to repair and maintain the inspected items may conduct the inspection. If the parties want to allow unlicensed persons (such as themselves) to conduct the inspections, use paragraph I of the comprehensive addendum (property clauses addendum).
- **Scope of Inspection.** The inspection is limited to determining whether warranted items are in the condition warranted. If the buyer wants broader inspection rights, use paragraph I(2) of the comprehensive addendum.
- **Notice of Defects.** If the buyer’s inspector found that any items covered by the seller’s subparagraph (a)(1) warranty were not in the condition warranted (working condition, structurally sound or watertight, permit not pulled for work), then the buyer must deliver a written notice to the seller detailing how the items do not meet the warranty. The buyer must also give the seller a copy of the inspector’s written report, if there is one.
- **Failure to Provide Written Notice of Defects.** If the buyer fails to conduct the inspection or for some other reason does not give the seller the written notice of defects in time, the buyer loses the right to enforce the seller’s warranties, as listed in subparagraph (a)(1). The seller will still be responsible for the maintenance requirement, i.e., if something was working on the effective date, it must be working on the closing date.

Property Condition

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

Purpose:

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

Deadlines:

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

Explanation:

- **Repair Estimates.** The seller is charged with obtaining repair estimates. If the seller desires, he or she may rely on any estimates provided by the buyer or the buyer's inspector.
- **Seller's Obligation to Make Repairs.** The seller is only obligated to repair items covered by the warranty of subparagraph (a)(1). In order to be considered sufficient under the contract, the repairs must bring the item into the condition warranted (working condition, structurally sound or watertight).
- **Repair Limit.** The seller's responsibility for repairs is limited to the amount specified as the Repair Limit in blank 23, paragraph 5.
- **Second Inspection.** A seller who is not satisfied with the outcome of the buyer's inspection report may choose to have his/her own professional inspection made to verify the accuracy of the first inspector's assessment of the property. If the seller has a second inspection, the inspector must have the same qualifications as the buyer's professional inspector — see the explanation to subparagraph (a)(2). The inspection must be conducted within five business days from the date the seller receives the buyer's notice of problems with the property. If the reports agree, the seller should repair the property in accordance with the terms of the contract.
- **Conflicting Inspection Reports.** If the buyer's inspector and the seller's inspector have different opinions about the need for repair of any warranted item, the parties should first try to compromise. If unable to compromise, the parties must agree upon a third inspector. Each party must pay half of the third inspector's fee and both parties will be bound by that inspector's report.
- **"Workmanlike" Manner.** This term means worthy of a good workman or skillful. The seller must ensure that the repairman is competent so that the repairs are made in a workmanlike manner and are not shoddy or incomplete.
- **Cost of Repairs Within Repair Limit.** If the cost to bring warranted items into the condition warranted equals or is less than the Repair Limit, the seller must make the repairs. The repairman must be licensed by the State of Florida to make the repairs, if such a license is required under Florida law.
- **Costs in Excess of Repair Limit.** If the cost of required repairs is more than the Repair Limit, then the buyer or the seller may decide to pay the excess balance and close the contract, **or** the buyer may decide to accept the property with some items under the seller's warranted standard. If the buyer chooses the latter option, then the buyer has the right to decide which repairs are made and which items he/she will accept as is. If neither party wants to pay the amount of repairs exceeding the Repair Limit and the buyer does not want to accept only a partial repair job, then either party may cancel the contract.

Property Condition

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

Deadlines:

- **Termite Inspection.** This must be conducted by the date specified in blank 30 in paragraph 6.
- **Termite Infestation or Damage Report.** This is due within five business days from date of the inspection.
- **Treatment and Repair Estimates.** This is due within five business days from having received the inspector's report.

Explanation:

- **Extended Closing Date.** This provision may extend the closing date since, in order to facilitate lender requirements, the buyer is allowed to have the inspection done any time prior to closing unless a specific date is listed in blank 30 in paragraph 6. If the buyer is getting third party financing, you should tie the inspection date to the commitment date specified in blank 21 in paragraph 3. You may also wish to establish a specific deadline at least ten business days before the closing date if any of the following are true:
 1. The buyer is paying cash with no financing contingency.
 2. The seller is providing all the financing.
 3. You anticipate that termite infestation or damage will be found.
- **"Wood-Destroying Organism."** The definition in the contract tracks the Section 482.021(28), *Florida Statutes*, definition of a "wood-destroying organism." Chapter 482 regulates the pest control business.
- **Property Excluded From Coverage Under Inspection/Repair Provision.** Fences are not covered by the inspection and repair rights arising under subparagraph 8(b).
- **Buyer's Inspection.** The buyer may pay for a pest control business (licensed to operate in Florida) to inspect the property any time prior to closing. The purpose of the inspection is to determine whether or not there is infestation or damage caused by wood-destroying organisms. The damage and infestation may have occurred in the past or may be current.
- **Inspection Report.** If the inspector finds evidence of damage or infestation, the buyer has five business days from the date of the inspection to give a copy of the inspector's report to the seller. If the inspector finds no evidence of damage or infestation, the seller has no obligation to treat or repair.
- **Treatment and Repair Estimates.** If the inspection report reveals damage caused by wood-destroying organisms, the seller must obtain a repair estimate from a licensed building or general contractor. If the inspection report reveals evidence of infestation, the seller must obtain a treatment estimate from a Florida licensed pest control business. The seller must obtain both estimates within five business days from the date the seller receives the inspection report.
- **Treatment and Repair Obligation.** The seller is obligated to treat and repair the property at a total cost not to exceed the WDO Repair Limit as stated in paragraph 5 (blank 24). The seller will not have to treat the property if the report either (1) shows no evidence of infestation or damage (the right to request treatment never arises), or (2) shows evidence of infestation without any evidence of live organisms, but the property has previously been treated; there is a current, transferable full treatment warranty; and the seller transfers the warranty to the buyer at closing. If the seller has treated the property but has no transferable warranty, additional treatment may be required under this provision.
- **Cost Exceeds Termite Repair Limit** Either party may choose to pay the amount over the 1.5 percent or other amount inserted in blank 24. If neither party wishes to do so, then either party may cancel the contract.

• **Treatment Warranty.** Sometimes, an inspector will find evidence of old infestation or damage caused by old infestation. If the property was treated, either by the current or a previous owner, and the seller has a current full treatment warranty, then the seller does not have to treat the property again so long as no current live infestation was observed.

• **Failure to Deliver Notice of Infestation or Damage.** If the buyer does not deliver the inspector's written report of damage or infestation within five business days after the date specified in blank 30 in paragraph 6, the buyer is deemed to accept the property with any existing infestation and damage.

Property Condition

163 (c) **Walk-through Inspection:** Buyer may walk through the Property solely to verify that Seller has made repairs required
164 by this Contract and has met contractual obligations. No other issues may be raised as a result of the walk-through
165 inspection. If Buyer fails to conduct this inspection, Seller's repair and maintenance obligations will be deemed fulfilled.

Explanation:

• **Walk-Through Inspection.** The buyer must conduct the walk-through inspection the day before closing or at any other time upon which the parties agree, in accordance with paragraph 6. The only issues the buyer may raise on the walk through are:

1. Failure by the seller to keep the property in the same condition as it was on the effective date excluding conditions considered to be normal wear and tear) or absence from the premises of items listed in paragraph 1 as included in the purchase.
2. Failure by the seller to have made all repairs that he/she was responsible to make.
3. Removal of items that are included in the sale.
4. Failure of the seller to disclose facts that materially affect the value of the property.

• **Failure to Conduct Inspection.** If the buyer fails to do so, the buyer loses the right to enforce the seller's warranties and repair obligations.

• **Items That Worked at the Time of Inspection but Not at the Time of Walk-through.**

Sometimes, a warranted item will be working when the buyer's inspection is conducted but stops working before the closing. Even though the buyer did not specify the item as being in non-working condition in connection with the professional inspection, the seller will have to repair the item under the maintenance requirement. If the item worked on the effective date, it must still work on the closing date.

Property Condition

166 **9. RISK OF LOSS:** If any portion of the Property is damaged by fire or other casualty before closing and can be restored within
167 45 days from the Closing Date to substantially the same condition as it was on Effective Date, Seller will, at Seller's expense,
168 restore the Property and the Closing Date will be extended accordingly. Seller will not be obligated to replace trees. If the
169 restoration cannot be completed in time, Buyer may accept the Property "as is", in which case with Seller will credit the
170 deductible and assign the insurance proceeds, if any, to Buyer at closing in such amounts as are (i) attributable to the Property
171 and (ii) not yet expended in making repairs, failing which either party may cancel this Contract. If the Property is a
172 condominium, this paragraph applies only to the unit and limited common elements appurtenant to the unit; if the Property is in
173 a homeowners' association, this paragraph will not apply to common elements or recreation or other facilities.

Purpose:

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

Deadline:

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

Explanation:

• **Extended Closing Date.** This provision may extend the closing date of paragraph 4.

• **"Casualty."** This term means an identifiable event of a sudden, unexpected or unusual nature, such as a tornado, fire or hurricane, that causes complete or partial destruction of property.

• **Seller's Obligation to Restore.** If the property is damaged by a casualty before closing, the seller will be obligated to repair the property so that it is in essentially the same condition as it was and has

the same features it had on the effective date. If the seller is able to repair the property in time, the buyer will be obligated to close. If not, the buyer may take the property with existing damage and insurance proceeds and close on the closing date. The seller is not obligated to replace trees; this does not negate any obligation to remove fallen or damaged trees.

- **Time Limit to Decide Whether or Not to Accept Damaged Property.** Since there is no time limit imposed on the buyer by the contract to make the decision to take the damaged property with insurance proceeds, a reasonable time given the circumstances must be allowed before the seller may cancel the transaction.
- **Seller's Expense.** All repairs made pursuant to this clause are to be paid by the seller. The seller's hazard insurance normally covers post-casualty repairs.
- **Cancellation of Contract.** Either party may cancel the contract if the repairs cannot be completed within 45 business days from the closing date given in paragraph 4 and the buyer chooses not to take the property as is with insurance proceeds.
- **Insurance Proceeds.** If the seller has received funds to make repairs and has expended some of the funds, e.g. as deposits on repair contracts, the unexpended portion should be assigned to the buyer at closing to be used in completing the repairs. The amount of the seller's deductible that has not yet been expended and is attributable to the property should be credited to the buyer since payment of a deductible is the seller's responsibility under their insurance agreement.
- **Deductible and Proceeds Attributable to Property.** If the seller experienced damage to both the real property and personal belongings, a portion of the deductible and insurance payment may relate to property that is not being conveyed in the transaction. The deductible and proceeds should be prorated among damaged covered property that is and is not subject to the contract.

Title

175

TITLE

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

Purpose:

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

Explanation:

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



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

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

Title

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

Purpose:

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

Deadline:

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

Explanation:

- **Permitted Encumbrances.** The contract allows exceptions to the title for listed matters that do not prevent using the property for residential purposes. The exceptions are: covenants, easements and restrictions that are recorded in the public documents of the county in which the property is located; matters of plat; existing zoning and government regulations (such as growth management plans); oil, gas and mineral rights, provided the holder of the rights has no right to enter the property; current taxes; mortgages that the buyer will assume as part of the purchase; and encumbrances that the seller will remove at or before closing.
- **Oil, Gas and Mineral Rights.** The only such rights permitted under this contract are those in which another person has the right to proceeds from any such substances found on the property, but has no independent right to go to the property and start digging or drilling.
- **Liens.** A construction lien may be filed anytime within 90 days from completion of the work. If the work is done within 90 days prior to closing, it is possible that a lien could be filed after the title is transferred. Under this contract, the seller is obligated to deliver the property free of such liens. To ensure compliance, require the seller to provide an affidavit, usually supplied by the closing agent, attesting to the absence of liens or potential lienors. If the work has been completed within 90 days from the closing date, the seller must provide releases and waivers of construction liens signed by all contractors, subcontractors, suppliers and materialmen along with an affirmation that the seller has paid, or will pay at closing, all charges that could serve as a basis for a construction lien or claim for damages. The closing agent should have these forms.
- **Seller's Choice of Title Evidence.** The seller has the choice as to which kind of title evidence he or she will provide the buyer. However, the seller is limited to only those options that are generally accepted in the county where the property is located.
- **Seller's Responsibility.** Since the contract language says that the seller will deliver the title evidence, the seller must ensure that the title evidence is provided to the buyer at least 2 days before closing. However, who pays for the title evidence is negotiable. Even if the buyer pays for the title evidence, the seller is still responsible for ensuring that the title evidence is delivered to the buyer.
- **Relationship to Paragraph 5.** The applicable title evidence paragraph should be indicated in paragraph 5(c) by checking the appropriate box.
- **Title Search.** The purpose of a title search is to verify that the seller actually owns the property. To verify ownership, an experienced abstractor or title company must search the public records for all documents that affect the title as well as look for unrecorded matters that may affect the title. When the search is finished, an abstract, title insurance policy or other title evidence can be issued.

Title

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

Deadline:

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

Explanation:

- **Title Insurance Commitment.** A commitment is a promise, usually made before closing, to issue a title insurance policy to the new owner after closing. The commitment establishes the requirements that must be met before the title insurance policy will be issued and it lists the exceptions that will appear on the title policy. The exceptions can only be those listed in the contract or those that will be eliminated at or before closing.
- **Premium.** Florida Insurance Commission rules require that a premium be charged for a title insurance commitment or binder, regardless of whether or not a policy is issued. If a title insurance policy is issued pursuant to a commitment, there is no additional charge for the policy. Payment of the premium is negotiable under paragraph 5(c).
- **Owner's Title Insurance Policy.** An owner's policy protects the buyer up to the property's purchase price if the title is not as described in the title commitment or if there is a title defect or encumbrance on the title or property that was not disclosed in the title commitment. Since most policies have exclusions, the buyer should closely examine the policy or have his/her attorney explain what is and is not covered.
- **Abstract of Title.** A condensed history of the property's title. It contains a summary of the material portions of all recorded conveyances (such as transfers, assignments, leases, mortgages and encumbrances) of the property, along with a statement of all liens, charges or liabilities to which the property may be subject.
- **Delivery of Abstract.** If the seller is providing an abstract, it must be given to the buyer no later than 10 business days before the closing date. Also, it must be certified through the contract effective date.



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

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

Title

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

Purpose:

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

Deadlines:

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

Explanation:

- **Examination of Title Evidence.** When the buyer receives the seller's title evidence, the buyer should examine the evidence for problems that could jeopardize the buyer's ownership rights. Any defects must be noted in writing to the seller before closing.
- **"Cure."** This means to correct aspects (defects) of the title that render the title unmarketable or do not conform to the seller's promise of delivering a marketable title.
- **Seller's Obligation to Cure Title.** This contract requires the seller to deliver a marketable title. If the buyer discovers title defects and gives timely, written notice to the seller, the seller must attempt to correct the defects within the curative period.
- **Seller Able to Cure Defects Within Curative Period.** If the seller is able to cure the defects within the curative period, the seller should immediately send the buyer written notice of the correction. Once the buyer receives the written notice, the transaction can be closed.
- **Seller Unable to Cure Defects Within Curative Period.** If the seller is unable to cure the defects within the curative period, the seller should immediately deliver written notice to the buyer so the buyer can decide whether to cancel the contract or close the transaction in spite of the existing defects. The parties may also agree to extend the closing date. The buyer should consult an attorney when making this decision since his/her title may be at risk if a problem arises.

Title

202 (c) **Survey:** Buyer may, at Buyer's expense, have the Property surveyed and deliver written notice to Seller, within 5 days from
203 receipt of survey but no later than closing, of any encroachments on the Property, encroachments by the Property's improvements
204 on other lands or deed restriction or zoning violations. Any such encroachment or violation will be treated in the same manner as a
205 title defect and Buyer's and Seller's obligations will be determined in accordance with subparagraph (b) above. If any part of the
206 Property lies seaward of the coastal construction control line, Seller will provide Buyer with an affidavit or survey as required by law
207 delineating the line's location on the property, unless Buyer waives this requirement in writing.

Purpose:

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

Deadlines:

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

Explanation:

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



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

- **Encroachment.** An encroachment is a trespass on the lands or rights of another. This contract treats an encroachment by the seller's property onto the lands of a neighbor (e.g., the seller's fence stands on the neighbor's property) or an encroachment by a neighbor's property onto the seller's property (e.g., the neighbor built a shed that lies partially on the seller's property) as a title defect.
- **Violations of Deed Restrictions.** The deed to the property may be subject to one or more restrictions regarding the use of the property. If the survey shows that a violation of the restrictions, the violation will be treated as a title defect.
- **Zoning Violations.** If the survey shows that the property violates existing zoning regulations, the violation will be treated as a title defect.
- **Seller's Expense.** The seller is responsible for the expense of correcting any encroachments.
- **Seller's Obligation to Cure Title.** This contract requires the seller to deliver a marketable title. If the buyer discovers an encroachment and gives timely, written notice to the seller, the seller must attempt to correct the problem within the curative period.
- **Seller Able to Cure Defects Within Curative Period.** If the seller is able to correct the encroachment, deed restriction or zoning violation within the curative period, the seller should immediately send the buyer written notice of the correction. Once the buyer receives written notice, the transac-

tion can be closed.

- **Seller Unable to Cure Defects Within Curative Period.** If the seller is unable to correct the encroachment, deed restriction or zoning violation within the curative period, the seller should immediately deliver written notice to the buyer so the buyer can decide whether to cancel the contract or close the transaction in spite of the existing defect. The parties may also agree to extend the closing date. The buyer should consult an attorney when making this decision since the ability to resell the property may be hampered by a defect.

- **Coastal Construction Control Line (CCCL).** The CCCL is a “line in the sand” established by the Florida Department of Environmental Protection (DEP) in an effort to protect the state’s beaches and coastal barrier dunes. The lines are established so as to define the portion of the beach-dune system that is subject to severe fluctuations based on a 100-year storm surge, storm waves or other predictable weather conditions. If a comprehensive engineering study and topographic survey show that placement of the control line is necessary for protection of upland properties and to control beach erosion, the DEP will hold a public hearing and then will establish the line.

- **Restrictions on Building Seaward of CCCL.** A person who wants to do any kind of construction seaward of the CCCL must apply for a permit from the DEP unless an exemption is available.

- **Survey or Affidavit.** Section 161.57, *Florida Statutes*, requires that the seller provide the buyer with an affidavit or a survey showing the location of the CCCL on the property, unless the buyer waives in writing the right to receive the affidavit or survey. A written waiver such as “Buyer waives the right to receive a CCCL survey or affidavit from seller” may be placed in paragraph 21.

- **Requirements of Survey.** The survey must meet the minimum technical standards for land surveying, as established by the Board of Professional Land Surveyors pursuant to Chapter 472, *Florida Statutes*.

Miscellaneous

208

MISCELLANEOUS

209 **11. EFFECTIVE DATE; TIME:** The “Effective Date” of this Contract is the date on which the last of the parties initials or signs the
210 latest offer. **Time is of the essence for all provisions of this Contract.** All time periods will be computed in business days (a
211 “business day” is every calendar day except Saturday, Sunday and national legal holidays). If any deadline falls on a Saturday,
212 Sunday or national legal holiday, performance will be due the next business day. All time periods will end at 5:00 p.m. local
213 time (meaning in the county where the Property is located) of the appropriate day.

Purpose:

To establish time standards.

Explanation:

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



Practice Tip. As counter offers are made back and forth, remind the parties that, if they accept the counter offer without making any changes, they need to indicate the date they signed or initialed the counter in this blank. Even if the Effective Date box on page four is not completed, the Effective Date is still the date on which they signed or initialed the final counter offer.

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

1. Paragraph 3(b) Commitment Period (30 days from effective date unless a specific date is inserted in blank 21)
2. Paragraph 3(b) Application (5 business days from effective date unless a different number of days is specified in blank 20)
3. Paragraph 6 Inspection Period (10 business days from effective date unless a specific date is inserted in blank 29) (this covers the Paragraph 7(a) Energy Efficiency Rating Determination, Paragraph 7(b) Radon Testing and Paragraph 8(a)(2) Professional Inspection)
4. Paragraph 7(c) Buildings Below Minimum Elevation in Special Flood Hazard Zone or Coastal

High Hazard Zone (20 business days from effective date)

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

1. Paragraph A(1) Condominium Documents (3 business days from effective date)
2. Paragraph A(2) Condominium Association Approval (insert number of business days in blank 52)
3. Paragraph B(2) Homeowners' Association Approval (insert number of business days in blank 65)
4. Paragraph C Seller Financing (10 business days from effective date)
5. Paragraph I(2) Right to Cancel Based on Inspection Report. (10 business days from effective date unless a specific date is inserted in blank 29)
6. Paragraph K(2) Lead-based Paint Assessment (unless a specific date is inserted in blank 29 of the contract or the buyer waives the right to have an lead paint inspection)
7. Paragraph R(3) Existing Tenant Document Delivery (negotiable number of business days from effective date) and Buyer's Notice of Termination (negotiable number of business days from effective date)
8. Paragraph V Property Disclosure Statement (3 business days from effective date)

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

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

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

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

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

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

Miscellaneous

214 **12. NOTICES:** All notices will be made to the parties and Broker by mail, personal delivery or electronic media. **Buyer's failure**
215 **to deliver timely written notice to Seller, when such notice is required by this Contract, regarding any contingencies will**
216 **render that contingency null and void and the Contract will be construed as if the contingency did not exist. Any notice,**
217 **document or item given to or received by an attorney or Broker (including a transaction broker) representing a party will**
218 **be as effective as if given to or by that party.**

Purpose:

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

Explanation:

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



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

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

Miscellaneous

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

Purpose:

To provide "housekeeping" provisions.

Explanation:

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



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

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



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

• **Conflicting Provisions.** Under general contract interpretation rules, if a preprinted contract term conflicts with a handwritten or typed term, the handwritten or typed term will prevail because it presumably shows the last intent of the parties.

• **Electronic Communications.** Florida Statutes section 668.50 gives legal recognition to contracts formed by electronic means. It provides that persons who have agreed to conduct a transaction by electronic means may do so as long as the information is provided, sent or delivered in an electronic record capable of retention by the recipient at the time of receipt, i.e. the recipient can print or store the electronic record. This contract includes an agreement that the contract, signatures, modifications, etc., may be communicated electronically.

• **Electronic Signatures.** Florida law defines an electronic signature as "an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record." This does not require that special security measures be used to authenticate the signature; an electronic signature can be created by simply having the parties type in their names (or other mark) on the signature lines. As with paper agreements, brokers are advised not to sign on behalf of a party without specific agency authority to do so, e.g. under a power of attorney to convey property.



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

• **Severability.** If a court decides that a particular provision of the contract is unenforceable, the parties and court must still honor the other terms of the contract.

• **Public Record.** Since any document recorded on the public records becomes a cloud on the property's title, this contract may not be recorded.

Miscellaneous

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

Purpose:

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

Explanation:

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



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

• **Liability of Buyer After Assignment.** Unless the contract specifies otherwise, the buyer remains liable for full performance of the contract if the assignee fails to perform. If the parties intend for the buyer to not remain bound, check the “will not” box in the comprehensive addendum (property clauses addendum) or insert a clause such as “Buyer will be relieved of all liability under this contract upon seller’s receipt of a copy of the assignment.”



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

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

Default and Dispute Resolution

230

DEFAULT AND DISPUTE RESOLUTION

231 **15. DEFAULT: (a) Seller Default:** If for any reason other than failure of **Seller** to make **Seller’s** title marketable after diligent effort, **Seller**
232 fails, refuses or neglects to perform this Contract, **Buyer** may choose to receive a return of **Buyer’s** deposit without waiving the right to
233 seek damages or to seek specific performance as per Paragraph **16**. **Seller** will also be liable to Broker for the full amount of the
235 brokerage fee. **(b) Buyer Default:** If **Buyer** fails to perform this Contract within the time specified, including timely payment of all deposits,
236 **Seller** may choose to retain and collect all deposits paid and agreed to be paid as liquidated damages or to seek specific performance as
237 per Paragraph **16**; and Broker will, upon demand, receive 50% of all deposits paid and agreed to be paid (to be split equally among
238 cooperating brokers except when closing does not occur due to **Buyer** not being able to secure Financing after providing a Commitment,
239 in which case Broker’s portion of the deposits will go solely to the listing broker) up to the full amount of the brokerage fee.

Purpose:

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

Explanation:

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

ing and able to buy the property. If the buyer defaults, the listing or selling broker (or both) may demand up to one-half of the buyer's deposit, whether or not the seller keeps it as liquidated damages. The broker's share of the deposit must then be split equally with the cooperating broker unless the transaction fails to close because the buyer could not meet the terms and conditions of the financing commitment. In this case, since the selling office was unable to produce a ready, willing and able buyer, the listing office retains the entire brokerage portion of the deposits. However, a broker may not receive more than the amount of the commission that he/she would have received if the transaction had closed.



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

Default and Dispute Resolution

240 **16. DISPUTE RESOLUTION:** This Contract will be construed under Florida law. All controversies, claims and other matters in
241 question arising out of or relating to this transaction or this Contract or its breach will be settled as follows:

242 (a) **Disputes concerning entitlement to deposits made and agreed to be made:** Buyer and Seller will have 30 days from the
243 date conflicting demands are made to attempt to resolve the dispute through **mediation**. If that fails, Escrow Agent will
244 submit the dispute, if so required by Florida law, to Escrow Agent's choice of arbitration, a Florida court or the Florida Real
245 Estate Commission. Buyer and Seller will be bound by any resulting award, judgment or order.

Purpose:

To establish a method and procedure for resolving contract disputes.

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

Deadline:

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

Explanation:

- **Florida Law.** No matter what state(s) the parties reside in, all disputes arising in connection with the contract or the transaction must be resolved in accordance with the laws of Florida and the provisions of this paragraph.

- **Conflicting Demands.** A dispute over a deposit occurs when both the buyer and seller demand the deposit be given to them. They do not have to put their demands in writing; under the real estate license law, a verbal demand is enough to trigger the conflict. For calculation of time periods, the dispute is considered to arise on the day the last party demands the deposit. For example, Day 1 - the buyer demands the deposit and the escrow agent informs the seller of the demand, but the seller doesn't respond. Day 2 - the seller tells the escrow agent that he/she is entitled to the deposit. Day 2 would be the date used for calculation of time periods. The law regarding conflicting demands is found in Section 475.25 (1)(d), *Florida Statutes*, and 61J2-10.032 of the FREC rules.

- **Resolving Escrow Deposit Disputes.** Subparagraph (a) covers deposit disputes. The first step is to try to mediate the dispute (see explanation below). Within 30 business days from the date the conflicting demands arose, mediation should be scheduled or held, if possible. If the parties are unable to come up with a date on which they can mediate, and the deadline passes, another dispute resolution method may be tried.

- **Escrow Agent Dispute Resolution Rules.** The escrow agent is usually an attorney, real estate brokerage or title company, each of which has its own set of rules to be followed in the event of an escrow dispute. For example, if an attorney is the escrow agent, he/she may be under no legal duty to try to resolve the dispute if mediation does not work.

- **Real Estate Licensee Dispute Notification Requirements.** Rule 61J2-10.032 imposes the following requirements on real estate licensees who act as escrow agents:

1. Notify FREC in writing within 15 business days from the date of the last party's demand that

there is a conflict in demands. Include a description of the property involved, the names of the parties and the amount of money at stake. Send the notice by certified mail with return receipt requested to the Division of Real Estate, 400 West Robinson Street, Orlando, Florida 32801. You may use FAR form NED-6, Notice of Escrow Dispute (available through FAR's licensing program or online).

2. Select one of the four settlement procedures outlined below and notify FREC of the method chosen within 30 business days from the date of the last party's demand.

3. Notify FREC within 10 business days from the date on which the matter is settled. Include specifics on the amount of money disbursed to each party.

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



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

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

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

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

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

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

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

• **Transferring Disputes From Litigation to Arbitration.** One method available to the real estate licensee to resolve a conflict in demands is to turn the money over to a court using an interpleader or

civil action. Generally the escrow agent is out of the dispute at that point and the parties are left to plead their causes before the judge. However, sometimes a party will file a claim against the escrow agent alleging some type of fault on the escrow agent's part. If this happens, the judge should consent to transfer the whole matter to an arbitration proceeding in accordance with the contract's terms.

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

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

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

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

Default and Dispute Resolution

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

Purpose:

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

Deadline:

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

Explanation:

• **Non-deposit Disputes.** This includes conflicts over any performance (or lack thereof) other than the payment of deposits.

• **Location of Arbitration.** The arbitration may be held anywhere in the county where the real property is located. Always try to choose a neutral site such as the arbitrator's office.

- **Specific Enforcement of Arbitration Agreement.** If any party files a lawsuit or otherwise refuses to arbitrate any dispute covered under subparagraph (b), the other party may ask the court to compel the arbitration of the dispute.
- **Arbitrator’s Power.** The arbitrator cannot rewrite the contract. He/she must review the evidence in light of the contract’s terms and determine which side presents the most compelling evidence. The award must state findings of fact (those facts which the arbitrator found to be true or most likely to be true) as well as the contractual authority on which the award is based. The arbitrator also has the authority to solve any questions related to discovery, if any.
- **Arbitration Award.** The award must be in line with the provisions of the contract, such as paragraph 15. If a party fails to comply with the arbitrator’s decision, the other party can file the decision with a court. The court’s decision has the same legal effect as any judgment issued by a court.
- **Discovery.** “Discovery” is the process by which attorneys and parties learn more about the other side’s case. If discovery is used, each party may compel the other to turn over copies of relevant documents or other evidence so as to be more thoroughly prepared to argue his/her own case. Depositions, interrogatories and subpoenas are all part of the discovery process. If the parties have attorneys, they are likely to want to utilize discovery procedures.
- **Claims Against Licensees.** If any party wants to arbitrate a dispute with a real estate licensee, the licensee’s broker must decide whether to arbitrate or to let the matter go to court. If the broker decides to arbitrate, he/she should give written consent to become a party to the proceeding. The brokerage, like the other parties, will be responsible for paying its own fees and for bearing an equal share of the arbitrator’s fees and administrative fees. Brokers cannot compel the parties to arbitrate if they have agreed to waive the arbitration clause and take their claims to court.

Default and Dispute Resolution

254 (c) **Mediation and Arbitration; Expenses:** “Mediation” is a process in which parties attempt to resolve a dispute by
 255 submitting it to an impartial mediator who facilitates the resolution of the dispute but who is not empowered to impose a
 256 settlement on the parties. Mediation will be in accordance with the rules of the American Arbitration Association (“AAA”) or
 257 other mediator agreed on by the parties. The parties will equally divide the mediation fee, if any. “Arbitration” is a process in
 258 which the parties resolve a dispute by a hearing before a neutral person who decides the matter and whose decision is
 259 binding on the parties. Arbitration will be in accordance with the rules of the AAA or other arbitrator agreed on by the
 260 parties. Each party to any arbitration will pay its own fees, costs and expenses, including attorneys’ fees, and will equally
 261 split the arbitrators’ fees and administrative fees of arbitration.

Purpose:

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

Explanation:

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



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

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



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

- **Arbitration.** This is the dispute resolution process by which the parties to a dispute choose an impartial person to hear their arguments and to issue a decision to which the parties will adhere. This process is intended to avoid the formalities, delay, expense and aggravation of ordinary litigation. Chapter 682, *Florida Statutes*, provides the right to have the arbitration decision reviewed by a court in limited circumstances.

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



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

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

Escrow Agent and Broker

ESCROW AGENT AND BROKER

262
 263 **17. ESCROW AGENT:** Buyer and Seller authorize Escrow Agent to receive, deposit and hold funds and other items in escrow and
 264 subject to clearance, disburse them upon proper authorization and in accordance with Florida law and the terms of this Contract,
 265 including disbursing brokerage fees. The parties agree that Escrow Agent will not be liable to any person for misdelivery of escrowed
 266 items to Buyer or Seller, unless the misdelivery is due to Escrow Agent’s willful breach of this Contract or gross negligence. If Escrow
 267 Agent interpleads the subject matter of the escrow, Escrow Agent will pay the filing fees and costs from the deposit and will recover
 268 reasonable attorneys’ fees and costs to be paid from the escrowed funds or equivalent and charged and awarded as court costs in
 269 favor of the prevailing party. All claims against Escrow Agent will be arbitrated, so long as Escrow Agent consents to arbitrate.

Purpose:

To establish the role and authority of the escrow agent.

Explanation:

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



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

- **Misdelivery of Escrowed Items.** The escrow agent should follow the rules established by his/her state licensing authority with regard to disbursement of escrowed items. The real estate license law requires proper authorization by all interested parties. If the escrow agent delivers the items to the wrong person without proper authorization, the escrow agent may be liable for gross negligence or willful breach of contract. However, if the agent receives proper authorization and releases the funds accordingly, the escrow agent should not be liable to either party even if a court later determines that the funds should have been distributed differently.

- **Proper Authorization for Disbursement.** Depending on what type of license the escrow agent holds, “proper authorization” could have different meanings. For a real estate licensee, proper authorization is the verbal or written consent to release the funds in a particular manner to a particular person (e.g., “Give the buyer his money back.”). Proper authorization also occurs when FREC issues an escrow disbursement order directing the licensee to release the funds. If the licensee complies, FREC will not bring disciplinary action against him/her, even if a court later determines that the

items should have been distributed differently. Also, the licensee can use disbursement in accordance with an EDO as a defense to charges of misdelivery because of gross negligence or willful breach of contract. See also the discussion of paragraph 16 (a), particularly Exceptions to Dispute Resolution Requirement.

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



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

Escrow Agent and Broker

270 **18. PROFESSIONAL ADVICE; BROKER LIABILITY:** Broker advises **Buyer** and **Seller** to verify all facts and representations that are
271 important to them and to consult an appropriate professional for legal advice (for example, interpreting contracts, determining the
272 effect of laws on the Property and transaction, status of title, foreign investor reporting requirements, etc.) and for tax, property
273 condition, environmental and other specialized advice. **Buyer** acknowledges that Broker does not reside in the Property and that all
274 representations (oral, written or otherwise) by Broker are based on **Seller** representations or public records. **Buyer agrees to rely**
275 **solely on Seller, professional inspectors and governmental agencies for verification of the Property condition, square footage**
276 **and facts that materially affect Property value.** **Buyer** and **Seller** respectively will pay all costs and expenses, including reasonable
277 attorneys' fees at all levels, incurred by Broker and Broker's officers, directors, agents and employees in connection with or arising
278 from **Buyer's** or **Seller's** misstatement or failure to perform contractual obligations. **Buyer** and **Seller** hold harmless and release
279 Broker and Broker's officers, directors, agents and employees from all liability for loss or damage based on **(1) Buyer's** or **Seller's**
280 misstatement or failure to perform contractual obligations; **(2) Broker's** performance, at **Buyer's** and/or **Seller's** request, of any task
281 beyond the scope of services regulated by Chapter 475, F.S., as amended, including Broker's referral, recommendation or retention
282 of any vendor; **(3) products** or services provided by any vendor; and **(4) expenses** incurred by any vendor. **Buyer** and **Seller** each
283 assume full responsibility for selecting and compensating their respective vendors. This paragraph will not relieve Broker of statutory
284 obligations. For purposes of this paragraph, Broker will be treated as a party to this Contract. This paragraph will survive closing.

Purpose:

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

Explanation:

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



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

- **Real Estate License Law.** The real estate license law allows a licensee to negotiate sales and direct or assist in the procuring of prospects, or the negotiation or closing of any transaction which does, or is calculated to, result in a sale, exchange or lease of real property.

- **Unlicensed Practice of Law.** The Florida Supreme Court regulates the practice of law. In a 1950 case, the Supreme Court examined the extent to which a real estate licensee could participate in a transaction before crossing the line into the practice of law. The Supreme Court decided that the real estate licensee's role is generally preliminary to the actual conveyance. Since the licensee is retained to find ready, willing and able parties to a transaction or to procure a binding contract, the licensee is authorized to draft papers such as a memorandum, deposit receipt or contract which records his/her work in the real estate transaction. Work beyond this point must be handled by a lawyer. The licensee may not guide the parties through the steps that consummate the closing. For

example, he/she may not give opinions concerning the state of the property's title, predict the legal effect of a particular clause or interpret the parties' rights in a specific situation.

- **Foreign Investor Reporting Requirements.** If the buyer or seller is a foreign person as defined by federal law, he/she should seek the advice of an international law/immigration law attorney to discuss the reporting obligations. This type of advice is especially crucial because the real estate licensees involved in the transaction could be held liable if the reporting requirements are not fulfilled.

- **Broker Representations.** Because real estate licensees do not live in the homes they are selling, they are not usually as familiar with the property as the homeowner. Yet, when the buyer moves in and discovers problems that were not disclosed, the broker is the first person the buyer contacts to fix the problems. This clause notifies and contains a promise by the buyer that he or she will look to those persons/entities most likely to have more detailed knowledge about the most frequently disputed areas -- property condition, square footage and facts that materially affect the property value. It will not relieve the licensee of liability for fraud or misrepresentations made in the course of the transaction.

- **Release.** This clause is intended to address the broker's civil liability for loss and damage incurred in connection with the performance of the task. It will not protect the broker from FREC disciplinary action.

- **Scope of Release.** This release only covers tasks a real estate licensee may be asked to do but is not required to do as part of fiduciary or other legal duties established by real estate license law. This is not authorization for the licensee to engage in activities that normally require specialized, professional expertise. However, if the buyer or seller asks the licensee to perform a task that is lawful and the licensee feels competent to complete the task, then this release may apply.

Escrow Agent and Broker

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

292* 32 293* _____ Selling Sales Associate/License No.	33 _____ Selling Firm/Brokerage Fee: (\$ or % of Purchase Price)	34 _____
294* 32 295* _____ Listing Sales Associate/License No.	33 _____ Listing Firm/Brokerage fee: (\$ or % of Purchase Price)	35 _____

Purpose:

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

Blanks:

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

Explanation:

- **"Broker."** In this contract, "broker" includes each person named in paragraph 19, as well as the named brokerages.

- **Brokerage Fee Payment.** The contract states that the brokers will be paid at closing the amount specified in the listing agreement and the MLS or other cooperative/compensation agreement between the listing and selling offices. If there are no separate agreements, the amount of the brokerage fee may be specified in blanks 34 and 35
- **Procuring Cause.** Most listing agreements provide that the broker is considered the procuring cause if he/she finds a buyer who is ready, willing and able to purchase the property at the seller's price and terms. Some listing agreements provide that the contract must be closed for the broker to be considered procuring cause.

Addenda and Additional Terms

296 **ADDENDA AND ADDITIONAL TERMS**

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

298* <input type="checkbox"/> A. Condo. Assn.	<input type="checkbox"/> H. As Is w/Right to Inspect	<input type="checkbox"/> O. Interest-Bearing Account	<input type="checkbox"/> V. Prop. Disclosure Stmt.
299* <input type="checkbox"/> B. Homeowners' Assn.	<input type="checkbox"/> I. Inspections	<input type="checkbox"/> P. Back-up Contract	<input type="checkbox"/> W. FIRPTA
300* <input type="checkbox"/> C. Seller Financing	<input type="checkbox"/> J. Insulation Disclosure	<input type="checkbox"/> Q. Broker - Pers. Int. in Prop.	<input type="checkbox"/> X. 1031 Exchange
301* <input type="checkbox"/> D. Mort. Assumption	<input type="checkbox"/> K. Pre-1978 Housing Stmt. (LBP)	<input type="checkbox"/> R. Rentals	<input type="checkbox"/> Y. Additional Clauses
302* <input type="checkbox"/> E. FHA Financing	<input type="checkbox"/> L. Insurance	<input type="checkbox"/> S. Sale/Lease of Buyer's Property	<input type="checkbox"/> Other 36
303* <input type="checkbox"/> F. VA Financing	<input type="checkbox"/> M. Housing Older Persons	<input type="checkbox"/> T. Rezoning	<input type="checkbox"/> Other 36
304* <input type="checkbox"/> G. New Mort. Rates	<input type="checkbox"/> N. Unimproved/Ag. Prop.	<input type="checkbox"/> U. Assignment	<input type="checkbox"/> Other 36

305* **21. ADDITIONAL TERMS:** **37**

306* _____

307* _____

308* _____

309* _____

310* _____

311* _____

312* _____

313* _____

Purpose:

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

Boxes:

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

Blanks:

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

Explanation:

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



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

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

Offer

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

350

OFFER AND ACCEPTANCE

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

352 Buyer offers to purchase the Property on the above terms and conditions. Unless this Contract is signed by Seller and a copy
353* delivered to Buyer no later than 38 a.m. p.m. on 39, _____, this offer will be revoked
354 and Buyer's deposit refunded subject to clearance of funds.

355* Date: 40 Buyer: 41
356* Print name: 42

357* Date: 40 Buyer: 41
358* Phone: 43 Print name: 42
359* Fax: 44 Address: 45
360* E-mail: 46

361* Date: 40 Seller: 41
362* Print name: 42

363* Date: 40 Seller: 41
364* Phone: 43 Print name: 42
365* Fax: 44 Address: 45
366* E-mail: 46

367

COUNTER OFFER/REJECTION

368* Seller counters Buyer's offer (to accept the counter offer, Buyer must sign or initial the counter offered terms and deliver a copy
369* of the acceptance to Seller by 5:00 p.m. on 47, _____). Seller rejects Buyer's offer.

Purpose:

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

Boxes:

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

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

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

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

Blanks:

- 38 Insert the time at which the seller's signed copy of the acceptance is due back to the buyer.
- 39 Insert the month, day and year on which the seller's signed copy of the acceptance is due back to the buyer.
- 40 Each party should insert the date on which he/she signs the offer.
- 41 Each party should sign his/her name.
- 42 Print the parties' names.
- 43 Insert the parties' telephone numbers.
- 44 Insert the buyer(s) facsimile numbers.

- 45 Insert the addresses at which the parties want to receive all notices under the contract.
- 46 Insert the parties' e-mail addresses.
- 47 If the seller submits a counter offer to the buyer, insert the day, month and year by which the buyer must return the acceptance of the countered terms.

Explanation:

- **Offer to Purchase.** When the buyer signs this contract and requests that it be delivered to the seller, he/she is making a revocable offer to the seller.
- **Withdrawal of Offer.** A revocable offer means that the buyer has the right to withdraw the offer at any time prior to the seller's valid acceptance. If the buyer wants to withdraw the offer, that fact should be communicated to the seller as quickly as possible.
- **Valid Acceptance.** For the seller's acceptance of this contract to be valid, the seller must sign the offer, inform the buyer that he/she signed the offer and return the signed copy of the contract to the buyer by the time stated in blanks 38 and 39.



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

- **Automatic Revocation of Offer.** In this contract, the buyer's offer will automatically be revoked on the date specified in blank 39 if not returned to the buyer or buyer's agent in time.
- **Refund of Deposit.** The buyer's deposit may be released upon (1) clearing of the funds if made by check and (2) proper authorization from all interested parties (i.e., the seller if he/she has acquired an interest in the funds). If the escrow agent is holding the buyer's deposit check for three business days as allowed under FREC rules, he/she may return the check to the buyer within those three business days if the seller rejects the offer or does not return it in time.
- **Rejection.** The seller may reject the offer either verbally or in writing, or may simply let the offer period expire without response. If the seller rejects the offer, try to encourage the seller to check the appropriate box. There is no legal requirement that the seller indicate rejection in writing, but it will help you explain the rejection to the buyer and determine whether or not the seller has acquired an interest in the buyer's deposit.
- **Counter Offer.** When the seller makes a counter offer, it is treated as both a rejection of the buyer's initial offer and as a new offer from the seller to the buyer. In practice, the seller will generally make any desired changes to the contract, initial them and sign the acceptance. At that point, the licensee should return the contract to the buyer for him/her to initial the seller's changes within the time specified in blank 47. The counter offer may be written on FAR's Counter Offer (CO-2) form.

Effective Date

370*

Effective Date: _____ **48** _____ (The date on which the last party signed or initialed acceptance of the final offer.)

Purpose:

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

Blanks:

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

Explanation:

- **Effective Date.** As specified in paragraph 11, this is the date on which the final version of the contract is signed by the last party who needs to sign it.
- **Deadlines.** For contract and comprehensive addendum deadlines dependent on the effective date, see the explanation to paragraph 11.

