

2006 ADDITIONS AND REVISIONS TO ONLINE FORMS

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The following summary addresses the new addenda created by OREF that will become available in January 2006. *This summary should not be relied upon in lieu of a thorough review of the documents and provisions by each individual broker and their principal broker.*

1. **Back-Up Offer Addendum** - This addendum is for use in multiple offer situations. It provides that:

Ø The seller may freely negotiate with the prior buyer (e.g. the “first” buyer) without triggering any rights in the back-up buyer;

Ø All timelines begin only when the back-up buyer is notified by seller that they have been elevated to a “First Position.”

Ø If the pending transaction is terminated with the prior buyer the seller shall notify the back-up buyer that they are now in a “First Position.”

Ø Upon such notification, all rights, duties and obligations between the seller and back-up buyer commence.

Ø At any time prior to such notification, the back-up buyer may notify the seller that they have withdrawn from the transaction.

2. **Seller’s Fee Agreement** - This agreement is for use in FSBO or limited service situations where the buyer’s agent wishes to submit an offer of purchase on behalf of their client and obtain compensation from the seller. It provides that:

Ø There is no agency relationship between the seller and the buyer’s broker, and that with the exception of those affirmative obligations imposed by law, the broker is acting solely in the best interests of the buyer.

Ø The seller shall pay an agreed-upon compensation if they enter into a written Sale Agreement with the identified buyer during the specified term of the agreement.

Ø The seller agrees to comply with all applicable federal, state and local laws (e.g. lead based paint and property disclosure, where applicable) regarding the sale of the property and hold the broker harmless therefrom.

Ø The Fee Agreement is expressly incorporated into the Sale Agreement for all purposes, including dispute resolution.

3. **Repair Addendum and Notice & Acceptance of Completion of Repairs** – This addendum establishes a “protocol” for the parties to following when the buyer requests the seller to perform certain repairs based upon an inspection report. It provides that:

- Ø It is not a “counter-offer” or refusal by buyer to honor the Sale Agreement.
- Ø The buyer requests the seller to perform certain identified repairs or take other corrective action.
- Ø All “specialty” type work (e.g. electrical, HVAC, plumbing, etc.) is to be performed by Oregon licensed and bonded contractors and be in accordance with all applicable laws, codes and ordinances.
- Ø The parties shall agree upon a completion date and a period of time thereafter for the buyer to re-inspect and confirm completion.
- Ø The seller and buyer reach agreement confirming that the requested action has, in fact, been completed. (*Note: the seller’s notice of completion and buyer’s confirmation are on a separate form entitled “Notice and Acceptance of Completion of Repairs/Corrective Action.”*)

4. **Condominium/Townhouse Addendum** The statutory Property Disclosure form asks (a) if there is an HOA; (b) its name and the contact person; (c) whether there are any pending or proposed special assessments; (d) if there are any shared common areas or joint maintenance agreements; (e) pending litigation; and (f) if the property is in violation of any recorded CC&Rs and bylaws, etc. This new addendum is for use when the buyer is acquiring an existing (as opposed to “new”) condominium or townhome which has an operating Homeowners Association (“HOA”), and the buyer wants to review more documents than those provided identified in the Seller’s Property Disclosure form. It conditions the purchase upon buyer’s review and approval of certain requested documents, such as the following:

- Ø Minutes of HOA meetings.
- Ø Current policies of casualty and liability insurance.
- Ø Copies of the latest reserve studies (which are now required by law).
- Ø Names and phone numbers of the current management company and HOA officers.
- Ø Similar to the professional inspection protocol found in the Sale Agreement, the

buyer has an agreed-upon period of time to disapprove of the documents provided. If not timely disapproved, this contingency will be deemed to be waived.

5. **New Construction Professional Inspection Addendum** – This addendum is for use in those transactions where the Sale Agreement has been signed by the parties prior to final completion of the home and the Buyer wants to have certain “walk-through” rights before closing. Currently, the Sale Agreement does not address a buyer’s right to review and approve the final construction. The new addendum does the following:

Ø It permits the seller to notify the buyer of the issuance of a final occupancy permit after which time the buyer is entitled to submit a written “punch-list” of items;

Ø The punch-list is intended to address those items the buyer believes are either (a) not in substantial compliance with the applicable building codes; (b) not consistent with local building standards, or (c) not in substantial compliance with any written plans or specifications.

Ø The seller and buyer are to make a good faith effort to reach agreement on which items will be completed.

Ø The form divides repairs into “habitability” items and “non-habitability” items, with the former to be completed first. As to non-habitability items, the buyer may not refuse to close even though corrections are not completed before closing.

Ø If the buyer fails to provide seller with the punch-list items by an agreed-upon date, the buyer will be deemed to have accepted the condition of the property, except as to code violations, etc.

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