

## 2009 REVISIONS TO THE OREF NEW CONSTRUCTION SALE AGREEMENT

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The following summary addresses the recent 2008 changes made to the OREF New Construction Real Estate Sale Agreement that will become available in January 2009. Stylistic (i.e. non-substantive) changes will not be addressed as they do not materially affect Realtor<sup>®</sup> practice. The primary focus of the discussion below will be on the substantive changes which bear on Realtor<sup>®</sup> practice, the reason for the changes, and their risk management impact. *This summary should not be relied upon in lieu of a thorough review of the documents and provisions by each individual broker and, where applicable, their principal broker.*

### SECTION 1. DEFINITIONS.

We added a new subsection (4). For definitional efficiency, we provided that the terms "Seller" or "Contractor" had the same meaning given to the statutory term "Residential Contractor" as defined in ORS 701.005(12).

**Comment:** Note that the title of this document is "New Residential Construction Real Estate Sale Agreement." This document assumes that the Seller is a contractor and has met the requirements set forth in ORS 701.005(12).<sup>1</sup>

**Risk Management Tips:** The purpose of this form is to deal with *new* construction by one properly licensed with the Construction Contractor's Board ("CCB"). It is not recommended that it be used in those cases where the home is being built by the owner/seller who does not hold a proper CCB license, since there are many provisions in the form which assume the seller is licensed. (Note that even when an unlicensed owner constructs a home, he/she must still conform to all applicable codes and have all applicable inspections.)

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<sup>1</sup> (12) "Residential contractor" means a licensed contractor that holds an endorsement as a:  
(a) Residential general contractor;  
(b) Residential specialty contractor;  
(c) Residential limited contractor; or  
(d) Residential developer.

## **SECTION 15. CONSTRUCTION CONTRACTOR'S BOARD ("CCB")**

There were three additions: (1) The seller must state what kind of license (now called an "endorsement") they hold; "Residential" or "Both Residential and Commercial." (2) We added a new subsection (6) which states "Seller has used and shall only use licensed subcontractors properly endorsed for the work to be performed as required by law." (3) We added the following URL internet reference for the CCB to assist the consumer, should they have further questions or need further information: "<http://www.ccb.state.or.us/>".

**Comment:** The purpose of the changes was to further protect and inform the consumer of their rights and require the seller to verify their license status.

**Risk Management Tips:** For buyer agents, it doesn't hurt to actually verify the seller's license status on the CCB website before writing up the offer. Presumably, if corrections need to be made, the seller may – and should – do so in an addendum. If there is ever any question about the builder, his/her claims history, etc., most of which can be obtained from the CCB website, these questions should be thoroughly resolved before the transaction gets signed up. Buyer agents should encourage their customers to do their own due diligence, as well. However, Realtors® should avoid becoming the buyer's eyes and ears. Instead, get them involved in the due diligence process so everyone can check their notes and make sure all information is consistent. And never forget to ask for references of the seller's prior customers.

## **SECTION 28. (HOME WARRANTIES; CONTRACTOR WARRANTIES; RECOMMENDED MAINTENANCE SCHEDULES)** ***(Renamed)***

This section now addresses three separate, topics:

(a) It advises the parties that voluntary home warranty plans may be available to help cover homeowner costs to repair or replace certain home systems and appliances. The cost and type of such programs are matters of negotiation between seller and buyer.

(b) Oregon law now requires that contractors entering into residential construction contracts on or after July 1, 2008 must make a written offer of warranty to the buyer covering defects in materials and workmanship. The type of warranty, coverage, cost, etc. is up to the seller. The buyer is advised that if he/she refuses the seller's proffered warranty, the seller may decline to construct the structure as long as the sale agreement has not yet been signed by both parties. There are now two sets of checkboxes for the buyer to indicate whether he/she has received a copy of the warranty before signing the Sale Agreement and whether he/she "accepts" the builder's warranty. (These checkboxes are not required by law, but for the protection of everyone involved in the transaction, the Forms Committee felt the issue should be addressed in the body of the Sale Agreement.)

(c) Oregon law now requires that for all new residential structures complete on or after July 1, 2008, if the buyer is the first purchaser or owner of the structure, the seller must provide him/her with a recommended maintenance schedule. The parties are advised that the CCB has prepared a recommended minimum maintenance schedule at Oregon Administrative Rule 812-012-0120(4). The maintenance schedule must be given by the contractor to the buyer not later than sixty (60) days after (i) substantial completion of the structure or (ii) occupancy of the structure, whichever is later. This new clause also contains a checkbox (although not required by law) that asks: "Has Buyer received a copy of the maintenance schedule before signing this Agreement?"

**Comment:** Subsection (a) was inserted to clarify and advise consumers of the voluntary commercial warranty programs available for appliances and home systems. Subsection (b) was to distinguish the voluntary programs offered in (a) from those now legally required to be offered by the builder. Subsection (c) was added to advise consumers of when and how to maintain various systems – especially those related to moisture and its related problems such as mold and mildew.

**Risk Management Tips:** With regards to subsection (a) Buyer agents should remember to ask the listing agent about whether the builder will provide a commercial warranty program for the appliances and home systems. If not, discussion should occur with the buyer about paying for one. This can always be a point of negotiation between the parties. At subsection (b) Realtors<sup>®</sup> should remember that although the law says that the type, cost and scope of builder's warranty are up to the builder, its provisions should be thoroughly reviewed prior to signing the Sale Agreement and accepting the warranty. If there are any legal questions concerning coverage, etc., the broker should encourage his/her client to seek competent counsel. Equally important in reviewing the warranty is determining what action or non-action (such as normal maintenance and/or use of non-licensed contractors) could disqualify the warranty.) At subsection (c), it appears to be legally permissible for the builder to supply the maintenance schedule after occupancy. We suggest the buyer's agent be proactive here; i.e. ask the builder if they have a copy of their actual maintenance program (not simply a description), and if not, direct the buyer to the administrative rule identified in the subsection (especially item (4) which is the minimum maintenance schedule), so they will know what they may legally expect. However, Realtors<sup>®</sup> should remember that the maintenance program is not the builder's responsibility (unless expressly assumed in a written contract) and especially when it comes to water, in our Northwest climate, maintenance issues are extremely important for homeowners to monitor and follow.