

REVISIONS TO THE 2011 OREF SALE AGREEMENTS

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This summary should not be relied upon in lieu of a thorough review of the specific forms and their revised provisions by each individual broker and principal broker.

2011 NEW FORM - RESIDENTIAL CONDOMINIUM REAL ESTATE SALE AGREEMENT *(OREF-011)*

This entire form is new. However, it adopts most, if not all, of the substantive provisions contained in the Planned Community/Condominium/Townhouse Addendum (OREF-024) (hereinafter, "the Condo Addendum"). There were several reasons the OREF Forms Committee decided to develop this form. First, currently OREF has no separate sale agreement form for condos. We are seeing more Realtors® venturing into this somewhat specialized area with little familiarity of the many unique issues, such as Homeowner Associations, dues assessments, common elements, etc. With the recent well-publicized condo auctions in Portland's South Waterfront, coupled with the availability of FHA financing, this is a product most Realtors® need to become familiar with. The new form will serve as a helpful tool, by addressing many of the issues condo sellers and buyers need to confront at the inception of the transaction. Additionally, the Forms Committee concluded that the continued use of the standard Residential Real Estate Sale Agreement coupled with the Condo Addendum, was an unsatisfactory long-term solution. (However, it is important to note that the Condo Addendum will continue to be produced as an OREF form. It has not been substantively changed.)

The following summary will be general in nature. It is strongly suggested that all agents and their principal brokers familiarize themselves with this new form. Here are the highpoints in the Residential Condominium Real Estate Sale Agreement:

1. Since both Sale Agreement forms are to be used solely for residential sales, the new condo form includes *verbatim*, all of the applicable provisions of the Residential Real Estate Sale Agreement, including the changes for 2011 described above.
2. This new form is not to be used for *new* condo sales. The reason is because sales of new condos are governed by ORS Chapter 100. This includes certain statutory provisions that dictate what must be included in new condo sales agreement. As a reminder, the Oregon Seller Property Disclosure Form need not be given to buyers of new condo units. This is because the statutory representations and warranties required for new condo sales have replaced the need for a separate seller disclosure form. Accordingly, new condo sales are exempted from Oregon's Seller Property Disclosure law found at ORS 105.462 – 105.490.
3. The primary differences between OREF's Residential Real Estate Sale Agreement and the Residential Condominium Real Estate Sale Agreement are found at Section 13 (Buyer Acknowledgment) and Section 14 (Condominium Documents).

SECTION 13 (BUYER ACKNOWLEDGMENT): This section provides that the buyer acknowledges that it is their responsibility to conduct a complete review of all aspects of the condominium,

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including matters regarding its association, the assessments, budgets, reserves, general and limited common elements, governance documents, etc. This provision also recommends that the buyer use a third-party professional to conduct their due diligence. It specifically provides that: Neither the Listing or Selling Licensees can render advice on these matters. Neither Listing or Selling Licensees shall be responsible for advising Buyer on these matters."

Section 13 also contains a place for the buyer to insert their understanding of certain material information regarding the facilities, dealing with the parking space/garage; storage space; Association dues; and information to reach the current Association contact person.

SECTION 14 (CONDOMINIUM DOCUMENTS): This section provides that the seller (at seller's expense) is to provide the buyer with copies of certain condo association documents. It notes that not all of these documents may be readily available to the seller and suggests that, to avoid delay, the parties address this issue through a written addendum. Unless the parties agree otherwise, the default period is seven (7) business days for the seller to provide the requested documents.

There is a vertical listing of several types of documents that may be requested. Some may have already been provided, either by the condo management company or the title company. Accordingly, the form provides a place for the buyer to check which additional documents he/she requests.

The type of documents/information the buyer may select from include the following: The recorded Declaration; HOA's Articles of Incorporation; Bylaws, Rules and Regulations (including revisions or amendments); Policies, Agreements, and Notices relating to: age restrictions, pets, parking, and any restrictions on rental of homes or units; HOA meeting minutes for the last twelve months if a longer period is not selected; Casualty and liability insurance policies for the HOA and its Board of Directors; Documents verifying the current HOA assessments; Notices relating to potential increases in the assessments or special assessments; Documents relating to actual or potential construction defect claims; Documents showing the latest reserve study.

This section provides that buyer shall have a review period of five [5] business days (if a longer period is not selected) from the delivery of the requested documents, within which to review them. If the buyer notifies seller (or their licensee), in writing, prior to Midnight of the last day of the review period that they *unconditionally disapprove* of one or more of the requested, all earnest money deposits will be promptly refunded to buyer and the transaction shall be terminated. The buyer's failure to provide the written unconditional disapproval within the agreed-upon review period, shall be deemed an approval of all of the condo documents.

There are two important provisions to remember in Section 14: (1) Condo documents such as the Declaration ("CC&Rs") that are provided to the buyer pursuant to Section 5 (Title) are subject to the same review period as provided in this Section 13; (2) The disapproval protocol is substantially the same as the professional inspection protocol found at Section 15 – i.e. only *unconditional* disapproval will work. A *conditional* approval or silence will constitute approval.