Standard Agreement for the Sale of Real Estate

(PAR Form ASR)

Guidelines for Preparation & Use

Updated July 2022

Pennsylvania Association of Realtors®

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Note to PAR Form Users

As stated in the title, this document is only a *guideline* for the proper use of the Standard Agreement of Sale. The suggestions presented here should be used in conjunction with, and as a supplement to, your professional education; they are not meant as a substitute for proper professional education.

The sale of a home is complicated. No set of instructions, no matter how complete, could possibly cover all of the issues and nuances that appear in any individual transaction. Seek guidance from your Broker and/or your legal counsel if you have any questions about the progress of a transaction or about the proper use of this or any PAR Standard Form.

To make these Guidelines more useful there are numerous helpful "extras" added to the main text. Many of the "Note" or "Practice Tip" items you will see are based, in part, on the experiences of PAR members, staff and legal counsel, and are designed to point out some of the more practical items to consider when filling out the Agreement.

General Notes on Usage

Pennsylvania Association of Realtors® Standard Forms are developed by the PAR Standard Forms Committee for use in a wide variety of transactions and market areas. To provide maximum flexibility to the parties, many provisions contain blank spaces that can be filled in as appropriate.

Where there is pre-printed language that is not agreeable to the parties and is not required by law, it can be crossed out and/or modified, with the parties dating and initialing the change in the margins. As a general rule, text added by the parties that changes pre-printed text, or pre-printed text altered by the parties, will prevail over pre-printed language should a dispute arise.

Throughout the Agreement you will find references to the "**Execution Date**." This is defined as the date when all parties have agreed to all terms of the Agreement by signing it and/or initialing any changes. The Agreement should always be delivered promptly after signing - preferably on the date accepted - but for purposes of counting days for inspections and other functions of the Agreement, the Execution Date is the date to be used. (See the explanation of Paragraph 5(C) for more information.) The Agreement contains Notices, some of which are legally required, while others are designed to educate Buyers and Sellers (and their agents) about particular aspects of the law. Make sure to familiarize yourself with the contents of these pages, so you can direct Buyer and Seller to the appropriate information.

Special Note to Broker for Seller

When reviewing an Agreement with a Seller, there may be representations made in the Agreement on the Seller's behalf (e.g., Seller's knowledge of land use restrictions on the Property, etc.), particularly in Paragraph 10, but in other locations as well. Do

not let Seller sign the Agreement unless these representations are true. If these representations are inaccurate, they should be amended, initialed, and generally treated as a counteroffer.

Parties

BUYER(S): Starting by the word "BUYER(S)" insert the name or names of Buyers. Be sure to list all Buyers, to make sure each one is fully bound to the Agreement.

> **Practice Tip**: If Buyer is a veteran, make sure the name on the Agreement matches the name on the discharge eligibility.

SELLER(S): Starting next to the word "SELLER(S)," insert the name or names of Seller(s).

> **Practice Tip:** Do not use terms such as "all registered owners" or "owners in title." The registered owners are not necessarily the only ones who must sign agreements and deeds to convey legal title (e.g., spouses of owners under certain circumstances). In the case of a cooperative sale where the Broker for Buyer does not have the proper names of all Sellers, leave the lines blank and ask the Broker for Seller to insert the proper names before approval.

Buyer and Seller should each include their mailing address in this box. **It is very important that both parties place a mailing address in the Agreement.** It is generally necessary to communicate with the other party during the course of a transaction, and having the address and contact numbers properly filled in can make this communication considerably easier, especially where one party is not represented by a broker. Both parties should communicate with another through their agents, but it may be necessary for the Buyer to contact the Seller directly about condominium documents.

Property

ADDRESS: When identifying the Property to be transferred, it is important to have the legal identification of the Property listed in the Agreement, not just the mailing address. Insert a description of the Property, including house number; street; postal city; ZIP Code; municipality, city or township; county; and school district.

> *Example:* ADDRESS (including postal city): **123 Mulberry Street, Hummelstown, PA** ZIP **17036**, in the municipality of **Township of Derry**, County of **Dauphin**, in the school district of **Derry Township**, in the Commonwealth of Pennsylvania.

> **Note:** Be certain to include the correct municipality (township, borough or city) in the property description where indicated, and not just the commonly referred-to post office designation that is likely to be a part of the mailing address.

While the school district and ZIP Code are not required for legal identification of the property, some Buyers are very interested in living in a specific ZIP Code or sending their children to schools in a certain district.

> **Note:** If the Buyer fills in the school district incorrectly or if the Buyer has not filled in a school district at all, the Seller should modify this line to reflect the accurate school district.

IDENTIFICATION: If market practice dictates further description, or if the short description is not sufficient to identify the Property, insert one or more of the following means of identifying the Property in the space provided: tax identification number(s); parcel number; lot and block; or deed book, page, and recording date.

> **Practice Tip:** If the Property consists of several parcels, or if there is the possibility of confusion regarding the boundaries of the Property, prepare an addendum to the Agreement that attaches a copy of the legal description taken from the last recorded deed, a proposed deed, or the legal description prepared by an attorney. Make sure that the legal description is in fact the correct and current description of the Property being sold. Attaching a proper legal description of the Property will help ensure that there is no dispute regarding the description of the Property to be transferred.

> **Practice Tip:** Property identifiers may have different names in different counties. Use what works in your area (e.g. Parcel Number, Property Identification Number, Tax ID Number).

Business Relationship Blocks

The Business Relationship (Buyer's Relationship with PA Licensed Broker and Seller's Relationship with PA Licensed Broker) boxes on the front page of the Agreement are used to identify the Brokers and Licensees involved in the transaction and to describe their business relationship to the parties involved in the transaction. Each block is divided, left and right, into a Broker section (left) and a Licensee section (right).

> **Note:** The Real Estate Licensing and Registration Act (RELRA) requires that Brokers identify: (1) the capacity in which they are engaged in a transaction; and (2) whether the Broker or any licensee affiliated with the Broker has provided services to any other party in the transaction. The information provided in the Business Relationship Blocks provides the appropriate business relationship information. Paragraph 25(D), is included to satisfy the second part of that requirement.

BROKERS:
On the left side, the Broker should fill in the name of the company (brokerage), its license number, and its contact information.

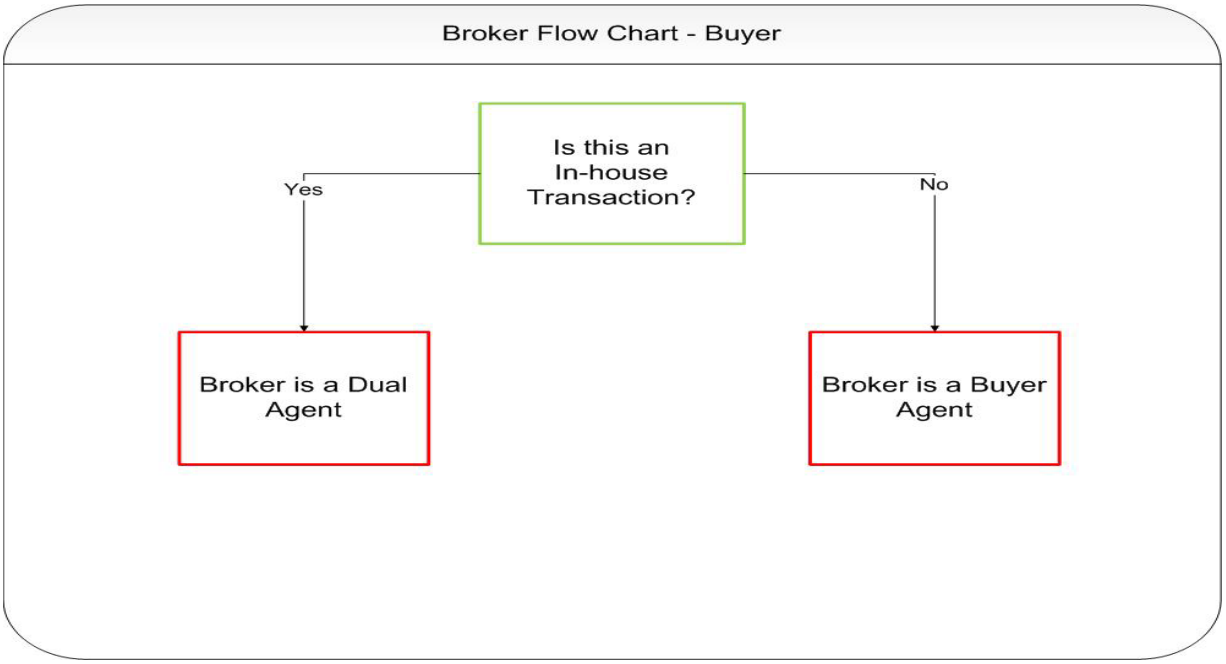
The checkboxes on the left side of the Business Relationship Block under the Broker contact information allow you to indicate whether the Broker represents only one party (Buyer Agent or Seller Agent) or both the Seller and the Buyer (Dual Agent).

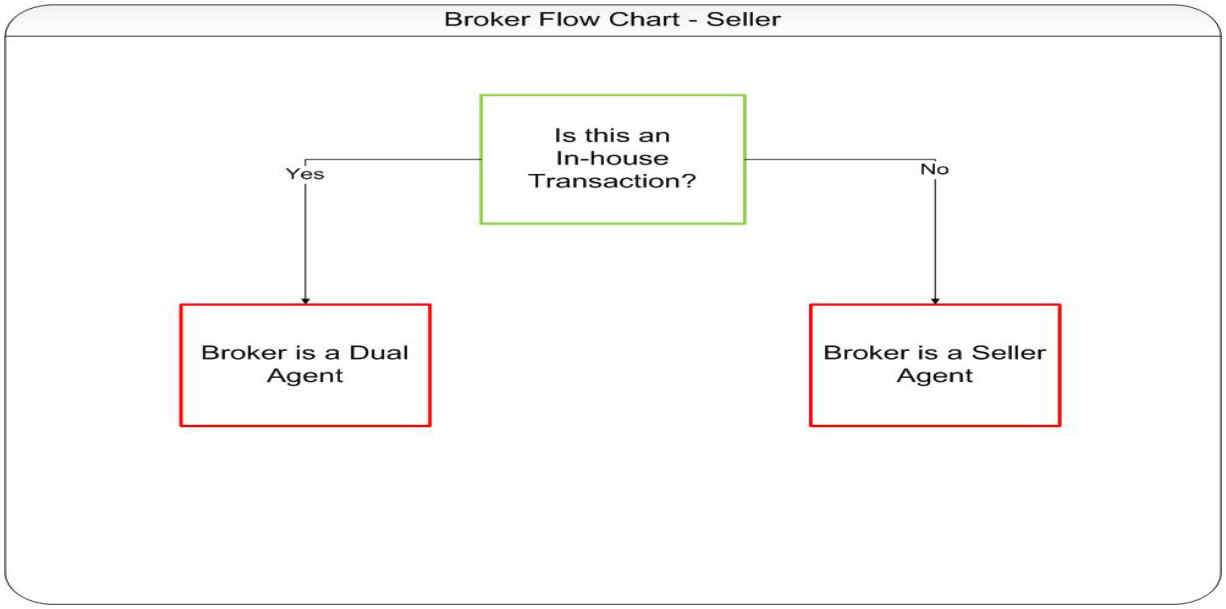
> **Note:** Where the Buyer and Seller are represented by the *same Broker*, the Broker is always a Dual Agent and the Broker (company) information in both boxes should be the same.

Where a transaction involves a party that is not represented by a Broker, the Broker working for the represented party should fill in broker and licensee information in the box for the party they represent and should select the "No business relationship" checkbox in the other party's Business Relationship Block.

> *Example*: A licensee representing a Buyer in a FSBO transaction would fill in Buyer's Business Relationship Block as the Agent for Buyer, and would check the "No Business Relationship" checkbox in the Seller's Business Relationship Block. This indicates that the defined "relationship" with Seller is one in which the Broker is working solely in the best interests of the Buyer. This can help eliminate any potential issues where a Buyer or Seller claims to have been unaware that he/she was not represented in a transaction.
>
> **Practice Tip:** If the "No business relationship" checkbox has been checked, the Broker and Licensee **should not** write their information in that Business Relationship Block.

Answer the questions in the flow charts below to determine which box to check on the Agreement.





LICENSEES:
On the right side, the Licensee should fill in his or her name, license number, and contact information. If more than one Licensee is representing the Buyer or Seller, each Licensee should write their name, license number, and contact information.

The checkboxes on the right side of the Business Relationship Block under the Licensee information allow you to identify your relationship with your client and the other Licensees involved in the transaction. First, make sure you understand the difference between Designated and Dual Agency and your brokerage policy. If you are unfamiliar with your broker's policy on this subject, speak to your broker. Do not assume that your broker's policy is the same as that of other brokers in the market.

A **Buyer Agent** or **Seller Agent** is a Licensee who, along with all other licensees in the brokerage, represents the Buyer or Seller.

A **Designated Agent** is a Licensee assigned by the Broker to act exclusively as the agent for the client to the exclusion of all other Licensees within the brokerage.

A **Dual Agent** is a Licensee who acts as an agent for both the Buyer and the Seller in the same transaction.

It is possible for a Designated Agent to be a Dual Agent if the same agent represents both parties!

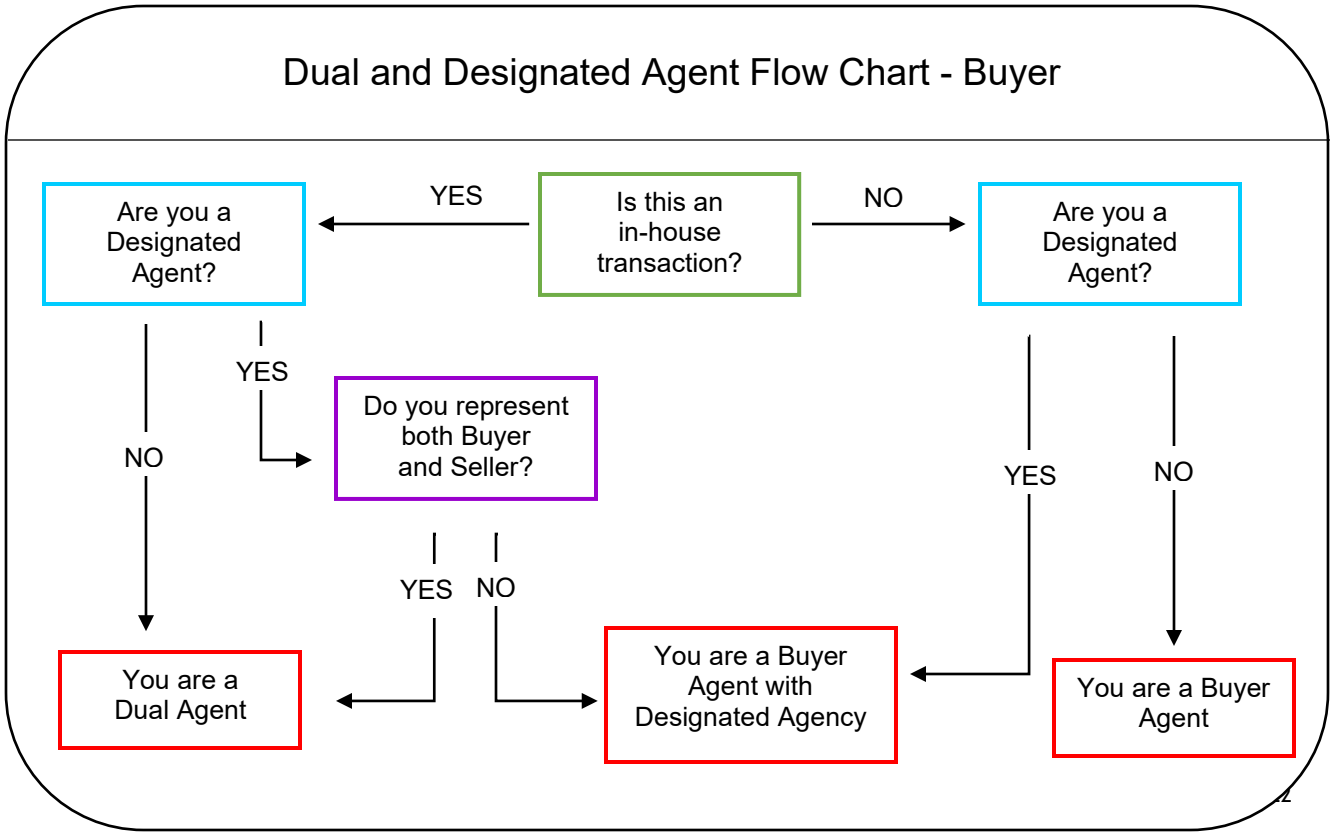
Licensee status will also depend on whether the transaction is an **in-house transaction** or a **cooperative** ("co-op") **transaction**.

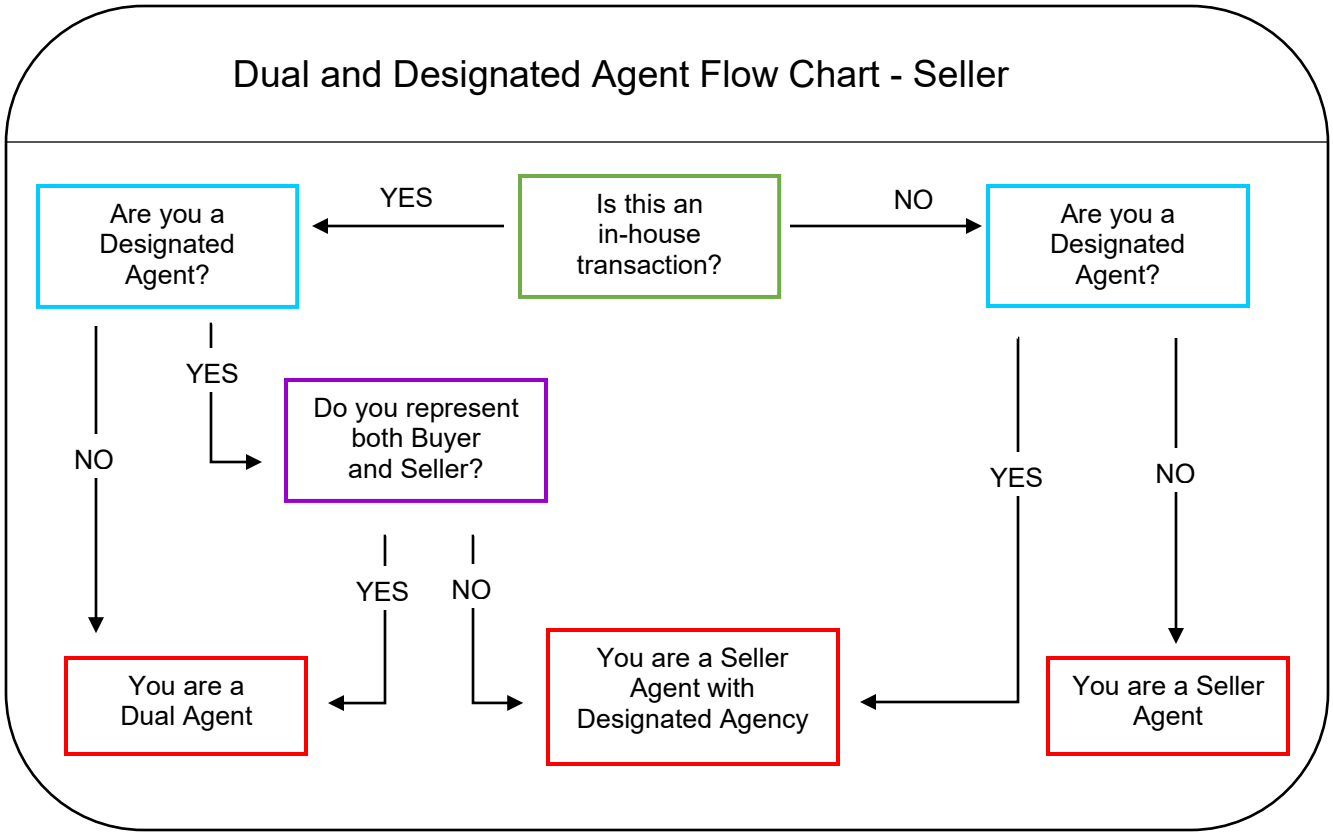
In a cooperative transaction, the licensee on each side of the transaction represents only one party, so dual agency is not an option. In this type of transaction, the Licensee needs to know whether her broker does or does not practice designated agency. If yes, select Agent with Designated Agency. If no, select Agent.

In an in-house transaction a Licensee can only select Dual Agent or Agent with Designated Agency. If the broker does not practice designated agency, the Licensee(s) representing both parties are considered to be dual agents. If the broker does practice dual agency, select Agent with Designated Agency if different Licensees represent the parties, or select Dual Agent if the same Licensee represents both parties.

> **Practice Tip**: When filling out the Business Relationship Blocks, keep in mind that only the legal name and address of Pennsylvania licensed real estate offices should appear in these blocks. Don't use office nicknames or home addresses if they are not approved by and registered with the State Real Estate Commission.
>
> **Practice Tip:** If you are unsure about information regarding the other agent in the transaction -- especially whether or not they are working as a designated agent -- do not fill in that information. Rather, contact the Broker or Licensee to learn of their status or ask the other Broker or Licensee to fill in the information when they have the Agreement.

Answer the questions in the flow charts below to determine which box to check on the Agreement.





Paragraph 1: DATE

To establish the date of the offer, insert the date that the Agreement is signed by the first party
(usually the Buyer) in the "dated" blank. Do not pre-date or post-date the Agreement.

> **Practice Tip**: This identification date on the Agreement should not change as the form is being passed between the parties in negotiation. The purpose of this date is to identify which "version" of the original contract is being negotiated. If the parties should write a new Agreement for the transaction it would be acceptable to start that version of the Agreement with a new date.

Paragraph 2: PURCHASE PRICE AND DEPOSITS

Subparagraph (A): Purchase Price

Write in the Purchase Price by using numbers on the first line and write it out on the second and third lines. Do not use 00/100 or No/100 as when writing a check.

> *Example*: Purchase Price $ **153,000 (One Hundred and Fifty-Three Thousand** U.S. Dollars), to be paid by Buyer as follows:

> **Practice Tip:** When filling out the Agreement to submit the initial offer, write the purchase price to the far left of the line to permit a Seller to submit a

counter-offer by crossing out the original amount and inserting a new amount on the same line.

(1) Initial Deposit: A Buyer will generally provide some sort of deposit or down payment immediately upon or shortly after the Seller's acceptance of the Agreement. It is more common these days for an Agreement to be signed and submitted electronically. When that occurs, the deposit check is typically not provided at the same time but arrives within a few days. If the Agreement is being signed and will be delivered without the indicated deposit, fill in a number of days that will afford you time to deliver the check to the Seller.

> **Note:** This Agreement of Sale refers to all monies paid by the Buyers as "deposits" -- most references are to "deposit monies paid on account of purchase price." Market practice may be to refer to these deposits as "down payments," "down money," "earnest money" or other similar terms.
>
> **Note:** There is no legal requirement to provide a deposit, although it is common practice in almost all markets to do so. The amount is open to negotiation. An Agreement presented without a deposit is still valid.

(2) Additional Deposit: The Sellers may request additional deposits at specified times during the transaction as a show of commitment by the Buyer. If any additional deposit is to be paid, the amount of the deposit and the time for delivery are indicated on this line. Be sure to advise the Buyer that making this payment on time is an obligation of the Agreement, and that there may be consequences for late payment. See Paragraph 5 (Dates/Time is of the Essence) and Paragraph 26 (Default, Termination and Return of Deposits) for more information.

(3) Blank line: If there is any other scheduled payment, list it on this line *with the date the payment is due*. **Do not insert the amount of the mortgage on this line** unless the Seller is taking back a
Purchase Money Mortgage or the Buyer is assuming the Seller's existing mortgage. If it is any other type of mortgage, use Paragraph 8 (Mortgage Contingency).

> **Note:** If the transaction does not proceed to closing, the Buyers' deposits must be accounted for and distributed. Certain circumstances may result in some or all of the deposits being retained by the Seller, while others may result in some or all of the deposits being returned to the Buyer. Pay special attention to the various termination and default clauses throughout the Agreement so you can inform your client about the proper treatment of deposit monies should the issue arise during the transaction. See Paragraph 26 for more information.

(4) Remaining balance will be paid at settlement: Whatever amount remains after all deposits have been subtracted from the Purchase Price will be paid by the Buyer at the settlement. This language is intended to prevent errors of arithmetic from being made as there is no need to calculate the total. This also eliminates the need to

remember to update the total in this paragraph when changing the Purchase Price or deposits for a counteroffer.

> **Practice Tip:** Buyers often prefer to make very small deposits, hoping to minimize their exposure should they default on the Agreement for some reason. Sellers, on the other hand, often will request higher deposits to help protect them from a Buyer default. When working as a Buyer agent, it may be worth reminding your client that negotiating deposits can sometimes be as effective as negotiating the purchase price. For example, faced with two Buyers offering similar prices, a Seller may lean towards the Buyer offering a higher deposit rather than a Buyer with a small deposit but a slightly higher purchase price.

Subparagraph (B): Mode of payment for deposits/holding money in escrow
This subparagraph contains two provisions, each of which relates to the methods in which deposits are paid and held pending settlement. First, deposits paid 30 days or more before Settlement Date must be in the form of a check, cashier's check or wired funds. Deposits paid within 30 days before Settlement Date must be in the form of a cashier's check or wired funds, not by personal check. This is designed to protect the Sellers by ensuring that funds provided at or near settlement are legitimate.

> **Practice Tip:** It is important to make it clear to Buyer clients, who may believe that a personal check would be sufficient for this purpose, that personal checks and certified checks are not listed as permissible methods of payment. A Seller has the authority to accept a personal check if they wish, but if they accept the personal check as payment then they have likely waived any protection they would have under this provision. The parties can always alter this language to provide for alternate payment methods. Also, there is no "magic" to the 30-day limitation that is inserted as a default. The thought is that this time period is more than enough to be sure that any personal check has plenty of time to clear before settlement. Allowing personal checks too close to settlement could cause problems if the funds are not actually available at settlement. If a Seller does not wish to receive payment by wired funds it would be necessary to specify that in the Agreement. Cash is not included on the list of acceptable payment methods to protect the safety of brokers who might have to hold and transport large amounts of cash.

Subparagraph (C): Deposits to Broker for Seller
The default position of the contract is that deposits will be held by the Broker for the Seller.

If the Broker for the Buyer or other individual (perhaps an attorney or title company) is holding the deposit money, put that information on the blank line provided. It is acceptable to use the term "Broker for Buyer" in this line, as the Broker is clearly identified at the beginning of the form.

If an attorney is holding the deposit monies, use the name of the attorney or the firm; do not simply identify the attorney as "Attorney for Buyer." If an individual or entity is not otherwise identified in the Agreement, be sure to include the full name of the individual or entity to allow the parties to identify the holder of deposits.

> **Practice Tip:** Brokers are not required to place deposit monies into interest-bearing accounts. If a Broker elects to do so, the general rule is that "interest follows the principal." That is, if the sale closes and the Seller receives the deposit then the Seller is also entitled to all interest. If the sale *doesn't* close and the Buyer has the deposit money returned, then all interest returns to the Buyer. If the parties wish to treat any interest differently they should be advised to put their wishes in writing prior to signing the Agreement in order to avoid potential problems at closing. Also keep in mind that an interest-bearing account would generally be set up in the name of the party to receive the interest, so Brokers should get a W-9 form from the client prior to establishing the account. Check with your Broker for the proper method to establish an interest-bearing account if one is desired.

This subparagraph provides that the escrow agent may hold uncashed checks pending the Seller's acceptance of the offer. Under ordinary circumstances a deposit to be held in escrow must be placed in the escrow account no later than the next business day after receipt. Where both parties have agreed, though, the broker can hold a Buyer's check until the Buyer's offer has been accepted by the Seller (at which point it must be deposited the next business day).

> **Note:** The PAR Listing Contract (Form XLS) and Buyer Agency Contract (Form BAC) each contain statements of their client's permission to hold deposits paid by check. The language in the Agreement simply affirms this right. Be sure to explain to your Buyer client that this provision does not give them permission to post-date a deposit check.

> **Practice Tip:** The language in these forms say the broker "may" (not "must") hold the deposit monies paid by check. Each broker should have a policy in place on this issue.

Paragraph 3: SELLER ASSIST

If the Seller is willing to contribute any monies towards the Buyer's costs (e.g., points or other closing costs), insert the maximum amount the Seller agrees to pay.

> **Practice Tip:** The line for Seller assist can be used to state a specific dollar amount or a percentage of the sales price. Whichever is used, be sure both parties understand how that number relates to any counteroffers that are made. For example, a Buyer may need to increase a dollar amount of assistance to reflect a higher negotiated sales price; a Seller who can only afford to contribute a certain dollar amount might need to reduce a percentage of the assist if the purchase price increases.

Practice Tip: Regardless of the intent of the parties, most lenders have a maximum amount or percentage of Seller assist they permit. It is VERY important to know what the maximum amount or percentage is, so the parties do not inadvertently cause a problem in the transaction by including a Seller assist that exceeds that maximum. Remember that when the Agreement is finalized, there may be other areas (particularly in relation to Inspection Contingency) where the Seller might agree to provide a credit for some reason. Be sure to check with the lender to see if these credits might be counted against the total amount of a Seller assist. The last sentence makes it clear that the Seller is only required to pay up to the lender's maximum amount or percentage. Be careful of the following example:

> **Original Offer:** $100,000 Purchase Price, with a $6,000 Seller assist; the lender's maximum allowed Seller assist is 6%. This is not a problem because $6,000 is not greater than 6% of the Purchase Price.
> **Counteroffer:** The Purchase Price is reduced to $97,000 Purchase Price, with a $6,000 Seller assist; the lender's maximum allowed Seller assist is 6%. This *is* a problem because $6,000 represents 6.2% (greater than 6% of the Purchase Price). At closing, the Buyer is likely limited to $5,820 by lender policy.

Paragraph 4: SETTLEMENT AND POSSESSION

Subparagraph (A): Settlement Date is _____, or before if Buyer and Seller agree Always fill this in with a specific date; do not use "30 days after acceptance" or a similar term. When selecting a Settlement Date, the parties (and agents) should be careful to consult a calendar and avoid setting settlement for a weekend, holiday, or other day that may cause difficulties (such as a religious holiday or a family obligation).

Practice Tip: This provision establishes a specific date for settlement that may only be changed by the agreement of the parties. To extend settlement beyond the date set in the Agreement, it is *always* necessary to have a *written* addendum to the Agreement changing the date. Although not legally required, it is also good practice to get a written addendum to change the settlement to a date earlier than that stated in the Agreement.

Subparagraph (B): Settlement location

This Subparagraph establishes a default position that settlement will occur in the county where the property is located or an adjacent county, during normal business hours. While this is the case for most transactions, there may be Buyers and Sellers who have special needs regarding settlement that will need to be addressed. For example, a Buyer from Pittsburgh moving to Allentown might need to schedule the settlement in Pittsburgh because she knows in advance that she will be unable to travel on the proposed settlement date. This provision encourages the parties to have a conversation about these special needs early in the process rather than having one party surprised by a difficult or inconvenient request just before settlement.

Subparagraph (C): At the time of settlement, the following will be pro-rated...
The Agreement presumes that the specified taxes and other fees will be pro-rated as of time of settlement. If another basis for division is to be used, insert it in the space provided after "unless otherwise stated here."

Subparagraph (D): For purposes of prorating real estate taxes …
All counties and municipalities levy their property taxes on a calendar year basis (January 1 – December 31), while the tax year of most school districts is July 1 to June 31 (except for Pittsburgh, Philadelphia and Scranton, which use a calendar year). Aside from confusion that may arise because of the different tax years, municipalities and school districts have varying policies regarding when tax bills are mailed to residents and when payment is due. Brokers and the parties should closely examine paid and owing tax bills to be sure that any proration of taxes is properly applied. It is always a good idea to check directly with the municipality or school district if there are any questions.

Subparagraph (E): Conveyance from Seller will be by fee simple deed of special warranty
The Agreement default is that a special warranty deed will be used to convey the property, as is most frequently the case. A **special warranty deed** contains the Seller's guarantee that the Seller (Grantor) received proper title when the Property was purchased and that the Property was not encumbered during the time the Seller held title, except as noted in the deed.

The alternative would be to use a **general warranty deed**. A general warranty deed guarantees not only that the Seller didn't encumber the title beyond that which is stated in the deed, but also guarantees that the prior owner had not done so. If this is the practice in your market area, or if the parties agree, you must insert "General Warranty Deed" in the space provided after "unless otherwise stated here." Never assume that a Seller is conveying by General Warranty Deed.

Subparagraph (F): Payment of transfer taxes
The Agreement reflects the usual practice of dividing the total amount of the transfer tax equally between the Buyer and the Seller. If other terms are negotiated or are customary in your market area, insert them in the blank provided after "unless otherwise stated here."

Subparagraph (G): Possession
Possession of the Property is to be delivered by deed, keys, and physical possession. The Seller agrees that the Property will be free of debris (e.g., trash, yard waste, etc.) with any structures "broom-clean."

> **Practice Tip:** In some transactions, physical possession will not occur on Settlement Date. Sellers sometimes negotiate to remain in the Property for some period of time after settlement, and Buyers occasionally will reach an agreement to move into the Property before settlement. Where Buyer moves in

early, consider using the PAR Pre-Settlement Possession Addendum (Form PRE). In cases where Seller remains after settlement, PAR produces a Post-Settlement Possession Addendum (Form POS). Both are helpful for outlining the relationship between the parties during this time, including the payment of any fees related to possession and what happens if certain conditions are not met.

Subparagraph (H): Leased Property
If the Property is leased, and the Seller has told the Buyer in writing before signing, then the Property is not transferred by physical possession but by assignment of leases. Copies of the leases are to be initialed at the time the Agreement is signed. If leases are unavailable at the time of signing, use the Tenant Occupied Property Addendum (PAR Form TOP). There is a checkbox at the end of this Paragraph which allows you to show that this form is an addendum to the Agreement. This also serves as a reminder for you that you and your client should consider attaching Form TOP if the Property is leased.

If the Property is leased, the Seller agrees as of the Execution Date of the Agreement to not enter into any new leases or lease extensions without the written consent of the Buyer.

> **Note:** The assignment of leases from the Seller to the Buyer may be accomplished by a separate assignment agreement drafted by counsel. Alternatively, the Seller may note on the lease itself that the lease is being assigned to the Buyer in consideration of the Buyer's purchase of the Property. This clause must be signed and dated by both the Seller and the Buyer.

Paragraph 5: DATES/TIME IS OF THE ESSENCE

Subparagraph (A): Written acceptance of all parties will be on or before …
Buyer's offer will expire if both parties have not responded within the time stated in this blank. Be sure to allow enough time for the Broker for Seller to reach Seller and present the offer, but try not to allow so much time that the Buyer may miss other potential purchasing opportunities while waiting for a response. Agents representing a Buyer should consult with their clients to decide how long the offer is to remain valid. The agent might also consider contacting the Broker representing the other party about the other party's accessibility before preparing the Agreement, if possible. Three to five days is often sufficient, but there may be many valid reasons to state a time that is longer or shorter (e.g., longer where the other party lives out of town or is on vacation, shorter if one party has a very tight settlement deadline or it is a particularly "hot" property).

> **Practice Tip:** Use a specific date by which all parties have to accept or reject the offer – do not simply fill in a time period (e.g., "3 days") as might be used in other sections of the Agreement.

Subparagraph (B): Time is of the essence
It is important to explain that "time of the essence" means that **all** dates and time limits within the Agreement -- inspections, replies, etc. -- must be met to avoid being in default of the Agreement.

> **Note:** Be aware that the Contingency Period in all of the inspection contingencies is the time for the Buyer to conduct inspections *and* to submit a written decision (acceptance, termination, corrective proposal) to the Seller. Failure to act on inspection results within this time period may result in a waiver of the inspection contingency and acceptance of the Property by the Buyer. (See Paragraph 11, Waiver of Contingencies).

Subparagraph (C): Execution Date and Counting of Days
The default position in the Agreement, as set forth in this subparagraph, is that the counting of days is done as follows:

- The first day of any time period is the day **after** the execution of the Agreement.
- The last day of a time period **is included** in the counting, and a time period will expire at the
  end of that last day.
- Holidays and weekends **are included** in the counting of days.
  *Example***:** An Agreement executed on Monday, July 1 provides that the Buyer must apply for mortgage financing within 10 days:
  - The first day of the time period is Tuesday, July 2.
  - The Fourth of July holiday (Thursday) **is counted**.
  - The weekend days of July 6 and 7 **are counted**.

  The Buyer has until the end of Thursday, July 11 (the 10th day) to make a completed application. If the application is not completed before 12:01 a.m. on July 12 the Buyer is in default.

> **Note:** Where a Buyer might need a longer period to conduct inspections an agent's instinct might be to alter the Agreement to provide that the days counted should be "business days." This practice is *not* recommended, as it has the potential to cause as many (or more) problems as it might solve. For example, the parties may differ over the treatment of some of the "minor" holidays (e.g., Columbus Day, Presidents' Day). Likewise, with more and more businesses, including banks, open on Saturdays or doing business every day of the year via fax and the internet, one could argue that every day is a "business day." More importantly, this change does not take into account circumstances that might arise from other special needs. For example, if your client is planning to take a vacation or will be observing a religious holiday on the last day of a time period it doesn't matter what kind of days you're counting – the client still won't be available.

> **Practice Tip:** Agents are encouraged to double-check the calendar once the Execution Date is established to be sure that there will be no problems with

meeting the deadlines as set forth in the Agreement. The "Execution Date" of the Agreement is defined as the date when both parties have approved the Agreement, as evidenced by their signatures and/or initials. It is especially important to be sure that all changes to the Agreement are properly initialed *and dated* so it is easy to determine the date of the last change.

Note: Legally, it is always required that the Agreement be delivered to the other party to complete acceptance. The primary reason that the "Execution Date" defined in the Agreement does not depend on delivery, however, is that a "delivery date" cannot always be easily proven, where finding the last dated change on the form is much easier and is much less subject to interpretation. Keep in mind that licensees are legally and ethically required to deliver all completed contracts promptly, so there should be very little delay between the signing/initialing of an Agreement and delivery.

Subparagraph (D): Settlement Date not extended
The Settlement Date is **not** automatically altered if the various times and dates in an Agreement do not add up correctly; **settlement can only be delayed by written agreement of the parties**. For example, if settlement is set for a date 45 days from the execution date of the contract, you must be careful to make sure that all inspections, negotiations, etc. are to be completed on or before that 45th day. When determining the time period for the various contingencies, inspections and other provisions of the Agreement, be sure that the obligations of the parties are all scheduled to be completed before the selected settlement date. Similarly, if it is necessary to extend other timelines established in the Agreement, be sure that these extensions do not extend past the Settlement Date.

Subparagraph (E): Certain terms and time periods pre-printed
All provisions in this Agreement that call for a task to be completed within a certain number of days have been supplied with a default number of days for that task. Many time periods (the Seller's request for a Certificate of Resale, for example) have simply been preprinted in an underlined blank. These lines are long enough that a party wishing to change the time can cross out the pre-printed text and insert a different number in the remaining blank area of the line. Other time periods (e.g., the Contingency Period) have been left blank, but provided with a parenthetical default position in the event the blank is not filled in (for example, "Within ____ DAYS (15 days if not specified) of the Execution Date of this Agreement…"). This alerts the parties to time periods that may require more thought or negotiation, but provides a fallback if the blank is not filled in.

Practice Tip: If the parties wish to use the default time periods in the locations where blanks are provided it is not absolutely necessary to fill in the blank, but best practice would be to do so anyway. Even with a default provided, it is inadvisable to proceed with an Agreement that has any unfilled blank lines, especially considering that a misunderstanding over one of these time periods could cause major problems in the transaction.

Note: There are some provisions in the Agreement that are required by law (e.g., Department of Transportation, Zoning, Coal Notice) that should not be modified.

Paragraph 6: ZONING

Pennsylvania law requires that the Agreement contain the zoning classification of the Property unless it is in an area that is zoned primarily or exclusively for single-family homes. **If the Property is zoned to permit anything other than a single family dwelling, the zoning classification must be stated in the Agreement or the Buyer will have the right to void the contract.** If the zoning classification is not primarily or exclusively residential, insert the zoning classification in the space provided.

The language of the Agreement directs you to use the local zoning ordinance as your source for this information. Be careful to avoid using municipal directories or the Seller's representations, which may not be accurate. Confirm the classification with the municipality at the time the Property is listed, and perhaps again at the time of sale. If there is any question regarding permitted uses, have the Buyer contact the municipality directly.

Practice Tip: Because zoning is often referred to by a letter/number combination that may mean different things in different municipalities, it is generally advisable to include a short description of the types of permitted uses as well.

Example: **Zoning Classification: R-2 Residential, Single and Two-Family Dwellings**

Where the zoning classification is not required, it is better to insert N/A, or the actual zoning classification, rather than leave the line blank.

Practice Tip: Some municipalities do not have zoning restrictions. To avoid confusion it is advised that you write in language to that effect (e.g., "No zoning ordinances in this municipality").

Paragraph 7: FIXTURES AND PERSONAL PROPERTY

Subparagraph (A): Fixtures

"Fixtures" are pieces of personal property that have been attached to land or a building in such a way that makes removal impractical. For example, a gas fireplace is an item of personal property but once it has been installed in a living room and dressed up with shelves and a mantle, it is more likely to be regarded as a fixture. While disputes over these items are not new, advancing technology makes certain items of personal property inherently more mobile and less inclined to be attached to the property in any sort of permanent way; however, this does not necessarily mean that the item is not a fixture. The point of this language is to remind the parties that they should be very specific when negotiating which items of personal property will be included with the sale and which will not. It is better to spend some time clarifying

what you might think is obvious at the outset than fighting over it the morning of settlement.

Subparagraphs (B) and (D): Included/Excluded
Subparagraph (A) specifies what existing items are included in the sale of the Property. Additional items included in the sale can be listed on the lines provided. Cross out any pre-printed items that are not included and have both the Buyer and the Seller initial and date the deletions, and/or specify any excluded fixtures and items in Subparagraph (C). If there are other items not listed in this paragraph, use the blanks to clearly state which items are to be included or excluded (swing-set, etc.).

> **Practice Tip:** Be sure to familiarize yourself with the pre-printed list of "included" items in Subparagraph (A), as local practice may not have some of these items automatically included in the transaction without further negotiations (e.g., some markets may not automatically include the range in a transaction). Also, make sure your clients are aware that an included item is generally meant to be the exact item that was in the Property when seen by the Buyer. The Sellers should not attempt to substitute lesser items in place of those usually on the property unless otherwise agreed to (e.g., do not replace an expensive appliance with a cheaper second-hand item).

Many lenders do not like to see items of personal property, such as those listed in Subparagraph (A), included in the sale of the Property. From their point of view, the mortgage is secured by the real property only and any of the personal property listed should not be included in the transaction. The language at the end of the paragraph is intended to remove the value of the personal property listed from the transaction, without removing the personal property itself.

Subparagraph (C): Leased
Any leased items or systems (e.g., propane tanks, security systems, water treatment systems) on the Property should be listed in Subparagraph (C). This puts the Buyer on notice that these items are not owned by the Seller and that the lessor might remove the items unless arrangements are made for them to remain. If the items are to remain on the Property, the responsibility for the lease(s) may automatically transfer to the Buyer. Make sure that the Buyer understands the terms of the lease(s) and what will happen to the leased items when the transaction is completed. The Buyer should be encouraged to contact the lessor to make arrangements for use and payment of leased items, or for their removal.

> **Practice Tip:** The Agreement is the final word on what is included or excluded in the sale of the Property. **Do not** rely on information stated in a highlight sheet, MLS description sheet or the Seller's Property Disclosure Statement, as these documents are not part of the Agreement. Also, keep in mind that the information in these outside documents may not be correct and may not reflect the terms negotiated between the parties.

Paragraph 8: BUYER FINANCING

Subparagraph (A): If Buyer is getting a loan

Further along in this paragraph, Buyer may choose to elect the financing contingency, which would mean that if their loan to purchase the Property is not granted then they would not be in breach of the Agreement for not buying it. Buyer may also decide to waive the financing contingency, which means that Buyer's failure to complete the purchase (based on lack of funding) would be a breach of contract. No matter which option Buyer ends up selecting, Buyer is always permitted to try to get financing for the purchase and if they do, then the terms in this subparagraph apply to the transaction.

1. If Buyer is making an application for financing, they must do so honestly. Buyer must provide all necessary information and cooperate with the lender in the process. Failure to cooperate in good faith, or failure to provide truthful information, may be considered default of the Agreement. Failure to pay the lender for a credit report or appraisal when asked would make Buyer in default of this Agreement.

2. Buyer should not delay seeking financing. Buyer is obligated to submit a loan application within the specified time period (7 days, if no other time is specified). That loan application must be *written, completed and submitted* by the end of the time period; inquiring about financing, providing oral information to a lender or submitting a partially completed application does **not** meet this requirement. Additionally, Buyer must pay the lender for a credit report or appraisal when requested by the lender.

The loan application must be made according to the terms stated in subparagraph (F), if any, including the amount, term, interest rate, and lender. Failure to make application according to the agreed-to terms may be a breach of the Agreement, especially if financing is denied based on the actual application where it would have been approved based on the stated terms. The broker for Buyer or, if none, the broker for Seller, is authorized to communicate with the lender in order to assist in the loan process.

> **Practice Tip:** Lenders are generally prohibited from revealing financial information about customers/applicants without consent. This provision provides consent for the broker(s) to communicate with the lender and have access to this financial information. Lenders might ask for a copy of this language and a copy of your client's signature on the Agreement as proof that they are permitted to communicate with you.
>
> **Note:** If you have attached the PAR Short Sale Addendum (Form SHS) to the Agreement, the Seller might be obligated to communicate any change in the terms or conditions relating to the transaction to the Buyer.
>
> **Practice Tip:** If Buyer does not identify a lender in subparagraph (F), Buyer can apply to any "reputable" lender of Buyer's choice. Even if a lender is

identified, Buyer can still make additional applications, as long as an application to the original lender is also made. The Agreement does not prohibit Buyer from accepting a loan from another lender, but if that financing agreement falls through Buyer may be in default. Best practice is to submit an addendum (Form CTA) to Seller if Buyer decides to apply to a different lender, so there is no issue regarding permission. If the additional lender is reputable, most sellers should not have a problem agreeing to that sort of change.

3. Seller agrees to provide access to insurers' representatives, and, as required by the lender or the terms of the Agreement, any surveyors, municipal officials, appraisers and inspectors *even if the Buyer has waived the right to make these inspections elsewhere in the Agreement*. For example, if Buyer waives the right to a wood infestation inspection in Paragraph 13, but the lender requires a wood infestation test, then Seller is obligated to accommodate that request. Even where the financing contingency is waived, Seller still agrees to allow inspection and appraisals as required by the lender. If repairs are required as a condition of getting the loan, the process is addressed further along in this Paragraph.

4. If Buyer is given the right to lock in an acceptable interest rate for the loan, then they must do so at least 15 days (or another time period as negotiated by the parties) before the Settlement Date. The purpose of this is to prevent last-minute delays that could have otherwise been prevented had Buyer confirmed the loan earlier.

> **Note:** The "Know Before You Owe" Rule implemented by the Consumer Financial Protection Bureau (CFPB), otherwise known as TRID, requires mortgage lenders to provide the Buyer with a Loan Estimate (LE) within three days of receipt of the Buyer's mortgage application. When the interest rate is locked at the time of the delivery of the LE, the date and time (including the applicable time zone) when the lock period ends must be disclosed.
>
> **Note:** Remember that APR includes not just loan interest rates, but other elements such as fees. Buyer agents should help the Buyer set those fees as early as possible to avoid problems later in the transaction.

5. If the lender or a property and casualty insurer require repairs to the Property as a condition of getting financing, then Buyer must provide a copy of the written requirements to Seller. Seller then has two choices.

The first option is that Seller makes the required repairs. If the repairs are made, Buyer must proceed with the purchase of the Property under the terms of the Agreement. The second option is that Seller chooses not to make the repairs or doesn't respond to Buyer's notice within the time required. If this happens, then Buyer has two choices. The first is for Buyer to make the required repairs at their own expense, the second is to terminate the Agreement. If Buyer is willing to make the repairs, Seller may not "unreasonably withhold" permission for Buyer to do the repairs or access to the Property to be able to perform the repairs. A request from

Seller that Buyer sign a pre-settlement possession addendum is not an "unreasonable" withholding of permission or access; this is not to say that the *contents* of an addendum will always be reasonable, merely that it's reasonable for Seller to request an addendum. If Buyer terminates under this provision, the Agreement is void and all deposit monies are returned to Buyer.

Subparagraph (B): Loan-to-Value
The **Loan-to-Value Ratio** (LTV) is used by lenders as one tool to help assess the potential risk of a mortgage loan. LTV is determined by dividing the requested loan amount by either the Purchase Price or the appraised value of the property, **whichever is lower**. The appraised value of the Property is used by lenders to determine the maximum amount of a mortgage loan. The appraised value is determined by an independent appraiser, subject to the mortgage lender's underwriter review, and may be higher or lower than the Purchase Price and/or market price of the property. A particular LTV may be necessary to qualify for certain loans, or the Buyers might be required to pay additional fees if the LTV exceeds a specific level.

Example:
Situation 1: A Buyer is planning to put in an offer for a property with a $100,000 Purchase Price. The Buyer intends to put down 20 percent ($20,000) and borrow 80% ($80,000) and anticipates their appraisal will come in at $100,000. The Buyer would not be comfortable with any LTV ratio that is greater than 80%, so they have written in a maximum of 80% in the LTV blank in the first mortgage box.

Outcome 1: If the appraisal ends up coming in at the $100,000 that was anticipated, the LTV ratio would be 80% ($80,000/$100,000). In this case, because the LTV ratio of 80% does not exceed the maximum amount stated in the Agreement, the terms of Paragraph 8(A) have been met.

Outcome 2: If the appraisal ends up coming in at $97,000, not the $100,000 that was anticipated, the LTV ratio would be 82.5% ($80,000/$97,000). In this case, because the LTV ratio of 82.5% exceeds the 80% maximum amount stated in the Agreement, the terms of Paragraph 8(A) have not been met.

Outcome 3: If the appraisal ends up coming in at the $103,000, $3,000 more than was anticipated, the LTV ratio would be 80% ($80,000/$100,000) because the Purchase Price is used in the calculation since it is lower than the appraised value. In this case, because the LTV ratio of 80% does not exceed the maximum amount stated in the Agreement, the terms of Paragraph 8(A) have been met.

Situation 2: A Buyer is planning to put in an offer for a property with a $100,000 Purchase Price. The Buyer intends to put down 10 percent ($10,000) and borrow 90% ($90,000) with two loans – a first mortgage for $80,000 and a second mortgage for $10,000. The Buyer anticipates their appraisal will come in at $100,000. The Buyer would not be comfortable with any LTV ratio that is greater than 80% for the first mortgage and 10% for the second mortgage, so they have written in a maximum of 80% in the LTV blank in the first mortgage box and a maximum of 10% in the LTV blank in the second mortgage box.

Outcome 1: If the appraisal ends up coming in at the $100,000 that was anticipated, the LTV ratio would be 80% ($80,000/$100,000) for the first mortgage and 10% (($10,000/$100,000) for the second mortgage. In this case, because the LTV ratios of 80% and 10% do not exceed the maximum amount stated in the Agreement, the terms of Paragraph 8(A) have been met.

Outcome 2: If the appraisal ends up coming in at $97,000, the LTV ratio would be 82.5% ($80,000/$97,000) for the first mortgage and 10.3% (($10,000/$97,000) for the second mortgage. In this case, because the LTV ratios of 82.5% and 10.3% exceed the maximum amount stated in the Agreement, the terms of Paragraph 8(A) have not been met.

Outcome 3: If the appraisal ends up coming in at the $103,000, $3,000 more than was anticipated, the LTV ratio would be 80% ($80,000/$100,000) for the first mortgage and 10% (($10,000/$100,000) for the second mortgage, because the Purchase Price is used in the calculation since it is lower than the appraised value.
In this case, because the LTV ratios of 80% and 10% do not exceed the maximum amount stated in the Agreement, the terms of Paragraph 8(A) have been met.

Situation 3: A Buyer is planning to put in an offer for a property with a $100,000 Purchase Price. The Buyer intends to put down 10 percent ($10,000) and borrow 90% ($90,000) and anticipates their appraisal will come in at $100,000. The Buyer has some flexibility and would be comfortable with an LTV ratio up to 95% for their first (and only) mortgage, so they have written in a maximum of 95% in the LTV blank in the first mortgage.

Outcome 1: If the appraisal ends up coming in at the $100,000 that was anticipated, the LTV ratio would be 90% ($90,000/$100,000). In this case, because the LTV ratio of 90% does not exceed the maximum amount stated in the Agreement (95%), the terms of Paragraph 8(A) have been met.

Outcome 2: If the appraisal ends up coming in at $95,000, not the $100,000 that was anticipated, the LTV ratio would be 94.7%

($90,000/$95,000). In this case, though the LTV is higher than the Buyer's original intentions, because the LTV ratio of 94.7% does not exceed the 95% maximum amount stated in the Agreement, the terms of Paragraph 8(A) have still been met.

Outcome 3: If the appraisal ends up coming in at $94,000, not the $100,000 that was anticipated, the LTV ratio would be 95.7% ($90,000/$94,000). In this case, because the LTV ratio of 95.7% exceeds the 95% maximum amount stated in the Agreement, the terms of Paragraph 8(A) have not been met.

Outcome 4: If the appraisal ends up coming in at the $103,000, $3,000 more than was anticipated, the LTV ratio would be 90% ($90,000/$100,000) because the Purchase Price is used in the calculation since it is lower than the appraised value. In this case, because the LTV ratio of 90% does not exceed the maximum amount stated in the Agreement, the terms of Paragraph 8(A) have been met.

Subparagraph (C): FHA/VA Endorsement
The language in this Paragraph is required by the FHA/VA to process a mortgage application. Insert the Purchase Price as stated in Paragraph 2 in the blank. Keep in mind that the lender may require the Buyers to acknowledge a similar statement on the lender's form.

Note: Subparagraphs (C) - (E) apply ONLY where the Buyer is obtaining an FHA or VA backed mortgage.

Subparagraph (D): HUD Notice to Purchasers
HUD rules require lenders to provide a notice called "For Your Protection: Get a Home Inspection" to the Buyers getting an FHA-backed mortgage. The requirement is that the Buyers receive the notice *before* signing an Agreement of Sale. If you or a lender provided this notice to the Buyer before they signed the Agreement, have them acknowledge it by marking the checkbox.

Practice Tip: If the Buyer decides to make application for an FHA loan after signing the Agreement, lender practice is generally to provide the notice, then ask that the Buyers re-execute the Agreement of Sale to meet the requirement that the notice be provided prior to the Agreement being signed. If your Buyer is asked to amend the form to reflect a new execution date, remember that this new date may change all the timelines previously established in the Agreement unless an addendum states otherwise. Be sure to consult with both parties (and your broker) to be sure that everyone understands how this issue will be handled.

Practice Tip: If brokers wish to provide this notice to the Buyers on their own, a copy can be obtained from HUD or any lender who processes FHA loans. A

copy is also available as a free download on the PAR website, designated as Form FYP. Where you believe the Buyer might qualify for this type of loan, providing the notice in advance can avoid any of the above issues.

Subparagraph (E): Certification
FHA mortgage guidelines require the parties to certify that the Agreement is a true and complete record of the transaction. This statement says that the parties' certification is evidenced by their signature on the Agreement. Brokers are also required to attest to the accuracy of the Agreement. This certification will be provided by the lender as part of the loan process; Brokers are not a party to the Agreement, so there is no place for them to provide that acknowledgement on the form.

Subparagraph (F): Financing contingency
Here is where Buyer will indicate whether the Agreement will be contingent upon financing. If Buyer is proposing a cash transaction, this will likely be waived. Buyer may also waive this contingency where they are applying for financing but are willing to do so without the protection provided by the contingency. For example, a solid buyer might waive the contingency, even knowing that financing is necessary, because the waiver will make the offer appear to be stronger to the seller. At the same time, however, the buyer who waives the contingency in this circumstance will be in default of the Agreement if financing is not secured, leading to the likely loss of any deposit and the possibility of additional legal action. Waiver of this contingency should be done with great caution, and only after fully advising a client of all possible repercussions.

> **Note**: Buyer may obtain financing even if the financing contingency is waived. If it has been waived, Buyer may still be getting a loan and Seller would need to cooperate with that process where required, unless the contract specifies that Buyer is going to pay cash. The parties may want to use the Appraisal Contingency Addendum (Form ACA) to include an appraisal contingency whether or not the financing contingency has been elected.

Delivering proof of approval
When Buyer receives written proof of the lender's approval, a copy of that documentation will need to be provided to Seller. Use a specific date for the Commitment Date - the deadline for Buyer to deliver a copy of the approval to Seller. Because time is of the essence, be realistic in establishing this date by considering all the elements in the approval process. Seller must receive a copy of the written approval by the deadline or Seller will have the option to terminate the Agreement in writing. Notifying Seller via email or telephone is not sufficient.

> **Practice Tip:** While selecting a date to put in the blank, be sure to include time for: acceptance of the offer by Seller, filling out and submitting an application. action on the application by a lender, delivery of a copy of the approval to Seller, and any necessary cushion for unexpected delays or

glitches. Many of these items will be based on market practice or the practice of local lenders; be sure to have all this information at hand before filling out the Agreement so you can provide a realistic estimate for your client.

Loan terms

Pay special attention to the needs of your buyer clients when filling out the terms in this subparagraph -- don't just fill in "the usual" and then figure out after an offer is accepted if the client has any special needs for financing. Although this section may not seem significant, keep in mind that in a competitive market a seller may accept or reject a particular offer based on the perceived likelihood that a buyer will be able to obtain financing. Changing the terms of an application may have a material impact on Buyer's ability to obtain the desired financing. Applying for different terms or to a different lender than listed in the Agreement may not be a default by itself, but if Buyer is turned down for financing and hasn't applied on the stated terms then they may not be entitled to a return of their deposit monies and may be in default at that point.

> **Practice Tip:** Should Buyer decide to apply for financing that differs from any of the financing terms listed in the Agreement, the Agreement should be changed with a written addendum.

Specify the amount of the loan Buyer will apply for, the term of the loan (number of years), and the interest rate that Buyer is seeking. Regulations of the State Real Estate Commission state that you must include a "cap" or maximum interest rate that Buyer will accept if offered by the lender. Insert that amount into the blank provided. Buyer also has the option to identify the lender to which Buyer will submit an application.

> **Practice Tip:** List a specific interest rate that Buyer will apply for; do not use terms like "prevailing rate" as there is no legal rate identifiable as the "prevailing rate."

> **Practice Tip:** The purpose of asking Buyer to identify a lender is to help both Seller and Buyer avoid those lenders that may have been problematic in the past. For example, some lenders may be more likely than others to delay settlement dates or have problems with the availability of funds. In discussing this issue with buyer clients, buyer agents should suggest that their clients do their preliminary research of lenders well in advance of making an offer so they can find lenders with good business reputations without the pressure of an immediate application deadline. Listing agents can help sellers avoid problems by flagging those Agreements where buyers indicate their preference to use lenders with less than stellar reputations.

> **Note:** In neither case should a broker or salesperson "steer" the client towards or away from any particular lender. Keeping all information factual and experienced based is always recommended (e.g., "You can use whomever

you'd like, but I've had 3 deals with that lender in the last year and all have had delayed closings" would be acceptable advice. "I won't submit the offer unless you change the lender" would not be acceptable).

Note: The terms of the loan commitment need to match *all* of the criteria laid out in Paragraph 8(B). If *all* criteria are not met, Seller may have the right to terminate.

Locking in rates
Buyer may have options to lock in or float certain mortgage terms. Paragraph 8 has two provisions encouraging Buyers to lock in terms when they can. The first was addressed in Subparagraph (A), above. The second as stated here says that if the Buyer has the right to lock in mortgage terms at or below the maximum stated, they are deemed to have met the terms of the Paragraph, even if they later goes beyond the stated parameters.

Example: The Buyer sets 6.25% as the maximum interest rate in 8(F) and the lender offers the Buyer the chance to lock in at 6%. The Buyer does not lock in, hoping the rate will come down. Instead, the rate jumps to 6.375% by the time the Buyer has to finalize the loan. Because the Buyer could have locked in at 6% (or any other rate at or below 6.25%), the Buyer is deemed to have met the stated criteria.

Seller termination
After the Commitment Date listed in Paragraph 8(F), Seller may terminate the Agreement in writing if any of the following are true:

1. If a copy of the approval is not delivered to Seller by the Commitment Date. Remember, time is of the essence! If a copy of the documentation is not delivered by the deadline, Seller has the right to terminate the Agreement **at any time** until that documentation is received. Buyer must **promptly** deliver a copy of the documentation to Seller or the Broker for Seller. The mortgage contingency is not satisfied until a copy of the written approval is delivered to Seller, so Buyers should be sure to make delivery as early as possible.

2. The loan approval does not reflect the terms stated in subparagraph (F), including the amount, term, interest rate, and lender. Failure to make application according to the agreed-to terms may be a breach of the Agreement, especially if financing is denied based on the actual application where it would have been approved based on the stated terms.

Practice Tip: If Buyer does not identify a lender, Buyer can apply to any "reputable" lender of Buyer's choice. Even if a lender is identified, Buyer can still make additional applications, as long as an application to the original lender is also made. The Agreement does not prohibit Buyer from accepting a loan from another lender, but if that financing agreement falls through Buyer

may be in default. Best practice is to submit an addendum (Form CTA) to Seller if Buyer decides to apply to a different lender, so there is no issue regarding permission. If the additional lender is reputable, most sellers should not have a problem agreeing to that sort of change.

3. If Buyer's approval contains any additional conditions that are not removed by Buyer within 7 days of the deadline. This 7-day period allows the Buyer to satisfy or convince the lender to remove any condition, large or small. There is an exception here for conditions that are generally handled at or near the time of closing. For example, where lenders require confirmation of employment just before settlement, it would be unreasonable to permit Seller to terminate over such a routine contingency. This doesn't mean that Buyer can just put off satisfaction of contingencies until settlement, though. If the contingency can be satisfied within 7 days, Buyer must do so.

> **Practice Tip:** To prepare an Agreement that is contingent upon the sale and settlement of other Property owned by Buyer, include an addendum stating that the provision concerning Seller's right to terminate based on sale and settlement of other property does not apply. PAR Form SSP (Sale & Settlement of Other Property Contingency), Form SSPCM (Sale & Settlement of Other Property Contingency with the right to Continue Marketing), and Form SSPTKO (Sale & Settlement of Other Property Contingency with Timed Kickout) all have the appropriate language. If Buyer's current Property is already under an Agreement, use Form SOP (Settlement of Other Property).

> **Note:** Lenders will often issue an approval with conditions (e.g., "This commitment conditioned upon borrower providing copies of income tax returns."). The language in this provision provides that Buyer has 7 days from the deadline — **not** the date the approval is received — to clean up any of these contingencies. Buyers are encouraged to leave *at least* 7 days between the deadline and Settlement Date to allow for the operation of this provision; leaving at least 10 days is even better, as that permits time to provide appropriate notice for settlement or to clear up any remaining issues before settlement. Further, this provision in the Agreement provides an incentive to lenders to issue a second "clean" approval letter once contingencies are met, to help Seller know that the conditions have actually been removed.

Seller has the right to terminate the Agreement until the time Buyer provides them with the loan approval. Until Seller terminates, Buyer is still obligated to seek financing. If financing is not received by the Settlement Date, the Agreement expires. The Settlement Date cannot be extended except by written agreement of the parties. Remember that Buyer is under an obligation to submit a valid mortgage application and has a general duty to cooperate in the processing of that application. If an inability to obtain financing is due to action or inaction by Buyer that violates these obligations, Buyer may be in default.

> **Practice Tip:** Where a seller has the right to terminate under this provision but does not intend to do so, the parties may want to consider adding an addendum stating that Seller waives the right to terminate under this provision.

If Seller terminates the Agreement under Subparagraph (F), OR if Buyer is unable to obtain financing in good faith (i.e., the Buyer has done everything required under the Agreement and hasn't misrepresented their finances to Seller or the lender), Buyer will have all deposit monies returned. Buyer will not be entitled to the refund of fees paid in advance and may have to pay cancellation fees.

Paragraph 9: CHANGE IN BUYER'S FINANCIAL STATUS

The idea behind this Paragraph is simple: if the Buyer's ability to purchase the property has changed because of a change in the Buyer's financial status, the Buyer has an obligation to notify the Seller and the lender of this change in writing. Not all financial changes will warrant this notification, but there are some things that would clearly require it, including buying a car, making large furniture or appliance purchases, and applying for new credit (in the form of a credit card, personal loan, or line of credit). Agents should encourage their Buyers to avoid these changes until after settlement, since these changes in credit can impact a buyer's ability to settle on the property.

Paragraph 10: SELLER REPRESENTATIONS

The Buyer may often fill out this Paragraph based on seller representations made in the MLS, the Seller's Property Disclosure or public records. If a Buyer is unsure about what to fill in for any part of this Paragraph, it is best to leave it blank and to ask the Seller to complete it. Because the Seller's signature on the Agreement indicates that these representations are accurate, the Seller should be sure to review and correct any information stated in this Paragraph for its accuracy.

Subparagraph (A): Status of Water
Check the type of water system that serves the Property.

Subparagraph (B): Status of Sewer
Check the type of sewage disposal system that serves the Property. Several legally required notices are referenced with some of the types of systems identified in this section. If the Property is not served by a public system, direct the Buyer's attention to the appropriate Sewage Notice or Notices printed in Subparagraph 10(B)(2).

> **Note:** These notices are required by the Pennsylvania Sewage Facilities Act. The parties should be encouraged to contact the local agency charged with administering the Act for information. Generally speaking, this can be done by calling the municipality and asking for the sewage enforcement officer.

Subparagraph (C): Historic Preservation
Some properties are subject to historic preservation restrictions. The restrictions can be put in place by national, state, or local governments, as well as community organizations. The Agreement assumes that historic preservation restrictions *do not* exist. If the Buyer knows of these restrictions, the Buyer should write them in when filling out the Agreement of Sale. The Seller should be sure to review this paragraph for its accuracy and revise or update the restrictions written in the Agreement as appropriate. The information in this Paragraph should match the information that was disclosed on the Seller's Property Disclosure (Paragraph 20(A) in PAR Form SPD).

Subparagraph (D): Land Use Restrictions
A property can be subject to certain land use restrictions or protections, and can potentially receive preferential treatment regarding tax assessment if the Property falls under certain laws. These restrictions and benefits can be put in place by national, state or local governments, as well as community organizations.

This Paragraph lists the most common programs that restrict land use and/or provide preferential tax treatment. A short description of the program or law is also included. Buyers and Sellers should be advised to seek the advice of legal and tax specialists to determine the implications of transferring the Property. The Seller (or the Buyer on the Seller's behalf) should check all boxes corresponding to these laws that apply to the Property.

> **Note:** More than one box can be checked, if more than one Act applies. If no boxes are checked in this section, it is assumed that the Property does not have any land use restrictions or receive preferential tax treatment.

Subparagraph (E): Seller Disclosure
The Real Estate Seller Disclosure Law requires that before an Agreement is signed, the Seller in a residential real estate transfer must make certain disclosures regarding the Property to potential Buyers. PAR Form SPD provides for disclosures beyond the minimum requirement. The Seller Disclosure Law applies to most transfers (sales, exchanges, installment sales contracts, leases with an option to buy, grants or other transfers) of one to four dwelling units.
The law defines a number of exceptions where the disclosures do not have to be made:

1. Transfers that are the result of a court order;
2. Transfers to a mortgage lender that result from a buyer's default and subsequent foreclosure sales that result from default;
3. Transfers from a co-owner to one or more other co-owners;
4. Transfers made to a spouse or direct descendant;
5. Transfers between spouses that result from divorce, legal separation or property settlement;
6. Transfers by a corporation, partnership or other association to its shareholders, partners or other equity owners as a part of a plan of liquidation;

7. Transfers of property to be demolished or converted to non-residential use;
8. Transfers of unimproved real property;
9. Transfers by a fiduciary during the administration of a decedent estate, guardianship, conservatorship or trust; and
10. Transfers of new construction that has never been occupied when:
    a. The Buyer has received a one-year warranty covering the construction;
    b. The building has been inspected for compliance with the applicable building code or, if none, a nationally-recognized model building code; AND
    c. A certificate of occupancy or a certificate of code compliance has been issued for the dwelling.

In addition to these exceptions, disclosures for condominiums and cooperatives are limited to the Seller's particular unit(s). Disclosures regarding common areas or facilities are not required, as those elements are already addressed in the laws that govern the resale of condominium and cooperative interests.

Subparagraph (F): Public and/or Private Assessments
The Seller represents that no notices or assessments that have been served on the Property remain uncorrected or unpaid as of the execution of the Agreement. The Seller's duties also include disclosure of any conditions that would violate zoning, housing, building, safety or fire ordinances, whether or not written notice has been served by the municipality. This Paragraph is not intended to require the Seller to notify the Buyer of any real estate tax reassessments, changes in millage rates, etc.

> **Note:** The language in this paragraph refers to "notice by any government or public authority." While this includes notices regarding to violation of laws or local ordinances, it is meant to cover any type of notice that might be given to a property owner by a governmental entity. For example, a notice from the state or federal government that a neighboring property has been declared to be a toxic waste site should be provided to the Buyer.

Also, the Seller must disclose knowledge of any potential notices or assessments that have not been delivered as of the execution of the Agreement. For example, if the Seller knows that their homeowner association has been actively debating whether or not to impose a new fee, that information should be disclosed to the Buyer.

Subparagraph (G): Highway Occupancy Permit
This statement is required by law. If the Property's driveway directly accesses a public road, the Buyer may be required to get a permit from the Department of Transportation. The Buyer can contact the local Department of Transportation office to determine whether a permit is required.

Subparagraph (H): Internet of Things (IoT) Devices

The addition of technology to real property has created a new aspect of real estate transactions to be considered – not only the devices themselves but also the data stored on them or transmitted to third parties. These devices are meant to be personalized to their owners and will likely have settings and information stored on them that is specific to the Seller. Some time prior to settlement, the Seller should clear whatever data they can from the devices that will stay with the Property, as well as from any personal mobile devices that connect to them. Buyers should also take some responsibility for securing the devices, which could include returning the device to factory presets and deleting stored data.

Paragraph 11: WAIVER OF CONTINGENCIES

The Buyer's failure to meet deadlines imposed by any inspection/repair contingency clause will act as a WAIVER of the contingency. Explain to the Buyer that missing deadlines will mean accepting the Property and agreeing to release the Seller and Licensees from liability.

> **Practice Tip:** The best time to start seriously discussing issues of time periods is before the offer is submitted. Remind the Buyer that any missed Contingency Period deadlines will act as a waiver. Hopefully, the Buyers who know that they may have trouble with certain deadlines will be more likely to raise these issues early if you cover them early. This way you can make any adjustments to the default time periods before it becomes necessary to negotiate an extension after the offer is accepted.

Paragraph 12: BUYER'S DUE DILIGENCE/INSPECTIONS

Subparagraph (A): Rights and Responsibilities

The Seller agrees to provide access to insurers' representatives, and, as required by the mortgage lender or the terms of the Agreement, any surveyors, municipal officials, appraisers and inspectors.

> **Note:** This provision permits inspections that may be required by a mortgage lender or insurer *even if the Buyer has waived the right to make these inspections themselves elsewhere in the Agreement*. For example, if the Buyer waives the right to a radon inspection in Paragraph 12, but the lender requires a radon test, the Seller is obligated to accommodate that request. Even where the mortgage contingency is not elected, the Seller still agrees to allow inspection and appraisals as required by the lender. If repairs are required as a condition of getting the loan, the process should be handled under Paragraph 8(H) if the Buyer has selected the mortgage contingency.

Where an inspection waived by the Buyer is later required by the lender or insurer, the Buyer may have waived any right to renegotiate contractual terms based on the results of that inspection. If the results of the inspection are unsatisfactory, the

Buyer's remedy may be to seek to terminate the Agreement based on a failure to obtain the necessary financing or insurance.

> **Practice Tip:** Only the parties and their real estate licensees have the right to attend any of these inspections. Many Buyers like to bring their parents or handy family members along to inspections, but this language intentionally limits the list of people who can attend the inspections. If the Buyer would like anyone who is not a real estate licensee to attend the inspection, it is important to include that as a term of the Agreement or negotiate with the Seller prior to the inspection.

The Buyer reserves the right to make two **pre-settlement inspections ("walk-through")** of the Property. The right to conduct these pre-settlement walk-through inspections is not waived by the waiver of any other inspection(s) or repair contingencies in the Agreement. A pre-settlement walk-through is **not** meant to be a formal inspection of the Property – it is simply to allow the Buyer to look around and make sure the Property appears to be in the condition stated in the Agreement (e.g., required repairs have been completed, appliances/fixtures have been left or removed as stated). The Buyer should not use this as the time to measure for renovations, to bring in contractors or take the extended family on a tour of the Property.

Some items may not be easily tested during the home inspection (e.g., air conditioners in winter). If this is the case, the parties must understand that the Seller has a duty to honestly disclose what the Seller knows about the condition of the item and that, in the absence of misrepresentation, the Buyer takes such item in its present condition (at the time the Agreement is executed). Also remember that inspectors may not be able to do their jobs properly if the utilities and/or heat are not on during the inspection period.

The Seller agrees to have the heat and all utilities (including fuels) on and usable for the Buyer during all inspections and appraisals.

The Sellers who fail to provide for the utilities to be usable may be suspected of misrepresentation if a problem is found later that could have been detected during the original inspection.

> **Note:** It is possible—most likely in a short sale or foreclosure situation—that the Seller will not be willing to turn on the heat and/or utilities for inspections or appraisals. If you are aware that this is the situation when you are completing the Agreement, it is a good idea to add terms that dictate which party will be responsible for turning on the utilities. For bank-owned properties, this language may be included in a lender's addendum to the Agreement.

All inspectors performing inspections under the terms of the Agreement are authorized by this provision to provide copies of their inspection reports directly to the Broker for the Buyer. The Home Inspection Law requires that a home inspector

have client consent in order to provide a copy on a home inspection report to anyone but the client (generally a Buyer). This provision provides that consent if the contract between the home inspector and the Buyer does not. Keep in mind that even with consent the inspector is not *required* to provide a copy to the Broker for the Buyer unless that is a requirement of the contract between the inspector and the Buyer. This consent provision also can be applied to any inspector who refuses to release a copy of any inspection to a Broker without client consent.

Seller has the right to obtain copies of all inspection reports from the Buyer, at no charge to the Seller. This issue is often raised in the inspection contingency, which does not *require* the Buyer to submit inspection reports to terminate the Agreement. If the Buyer doesn't submit the report, the Seller still has the right to get one upon request. The one exception to this general rule is an appraisal that is prepared for the lender. That the Buyer must provide a copy of the report, however, does not mean that the Seller gets any right to object to the content of the report, nor does it necessarily give the Seller any right to use the information in the report in any negotiations. These reports can sometimes provide notice of certain conditions that may need to be disclosed by amending the Seller's Property Disclosure Form, and the Sellers should know of their obligations before making the request. Brokers should consult with their Sellers and may even suggest that the Sellers contact an attorney before asking for reports that are not otherwise provided.

Subparagraph (B): Inspections Waived or Performed at Buyer's Expense
This Paragraph states that the Buyer agrees to pay for any elected inspections and may be waiving certain inspections. This also sets forth general qualifications of inspectors ("licensed or otherwise qualified") and specifies that the inspections must be done in a non-invasive manner unless otherwise agreed in writing.

> **Note:** Inspection(s), as defined in the Agreement, includes inspections, certifications and investigations.
>
> **Note:** All inspectors must be licensed or otherwise qualified to perform an inspection. Home Inspectors have additional requirements to meet in order to comply with the Home Inspection Law.
>
> **Note:** For the home inspection, the inspection must be performed by a home inspector, as it is defined under the law. Other inspections (i.e., wood infestation, radon) must be performed by a "licensed or otherwise-qualified professional". If the same contractor is carrying out more than one of these other Inspections, that contractor must be a Home Inspector. There is no limit to the number of different certified contractors that can be hired to perform single inspections.

Subparagraph (C): Elected/Waived Inspections
The beginning of this section lays out the general responsibilities and wishes of the Buyer with regard to Inspections, while the end allows the Buyer to elect or waive

each of the nine Inspections, plus any that are added by the parties, as desired. If the Buyer has elected any Inspection(s) in the Agreement, the Buyer must, within the Contingency Period, complete the Inspections and either accept the Property, terminate the Agreement or submit a Written Corrective Proposal to the Seller. (See Paragraph 13(B) for full instructions)

> **Practice Tip:** When electing or waiving an inspection, it is recommended that the Buyer use their initials, not a check mark or X, to indicate their choice. Doing this eliminates the possibility of a client saying, "I didn't make that check mark, my agent did!" If the Seller would like to change the choices made as part of a counteroffer, they are advised to cross out the Buyer's initials and fill in their initial on the line for the alternate selection. As with all changes to the Agreement, these initials should be dated.
>
> **Note:** The Buyer might wish to have other inspections done for his own purposes regardless of what inspection contingencies have been waived. For example, a Buyer who waives the Home/Property Inspections contingency in the Agreement still might want to have the roof inspected to be sure it is structurally sound, even though the waiver means the Buyer would be unable to negotiate new terms based on the results of any report.
>
> In that instance, best practice is to make the Sellers aware of the issue and negotiate some sort of additional language that would permit access to the inspector(s) under these circumstances. A Buyer who sends an inspector without having alerted the Seller first may find the inspector's access denied.

Home/Property Inspections and Environmental Hazards
A list of eight specific inspections follows this general "catch all" inspection. Electing this inspection allows the Buyer to do a full "home inspection" as well as conducting various other inspections not specified in one of the other inspections. There is no need to have the Buyer identify exactly which parts of the home inspection he plans to carry out, although he can do so in "Other" inspections if he would like.

If the Buyer does wish to obtain a Home Inspection, the Buyer should initial "Elected." If the Buyer does not wish to have a Home Inspection/Property inspection, the Buyer should initial "Waived."

The Pennsylvania Home Inspection Law defines what is and is not a "home inspection," and states criteria for performing home inspections. When a home inspection is conducted as a contingency in an Agreement, the Law states that the Agreement must contain a statement that the inspection will be conducted by a "full member" in good standing of a "national home inspection association," by an inspector supervised by a full member of a national home inspection association, or by a licensed or registered engineer or architect.

Practice Tip: The Buyer is entitled to rely on the written representation of a home inspector in determining whether a particular home inspector belongs to a national home inspection association. To protect your client, get a copy of any signed representation for the transaction file, and consider providing a copy to the Seller as well. The PAR Home Inspector Compliance Statement (Form HIC) can be used for this purpose.

The Law provides that an inspector may not provide a copy of the home inspection report to anyone other than the inspector's client without the written consent of the client. Paragraph 12(A)(4) provides permission to give it to the Buyer Agent and Paragraph 12(A)(5) states that a Seller has the right to receive a copy of the report from the person for whom it was prepared (usually Buyer) upon request. Remember that in most cases if the Seller is made aware of problems with the Property, these problems would likely have to be added to the Seller's Property Disclosure Form for future Buyers if the transaction is terminated.

Practice Tip: The Buyer can do as many (or as few) additional inspections under this item as they would like, but all must be completed and acted upon by the end of the end of the Contingency Period. For this reason, the home inspection should be done as soon as possible in case any issues arise that indicate other inspections should be completed (e.g., the home inspector recommends a mold inspection). If additional inspections will take more time, the parties must agree on this change in writing.

Wood Infestation
If a wood infestation inspection (for termites and other wood-boring pests) is desired, the Buyer should initial "Elected." If the Buyer wishes to waive the wood infestation inspection, the Buyer should initial "Waived."

These inspections may only be valid for a short time, so some mortgage lenders may require the inspections to be completed within a certain time before settlement, often 30-90 days. Depending on the proposed Settlement Date, the Buyer may need to adjust the contingency period to make that work.

Practice Tip: The default language in this paragraph requires that the inspector be licensed as a "wood destroying pests pesticide applicator." In short, the requirement is that the inspector be someone who is licensed by the state to treat for active infestation. This requirement was included because there is no state-mandated certification for inspectors. While most inspection companies provide some sort of inspection training, there are not consistent standards from company to company; using the state certification as a starting point allows for a certain amount of consistency. If the parties agree that another inspector is permitted, best practice would be to amend this paragraph accordingly.

Note: There is no automatic requirement for the Seller to treat an active infestation; all requests for treatment and/or repairs are handled through the Inspection Contingency.

Deeds, Restrictions and Zoning

If Buyer does wish to inspect the deeds, restrictions and/or zoning, the Buyer should initial "Elected." If the Buyer does not wish to inspect the deeds, restrictions and/or zoning, the Buyer should initial "Waived."

While the Agreement includes places for the Seller to disclose the zoning for the Property and the existence of historic preservation restrictions, it is possible that other easements, deed and use restrictions or local zoning ordinances may apply to the Property. It is recommended that a buyer investigate these possible easements, restrictions and ordinances to make sure that the intended use for the Property is in line with its permitted use.

Note: This Inspection allows the Buyer to make the present use of the property (in-law quarters, apartment, home office, day care, etc.) a term of the Agreement by writing it on the blank line. The Zoning Approval Contingency Addendum (PAR Form ZA) can be used if the Buyer would like to verify the zoning classification of the property or make the Agreement contingent on that classification being changed. If the Seller knows that the present use written in by the Buyer is not accurate, the Seller should correct it. This inspection may be satisfied by a title search, or through a narrower investigation (See Paragraph 17).

Water Service

If the Buyer does wish to obtain an inspection of the water system, the Buyer should initial "Elected." If the Buyer does not wish to inspect the water system, the Buyer should initial "Waived."

Note: The language of the paragraph does not limit inspections to non-public water service (wells). The Buyers might wish to check the "quality and/or quantity of the water system" with a public water system, in order to check the flow rate and quality of the water, just as they would with a well. If the Buyer elects to do an inspection of public water, both parties will need to keep in mind that it is unlikely the Seller can perform any repairs and corrections on the system. The Seller agrees to provide access to any on-site water system (e.g., the well), and to restore the Property before settlement.

Practice Tip: Having the Seller "provide access" to the water system may mean more than simply opening the gate and pointing an inspector towards the well. Other measures may also be necessary to "provide access," (for example, clearing brush or digging to uncover elements of the system that may be underground). The Seller also agrees to return the Property to its prior condition. If the Seller is aware that any additional expenses may be necessary

to provide access to the water system and/or to restore the Property after testing, these expenses should be calculated into the process or negotiated separately.

The Agreement does not set out a particular standard for judging the results of water quality tests. The Buyers may look to municipal requirements where they exist, or to requirements provided by lenders. Testing companies may also provide suggested limits on certain contaminants that the Buyer can use to judge the test results. If the Buyer wants to know what the water test includes, the Buyer should call the water testing company when arrangements are made for testing. Having the Buyer participate in the selection of the type of tests to be performed can reduce the potential liability of Brokers and/or Licensees.

Remember as well that this contingency can be used to test the physical soundness of the well and its systems, not just the quality and quantity of the water. The Buyers with concerns about the structural integrity of the well system should discuss with the testing company whether they provide those services, or find a separate company to test those items if desired.

Radon

To have the property tested as a contingency in the Agreement, the Buyer must initial "Elected." If the Buyer does not want to have the property tested for radon, the Buyer should initial "Waived." By law, inspectors must be specially certified by the Pennsylvania Department of Environmental Protection. Information on radon testing and certified inspectors can be obtained from the DEP.

> **Practice Tip:** Agents representing the Buyers should be aware of the time it usually takes to obtain radon reports in different markets. If inspections and reports generally take longer than the default Contingency Period, it will generally be better to build in extra time when making the offer instead of relying on the Seller's willingness to negotiate an extension.

The Environmental Protection Agency advises property owners to take corrective actions when radon levels in a home are measured at or above an annual exposure level of 0.02 working levels (4 picoCuries/liter). There are also other standards in existence, so the Buyer may not feel comfortable even with levels around 4 picoCuries/liter.

> **Note:** The Buyer can submit a written corrective proposal for <u>any</u> level of radon that is revealed during the inspection. Potential action is not limited to findings at or above 4 picoCuries/liter.

On-Lot Sewage

If the Buyer does wish to obtain an inspection of the on-lot sewage system, the Buyer should initial "Elected." If the Buyer does not wish to inspect the on-lot sewage system, the Buyer should initial "Waived."

Practice Tip: The sewage inspection contingency applies only to on-lot sewage systems – septic tanks, cesspools, sand mounds, etc. – not to public sewer systems.

Practice Tip: Having the Seller "provide access" to the on-lot sewage system may mean more than simply leaving the gate open and pointing an inspector towards the system. Other measures may be necessary to "provide access," (for example, clearing brush or digging to uncover elements of the system that may be underground). The Seller also agrees to return the Property to its prior condition. If the Seller is aware that any additional expenses may be necessary to provide access to the on-lot sewage system and/or to restore the Property after testing, these expenses should be calculated into the process or negotiated separately.

Practice Tip: Be sure to check with the sewage inspector about all the details of the inspection well in advance. A hydraulic load test is a commonly-used inspection that pushes water through the septic system to make sure that waste is moving through the system properly and can be absorbed quickly. The Agreement states that Seller will provide all water needed for any septic inspection, which may be anywhere from tens to thousands of gallons of water, especially for a hydraulic load test.

This Paragraph (like Paragraph 13(B)) only applies if the Buyer elects to have a sewage inspection and the on-site system is discovered to have **defects that do not require expansion or replacement of the existing system.** If the report indicates that **the system needs to be expanded or replaced**, the Inspection Contingency will be carried out according to the terms of Paragraph 13(C).

Note: Unlike every other inspection contingency, situations that require the expansion or replacement of the system put the responsibility to obtain the corrective proposal with the Seller, not the Buyer. This is due primarily to the extensive time and expense that may be necessary to perform the required testing and to perform the necessary work.

Property and Flood Insurance

If the Buyer does wish to make the Agreement contingent upon the Buyer's ability to obtain property and/or flood insurance, the Buyer should initial "Elected." If the Buyer does not wish to make the Agreement contingent upon the Buyer's ability to obtain this insurance, the Buyer should initial "Waived."

If the Buyer elects this contingency, the Buyer should apply for property, casualty, and flood insurance within the Contingency Period (within 10 days if the default time isn't changed). If the Buyer is not able to obtain insurance on terms satisfactory to the Buyer, the Buyer has the rights laid out in the Paragraph 13(B) (Inspection Contingency).

Practice Tip: To some degree, there is an implied insurance contingency in the mortgage contingency because a Buyer who cannot get insurance is not likely to get a loan. This implied protection does not exist in a cash sale (there would be no mortgage contingency) nor where a policy is more expensive than the Buyer would like, but not so expensive that it affects the Buyer's ability to be approved for a mortgage. This contingency is also helpful if the Buyer has unusual insurance needs not directly linked to financing (e.g., insurance coverage for jewelry or art).

Practice Tip: Common examples of items that might be included in a Written Corrective Proposal include repairs to be performed by the Seller, a reduction in price, or the Seller agreeing to pay some portion of a first year premium cost.

This inspection includes flood insurance. In 2012 the United States Congress implemented changes to the National Flood Insurance Program (NFIP), which changed the major parts of the NFIP including flood insurance rates, flood hazard mapping, grants, and the management of floodplains. Changes will be phased in over several years, and may be subject to additional Federal changes.
The language in the Agreement is intended to inform prospective buyers that due to the removal of Federal subsidies, the Property may be subject to higher premiums for flood insurance, or that the Property may be located in a newly-mapped floodplain requiring the purchase of flood insurance. The Buyer should be advised to comply with the current mandates of the NFIP and not rely on assurances from the Seller regarding the need for, or the cost of, flood insurance.

Practice Tip: As flood maps can change, it may be more or less difficult to obtain flood insurance. Buyer may be required to carry flood insurance at Buyer's expense, which may need to be ordered 14 days or more prior to Settlement Date.

Property Boundaries
If the Buyer does wish to inspect the Property boundaries, the Buyer should initial "Elected." If the Buyer does not wish to inspect the Property boundaries, the Buyer should initial "Waived."

Many Buyers rely on visual cues - such as fences, hedges or walls - or representations in the MLS or by the Seller to determine the Property boundaries. Unless the boundaries of the property are laid out as a term of the Agreement of Sale, these estimations should not be considered to be accurate. While this may be an effective tool for approximation, it should not be taken as the true Property boundary. The Buyers are advised to hire a surveyor or title abstractor to assess the actual boundaries of, or amount of, the land included with the Property.

Residential Lead-Based Paint Hazards
If the Property involved was built prior to 1978, the Buyer has the option to conduct a risk assessment and/or inspection to determine the presence and risk of lead-based paint. If the Buyer does want this inspection, the Buyer should initial "Elected." If the Buyer does not wish to have such an inspection, the Buyer should initial "Waived."

Where the Property was built before 1978, the Lead-Based Paint Hazard Reduction Act requires the Seller to provide the Buyer with the EPA-approved "Protect Your Family from Lead in Your Home" information pamphlet.

> **Practice Tip:** PAR produces a Lead-Based Paint Hazards Disclosure Addendum (PAR Form LPD) to make the mandatory disclosures, as well as a version of the mandatory EPA booklet (Form LPB). The LPD is intended to be initiated on the Seller's side of the transaction, most likely when the Listing Contract or Seller's Property Disclosure are being filled out. (See Form LPD and its Guidelines for Preparation and Use)
>
> **Note:** The LPD or other compliant form is required in every pre-1978 sale. Brokers on both sides of the transaction may be held to very strict enforcement if audited by the EPA. Be sure that **all** information, including all initials and signatures of the parties, has been completed. The Buyer acknowledges that she has received the LPD and EPA pamphlet on the signature page.

Other
This section allows the Buyer or the Seller to write in any other inspections, not named above, that the Buyer would like to perform or that the parties agree to explicitly waive.

> **Practice Tip:** If the Buyer does not want to perform any inspections that are not named above, it is recommended that the Buyer initial "Waived" to make it clear that the lines were intentionally left blank.
>
> **Practice Tip:** There is only one line to elect and one line to waive this contingency. If more than one item is listed under other and the parties would like to remove one, the item to be removed should be crossed out and initialed. It might be clearer to simply address this change in an addendum to the Agreement.

Existing Conditions
There is a space to list any items that are to be excluded from any of these "blanket" inspection contingencies. The Sellers may want to consider excluding any items/systems that have already been disclosed as faulty. For example, if the Seller has disclosed that a hot water heater needs to be replaced, that defect should be considered by the Seller in setting an asking price and by the Buyer when making an offer. Including it in the list does not mean the Buyer cannot inspect for it, but it does mean that the Seller does not have to negotiate over it in a report/as part of a

Written Corrective Proposal. The Seller should consider listing all defects so the Buyer does not attempt to negotiate the offer based on an inspection report detailing a defect that was already disclosed.

Subparagraph (D): Notices Regarding Property & Environmental Inspections
Clients should be directed to these Notices when they are deciding whether to elect or waive any certain inspection. These Notices provide a small description of some less-common issues that may arise and direct them to agencies which can give them more information.

Paragraph 13: INSPECTION CONTINGENCY

Subparagraph (A): Contingency Period
The Contingency Period that applies to **all** inspections elected in Paragraph 12 is established in Paragraph 13(A). The default Contingency Period is 10 days, though the parties can agree to a different length if desired.

Since this Contingency Period applies to **all** inspections carried out under the Paragraph, make sure that the time inserted is sufficient to allow completion of the most difficult or time-consuming inspection being considered. Agents should know how long it typically takes to obtain the various types of inspections in markets where they do business. Paragraph 13(B) says the Buyer must complete an inspection and take action (accept, terminate or submit a Written Corrective Proposal) within the Contingency Period.

> **Note:** Failure to conduct these inspections and take action by the end of the Contingency Period may serve as a waiver of the Buyer's right to request any remedy. (See Paragraph 11)
>
> **Practice Tip:** If your Buyer is running out of time in the stated period, attempt to negotiate an extension. Remember that any extension must be signed within the Contingency Period to be effective; if there is no negotiated extension during this time, the Buyer may have waived certain rights once the original Contingency Period expires. To negotiate different timelines for an inspection, the parties can use the Change in Terms Addendum (PAR Form CTA) to change a specific date in limited circumstances.

Subparagraph (B): The Inspection Contingency
The Inspection Contingency provides the Buyer with three choices after completing their Inspections. In addition to providing the Seller with complete copies of the inspection reports, the Buyer must decide whether to:

1. Accept the Property with the information stated in the Report(s) and agree to the release in Paragraph 28 of this Agreement, OR
2. Terminate the Agreement by written notice to the Seller, with all deposit monies returned to the Buyer according to the terms of Paragraph 26 of the Agreement, OR

3. Present a Written Corrective Proposal ("Proposal") listing corrections and/or credits desired by the Buyer.

Note: Buyer's choice, and notification to the Seller of that choice, must be made within the Contingency Period.

If the Buyer **accepts the Property**, the Buyer and Seller remain bound to the Agreement.

If the Buyer **terminates the Agreement** based on inspection findings that are unsatisfactory, the Buyer is entitled to the return of their deposit monies.

Practice Tip: If the Buyer is not satisfied with the information stated in the inspection report(s), there is no requirement that the Buyer limit his requests only to certain types of conditions; any size or type of issue can be raised, as long as it is legitimately raised under the appropriate Inspection Contingency. Likewise, there is no requirement that the Buyers limit requests to material defects, nor is there a limitation that would prevent the Buyers from requesting repairs for very small items.

If the Buyer chooses to submit a **Written Corrective Proposal**, it may, but is not required to, include the name(s) of a properly licensed or qualified professional(s) to perform the corrections requested in the Proposal, provisions for payment, including retests, and a projected date for completion of the corrections.

Practice Tip: Be sure to get reliable quotes/cost estimates. Valuable time will be lost if the parties spend time arguing over the validity of estimates rather than the substance of the reports.

Practice Tip: Under the Home Inspection Law, Home Inspectors may provide repair estimates, but only as a range of costs with the source of the estimate being identified, and accompanied by a statement that the parties should consider consulting with a contractor who performs the type of repairs involved. Keep in mind that you may wish to provide time to obtain outside estimates if you consider that they may be perceived as being more reliable than estimates provided by a home inspector; providing a reliable estimate as a Buyer may make it easier to negotiate for repairs or a credit.

Note: The Buyer should be sure that requested repairs would be compliant with relevant codes and other requirements. The Agreement provides that if the Seller performs according to the terms of a Written Corrective Proposal, the Buyer cannot try later to hold the Seller liable for non-compliance.

Note: The Seller can address each Written Corrective Proposal as it comes in, or can hold each of them and formulate a response once all of the proposals have been received.

Once the Buyer submits a Written Corrective Proposal, the Seller has two options: (1) accept all of the terms of the Buyer's Proposal or (2) negotiate. Following the end of the Contingency Period, Buyer and Seller have the number of days stated in Paragraph 13(B)(3)(a), five days being the default, for a Negotiation Period. During this time, the Buyer and the Seller are encouraged to communicate, either verbally or in writing, to negotiate the terms of a mutually acceptable written agreement.

> **Note:** If, at any time during the Negotiation Period, the Seller accepts Buyer's Proposal or the Buyer and the Seller enter into a negotiated written agreement, the Buyer is "locked in" and must continue with the transaction. This agreement will also end the Negotiation Period.

If, during the Negotiation Period, no mutually acceptable written agreement is reached or the Seller fails to respond to the Buyer's Proposal, then the Buyer will have an additional 2 days (unless altered) to decide whether to: (1) accept the Property and agree to the Release or (2) terminate the Agreement and have any deposit monies returned.

> **Note:** It is not sufficient for the Seller to make their choice but not notify the Buyer in writing of that choice. The Seller's failure to take any option could result in the Buyer having the right to terminate the Agreement.

> **Note:** The Inspection Contingency process laid out above does not apply to the On-Lot Sewage Inspection when that Inspection finds that the on-lot sewage system needs to be expanded or replaced. The inspection contingency that governs these instances is laid out in Paragraph 13(C).

> **Practice Tip:** In setting any dates in the Agreement that might rely on the results of negotiations under this Paragraph (settlement date, for example), be sure to permit enough time to give the Buyer and Seller the opportunity to fully exercise their rights under this Paragraph. Scheduling settlement prior to the end of the time period stated in this contingency *does not* extend settlement and could result in one or both parties forfeiting their rights.

If the Buyer fails to respond or terminate within the given time, the Buyer will accept the Property and agree to the Release in Paragraph 28 of this Agreement.

> **Note:** Ongoing negotiations or discussions do not automatically extend the Negotiation Period. Any agreement to extend the Negotiation Period must be in writing.

Subparagraph (C): On-Lot Sewage Disposal System
If an Inspection Report indicates that the on-lot sewage disposal system needs to be expanded or replaced, the Inspection Contingency in Paragraph 13(B) *is not used*. In this instance, the *Seller* may obtain a detailed corrective proposal (including who is

responsible for any repairs) and submit that proposal to the *Buyer*. The Buyer will then elect one of three options:

(1) Accept the Property and the terms of the corrective proposal;
(2) Accept the Property and, if required by the mortgage lender or government authority, make the repairs at Buyer's expense and with Seller's permission; or
(3) Terminate the Agreement.
If the Seller denies permission to perform repairs, the Buyer also may terminate the Agreement.

Note: Unlike virtually every other inspection contingency, a situation requiring the expansion or replacement of the system puts the responsibility to obtain the corrective proposal with the Seller, not the Buyer. This is due primarily to the extensive time and expense that may be necessary to perform the required testing and to perform the necessary work. Remember that if no corrective proposal is obtained **and delivered** by the end of the stated time period, the Buyer has the option to choose among the three choices above.

Paragraph 14: TITLES, SURVEYS AND COSTS

Subparagraph (A): Title Report

Within 7 days of the Execution Date, the Buyer must order a title report on the Property. Although a report is usually required by a mortgage lender, the ordering of the report is typically put off until near the end of the transaction. The delay may result in last-minute defaults, a postponement of closing or the canceling of the Agreement altogether, all of which are consequences that can be avoided by learning of potential clouds on the title early enough in the transaction to clear them prior to settlement.

Subparagraph (B): Title Insurance

This notice is intended to encourage a discussion between the Buyer and the Buyer's agent about title insurance. On the Loan Estimate, title insurance is broken down between the lender's insurance policy and the owner's insurance policy with the latter being described as "optional." The lack of an owner's policy can leave some buyers without protection from claims on the title. Buyers' agents should encourage their clients to discuss their options for standard and enhanced policies with a title insurer.

Subparagraphs (C) and (D): Costs

The Buyer will pay for: any survey(s) desired by the Buyer or the mortgage lender, any required title or property-related insurance, any appraisal fees and/or fees to the mortgage lender, and the Buyer's customary settlement costs. The Seller will pay for any surveys required by the title insurance company or abstracting attorney to prepare a legal description of the Property.

Subparagraph (E): Good and marketable title

This clause provides that the Seller will deliver good and marketable title to the Property. The Buyer should be advised that the Property is likely to be subject to

easements and perhaps deed and use restrictions. Other agreements of record that affect the marketability of title (for example, timber rights) should be discovered by the title abstractor.

> **Practice Tip:** By signing the Agreement, *the Buyers agree to take title to the Property subject to any deed restrictions, easements (visible or of record), and rights of utilities or public service companies*. These restrictions may prevent the Buyer from making certain physical changes to the Property and may have other consequences. (For example, an easement for an underground natural gas pipeline might prevent a property owner from digging a new well, expanding a septic system or putting in a pool.) If the Buyer is concerned that use of the Property may be limited by such restrictions, the Buyer should hire an attorney or title abstractor to do a title search *before* an Agreement is signed, or (more likely) make the Agreement contingent on satisfaction with the condition of the title. One way to do this would be to elect Deeds, Restrictions and Zoning under the Property Inspection Contingency. Of course, many easements or use restrictions can't be "fixed" by the Seller or negotiated between the parties, making it more difficult to reach any resolution on the issue other than a possible termination by the Buyer.

Subparagraph (F): Change in Seller's Financial Status
This Paragraph reflects Paragraph 9 (Change in Buyer's Financial Status); if the Seller's ability to convey title to the Property has changed because of a change in the Seller's financial status, the Seller has an obligation to notify the Buyer of this change in writing. Not all financial changes will warrant this notification, but there are some things that would clearly require it, such as the filing of a foreclosure lawsuit against the Property or entry of a monetary judgment against the Seller. Sellers' agents should be telling their clients to notify them immediately if any change occurs that may affect the ability to convey title.

Subparagraph (G): Buyer Termination
If the Seller cannot deliver a good and marketable title, this provision gives the Buyer the option to accept the title that the Seller can deliver (without a change in the sale price), or to terminate the Agreement. Rather than waiting for receipt of the title abstract to determine what liens or encumbrances may exist, the Seller can be encouraged to provide this information when the listing is obtained or at the time the Agreement is signed. If the Buyer terminates the Agreement because the Seller is unable to convey an acceptable title, any deposit monies are returned to the Buyer *and* certain pre-paid costs - *including costs for inspections conducted under the terms of the Agreement* - are reimbursed to the Buyer. This should be an incentive for the Seller to disclose all relevant information at the beginning of the transaction.

Subparagraph (H): Oil, Gas and Mineral Rights
Oil, gas and mineral rights impact several real estate markets across Pennsylvania. The default language states that the Seller has no knowledge of the status of oil, gas, and mineral rights for the Property. This is the default because, in many cases, it is

unlikely that the Seller will have actual knowledge of the chain of title issues as they relate to oil, gas and mineral rights.

If the Seller knows he does not own all oil, gas and mineral rights, the box should be checked.

> **Note:** Unless it is stated otherwise in the Agreement, it is assumed that the entire bundle of rights (surface and subsurface) will be conveyed with the Property. By checking the box, it is an acknowledgement that something less than the entire bundle of rights will be conveyed to the Buyer.

While checking the box is helpful because it provides the Buyer with the information that the entire bundle of rights will not be conveyed, it does not tell the full story. It might leave the Buyer asking, "Well, if the Seller doesn't own all of the oil, gas and mineral rights to the property, which ones do they own? And which ones do I get in the transaction?"

The PAR Oil, Gas and Mineral Rights Addendum to Agreement of Sale (PAR Form OGM) allows the Seller to provide some of this information and encourage the Buyer to conduct an inspection of title issues relating to oil, gas and mineral rights. Use the check box to indicate that Form OGM is attached to the Agreement if the Seller does not own all oil, gas and mineral rights for the Property.

Subparagraph (I): Coal Notice
This paragraph must be part of the Agreement if the rights to the land have been severed from any rights to coal underneath the land. In most cases, if the Coal Notice is applicable the deed will contain a statement substantially similar to the sentence in quotes. The purpose of the provision is to inform the Buyer of the possible lack of surface support resulting from the removal of substances below the surface so that the Buyer can conduct the proper inspection. The Buyer may want to consult with structural engineers or other professionals to determine the structural integrity of the Property. When this Subparagraph is not applicable it is not necessary to strike the text from the form.

Subparagraph (J): Recreational Cabins
The Pennsylvania Construction Code Act sets forth uniform construction standards across the Commonwealth. The Act does not apply to recreational cabins, however, if 1) the cabin is equipped with at least one smoke detector, one fire extinguisher and one carbon monoxide detector in both the kitchen and sleeping quarters; and 2) the owner of the cabin files with the municipality either an affidavit attesting that the cabin meets the definition of a "recreational cabin" as stated in the Act or valid proof of insurance for the cabin. See 35 P.S. §7210.104 for further details.

A **recreational cabin** is a structure which is 1) utilized principally for recreational activity; 2) not utilized as a domicile or residence for any individual for any time period; 3) not utilized for commercial purposes; 4) not greater than two stories in

height, excluding basement; 5) not utilized by the owner or any other person as a place of employment; 6) not a mailing address for bills and correspondence; and 7) not listed as an individual's place of residence on a tax return, driver's license, car registration or voter registration.

If a recreational cabin is excluded from the Act, then the exemption must be noted in both the Agreement and the deed. If this is not done, then the Buyer may be required to bring the Property up to full Code compliance or may be able to render the sale void.

Subparagraph (K): Private Transfer Fees
Some Property in Pennsylvania may be subject to Private Transfer Fees, which are defined in Subparagraph (J)(2). The default language is that the Property is not subject to a Private Transfer Fee. If you know that the transfer of the Property will require a fee, fill in the blank provided.

Paragraph 15: NOTICES, ASSESSMENTS AND MUNICIPAL REQUIREMENTS

Subparagraph (A): Public and/or Private Assessments
If a notice or assessment is received after execution of the Agreement but before settlement,
the Seller has the option of complying with the notices/assessments at the Seller's expense. Public and private assessments were addressed in Paragraph 10(F), as well. Paragraph 10(F) asks the Seller to reveal any notices or assessments that had been received prior to the signing of the Agreement; this Paragraph requires the Seller to provide those same notices and assessments to the Buyer which are received after the Agreement has been signed. This language does not apply to real estate tax reassessments, changes in millage rates, etc.

If the Seller chooses not to comply, the Buyer has the option of complying at the Buyer's expense or terminating the Agreement. As with most other contingency choices, the Buyer's failure to inform the Seller of his course of action within the specified time period results in a waiver of the Buyer's right to terminate under this Paragraph.

Subparagraph (B): Municipal Certification
In certain municipalities, the Seller is obligated to provide the Buyer with a certification or other documentation prepared by the municipality's codes enforcement officer regarding the condition of the Property. In other municipalities, a certificate of occupancy (rather than just an inspection report) is required. There may also be other notifications or certifications required by the municipality. Licensees should familiarize themselves with the requirements of the various municipalities in which they do business, as requirements and local practice can vary greatly. Where such a certification is required, the Seller agrees to order and pay for the certificate after the execution of the Agreement. If repairs are necessary to

obtain the certification, the Seller must notify the Buyer of which repairs are required and whether the Seller will perform the repairs at the Seller's expense. If the Seller chooses not to make the repairs, the Buyer has five days in which to (1) accept the Property with whatever temporary certificate is issued by the municipality and make the required repairs at the Buyer's expense or (2) terminate the Agreement.

> **Practice Tip:** Municipalities will have various rules regarding the timing of these inspections, so brokers should familiarize themselves with these local rules. For example, some might suggest (or require) that the inspection be ordered early in the transaction so the municipality has plenty of time to schedule the inspection and the parties have time to negotiate over any potential corrections. Others prefer to do the inspections as late as possible (e.g., after all contingencies in the Agreement have been satisfied) to be sure that the transaction is not likely to terminate for some other reason. In some cases, the municipality might set an expiration date on the certification itself, so the Sellers can't use the certification indefinitely (e.g., the certification is only valid for 30 days). The default time to order the certification is 30 days from the Execution Date, but not later than 15 days before settlement. If your municipality has different requirements, be sure to write them in.

Unlike most other provisions dealing with the ordering of an inspection and/or report, the time frame for Subparagraph (B) relates only to the time within a report must be *ordered*, not the time for delivery.

Because of variations among local ordinances and customs, it is impossible to have a standardized time period within which the municipality delivers its report/certificate. Instead, Paragraph 15(B)(1) says the Seller must provide the Buyer with the report and the Seller's elections within 5 days of receipt, which then starts the clock for the Buyer's response. In a few municipalities, the practice is to deliver the report to the Buyer, not Seller. The last sentence in (B) requires the Buyer to "promptly" give a copy of the report to the Seller.

Unlike many of the other contingencies, there are repercussions to the Buyer AND the Seller should one of them fail to meet their agreed-upon time deadlines. Where the Sellers chose to not make required repairs, the Buyers who don't make an election of whether to proceed or terminate will have waived their right to terminate and must accept the Property. Where Seller is told that repairs are necessary, however, but Seller does not notify the Buyer of the requirement within the stated time, this failure of notification serves as a waiver of the Seller's right to refuse to perform the corrections and the Seller is obligated to perform according to the terms of the notice. This Paragraph survives settlement, meaning that if the Buyer finds out about the required repairs after settlement, the Buyer can come back under the Agreement and require the Seller to make the repairs.

Paragraph 16: CONDOMINIUM/PLANNED COMMUNITY (HOMEOWNER ASSOCIATION) RESALE NOTICE

If the Property being sold is a condominium, it is generally subject to the Uniform Condominium Act. If the Property being sold is in a planned community, it is subject to the Uniform Planned Community Act. Each of these Acts states that the Agreement must give the Buyer a five-day window to review and accept the condominium or association documents (**Certificate of Resale**) before being obligated to buy the Property.

A **condominium** is defined in the Act as real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

A **planned community** is defined in the Act as real estate with respect to which a person, by virtue of ownership of an interest in any portion of the real estate, is or may become obligated by covenant, easement or agreement imposed on the owner's interest to pay any amount for real property taxes, insurance, maintenance, repair, improvement, management, administration or regulation of any part of the real estate other than the portion or interest owned solely by the person. This includes non-residential campground communities.

Subparagraph (A): Condominium or Planned Community

The default language in this paragraph states that the property is NOT a condominium or part of a planned community, unless one of the two boxes is checked. If the property is a condominium or part of a planned community, check the box for the appropriate Property type.

Subparagraph (B): Sales of New Units

If the sale involves a newly-constructed unit that has never been occupied, it is likely being sold by the builder, known as the "declarant." Pennsylvania law requires that when a new unit in a condominium or planned community is sold by the declarant, the Seller must provide a Public Offering Statement to the Buyer. The Public Offering Statement has many required elements and is used to disclose information about the condominium or planned community to the Buyer. Depending on the type of property, the Buyer has time after receiving the Public Offering Statement to review the information and make a decision as to whether to terminate the Agreement.

Subparagraph (C): Certificate of Resale

The Seller should be given a reasonable amount of time to submit the request to the association (the default period is 15 days). It is advisable for the Broker for the Seller to assist in submitting a written request to the association for the certificate of resale and required documents. Note that the association has ten days to deliver the documents, so take that into account when establishing a time frame. The applicable documents should be requested by the Seller as soon as possible so that they can be given to the Buyer shortly after the Agreement is signed.

Note: The documents must be delivered directly to the Buyer, not to the Buyer Agent for the clock to start for the review period. It is recommended that the Seller delivers these documents in person and gets confirmation of it in writing (the confirmation can be documented by using the PAR Receipt of Documents form (Form ROD), by certified U.S. mail, or by paid courier service (e.g., FedEx or UPS). (See Paragraph 30)

Practice Tip: The Buyer's window to terminate the Agreement (any time up to 5 days after receipt of the documents, or until closing, whichever is first) is a legally mandated time period and cannot be shortened by the parties. Further, there is no requirement that the Buyer find any deficiency in the Property or the documents in order to terminate. Listing brokers may want to strongly encourage the Sellers to push the homeowner's association to deliver the documents promptly; otherwise, the Buyer may continue to have an almost unfettered right to terminate all the way up to settlement.

Paragraph 17: REAL ESTATE TAXES AND ASSESSED VALUE

Property taxes are levied based on the current assessed value of the property. State law permits a property owner to appeal a property assessment to reduce the assessed value if the owner feels a lower value is appropriate. That same law permits municipalities and school districts to appeal an assessment to increase the assessed value. The property tax notice informs the Buyers that the current taxes on the Property may be increased if the municipality or school district successfully appeals and increases the assessed value of the Property. If you know that assessment appeals are common in your market, or if you are aware that the county is planning a county-wide reassessment, it is good practice to let your Buyer know that the value of the property – and thus the taxes – may well increase after the purchase.

Paragraph 18: MAINTENANCE AND RISK OF LOSS

Subparagraph (A): Seller to Maintain

The Seller is responsible for maintaining all parts of the Property included in the sale in the same condition they are in at the time the Agreement is executed, normal wear and tear excepted. Items not working at the signing of the Agreement, and that are not going to be repaired or replaced by the Seller, should be prominently stated by the Seller. Identifying these items prior to signing will help avoid last minute disagreements where the Buyer might assume an appliance had been working at the time of signing. The best place for this would be in Paragraph 7 or a separate addendum.

Note: The definition of "Property" includes structures, grounds, fixtures, appliances and personal property specifically listed in the Agreement.

Subparagraph (B): If part of the Property fails

If any part of the Property included in the sale fails before settlement, the Seller has three options. First, the Seller can simply repair or replace the part of the Property

with an item of comparable value. If this repair or replacement is done, the Seller is not obligated to inform the Buyer. (In essence, the Buyer is getting the same bargain as if the original part of the Property were still there and in working order.) Second, the Seller can inform the Buyer that the Seller will provide a credit for the market value of the part of the Property as permitted by the mortgage lender. Third, the Seller can simply tell the Buyer that he will not repair, replace or provide a credit for the failed part of the Property. If the Seller does not repair, replace or offer a credit, the Buyer has the option of terminating the Agreement. The Buyer must notify the Seller of the election to terminate within five days, or before settlement, whichever is sooner, otherwise the Buyer must accept the Property with the failed part.

> **Note:** If the Seller repairs or replaces the failed part of the Property before settlement, the Buyer must proceed with the purchase of the Property.

Subparagraph (C): Seller bears risk of loss
The Seller is responsible for maintaining the Property and bears the risk of loss in the case of fire or other accident. If the Seller declines to repair or replace accidental damage or loss before settlement, the Buyer can terminate the Agreement and get the deposits back, or the Buyer can accept the Property and get any insurance proceeds that the Seller receives. Advise the Seller to maintain insurance until settlement to be sure the Seller's interests in the Property are fully protected.

> **Note:** Advise the Seller to check with an insurance agent to see what sort of insurance policy or rider would be suitable during this time. Depending on how long the Seller plans to be in the Property and when the Buyer moves in, there may be different policies suggested (or required) by the insurer. For example, if the Seller moves out substantially before settlement and occupancy by the Buyer, a standard homeowner's policy may not be appropriate. Where the Seller stays in the Property for some time after settlement or the Buyer moves in before settlement there may also be varying insurance requirements.

Paragraph 19: HOME WARRANTIES

This Paragraph is primarily a notification to the parties that a home warranty may be available for purchase. There is not a check off for the Buyer or the Seller to indicate that a warranty is being offered or purchased, nor does this Paragraph create any sort of a presumption that a warranty will be offered or purchased.

> **Note:** Some E & O insurers are offering discounts to brokers who can show that their salespeople are advising clients about the availability of home warranties. Check with your insurer to see if they have such a program. Remember that if the broker or salesperson has any financial interest in or relationship with home warranty company, it would have to be disclosed to the parties as with any other financial relationship. Be sure to check with your broker to understand the rules regarding this disclosure.

Paragraph 20: RECORDING

Recording the Agreement in the Office of Recorder of Deeds may result in a "cloud" on the title in the event that settlement does not take place (i.e., someone doing a later title search will see the Agreement but no termination language or change in ownership on the deed and may not be able to determine if the Agreement gives the listed the Buyer some right to the property). For this reason, the parties are prohibited from recording the Agreement.

Paragraph 21: ASSIGNMENT

The Buyer may not transfer or assign the Agreement without written consent of the Seller unless the Agreement states otherwise. The most likely place to find language to the contrary would be in the very first Paragraph, where a Buyer might be listed as "Joe Smith and/or his assigns."

> **Note:** Selling the Property in this manner could mean that the named Seller assigns his rights under the Agreement to some third party before the transaction closes. In some cases this could mean that the assignment is made to a person or entity the Seller was not aware of and did not have the opportunity to assess in terms of their ability to close the transaction. For example, if selling the property to "Joe Smith and/or his assigns," the Seller might find that Joe Smith is very financially sound, but after execution of the Agreement he might assign his rights as purchaser to his son who has shaky credit. Had the son been the named party, the Seller might not have accepted the original agreement. When negotiating this sort of assignment language be sure that both parties are aware of what sort of assignments are permissible and how the assignment would work in the transaction.
>
> **Note:** The Pennsylvania Department of Revenue has indicated that it may consider the assignment of an executed Agreement of Sale the same as a separate transaction and would therefore impose the transfer tax on both the Purchase Price and the assignment, which would result in additional tax liability. Implementation is unclear, so if the Agreement is being assigned to another party, it is a good idea to advise your client to consult with his/her tax attorney and/or accountant.

Paragraph 22: GOVERNING LAW, VENUE & PERSONAL JURISDICTION

This Paragraph states that any legal action regarding the Agreement must be filed in Pennsylvania courts, and must be decided under Pennsylvania law. This should prevent scenarios where an out-of-state buyer might try to sue in their home state and force the Seller (and possibly the brokers) to defend the case in that state.

Paragraph 23: FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT OF 1980 (FIRPTA)

FIRPTA permits the IRS to impose a tax on foreign persons upon dispositions of real estate located within the United States. For purposes of the Act, a "**foreign person**"

can be a nonresident alien individual, a foreign corporation, foreign partnership, foreign trust or foreign estate. This term does not apply to resident aliens.

If FIRPTA applies to your transaction, the transferee (the Buyer) must deduct and withhold the proper amount of tax due to the IRS on the sale. If they fail to properly withhold, the Buyer may be liable for the tax. It is strongly suggested that the Buyer seek legal and/or tax advice prior to signing the Agreement if the Property is owned by a foreign person.

Paragraph 24: NOTICE REGARDING CONVICTED SEX OFFENDERS (MEGAN'S LAW)

The purpose of Megan's Law is to provide community notification of the presence of certain convicted sex offenders working or living in a certain area. The Buyer should be encouraged to read this Paragraph, do his or her own research, and make a decision on the desirability of the Property prior to signing the Agreement.

Paragraph 25: REPRESENTATIONS

Subparagraph (A): All Representations Reduced to Writing

These Paragraphs clarify that the Buyer has not relied on any information other than his or her own inspections for making a purchase decision and that all conditions of the Agreement must be contained in writing as part of the Agreement itself. Ask the Buyer to list any additional representations which he or she is using to make the decision to purchase the Property and include them in the Agreement.

> **Practice Tip:** Information on an MLS sheet or Seller's Property Disclosure is not part of the Agreement of Sale as written. If information from either of these sources has been relied upon, include it in an addendum in order to incorporate it into the contract. Much of this information is already included in Paragraph 10.

Subparagraph (B): Buyer's Representations

The Buyer agrees to purchase the Property in its present condition. The term present condition includes any changes that have been agreed upon during the Inspection/Inspection Contingency process.

Subparagraph (C): Workmanlike Manner

All repairs performed under the terms of the Agreement must be performed in a "workmanlike manner." Although there is no specific definition of this term, it is generally understood to mean that any work would be done by qualified workers in a professional manner. (For example, if Seller agrees to repair a leaky roof, gluing a tarp over the hole instead of hiring a roofer is not performing the repair in a "workmanlike manner.")

Subparagraph (D): Unrepresented Parties
This statement is required by the Licensing Act, which states that a Broker must notify the parties if the Broker or any licensee has provided services to any other party in the transaction.

Paragraph 26: DEFAULT, TERMINATION AND RETURN OF DEPOSITS

Subparagraph (A): Return of Deposit Monies
In many places throughout the Agreement, the Buyer is given the right to terminate the Agreement with the return of deposit monies. This Paragraph sets out the ground rules for this process and acknowledges that there are other situations in which the parties might claim entitlement to deposit monies (i.e., not every termination entitles the Buyer to this money).

Subparagraph (B): Brokers Holding Deposit Monies
The intent of this language is to explain to the parties that Brokers who are holding money in escrow are not only bound by the terms of the Agreement and the intent of the parties, but also by the law and regulations regarding the release of escrowed monies. Specifically, the parties are informed that brokers cannot return escrowed funds where there is any "dispute" over their distribution, and that brokers do not have the legal authority to determine whether a party should be entitled to the distribution of those funds where a dispute does exist.

Under Pennsylvania law, the following are the only four circumstances in which the Broker can distribute deposit monies:

1. If there is no dispute over entitlement to the deposit monies. The Buyer and the Seller agree that a written agreement signed by both parties is evidence that there is no dispute regarding deposit monies.

> **Note:** Requiring it to be in writing helps protect brokers so one party could not argue that a dispute remains and the broker should not have distributed the monies. The PAR Release form (Form AREL) can be used for this purpose, and many brokers may have preferred release language as well. Most broker-drafted release forms, as well as the PAR form, contain some language seeking to release the brokers from liability. Remember that the law does not permit brokers to dictate the terms under which escrowed funds will be released, as long as there is no disagreement between the parties. Thus, if the parties provide documentation that they agree to the release of funds but refuse to release the brokers from the possibility of a lawsuit, the brokers must still release the funds.

2. According to the terms of a written agreement signed by the Buyer and the Seller directing Broker how to distribute some or all of the monies.

Note: This circumstance implies that there was a dispute that has been settled. This requires the agreement to be in writing.

3. According to the terms of a final order of court.

Practice Tip: Have counsel review any court orders to ensure that the orders are final, with no further appeals.

4. According to the terms of a prior written agreement between the Buyer and the Seller that directs the Broker how to distribute the deposit monies if there is a dispute between the parties that is not resolved.

Note: The fourth option was added to RELRA in the summer of 2009 and took effect on September 4th, 2009.

Subparagraph (C): Disputes
This Subparagraph is a "prior written agreement between the Buyer and the Seller" as is permitted in number four in the list above.

Note: The language in this subparagraph is not mandated by the law and any terms could be used in an Agreement or addendum, if the Buyer and the Seller agree.

This language sets up a system by which the Broker holding the deposit monies can distribute those monies *to the Buyer* if there is still a dispute 180 days after the Settlement Date or date of termination of the Agreement, whichever is earlier. There are two things that must occur before the Broker can carry out that distribution:

1. The Broker must have received a written request from the Buyer (after those 180 days have passed) requesting that the Broker return the deposit monies to the Buyer.
2. The Broker, at the time the letter is received, has not received verifiable written notice of litigation or mediation between the Buyer and the Seller.

Note: The 180-day period begins the day after the Settlement Date, not the Execution Date. If the Settlement Date is modified during the transaction, the 180-day count would start from the last Settlement Date agreed upon in the Agreement.

Note: If the Broker does not receive a written request from the Buyer requesting the return of their deposit monies, the Broker is under no obligation to return the monies to the Buyer. In fact, doing so without the written request from the Buyer might open that Broker up to additional liability.

Note: If the Broker receives verifiable written notice of litigation or mediation *after* the Broker has received the Buyer's request for the return of the deposit

monies, the Broker is still obligated to return the deposit monies to the Buyer. If a party (likely the Seller) intends to file a lawsuit over deposits, it should be done before the 180-day period has passed, in order to ensure that the Broker will still be holding the monies.

Practice Tip: The parties will likely need to mediate before going to bringing suit, according to the pre-written terms of the Agreement. (See Paragraph 27)

This Paragraph also states that distribution of the deposit monies according to these terms is not a determination of which party is entitled to keep the money according to the terms of the contract. Returning deposits to the Buyer doesn't eliminate the Seller's right to file suit against the Buyer, it just means the Buyer may already have the funds in hand.

Subparagraph (D): Broker Indemnification
The Buyer and Seller are agreeing that the Broker who has distributed the deposit monies according to the Agreement or Pennsylvania law will not be liable for that distribution. If the Buyer and/or the Seller name the Broker or Licensees in litigation, the party bringing suit will pay the Broker and Licensee's legal fees.

Subparagraph (E): Deposits as Damages
If Buyer fails to make additional deposits, furnishes false information concerning Buyer's legal or financial status, or violates (or does not perform) any other terms of the Agreement they will be considered to be in default of the Agreement.

Note: Seller is not obligated to keep all - or any - monies paid by Buyer in these circumstances. What this means is that even if Buyer is in default, the parties can agree to divide the deposit in a way that is not "all or nothing." For example, it can be split fifty-fifty or Seller could receive an amount to cover the cost of a repair or upgrade with the rest going to Buyer. If the parties would like to avoid starting mediation or litigation, then compromise is the name of the game.

Subparagraph (F): Damages for Buyer Default
Carefully explain to the parties that, unless the checkbox in (G) is checked, Seller has three choices if Buyer defaults:

1. Seller can sue Buyer for the purchase price; OR
2. Seller can sue for damages and keep the deposit as part of those damages; OR
3. Seller can keep the deposit as liquidated damages.

Subparagraph (G): Liquidated Damages
If the checkbox in this subparagraph is checked, Seller's options in case of Buyer's default are limited to the amount of the deposit monies *that have already been paid* as liquidated damages.

> **Note:** Liquidated damages is an agreement between the parties to a contract on an estimated amount of damages that one party may recover if the other defaults. The damages are called liquidated because the actual damages may be uncertain, fluid, or difficult to define exactly.

More often than not, this box is checked when an offer is presented to the seller. It makes sense, considering the buyer is attempting to limit the amount of money that they could lose if they default. Being near the end of the contract it is often overlooked until the transaction is falling apart. Listing agents should be reviewing and appropriately negotiating this term of the contract. Because checking the box means that Seller's total damages are going to be limited to the amount of the deposit that has been paid, there are a few considerations in play.

First, does Seller want to agree to limit their damages? If the most that Seller can recover is the amount of the deposit, then is the amount of the deposit likely going to be enough to make them whole? In the worst-case scenario, Buyer breaches the agreement by failing to appear at settlement. If Seller would rather preserve their right to pursue Buyer for the full purchase price or for actual damages, then the box should not be checked.

Second, how much was the deposit? Is $500 going to cover all of Seller's damages if the breach is on the day of settlement? If Seller is going to limit their recovery to the amount of the deposit then the deposit should be high enough to be worth it.

Third, the deposit needs to be paid. The language specifically limits Seller's recovery to "sums paid" by Buyer. This means that if this box is checked, Seller will only be able to get their damages if a deposit has been provided. So when do you want that deposit to be handed over? The basic language of the contract gives Buyer a few days to deliver their deposit to the escrow agent, but that term is also negotiable.

Subparagraph (H): Agreement Void
If the Seller elects to keep deposit monies as liquidated damages under either Subparagraphs (E) or (F), the Buyer will be released from the Agreement with no further liability (i.e., the Seller gives up the right to sue for additional damages).

Subparagraph (I): Brokers Not Liable for Deposits
Brokers and licensees are not responsible for unpaid deposits.

> *Example:* If a Buyer agreed to make a $1,000 deposit at signing and a $3,000 deposit after 10 days, but the Buyer terminates on day 11 without having made the second deposit, the Brokers would not be responsible for the money that was not received.

Paragraph 27: MEDIATION

Mediation is a cost-effective process designed to resolve disputes between the Buyers and Sellers (and possibly other persons who are connected to the transaction, such as

inspectors) that may arise out of the sale of real estate. It provides an alternative to a lawsuit.

This Paragraph requires the Buyer and Seller to submit all disputes or claims that arise from the Agreement to mediation. The mediation program to be used in a given situation will be determined by the system that the local Association of Realtors® has in place. In many cases this program is the Home Sellers/Home Buyers Dispute Resolution System ("DRS") program. Information about the DRS is available from PAR or your local association. For any association of Realtors® who are not using DRS, the Association can choose to use any other mediation provider, such a law firm or local mediation organization. If none of those options are feasible or available, associations can consider endorsing the use of one or more mediation providers recommended by PAR.

The default language in this Paragraph obligates the parties to pursue mediation as a means to settle disputes, but does not require the parties to wait until the mediation process is completed before seeking relief from a court of law. Waiting to file a civil claim can result in a party losing their right to recovery, so this paragraph allows either party to file their claim before, during or after mediation. Whatever claim is filed in court will not have to proceed any further than the initial steps until mediation is finished.

> **Note:** There is no specified time limitation on bringing mediation cases. It is possible that courts would not enforce a mediation clause past the standard statute of limitations for bringing a lawsuit on the same issue. That being said, if faced with a questionable mediation claim, it may still be preferable for the parties to mediate that claim than to take additional time and money to litigate the claim -- even if the respondent party ends up winning in the courts.

Paragraph 28: RELEASE

A clear explanation of this Paragraph is critical to the success of the contingencies set forth in the Agreement. Whenever the Buyer receives an acceptable inspection report, waives an inspection, fails to meet a time requirement for an inspection, or accepts the work done under a corrective proposal, the Buyer agrees to this Paragraph, which releases the Seller and the Broker/licensees of any subsequent liability that may arise from any related defects. In short, this prevents the Buyer from saying "I won't worry about it now; I'll just sue later if I decide that this was a problem that I should have addressed."

> **Note:** Most of the language in this release refers to the Buyer agreeing to release the Seller from liability. This sometimes raises concerns that the Paragraph protects the Sellers who are in default or engage in some fraudulent or illegal activity. This Paragraph does NOT function as a release where the Seller doesn't perform under the Agreement, and the last sentence of the Paragraph clarifies the point that if the Seller is in default or has acted illegally, the Buyer still retains all legal remedies they would otherwise have.

Paragraph 29: REAL ESTATE RECOVERY FUND

This language is required by the Real Estate Licensing and Registration Act.

Paragraph 30: COMMUNICATIONS WITH BUYER AND/OR SELLER

Subparagraph (A): Providing Documents to Broker

This paragraph requires the buyer to provide copies of the Loan Estimate and Closing Disclosure to his or her agent upon receipt. TRID regulations place increased responsibility for accurate disclosures on the lenders, and as a result it is more likely that the lender will be preparing these documents. However, these documents are to be provided directly to the consumer – both because of confidentiality issues and because of what the regulations require - not to the buyer's agent. It is important for agents to be provided with these documents to ensure that the buyer is applying for a mortgage according to the terms of the Mortgage Contingency, to make sure that the timeline is being followed, and (of course) to know that closing can occur as scheduled.

Subparagraph (B): Providing Documents to Buyer

As you read through the Agreement you will notice that there a certain requirements that items be communicated or delivered to the Buyer and/or the Seller. Bear in mind that these requirements are generally met if delivery or communication is made to the Broker/Agent representing the party.

> **Note:** There are two exceptions to this rule: the delivery of condominium or homeowners association documents. The law requires that these documents be delivered directly to the Buyer before her associated five-day review period would begin.
>
> **Practice Tip:** To ensure that these documents are delivered directly to the Buyer (and that the clock for the review period has started ticking), it is a good idea to deliver the documents in person or via a method that allows the licensee (or the Seller) delivering the documents to the Buyer to show when they were delivered. If the documents are being delivered in person, it is recommended that the deliverer use PAR's Receipt of Documents form (PAR Form ROD). Common examples of methods referred to above include certified mail, FedEx, or UPS.

Paragraph 31: HEADINGS

This Paragraph is intended to indicate that the headings listed at the beginning of Paragraphs and Subparagraphs in the Agreement are for convenience and organization purposes, and should not be interpreted as part of the Agreement.

Paragraph 32: SPECIAL CLAUSES

Subparagraph (A): Common Addenda

Several commonly used PAR addenda are referenced here. When checked, these addenda become part of the Agreement. The blank lines are provided to enable you

to insert titles of other addenda (including those that you may draft on your own) that are not referenced on the Agreement.

Subparagraph (B): Customize
This blank space is for any additional clauses that are not addressed in the Agreement or in an addendum, and that significantly alter other clauses in the Agreement. If the clauses are related to an existing Paragraph in the Agreement, number them as if they were appearing in the Paragraph to which they relate. Make sure the language used is clear and unambiguous.

> **Example:** If the clause to be added relates to the Settlement Date, you might put: "3(A) continued: Settlement may be postponed up to 30 days at the option of the Buyer, with written notice to the Seller on or before July 15."

Acknowledgments

Copies at Signing
The law requires that the Buyer and the Seller each receive a copy of the Agreement *at the time they sign it*. This means that the Buyer receives a copy upon filling out the original Agreement as an offer to the Seller, and the Seller receives a copy upon accepting the Agreement. The Buyer would also generally receive a copy upon acceptance so there is be a record of all the terms that were ultimately agreed upon.

Counterparts
"This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and which counterparts together shall constitute one and the same Agreement of the Parties." Two Agreements with identical terms can be signed on separate forms in different locations, but will still be counted as one executed contract.

> *Example:* If three Sellers must sign the Agreement, each can sign an identical version and do not need to each sign the same Agreement in sequence.

> **Note:** Agents and Brokers are strongly encouraged to retrieve a copy of the other counterpart(s) for their files to ensure the terms in each signed Agreement are identical.

Notice to Parties
This alerts the parties to contact a Pennsylvania real estate lawyer before they sign the Agreement if they desire legal advice.

Electronic Transmission
Return of this Agreement, and any addenda and amendments, including return by electronic transmission, bearing the signatures of all parties, constitutes acceptance by the parties.

> **Note:** Electronic transmission includes, but is not limited to, fax and email.

Acknowledgments/Checkboxes
Lines for the Buyers' initials are provided before the signatures of the Buyer to acknowledge that certain required information has been received. Note that the Seller also has three acknowledgments before the Seller's signature lines, but they do not have lines for initials. Primarily, this is because some of the Buyer acknowledgments are optional (i.e., not every Buyer will receive a Deposit Money Notice or Lead-Based Paint Hazards Disclosure), while the Seller acknowledgments should always be mandatory.

Consumer Notice: Without exception, all consumers of real estate services must receive this form at the outset of a relationship with a Licensee. If the consumer *is represented* by a Licensee the Consumer Notice will be provided by their own agent at or near the start of the relationship; if a consumer *is not represented*, the agent representing the **other** consumer should provide the Consumer Notice and explain the relationship (or lack thereof) that the agent has with the two parties.
Closing Costs: Without exception, the Buyers and the Sellers must receive estimates of their closing costs before they sign an Agreement.

> **Practice Tip:** Many lenders provide estimates of closing costs as part of the financing process. These estimates may not contain certain items that must be listed (e.g., Broker fees or inspection fees), and generally should **not** be used in place of a separate estimate of closing costs drawn up by the agent unless the Broker/agent is absolutely sure that the estimates provided by the lender are comprehensive and accurate.

Deposit Money Notice: When a deposit is accepted by a cooperating Broker (Broker for Buyer) and transferred to the Broker for the Seller, the cooperating Broker must get a Deposit Money Notice signed by the Buyer, and the checks for deposits must be made payable to the Broker for the Seller. This type of notice is required by law.

> **Practice Tip:** A signed check made out to the Broker for the Seller is **not** considered sufficient to comply with the regulation. PAR publishes a Deposit Money Notice form to provide this required notice (Form DMN).

Lead Paint
By initialing this statement, the Buyer is acknowledging three things:
1) Buyer has received the Lead-Based Paint Hazards Disclosure
2) The Lead-Based Paint Hazards Disclosure is attached to the Agreement
3) Buyer has received the *Protect Your Family from Lead in Your Home* pamphlet

Signatures & Dating
To be valid and binding the Agreement must be signed by the Buyer and Seller, and the date of the signature must appear. **The date is a must,** since it may help to establish the Execution Date to which all time frames in the Agreement refer.

Practice Tip: Most Agreements submitted by a Buyer will have a response date listed in Paragraph 5(A). Similarly, the Sellers may place a response date on the Agreement when making counteroffers to the Buyer. The purpose of these deadlines is to indicate that the offer or counteroffer is no longer in effect if the other party doesn't respond by the stated date. If the Agreement is signed after one of these dates, the purported acceptance may not be valid. Where a party wishes to accept an Agreement after this date, best practice would be to contact the other party to determine if they are willing to waive this provision and continue in the transaction. **Do not post-date an Agreement in an attempt to avoid this problem.** Because the Agreement is a multi-page form, the parties must initial each page when they sign the form. Blanks are provided on each page for that purpose. The initials serve not only as an acknowledgment that the parties have reviewed each individual page, but also help to identify the Agreement in the event pages get separated.

Note: There is space for the Buyer and Seller to include a mailing address in the beginning of the Agreement. **It is very important that both parties place a mailing address in the Agreement.** It is generally necessary to communicate with the other party during the course of a transaction, and having the address and contact numbers properly filled in can make this communication considerably easier, especially where one party is not represented by a broker.

Delivery

Delivery of the fully signed and executed Agreement to the parties (or their Brokers/licensees) is the last important step in the completion process. The Broker/licensee for the last party to sign or ratify the Agreement is responsible for delivering the contract to the other party or his or her Broker/licensee. Any delay gives the other party an opportunity to rescind the offer or counteroffer.