Agreement for the Sale of Commercial Real Estate

(PAR Form ASC)

Guidelines for Preparation & Use

Updated January 2023

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 PAR Form ASC. 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.

Any purchase of real estate is a complicated transaction, and no set of instructions, no matter how complete, could possibly cover all 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 regarding the proper manner of filling out any contract during the course of a transaction.

To make these Guidelines more useful there are numerous "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.

Except where restricted by law, the pre-printed language that is not agreeable to the parties 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 this 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 4(B) 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.

As you read through the Agreement you will notice that there are certain requirements that items be communicated or delivered to the Buyer and/or Seller. Bear in mind that these requirements are generally met if delivery or communication is made to the Broker/Agent representing the party (See Paragraph 28 on Communications with Buyer and/or Seller).

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., the status of the sewage system on the Property, etc.). 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.

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

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 number; street; city; municipality; ZIP Code; and county.

> *Example:* PROPERTY ADDRESS: **123 York Road, Hershey, PA** ZIP **17033**, in the municipality of **Derry Township**, County of **Dauphin**, 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.

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 22(B) 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) and its contact information.

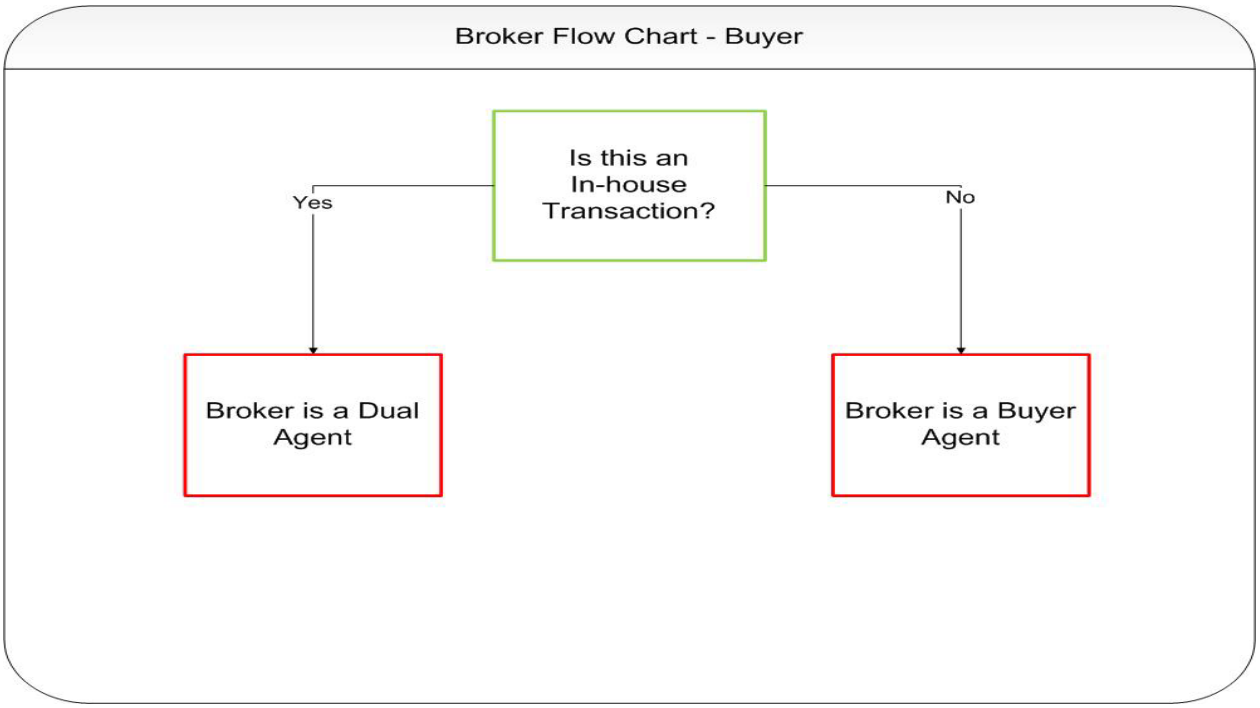
The checkboxes on the left side of the Business Relationship Block under the Broker contact information allow you to indicate whether the Broker represents only one party (Buyer Agent or Seller Agent) or both the Seller and the Buyer (Dual Agent).

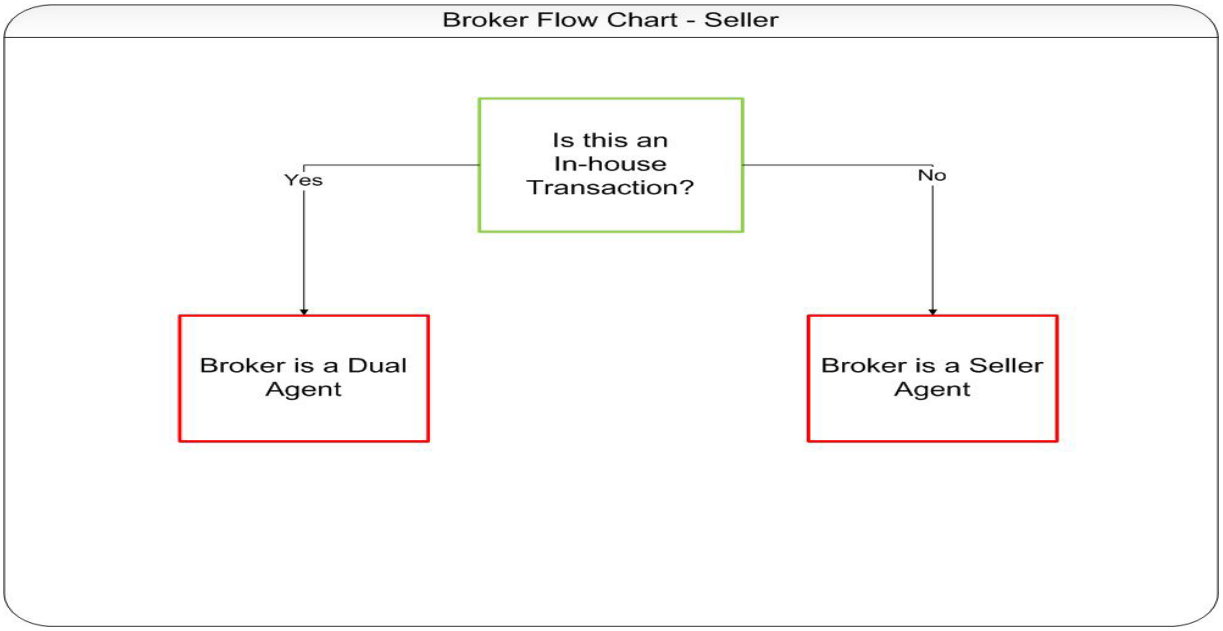
> **Note:** Where the Buyer and Seller are represented by the *same Broker*, the Broker is always a Dual Agent and the Broker (company) information in both boxes should be the same.

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 and contact information. If more than one Licensee is representing the Buyer or Seller, each Licensee should write their name 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!

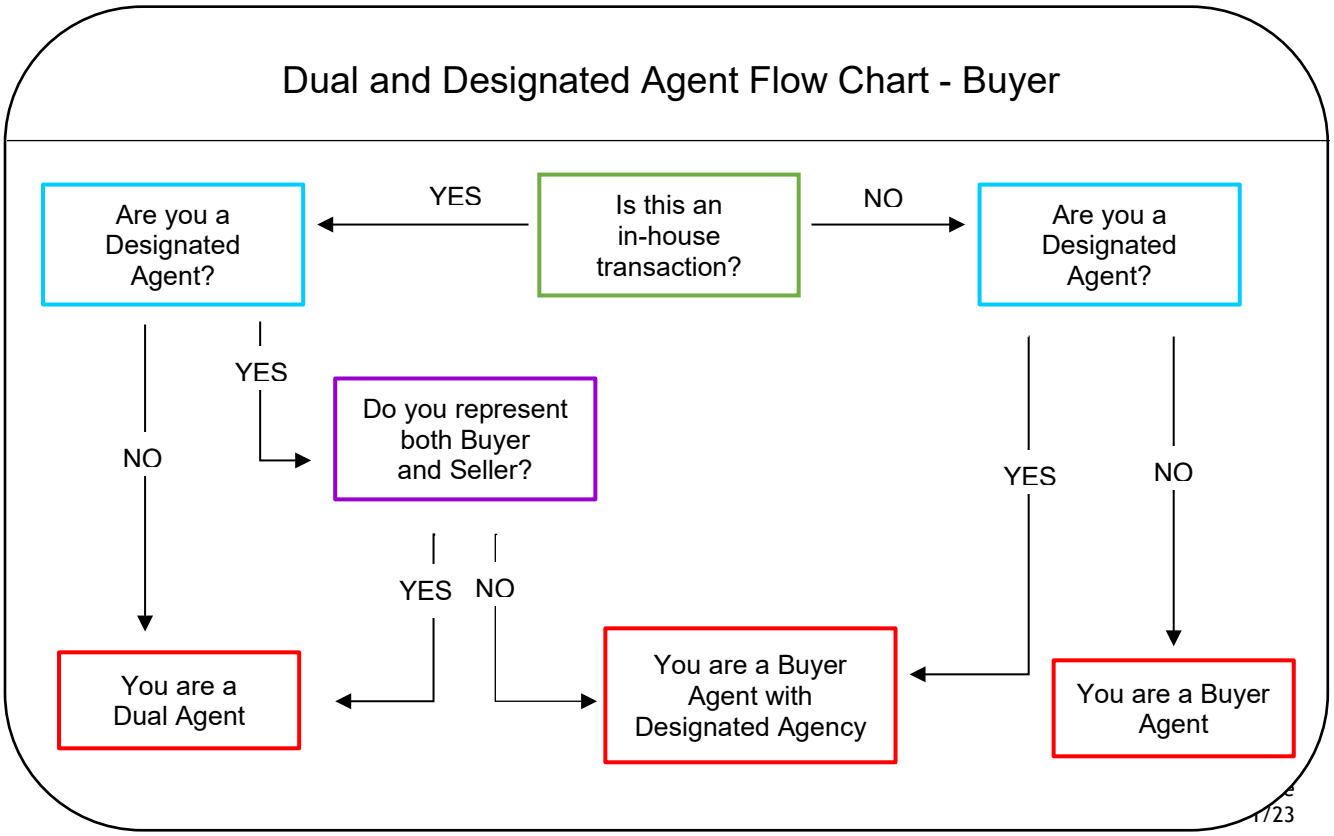
Licensee status will also depend on whether the transaction is an **in-house transaction** or a **cooperative** ("co-op") **transaction**.

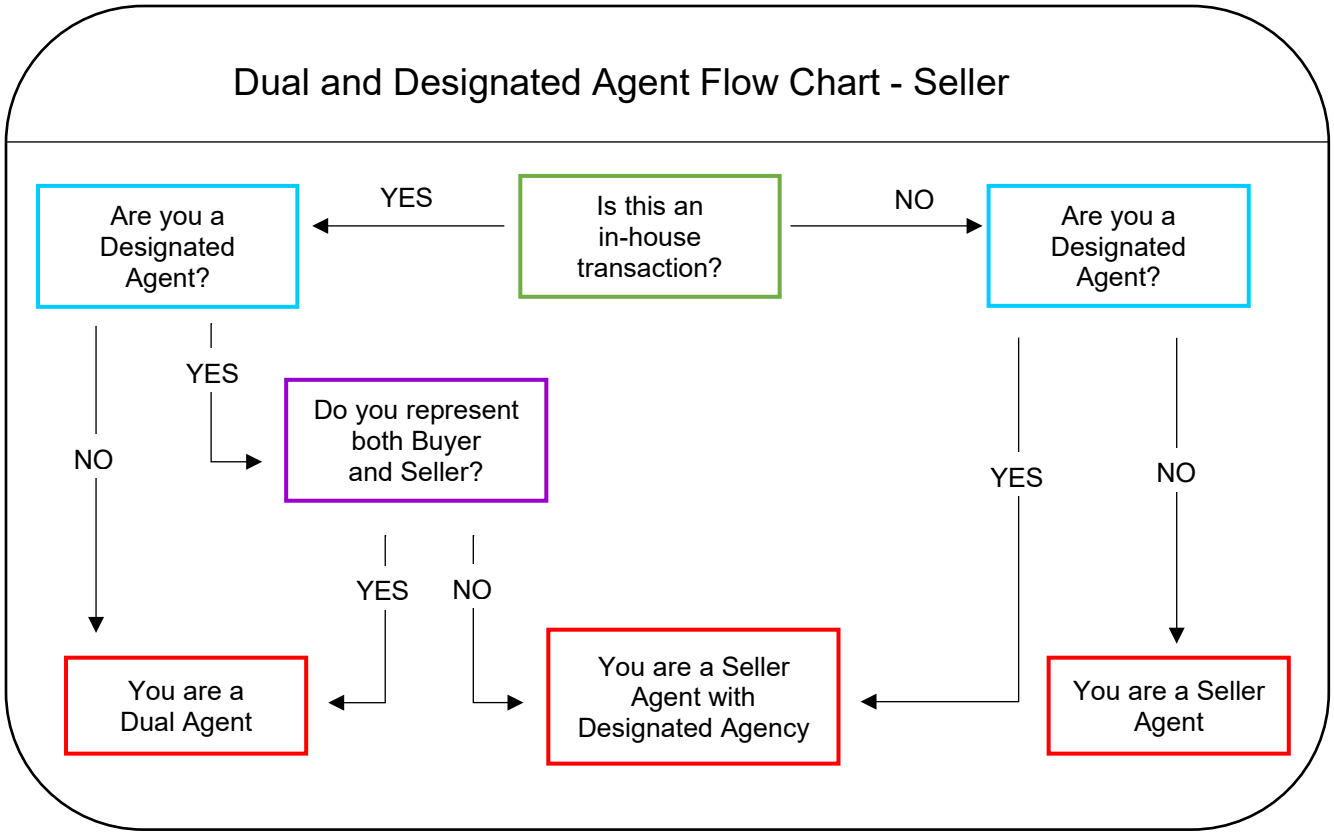
In a cooperative transaction, the licensee on each side of the transaction represents only one party, so dual agency is not an option. In this type of transaction, the Licensee needs to know whether her broker does or does not practice designated agency. If yes, select Agent with Designated Agency. If 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 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 on the next page 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 $ **453,000 (Four 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 4 (Dates/Time is of the Essence) and Paragraph 24 (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 financing. If the Buyer intends to use any other type of financing, use Paragraph 7 (Financing 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 24 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 for Commercial Property (Form XLSC) and Commercial Buyer/Tenant Agency Contract (Form CBAC) 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: SETTLEMENT AND POSSESSION

Subparagraph (A): Settlement Date

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.

Note: The actual Settlement Date may be earlier or later than the date set in the Agreement *if both parties agree*. To extend settlement beyond the date set in the Agreement, it is ***always*** necessary to have a written endorsement to the Agreement changing this date. Although not legally required, it is good practice to also get a written endorsement 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 expanding operations 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.

Practice Tip: Check to make sure the proration on the HUD-1 is accurate.

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 (the 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. If the Property is vacant, the Seller agrees that the Property will be free of debris (e.g., trash, waste, etc.) with any structures "broom-clean."

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. "Leases" includes short-term rental agreements, such as vacation rentals. Copies of the leases or short-term rental agreements 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, including those for short-term rentals, 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 4: DATES/TIME IS OF THE ESSENCE

Subparagraph (A): Acceptance Date

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 Due Diligence Period is the time for the Buyer to conduct inspections *and* to submit a written termination (if any) to the Seller. Failure to act on inspection results within this time period may result in a waiver of the contingency and acceptance of the Property by the Buyer.

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 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 12:00 a.m. on July 12 the Buyer is in default.

Note: Where a Buyer might need a longer period to perform, 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. Some

time periods (the Seller's request for a Certificate of Occupancy, 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 period for making a financing application) have been left blank, but provided with a parenthetical default position in the event the blank is not filled in (for example, "Within ____ days (10 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 5: 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 as a focal point of a bar, 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 (B) 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 (D). If there are other items not listed in this paragraph, use the blanks to clearly state which items are to be included or excluded (shelving, etc.).

> **Practice Tip:** Be sure to familiarize yourself with the pre-printed list of "included" items in Subparagraph (B), 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 lighting fixtures 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).

Subparagraph (C): Not owned by Seller
Any leased items or systems (e.g., propane tanks, security systems etc.) 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 financing agreement may automatically transfer to the Buyer. Make sure that the Buyer understands the terms of the financing agreement 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 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: BUYER FINANCING

Subparagraph (A): If Buyer is getting a loan

In the next subparagraph, 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 (10 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 (B), 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 (B), 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.

Subparagraph (B): 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 the loan 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."

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.

Paragraph 8: 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 a loss or change in income, making a large appliance purchase, 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 9: 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 the 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 9(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): Contamination and Restrictions
In this Paragraph the Seller affirms that he has no knowledge that the Property has been contaminated by harmful materials that would require removal by the Buyer, unless noted elsewhere in the Agreement. The Seller is further attesting that no waste from the Property has contaminated the soil, air, surface water, or ground water.

The Seller is also stating that the Property is not subject to any land use restrictions or protections that would restrict development.

If the Seller knows that any of these statements does not apply to the Property, then the Seller should strike through the language before signing the Agreement and explain the contamination or land use restriction issue in an addendum to the Buyer.

Subparagraph (D): Broker Indemnification
If the Buyer makes any claims against the Seller from representations made regarding the environmental condition or suitability of the Property, the Seller agrees to indemnify the Broker from those claims, demands and liabilities, including attorney fees and court costs. This indemnification extends to claims for any environmental condition, not only those listed in Paragraph 9(C).

Subparagraph (E): 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.

Subparagraphs (F) and (G): 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.

> **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 (H): 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 (I): 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 10: 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 Due Diligence 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 11: BUYER'S DUE DILIGENCE

The Buyer has the right to a Due Diligence Period, during which the Buyer may pay for qualified professionals to inspect the Property to determine if it will suit the Buyer's needs. If the Buyer would like to make the purchase of the Property contingent upon the results of any inspections, select the "ELECTED" box; if the Buyer is satisfied to purchase the Property without prior inspection select the "WAIVED" box. There is no requirement that the Buyer make any inspection of the Property but failure to elect this option may be a waiver of any claims against the Seller for conditions that would have otherwise been revealed by an inspection.

If the contingency is elected and the results of any inspections show that the Property will not meet Buyer's specifications, then the Buyer may terminate the Agreement in writing prior to the end of the Due Diligence Period and have her deposit returned. If the Buyer fails to terminate the Agreement within the Due Diligence Period then the Agreement remains in full force and effect. The default time period for the Due Diligence Period is 30 days, but the parties may negotiate a different timeframe as required for their transaction.

Subparagraph (A): Present Condition
Regardless of whether the Buyer has elected or waived the inspection contingency, by signing the Agreement the Buyer is acknowledging that he has been given the option to inspect the Property. This Paragraph states that the Property will be sold in its present condition. "Present condition" means the state of the Property as it existed when the Agreement was signed unless the Seller has agreed in writing to make any repairs or improvements.

> **Practice Tip:** It is good practice to make the Sellers aware of the Buyer's desire to conduct inspections and ask the Seller to agree to permit access to the inspectors. If possible, get it in writing in an addendum to the Agreement.

The Buyer also understands that neither the Broker nor its agents have made an inspection of the Property or systems, and that the Buyer is not relying on any representations from the Seller or the Broker in making a decision to purchase the Property.

Subparagraph (B): 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 (C): Flood Insurance
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. Buyer should be advised to comply with the current mandates of the NFIP and not rely on assurances from 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.

Paragraph 12: NOTICES, ASSESSMENTS AND MUNICIPAL REQUIREMENTS

Subparagraph A: 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.

Subparagraph (B): 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 9(F), as well. Paragraph 9(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.

If the Seller receives a notice or assessment after the signing of the Agreement and chooses not to comply, the Buyer has the option of complying at his or her own 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.

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 choose 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.

> **Practice Tip:** If it is necessary to delay the Settlement Date, attach a written addendum to the Agreement with the new Settlement Date.

Subparagraph (C): 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.

> **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 (C) relates only to the time within a report must be *ordered*, not the time for delivery. In a few municipalities, the practice is to deliver the report to the Buyer, not Seller. The last sentence requires the Buyer to "promptly" give the report to the Seller.

Subparagraph (D): Condemnation and Eminent Domain
The Seller conveys that he has no knowledge of any condemnation or eminent domain proceedings concerning the Property. If the Seller becomes aware of any such proceedings, the Seller must immediately notify the Buyer in writing. Fill in the number of days the Buyer will have to respond to such a notification. Within that time period, the Buyer has the right to terminate the Agreement in accordance with the Paragraph 24. If no action is taken within the agreed-upon time, the Buyer automatically agrees to move forward with the transaction and releases the Seller based on the terms of Paragraph 26.

Paragraph 13: TAX DEFERRED EXCHANGE
These are reciprocal paragraphs for the Buyer and Seller who may be interested in conducting a tax deferred exchange with the transaction. The Agreement presumes that the transaction will *not* be a tax deferred exchange, so be sure to discuss this with your client and find out their intentions.

If either party notifies the other of an intent to do a tax deferred exchange, this Paragraph allows that party to assign the right to sell or purchase the Property to a third party. This does not impact the other party's liabilities or responsibilities, other than requiring cooperation from the other party in executing the appropriate documents with the third party.

Paragraph 14: COMMERCIAL CONDOMINIUM

If the Property is a condominium that is intended for residential use, or is not a condominium at all, check "NOT APPLICABLE." If the Property is a condominium that is intended for non-residential use, check "APPLICABLE." In the case that the condominium will be used for non-residential purposes, the Buyer may agree to waive or modify the applicability of certain provisions of the Uniform Condominium Act that only apply to residential condominiums.

Paragraph 15: TITLES, SURVEYS AND COSTS

Subparagraph (A): 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. 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 make the Agreement contingent on satisfaction with the condition of the title. 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.

Subparagraphs (B) and (C): 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 (D): Change in Seller's Financial Status

This Paragraph reflects Paragraph 8 (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 (E): Buyer Termination
If the Seller cannot deliver a good and marketable title, this provision gives the Buyer the option 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 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 (F): Oil, Gas and Mineral Rights
Oil, gas and mineral rights impact several real estate markets across Pennsylvania. The default language states that the Seller is not making any representations about 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, check the box indicating that the PAR Oil, Gas and Mineral Rights Addendum to the Agreement of Sale (PAR Form OGM) is attached.

> **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 first 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?"

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 (G): 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. Where this Subparagraph is not applicable it is not necessary to strike the text from the form.

Subparagraph (H): 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 (I): 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 <u>not</u> 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 16: 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 5 or a separate addendum.

> **Note:** The definition of "Property" includes structures, grounds, fixtures, 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 is damaged, destroyed, or breaks before settlement, the Seller must promptly notify the Buyer. The Seller is under no requirement, unless the parties agree otherwise, to repair or replace the broken or damaged part 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. Insurance requirements may vary for properties that are vacant or under renovation.

Paragraph 17: 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 18: 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 19: GOVERNING LAW, VENUE AND PERSONAL JURISDICTION

Subparagraph (A): Governing Law

This Paragraph states that the interpretation of the Agreement, and any rights and responsibilities of the parties to the transaction, will be determined by Pennsylvania law.

Subparagraph (B): Jurisdiction

This Paragraph states that any legal action regarding the Agreement must be filed in Pennsylvania courts. 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 20: 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 21: CERTIFICATION OF NON-FOREIGN INTEREST

The Foreign Investment in Real Property Tax Act of 1980 (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. These designations are defined in Section 1445 of the Internal Revenue Code. This term does not apply to resident aliens.

If the Seller in your transaction is a foreign person, check the first box. 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.

If the Seller is *not* a foreign person, check the second box. The transferor (the Seller) should indicate which of the listed documents they will provide to the Buyer indicating that the withholding of tax is not required upon the sale of the Property.

Paragraph 22: REPRESENTATIONS

Subparagraph (A): All Representations Reduced to Writing

This Paragraph clarifies 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 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.

Subparagraph (B): 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 23: BROKER INDEMNIFICATION

Subparagraph (A): Indemnification

This Paragraph limits the liability of the Brokers listed, along with the Buyer and the Seller in case the transaction does not reach settlement. The Buyer and the Seller are acknowledging that they will not hold any of the other parties to the transaction liable for his or her own actions or inaction.

> **Note:** Any Broker listed in this Paragraph should also be listed on Page 1, with all of the proper contact information provided.

Subparagraph (B): Broker Services

In this Paragraph, the Buyer and the Seller state that they understand that any Broker identified in the Agreement is duly licensed as a real estate broker and is not an expert in legal, construction, engineering, or environmental issues. Further, the Buyer and the Seller acknowledge that the Brokers identified have not made any representations or investigations of the condition or suitability of the subject Property.

Note: If you do happen to have expertise in any of the above fields, such as code compliance, and were hired by your client due to that knowledge and/or experience, then edit this Paragraph as appropriate.

Paragraph 24: 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).

Subparagraphs (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 REL) 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 in the Agreement, or after the termination of the Agreement, whichever happens first. 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.

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 25: ARBITRATION OF DISPUTES

Arbitration is a 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. The arbitration is conducted before a three-person panel whose decision will be binding upon the parties.

This Paragraph requires the Buyer and Seller to submit all disputes or claims that arise from the Agreement to arbitration and sets forth the procedures the parties will use to select and pay the costs associated with the process. The arbitration is to be conducted according to the Pennsylvania Common Law of Arbitration.

> **Note:** It is possible that the parties will be referred to mediation. Mediation is a voluntary process that encourages a resolution of the dispute by the parties themselves instead of having a decision made for them. If faced with a questionable arbitration claim, it may be preferable for the parties to mediate that claim than to take additional time and money to litigate.

Paragraph 26: 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, or fails to meet a time requirement, 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 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 27: REAL ESTATE RECOVERY FUND

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

Paragraph 28: COMMUNICATIONS WITH BUYER AND/OR SELLER

As you read through the Agreement you will notice that there are 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 29: NOTICE BEFORE SIGNING

By signing the Agreement, the Buyer and Seller acknowledge that the Brokers have advised the Buyer and Seller to seek expert advice in areas that extend beyond the realm of real estate, specifically legal and tax issues.

Paragraph 30: 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): Additional Terms

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, Signatures and Dating

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 two 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), 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).

Signatures: 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.

> **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.

Voluntary Transfer of Corporate Assets

When a corporation sells, leases, or otherwise disposes of most or all of the business property and/or assets, shareholder approval may be required. Such approval is not required if the disposition is done in the usual and regular course of business of the corporation, or for the purpose of relocating most of all of the business. When shareholder approval is not required, the board of directors must authorize the sale or lease. The acknowledgement provided in the Agreement states that the Seller is so authorized and that the sale does not require shareholder approval.

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.