



CONTRACTS 1.0

NAVIGATING REAL ESTATE OFFERS AND CONTRACTS

Written by:

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Contracts 1.0: Navigating Real Estate Offers and Contracts

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Course Introduction and Learning Objectives

Course Overview

This course will resolve common problems, misconceptions and misunderstandings related to the Tennessee REALTORS® Purchase and Sale Agreement (RF401) and provide guidance to its proper use as well as related Tennessee REALTORS® forms. Students will practice filling out a sample contract and will learn how to explain its various provisions to a buyer or seller.

Learning Objectives

Upon completion of the course, students will be able to:

- Review of real estate contract fundamentals and good practices for REALTORS® in Tennessee.
- Explain the meaning and significance of the various **Timelines, Dates, Notices, and Actions** required by both parties as found in the Tennessee REALTORS® RF401 Purchase and Sale Agreement.
- Understanding the **Inspection and Repairs** section in the RF401 Tennessee REALTORS® Purchase and Sale Agreement.
- Correctly identify any required **Disclosures and Disclaimers** that must be included in or accompany the RF401 Purchase and Sale Agreement in various given situations.
- Explain to customers and clients what items should and should not be included under **Special Stipulations** in the RF401 Purchase and Sale Agreement (RF401).
- Recognize and advise consumers correctly as to the **Preprinted Items** in the Tennessee REALTORS® RF401 Purchase and Sale Agreement.
- Properly complete, through a skill exercise, the Tennessee REALTORS® RF401 Purchase and Sale Agreement on behalf of a prospective purchaser, and clearly explain the significance of each contract section.

CONTRACTS 1.0 SKILL ASSESSMENT

Choose the best answer to the following questions:

- 1. When should you review and explain the Tennessee REALTORS® Purchase and Sale Agreement (RF401) with buyers?**
 - a. After the offer is submitted
 - b. Before they make an offer
 - c. When the offer is accepted

- 2. When should you review and explain the Tennessee REALTORS® Purchase and Sale Agreement (RF401) to sellers?**
 - a. Before they receive an offer
 - b. When they receive an offer
 - c. After they accept an offer

- 3. Which of the following statements is TRUE?**
 - a. It's most important to be familiar with the Tennessee REALTORS® Purchase and Sale Agreement (RF401) form because you can address every issue by altering the boilerplate language.
 - b. Most Tennessee REALTOR® forms are rarely used.
 - c. It's important to be familiar with the function of all Tennessee REALTORS® forms so you understand how they work together to address different issues.

- 4. Which of the following is NOT an example of ambiguous language?**
 - a. Seller to provide Buyer with \$500 credit
 - b. Seller will provide Buyer with \$500 credit at closing towards Buyer's closing costs
 - c. Portion of closing costs to be paid by Seller
 - d. Buyer to take possession as determined prior to closing

- 5. Which of the following is the most acceptable method of delivering an offer?**
 - a. In person
 - b. By fax
 - c. By email
 - d. All of the above equally acceptable, with proper documentation

- 6. Which of the following statements is TRUE?**
- a. The Buyer always gets to select the Title Company
 - b. The Seller always gets to select the Title Company
 - c. In situations where the sale is being funded by a federally insured loan, the Buyer gets to choose the Title Company if the Buyer is paying for the title insurance policy
 - d. In situations where the property is being funded by a federally insured loan, the Seller gets to choose the Title Company if the Buyer is paying for the title insurance policy
- 7. Which of the following inspections is NOT legally permissible and not permitted under the Inspection Section?**
- a. Home inspection performed by a licensed home inspector
 - b. Home inspection performed by a licensed contractor
 - c. Home inspection performed by Buyer
- 8. One primary function of the Tennessee REALTORS® Purchase and Sale Agreement (RF401) is to**
- a. Reduce risk and liability for REALTORS® and brokers
 - b. Confuse REALTORS® and brokers
 - c. Address every possible situation that might arise during a transaction
- 9. The Tennessee REALTORS® Counter Offer Form (F8) states, “all terms and conditions proposed in previous counter offers, if any, are not included in this counter offer unless restated herein.”**
- a. True
 - b. False
- 10. Per the Tennessee REALTORS® Purchase and Sale Agreement (RF401), when a Buyer is terminating the contract due to Home Inspection OR financial contingency, both Buyer and Seller must sign the Trust Money Disbursement and Release form?**
- a. True
 - b. False
- 11. When Trust Money is either not received by the Holder or not honored for any reason, the holder does not have to notify Buyer and Seller of the Buyer’s failure to deposit the money agreed to in the RF401 Purchase and Sale Agreement.**
- a. True
 - b. False

UNIT 1 – CONTRACT BASICS

What is a Contract?

A contract is a **legally binding agreement** between two or more people. This means that there are **promises** to pay money, transfer property or to do or not do something exchanged between the parties.

What Makes a Contract Legal?

1. It Must Have a Legal Purpose

Parties cannot execute a contract to do an illegal act. The purpose of the contract must conform to the law. A contract between parties that involves fraud upon another would be void.

2. Legally Competent Parties

The parties to a contract must all be legally competent to enter into an agreement. This includes being of legal age and of sound body and mind at the time of entering in to a contract. In Tennessee, the legal age for signing contracts is 18 years old.

3. Agreement by Offer and Acceptance

In real estate this is illustrated by an offer to purchase a property by a buyer and the acceptance of that offer by the owner/seller.

4. Consideration

Consideration is anything of legal value offered and exchanged in the contract. This could be money, services or other valuable goods.

5. Consent

This element requires the parties to the contract have consented willingly and knowingly to the terms of the contract. There cannot be fraud, misrepresentation, or undue duress on any party to the contract.

Who Can Sign a Contract?

All owners of real estate should sign the contract of sale. If a husband puts his name only on a Purchase and Sale Agreement when both he and his wife own the property, then the buyer cannot force the wife to transfer the property in the absence of her written agreement.

If a party to the agreement cannot sign one or both of the parties can assign a **Power of Attorney** to someone who can sign in their absence. *(NOTE: Powers of Attorney should be NOTARIZED and a copy should be made available from your client to you and your broker for your file(s).)*

KEY POINT TO REMEMBER: Statute of Frauds

Contracts for the sale of real estate must be in writing and signed by all parties to be enforceable in the state of Tennessee. This is due to the “statute of frauds,” which in Tennessee holds that, **in order to be enforceable, the promise or agreement, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith.** Tennessee courts have generally held that an oral contract for the sale of real estate is not enforceable, even though the parties may have “partially” performed the contract.

Offer and Acceptance

An offer to purchase real estate can be fairly simple and quick or complex and lengthy. Either way, both the listing agent and the buyer's agent must manage the process in a legal and ethical manner.

Once an offer is made it can be accepted, rejected or countered. Remember, a counter offer constitutes the rejection of the offer and it must be in writing. Also, a party cannot extend a counter offer, have it rejected, and then attempt to accept the original offer. If a party rejects an offer outright, it needs to be noted in writing and signed/dated and returned to the offeror.

TREC Rule on Offers (1260-2-.08)

"A broker or affiliate broker promptly **shall tender every written offer to purchase or sell obtained on a property until a contract is signed by all parties.** Upon obtaining a proper acceptance of an offer to purchase, or any counteroffer, a broker or affiliate broker promptly **shall deliver true executed copies of same, signed by the seller, to both the purchaser and the seller.** Brokers and affiliate brokers shall make certain that all of the terms and conditions of the real estate transaction are included in the contract to purchase. **In the event an offer is rejected, the broker or affiliate broker shall request the seller to note the rejection on the offer and return the same to the offeror or the offeror's agent."**

A Few Words On Multiple Offers

Key Points on Multiple Offers

- Standard of Practice of the REALTOR® Code of Ethics states that **the existence of offers should only be disclosed with the seller's consent.**
- The **seller alone determines** whether one or more of the prospective buyers will be informed that there are multiple offers.
- Sellers who elect to disclose multiple offers risk that a buyer will walk away from a possible "bidding war."
- Alternatively, **sellers may elect to leverage the existence** of multiple offers to get the best price and terms.

Binding the Agreement

The Purchase and Sale Agreement becomes binding once the receipt of acceptance has been made and the receiving broker/agent signs the binding agreement information. This can be done on the original Purchase and Sale Agreement or on the final Counter Offer form.

An Example of the Binding Process of the Purchase and Sale Agreement

1. The **Buyer makes an offer.** (Selling Agent submits the offer to the Listing Agent.)
2. The **Seller counters the offer.** (The Listing Agent submits the Counter Offer to the Selling Agent.)
3. The **Buyer accepts the counter offer.** (The Selling Agent submits the accepted Counter Offer to the Listing Agent.)
4. The **Listing Agent binds the offer.** The last party to receive the acceptance of the offer/counter offer is the one who binds the agreement.

UNIT 2 – CONTRACT TIMELINES AND PERFORMANCE DATES

Failure to meet a contractual deadline may result in a breach of contract, forfeiture of Trust money, unenforceable performance and, in some cases, liability for civil damages. When a preprinted deadline needs to be changed, you should first check to see if the issue is addressed by another Tennessee REALTORS® form. If not, the EXACT verbiage should be copied with only the number of days for performance changed. By altering the verbiage within the attorney approved Purchase and Sale Agreement (RF401), you could end up making the party's performance unenforceable.

The Tennessee REALTORS® Purchase and Sale Agreement (RF401) contains several performance requirements with time limits associated with them. Can you name some of them?

Definition of Days

- All days are in the Tennessee REALTORS® Purchase and Sale Agreement (RF401) are *calendar days* **NOT** *business days*.
- The "start" / "commencement" date is the day following the Binding Agreement Date.
- **IMPORTANT:** The ONLY "drop dead" performance dates in this Agreement are the **Closing Date, Day of Possession, Completion of Repair Deadline** and **Offer Expiration Date**. These performance dates are actual CALENDAR DAYS which means if the date falls on a Saturday, Sunday or holiday, then it will occur on that day rather than rolling to the next business day.
- Be very careful when selecting these dates and CONSULT YOUR CALENDAR first. Holidays are defined by federal law (5 U.S.C. § 6103.) These are: New Year's Day (January 1), Martin Luther King, Jr. Day (3rd Monday in January), Washington's Birthday (3rd Monday in February), Memorial Day (last Monday in May), Independence Day (July 4th), Labor Day (1st Monday in September), Columbus Day (2nd Monday in October), Veteran's Day (November 11th), Thanksgiving Day (4th Thursday in November) and Christmas Day (December 25th)

Lines 397-405: "the term day(s) used throughout this Agreement shall be deemed to be calendar day(s) ending at 11:59 p.m. local time unless otherwise specified in this Agreement. Local time shall be determined by the location of the Property. **In the event a performance deadline**, other than the Closing Date, Date of Possession, Completion of Repair Deadline (Repair/Replacement Amendment), and Offer Expiration date, occurs on a Saturday, Sunday or legal holiday, the performance deadline shall be extended to the next following business day. Holidays as used herein are those days' deemed federal holidays pursuant to 5 U.S.C. 6103. In calculating any time period under this Agreement, the commencement date shall be the day following the initial date (e.g. Binding Agreement Date)." (Slight paraphrasing for spacing purposes only.)

Time is of the Essence

- A contract clause that emphasizes punctual performance is an essential requirement of the contract. Thus, if any party to the contract does not perform within the specified time period (the drop-dead date), that party is in default, provided the non-defaulting party has made a valid notice of demand of performance.
- If no demand is made, then the clause may be waived. The clause may also be waived by the subsequent acts of the parties such as accepting tardy payments or signing escrow instructions that allow for extensions of time in which to perform. However, if the contract terminates by its language, consult with an attorney if the parties want to “revive” a dead contract or execute a new one.

Loan Obligations

- The loan obligations paragraph in the Tennessee REALTORS® RF401 Purchase and Sale Agreement is one that sometimes is overlooked by the parties in the contract.
- This paragraph contains performance time frames related to the loan the buyer would be receiving in order to purchase the property.
- The buyer is required to make application for a loan and pay for a credit report.
- In addition, the buyer has obligations to obtain homeowners insurance, pay for an appraisal, cooperate with the lender on any requests for documentation, and confirm that the purchase is not contingent on the lease or sale of any property. The buyer must also communicate this to the seller in writing. The **Notification Form (RF656)** is designed to do this. Many agents still do not use the Notification Form and fail to have their buyer clients/customers give the proper notice to the seller of these deadlines. This places their client/customer in default that can result in lawsuits.
- And, they must work in good faith to ensure these obligations are satisfied.

Financing Contingency Waived

- The box on line 136 of the Tennessee REALTORS® RF401 Purchase and Sale Agreement should only be checked if the buyer is not purchasing the property conditioned upon his ability to secure a loan. A loan may be obtained, but the Agreement is not contingent upon the loan. This is typically known as an “ALL CASH” transaction.
- The buyer cannot use “failure to obtain financing/loan” to get the Trust Money/Earnest Money refunded. **There are NO financial contingencies.** Per the Agreement, the buyer has only five (5) days to provide proof they have the funds to close the transaction. The buyer should obtain Certified/notarized documentation confirming they have the money from the funds source in order to satisfy this performance requirement.

Binding Agreement Date

The Tennessee REALTORS® Purchase and Sale Agreement (RF401) defines when the Binding Agreement Date will be:

"This instrument shall become a "Binding Agreement" on the date ("Binding Agreement Date") the last offeror, or licensee of last offeror, receives notice of offeree's acceptance. Notice of acceptance of the final offer was received on day of __, at (time) by (name)." The date should be filled in by the last offeror (the person to receive the acceptance of the final counter offer or their agent. This will allow the agent to add the date on which it was actually received. All timelines will start on the next day for purposes of calculating days."

- The Binding Agreement Date is an **EXTREMELY CRITICAL DATE**. It is very important that this is completed because **it marks the time and date the contract went into effect**.
- This time and date "starts the clock" on the time deadlines in the Purchase and Sale Agreement. (e.g. Inspection deadlines, etc.) Note that it is referred to throughout the contract.

The agent who receives the finally executed contract from the agent representing the last signor of the contract is the one who completes this section. If this is not done, it creates havoc for trying to establish deadlines. It could even mean that a court could void the contract. **FILL THIS IN!**

Preprinted Deadlines

- **Preprinted deadlines are just as important as those you write in the Agreement!**
- If it's in the contract, it must be done by the date specified.
- **Failing to meet deadlines may constitute a breach.** An agent that allows a deadline to pass unnoticed may have a complaint filed against them with TREC and/or the local REALTOR® board as well as possibly facing a lawsuit.
- It is imperative to **discuss the pre-printed deadlines** in the Tennessee REALTORS® Purchase and Sale Agreement (RF401) with buyer clients **BEFORE** submitting an offer.
- If, for any reason, they will be unable to meet a required pre-printed deadline, this should be noted clearly **BEFORE** an offer is made or counter offer is submitted. For seller clients, you must discuss pre-printed deadlines and filled in dates.
- If for any reason, they will be unable to meet a required date or deadline, this should be noted clearly in a counteroffer.

Notification and Termination of the Agreement

- A party to a contract may elect to **terminate the agreement** due to various reasons. Some of these include the inability to remove the contingencies noted in the agreement or non-performance on the part of either the Buyer or the Seller.
- The Tennessee REALTORS® **Notification form** (RF656) form serves as a notification form for all

notices required in the Purchase and Sale Agreement (RF401). This form assists licensees in creating a paper trail of their compliance.

- **If trust money/earnest money has been paid by the buyer**, the holder of the money must decide if, when and how the money is to be distributed. The Tennessee REALTORS® Earnest Money/Trust Money Disbursement and Mutual Release of Purchase and Sale Agreement form (RF 481) should be used to distribute the funds and release the buyer, seller and all licensees from all obligations agreed upon in a purchase and sales agreement previously agreed upon. Keep in mind that if either party wants to pursue legal action, they **SHOULD NOT** complete this form. The parties waive all rights to sue if they use this form!

Defaulting on the Contract

If either party to the contract fails to perform as outlined in the terms and conditions of the agreement, the terminating party may have the right to pursue any and all legal rights and remedies against the defaulting party following termination.

- **If a Buyer fails to perform**, there are consequences – Trust Money is forfeited as damages to the Seller and are applied as a credit against Seller’s damages. The Seller may sue the Buyer for damages or specific performance.
- **If a Seller fails to perform**, there are consequences – the Buyer’s Trust Money is returned to them and the Buyer may sue the Seller for damages or specific performance.

Possible Causes for Default:

- Failure to close within the timeframe specified in the contract.
- Ignoring the terms and conditions of the contract.
- Failure to perform in “good faith.”
- Terminating the agreement without cause
 - Buyer decides they don’t want to purchase the property.
 - Seller decides they don’t want to sell the property.

CLASS EXERCISE #1: Performance Dates/Timelines

In the following exercise, there are several examples of how performance dates/timelines impact the parties in a real estate transaction utilizing the RF401 Purchase and Sale Agreement. Review each one carefully and provide the best way to handle each scenario.

1. In the offer to purchase the home owned by Tom Smith (Seller), Jane Wilson (Buyer) puts 6:00 p.m. on Friday as the time limit for the Seller to respond. The Seller is driving back home from the beach on Thursday evening and requests additional time to review the offer. He would like to extend the time limit of the offer. How should this be handled?

2. After extending the time limit of the offer, Mr. Smith (Seller) counters the offer submitted by Ms. Wilson (Buyer). Ms. Wilson reviews Mr. Smith's counter offer and makes one minor change that does not impact the price or closing date. The listing agent, Bill Taylor, sends the counter offer to Carolyn Jones, the buyer's agent. She, in turn, submits it to her buyer for her review. The buyer is in full agreement with the terms and conditions of the Seller's counter offer and accept it. They have a deal! The signed counter offer noting acceptance is returned to the listing agent, Mr. Taylor. Who binds the contract?

3. The Purchase and Sale Agreement states that the buyer, Ms. Wilson (buyer), will pay to the listing broker the Earnest Money/Trust Money in the amount of \$5,000 within three (3) days of the Binding Agreement Date. The end of the third day has arrived and the listing agent, Bill Taylor, or the listing broker has not yet received the money. What should happen in this situation?

4. Ms. Wilson, the buyer, is applying for a conventional loan to purchase the Seller's home. Bill Taylor, the listing agent, received a pre-approval letter from Acme Bank with the offer. However, three (3) days after the Binding Agreement Date the seller, Mr. Smith, has still not received Notification that the Buyer has made loan application with Acme and paid for the credit report. What does the seller need to do?

5. 14 days after Binding Agreement Date, Mr. Smith, the seller, or his agent, Bill Taylor, have not received notification that the Buyer has signed *Intent to Proceed* with lender and/or evidence of hazard insurance. What should the Seller do?

6. Ms. Wilson, the Buyer, has all inspections completed within the time frame specified in the contract. Her agent, Carolyn Jones, sends an RF654 Repair/Replacement Proposal to the listing agent, Bill Taylor, noting the items they would like the seller to repair. The Purchase and Sale Agreement states a 3-day resolution period. Mr. Smith, the seller, is not in agreement with the buyer's list of repairs and sends back another RF654 detailing what he is willing to do. The buyer is disappointed but wants to continue negotiating. At the end of the third day there is no resolution. What happens now?

7. The contract for the purchase of the seller's home was contingent on the appraised value equaling or exceeding the purchase price of \$325,000. The appraisal for the property was submitted to Jane Wilson, the buyer, via email on Tuesday afternoon by her lender. The appraiser valued the property at \$315,000. Ms. Wilson told Carolyn Jones, her agent, she needed to think about how she wanted to respond. If the buyer decides to terminate the agreement, when does she need to notify the seller? What happens if she notifies the seller of her intention four days later on Saturday? What needs to happen if the buyer still wants the home even though it appraised for \$10,000 less than the purchase price?

UNIT 3 – INSPECTIONS AND REPAIRS

Inspecting the Property

- **Buyers have the right to inspect the property they are purchasing.** It is important to discuss inspections and all that is involved in having the property inspected. Stress the importance of the timelines associated with the inspection period and the resolution period.
- **The word “Inspections” in the contract includes ALL inspections and reports related to the condition of the property.** This would include wood destroying insects, swimming pool, structural inspections, etc. The buyer is responsible for any and all costs associated with inspections.
- **All Inspections should focus on the structural or system integrity of the property and not cosmetic issues.** A buyer cannot terminate a contract if they don't like the color of the paint in the living room or the wallpaper in the kitchen.
- **The termite inspection is included** and if the buyer waives the inspections, they could “except” the termite inspection or any other specific inspection to add it back in by inserting the “exception” in the Special Stipulations paragraph.

A Note About Home Inspections in Tennessee

State law [T.C.A §62-6-302(3a)] defines a home inspection as a “visual analysis for the purpose of providing a professional opinion of the condition of a residential building, ancillary building, any reasonably accessible installed components, and the operation of the building systems, including any controls normally operated by the owner of the building, for the following components:

- | | |
|--------------------------|---|
| • Heating systems; | • Foundations; |
| • Cooling systems; | • Roof covering; |
| • Electrical systems; | • Exterior and Interior components; |
| • Plumbing systems; | • Any other site aspects that affect the residential dwelling.” |
| • Structural components; | |

Therefore, if the Buyer is receiving an inspection that covers ALL of the above mentioned components, **then it must be performed by a licensed home inspector.** A Buyer is permitted to get an inspection of individual systems without using a licensed home inspector. However, the person performing the limited inspection must meet state requirements for licensure and/or experience. (i.e. a licensed electrician to inspect the electrical, a licensed plumber to inspect the plumbing, an experienced roofer to inspect the roof.) Additionally, the buyer is permitted to conduct the inspection himself/herself. If the seller will not accept this, it should be negotiated in the contract itself.

Septic and Well Inspections:

The buyer may ask the seller to provide a septic letter at Seller's expense. Pursuant to TREC Rule 1260-02-.37: *“A licensee preparing an offer to buy shall provide in the offer and make the buyer aware that, for a fee, a septic system inspection letter is available through the Tennessee Department of Environment and Conservation, Division of Ground Water Protection.”*

The buyer may ask Seller to provide a well test at Seller's expense. Address this in Special Stipulations. The seller may already have had the well tested and have the results on file. You can ask the seller's representative.

Costs associated with Inspections and Repairs

All inspections are performed at the buyer's expense unless otherwise specified in the Special Stipulations section of the Purchase and Sale Agreement. The termite inspection costs are the responsibility of the Buyer unless the Buyer is receiving a VA loan. Government regulations within VA loan requirements will not allow the Buyer to pay for a termite inspection. (See Tennessee REALTORS® RF625 VA/FHA Addendum that addresses this issue.) The form states that the Buyer will order the inspection BUT the Seller will be responsible for paying for it. Buyers and Sellers should negotiate any needed repair costs, in good faith, using the RF654 Repair/Replacement Proposal or the RF655 Repair/Replacement Amendment.

Home Inspectors

Home Inspectors in Tennessee are licensed and regulated by the Home Inspector Licensing Program of the Tennessee Department of Commerce & Insurance. Tenn. Code Ann. §62-6-301(5) defines a home inspector as “any person who is licensed under this part as a home inspector and who engages in the business of performing home inspections and writing home inspection reports.” Clients and customers should be encouraged to use a licensed home inspector. Although buyers may inspect the property themselves, this may not carry the same weight in the eyes of the seller as a report from a licensed home inspector.

Inspection Contingency in the Purchase and Sale Agreement

The RF401 Purchase and Sale Agreement provides a buyer with an opportunity to make the offer/contract contingent upon a formal inspection of the property prior to closing on the transaction. Any and all inspections should be completed during the inspection period as noted in Section 7, Paragraph D in RF401 Purchase and Sale Agreement.

Reporting Inspection Results to the Seller

Once all inspections are completed the buyer has three (3) options in how they report the results to the seller:

1. They can provide a list of written specified objections and immediately **TERMINATE the Agreement. NOTE: DO NOT PROVIDE A FULL COPY OF THE REPORT!!! This is no longer a requirement. Agents SHOULD NOT automatically send the home inspection report with the list of repairs or termination notice. The Seller can request a copy (be careful as it can create an obligation on the part of the listing agent if adverse facts are revealed in this report.), but the buyer is not required to disclose it.**

2. They can **accept the property in its present “AS IS” condition** with any and all faults and no expressed warranties

OR

3. **Furnish the seller with a list of items they would like repaired and/or replaced** prior to closing.

Inspection Contingency Resolution Period

If the buyer chooses #3, the parties enter the “resolution period” and the RF654 Repair/Replacement Proposal form should be used for negotiating the items the buyer wants repaired and/or replaced. This form is signed only by the party making the proposal and does not go to the lender unless the lender requests it.

Once the buyer and seller agree on what items will be repaired and/or replaced, then the final agreement will be submitted on Tennessee REALTORS® RF655 Repair/Replacement Amendment with both parties’ signatures. It then becomes an amendment to the Purchase and Sale Agreement and must be submitted to the lender.

Remember to watch the performance dates associated with the resolution period. If a written resolution cannot be reached within this time frame, the contract is terminated and the buyer is entitled to a full refund of their Trust Money/Earnest Money.

A Note About “As Is” Properties

Buyers

When purchasing properties offered “as is,” buyers are still entitled to make any and all desired inspections – they can and should do so!

- Buyers may still attempt to negotiate any needed repairs.
- Buyers may cancel the contract based on any items disapproved in the inspection report or any defects disclosed by the seller.
- Purchasing a property “as is” does not limit a buyer’s options under the RF401 Purchase and Sale Agreement although, in practice, an “as is” Seller will be less likely to complete or negotiate needed repairs.

Sellers

- In practice, Sellers may offer a property “as is” because they don’t wish to make any repairs or because they are unaware of what problems may exist.
- Sellers offering a property “as is” are still required to fully disclose any property defects of which they have knowledge via the RF201 Tennessee Residential Property Condition Disclosure, unless exempt. It is especially important that Sellers answer honestly when a buyer inquires about a specific issue, i.e. plumbing or wiring.

Offering a property “as is” does not obligate buyers to *accept* the property “as is” until they’ve completed all desired evaluations and inspections. In the event a Seller offers a property “as is” and a Buyer agrees to waive their statutory right to a Tennessee Residential Property Condition Disclosure, an RF204 Tennessee Residential Property Condition Disclaimer form may be used. The ONLY time this form may be used is when the Buyer of property agrees to waive their statutory rights to a Residential Property Condition Disclosure.

Lender Requirements

It is important to familiarize yourself with lender requirements in your area related to appraisals and inspections. Know what lenders expect to receive before they order the required items for the loan obligations.

- If a lender needs the appraisal and/or inspection report before ordering loan documents, the deadlines you fill in at the direction of the Buyer, included in the RF401 Purchase and Sale Agreement should allow for this to happen to avoid putting the buyer at risk for breach. The parties may also wish to include in the special stipulations that the appraisal and/or inspection report must be obtained on or before a specific date.
- Buyers should be advised to stay in regular contact with the Lender to ensure their obligations are fulfilled. Lenders should be made aware of the contractual deadlines for the loan obligation. Using the RF708 Timeline Compliance Checklist for Purchase and Sale Agreement is a tool you can utilize to make sure everyone involved in the transaction is aware of the deadlines contained in the contract between the Buyer and Seller.

CLASS EXERCISE #2: Inspections and Repairs

In the following examples, there are five scenarios related to property inspections and the inspection contingency contained in the RF401 Purchase and Sale Agreement. Read each one carefully and decide how you would handle the particular situation.

Scenario 1:

The buyer, John Taylor, is making an offer on the home owned by Betty Anderson, the seller. The offer is contingent on inspections. John is willing to pay for any and all inspections, which he expects to have completed within 10 days. If repairs are needed, John is willing to negotiate with the seller. How would you address this in the offer?

Scenario 2:

Drew and Carolyn Carson, the buyers, completed their inspection on a home they are purchasing. They obtained an inspection report identifying needed replacement of the HVAC system, estimated at \$4,000. They want the seller to replace the system before they continue with the transaction. How would you proceed if you represent the buyers?

Scenario 3:

You represent the seller, Tony Cleaver. The buyer requests repairs to the roof, estimated at \$3,000. The seller, Betsy Andrews, is willing to pay no more than \$500 towards the needed repairs. How would you proceed?

Scenario 4:

You represent the Buyers, Artie and Julie Brown, who want to submit an offer on a home built almost two years ago. They want to close quickly and an existing home warranty is transferrable. They opt not to perform any inspections but notice water damage on an upstairs ceiling and two cracked panes in the living room bay window during a walkthrough after the contract is accepted. What are the Buyer's options?

Scenario 5:

You represent the Buyer, Tom Gray, who is under contract on a home in an older section of town. During the home inspection, the home inspector discovered several hairline cracks in the exterior brick and also inside the home. The inspector recommended Tom call a licensed structural engineer to inspect the cracks to determine if there were any major structural issues with the home. The structural engineer cannot inspect the property for another 5 days due to his work schedule. The inspection period ends two days from now. How would you address this situation?

UNIT 4 – SPECIAL STIPULATIONS

Special Stipulations

- A real estate sales contract contains numerous stipulations and clauses that expand the agreement between the seller and the buyer into concerns that go beyond the financial negotiations and the various contingency agreements.
- In the RF401 Purchase and Sale Agreement many stipulations are addressed throughout the Agreement. However, there are usually “special stipulations” that either the buyer or seller would like to include in the Agreement not addressed in the “boilerplate” language of the Purchase and Sale Agreement.
- Some example of “special stipulations” range from making the contract contingent on the sale of a home to requiring the property be clean at the time of the final inspection (final walk-through.)
- Whatever the stipulation may be, it is important to keep the language simple and understandable. Remember that your Tennessee real estate license does not allow you to practice law and draft language that is not congruent with other parts of the contract or the integrity of the transaction.
- Be careful with the stipulation you insert and how it may impact the parties if they agree to it. Seek the advice of your principal broker or closing/title attorney for assistance in drafting the correct wording for the special stipulation(s) you would like to add to the agreement.

Points to Remember

- The preprinted portions of the RF401 Purchase and Sale Agreement have been approved by the Tennessee REALTORS® forms committee and Tennessee REALTORS® attorneys.
- Handwritten provisions prevail! **When you write something in the special stipulations section, it should be consistent with the rest of the RF401 Purchase and Sale Agreement.** Whenever possible, use the same verbiage included in the preprinted portion, referencing the specific line number(s), only changing what is absolutely necessary!
- Before writing something into the special stipulations section, you should **FIRST check to make sure the issue is not addressed by another Tennessee REALTORS® form.**
- **NEVER include phrases such as TBD, actual costs, negotiable, etc.** Always be as specific as possible, especially when it comes to dates, amounts and actions required of either party. If you do not, then the contract may not be enforceable.
- The **Special Stipulations Library (RF707)** exists to assist you in addressing items in this section.
- If you’re using the special stipulations section to write in a contingency, there is likely another more appropriate Tennessee REALTORS® form.
- The special stipulations section can be appropriately used to make simple changes to a preprinted item, such as a required deadline, if the line number is referenced and exact verbiage reprinted, with only the number of days changed.
- **The special stipulations section should NEVER be used to write a new contract.**
- If you do not have enough space in the special stipulations section use **Form RF621 – Blank Addendum.**

CLASS EXERCISE #3 – Special Stipulations

Class participants should divide into groups to address the following situations. In your groups, decide whether the item should be addressed in the special stipulations section and, if so, how. If the item should NOT be addressed in this section, identify how an alternative form or section of the Purchase and Sale Agreement (RF401) would address it. Choose a representative who should be prepared to share the group's answers with the entire class.

1. The offer is contingent on the actual square footage of the property to be no less than 3,200 square feet.

2. The mirrors in the Master Bedroom bathroom are to remain with the property.

3. Seller to pay all of buyer's title expenses.

4. The offer is contingent on the sale of the buyer's current home in California.

5. The buyer wants the seller to ensure the property is "broom clean" and free of any trash/debris.

6. The buyer wants the seller to replace the damaged garage door.

7. The buyer wants to make sure the house has Radon levels within the acceptable EPA range.

8. The home is located behind another existing home and the driveway runs along the front neighbor's property (although it is part of the saleable property.) The buyer wants assurance their access won't be obstructed.

9. The buyer is obtaining an FHA loan to purchase the property.

10. The buyer wants to use the property for his dental office. The property is zoned residential, but other homes on the same street have been converted to commercial use. He wants to make the offer contingent on receiving approval from the city zoning board to use the house for his office.

11. The buyer wants the Dining Room curtains to stay with the property.

12. The buyer wants the seller to be responsible for any special assessments levied on the property before closing.

13. The property includes a large parcel of land and the buyer wants to make the offer contingent on a survey.

UNIT 5 – PRE-PRINTED ITEMS IN THE PURCHASE AND SALE AGREEMENT

Key Points for Pre-Printed Items in the Purchase and Sale Agreement

- The biggest lesson you can learn related to filling out contracts is one you learned a long time ago – color inside the lines! **Your goal is to fill in the existing picture, NOT draw a new one!**
- The preprinted portions of the Tennessee REALTORS® RF401 Purchase and Sale Agreement create obligations for the parties. To correctly explain them to clients and customers, you must understand them yourself! ALL preprinted items should be thoroughly explained to buyers and sellers, especially when the item requires action on their part.
- **Do NOT strike through ANY portion of preprinted language.** You should address any changes in the Special Stipulations section or another appropriate Tennessee REALTORS® form (i.e. the RF651 Counter Offer).
- Some fixtures are preprinted as included in the sale. If your seller does not wish to include them, you must note this specifically in writing – never assume anything. **Please note that items included in the Listing Agreement or MLS/MLS info sheet are NOT part of the binding agreement between the parties.**
- Pay special attention to notices required in the preprinted language and be sure to use the appropriate Notification form, if applicable.
- ALL preprinted items should be thoroughly explained to buyers and sellers, especially when the item requires action on their part.

Important Pre-Printed Components in the RF401 Purchase and Sale Agreement

- | | |
|--|---|
| • Items included in the purchase | • Handling of Earnest Money/Trust Money |
| • Items that REMAIN with the property | • Closing Date/Possession, Prorations and Warranties Transfer |
| • Items that WILL NOT REMAIN with the property | • Title Conveyance |
| • Financial Contingency and Appraisal | • Inspection Contingency |
| • Closing Expenses | • Legal terms and explanations |

UNIT 6 – DISCLOSURES AND DISCLAIMERS

Disclosing the Condition of the Property

When a homeowner elects to sell their home, under state law, they must disclose the condition of the property to any prospective buyer. Under the Tennessee Residential Property Condition Disclosure Act, the **Property Condition Disclosure** provides the buyer with information concerning the property and its condition, if known by the seller. If the seller wants to sell the property without any representations and warranties, they can complete a **Property Condition Disclaimer**.

Sellers must fill out the Tennessee Residential Property Condition Disclosure (RF201) form so it can be presented to buyers before they submit an offer. The buyer prior to reaching a binding agreement on the purchase of the property should carefully review any of these disclosures/disclaimers. The law states it must be submitted “prior to the acceptance of a real estate purchase contract” T.C.A. §66-5-203. The disclosure must include any defects known to the owner (see T.C.A. §66-5-202). It is in the seller’s best interests to disclose any adverse facts about the property – better to have it all out in the open beforehand and reduce their liability.

In addition, licensees are responsible for ensuring the buyer clearly understands these disclosure forms and be able to answer any questions the client may have concerning them. The licensee, however, should never complete any of these forms for their client. **It is imperative that only the seller FULLY COMPLETES any disclosure/disclaimer on the property condition. Additionally, the licensee should never advise what should be disclosed and what should not be disclosed. These are legal questions and answering them in the practice of law. If a seller has a question concerning what should be disclosed, he should speak with his/her own attorney.**

Required Property Condition Disclosures and Disclaimers

There are three Tennessee REALTORS® forms that deal with the Tennessee Residential Property Disclosure Act. One of these three forms should be completed in every transaction involving residential property. ALL of these should be completed by the SELLER and disclosed to potential buyers.

Form RF 201 Tennessee Residential Property Condition Disclosure form

This form is the one most commonly used by licensees for their sellers to complete. This is the one that is given to the seller where he/she discloses information about the property.

Note: Remember, if the seller or licensee is aware of any adverse fact concerning the property it must be disclosed even if an Exemption form is used.

Form RF 204 Tennessee Residential Property Disclaimer form

The Disclaimer form is RF 204. This is the form that you use when the seller wants to sell the property “as is”. The seller is stating that he is not going to make repairs and is not disclosing anything. However, in these circumstances, the buyer **MUST** agree to this disclaimer. If not, then the Condition Disclosure form must be completed if the sale is to proceed.

If the buyer agrees to accept the Disclaimer, the seller is not obligated to present the disclosure statement (and the buyer does not have to sign it).

In certain situations (such as someone has a power of attorney for the seller), you can explain that the seller is not able to provide an adequate disclosure form (get the seller's permission or the person holding the power of attorney before stating this to the buyer). This may make them more agreeable to accept the Disclaimer, especially if they understand that they can make whatever inspections they wish and can terminate the contract if they are not happy with the outcome of the inspections.

Form RF 205 Additional Required Residential Disclosures

Per T.C.A. § 66-5-212, all sellers are required to the presence of exterior injection wells, percolation test(s), foundation relocations, sinkholes, etc. This information can be found on RF201 and RF204. If a seller elects to complete RF203 (TN Residential Property Condition Exemption Notification) they will also need to complete an RF205. (This form was added in January 2018.)

Form RF203 Tennessee Residential Property Condition Exemption Notification

For "exempt" properties, no form is *required*, but an agent should use the RF 203 so that their file has documentation in it clarifying that the seller is exempt. Be aware, however, that if the RF203 is completed and RF205 must accompany it.

CLASS EXERCISE #4: Proper Disclosures

For the following items, identify which form(s) should be used to make the disclosure.

Issue	Form
1. Lead-based paint was found and removed from the basement of the seller's home.	
2. The seller knows the roof has a minor leak.	
3. The buyer has agreed to waive their right to the seller's property disclosure	
4. The seller added a room to the rear of the house without a permit.	
5. The home has four bedrooms but the seller admits the septic permit only allows for three.	
6. During periods of heavy rain, the backyard tends to have a great deal of standing water.	
7. The home was previously treated for radon.	
8. The seller just replaced the refrigerator, which is included in the sale.	
9. The seller's home was previously treated twice for termite damage.	
10. A neighbor's fence encroaches two feet onto the left side of the seller's property but they have refused to move it.	
11. The buyer is considering waiving their right to an inspection.	
12. The seller's property contains an exterior injection well, which is in working order.	
13. During the contract period, the seller discovers a significant amount of water damage in the rear wall of an upstairs closet.	
14. The developer of a vacant lot of land now listed for sale has paid a \$400 impact fee to the city with the installation of utilities.	
15. The seller has never occupied the property.	
16. The seller's property contains a large storage shed they are planning on having moved to their new home.	

UNIT 7 – COMPLETING THE OFFER

Before You Write an Offer

The following are suggestions of items you and your client should have prior to writing an offer to purchase:

1. Agency determined, and proper paperwork completed - Tennessee REALTORS® form RF 302 - Confirmation of Agency Status disclosure form and possibly RF 301 - Working with a Real Estate Professional.
2. TN Residential Property Disclosure (RF 201), Disclaimer (RF 204), Exemption (RF 203) and/or Additional Required Residential Disclosures (RF205).
3. Lead Based Paint disclosure (RF 209), if applicable
4. Disclaimer Notice (RF 304)
5. Good Faith Estimate from buyers lender
6. Vendor lists (RF 711)
7. If any known percolation tests, soil absorption rates, or if property contains Exterior Injection Well, you may use Tennessee REALTORS® form (RF 205). You may also want to use RF 205 if the property is located in a PUD or if the seller has knowledge that a single-family residence on the property has been moved from one foundation to another.

Two Very Important Rules Concerning Offers

1. TREC Rule Concerning Offers

TREC RULE 1260-02-.08 OFFERS TO PURCHASE. A broker or affiliate broker promptly **shall tender every written offer to purchase or sell obtained on a property until a contract is signed by all parties.** Upon obtaining a proper acceptance of an offer to purchase, or any counteroffer, a broker or affiliate broker promptly shall **deliver true executed copies of same, signed by the seller, to both the purchaser and the seller.** Brokers and affiliate brokers shall make certain that all of the terms and conditions of the real estate transaction are included in the contract to purchase. **In the event an offer is rejected, the broker or affiliate broker shall request the seller to note the rejection on the offer and return the same to the offeror or the offeror's agent.**

*NOTE: The **NAR Code of Ethics and Standards of Practice** provides additional requirements for handling offers. Standard of Practice 1-7 requires that listing brokers “continue to submit to the seller/landlord all offers and counter-offers until closing or execution of a lease unless the seller/landlord has waived this obligation in writing”, but does not require them to continue to market the property after an offer has been accepted. Standards of Practice 1-8 concerns buyer's/tenant's agents and states that they are required to “submit to buyers/tenants all offers and counter offers until acceptance but have no obligation to continue to show properties to their clients after an offer has been accepted unless otherwise agreed in writing.”*

2. Statute of Frauds

Contracts for the sale of real estate must be in writing and signed by all parties to be enforceable in the state of Tennessee. This is due to the “statute of frauds,” which in Tennessee holds that, **in order to be enforceable, the promise or agreement, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith.** Tennessee courts have generally held that an oral contract for the sale of real estate is not enforceable, even though the parties may have “partially” performed on the contract.

CLASS EXERCISE #5 – Writing the Offer

After reviewing the Tennessee REALTORS® RF401 Purchase and Sale Agreement, students will divide into groups. Using the following set of circumstances, each group will fill out the Purchase and Sale Agreement AND reference any other additional forms if needed. A representative from each group will be asked to present a portion of the offer as they would assist the buyer in filling it out.

You have been showing property to Tom and Beverly Smith for almost three months. Today, they found their “dream” home and have decided to purchase Robert and Martha Jones’ 30 year old home at 3450 Golf Course Lane. The home is a four bedroom, two and one-half bath brick home in Elmwood, TN. It was built in 1968. They are willing to offer \$305,000 for the property, assuming they successfully close on their current home at 550 East River St. in Columbus, Ohio, upon which they have a contract scheduled to close in three weeks.

They would like to purchase the home using the VA entitlement that was earned by Mr. Smith while serving in the U.S. Army. They would like to put down as little as possible and prefer to have the current owner pay for all their costs from the lender.

They need a response by tomorrow afternoon, as they like another home that will meet their needs as well and want to make sure they are able to secure one of these two homes. Although, they aren’t particularly interested in the storage shed in the backyard, as well as the hot tub on the deck, they really do not want those items to stay with the property.

Additionally, the property has a septic system, an exterior 500 lb. propane gas tank and a shared driveway with the home next door.

The Smiths are unfamiliar with the typical arrangements that agents make for clients for appraisals, inspections, etc. and are leaving those things up to your judgment. However, they very much want to have possession at time of closing and would like to close in forty-five days.

The name of your company is Acme Realty. You suggest – and your client agrees – to offer 1% of the offered price as Trust Money, with your firm holding it in an escrow account.

APPENDIX

Tennessee REALTORS® Forms Resource Guide

TAR FORM	PURPOSE
RF 302– Confirmation of Agency Status	To confirm the required agency disclosures have been made – this is NOT the same as an agency agreement!
RF303– Notification of Change in Status or Agency Relationship	To confirm a change in agency status
RF 143 & RF144– Buyer Representation Agreement (Non-Exclusive)	As a non-exclusive agency agreement for buyer agency
RF141 & RF142– Buyer Representation Agreement (Exclusive)	As an exclusive agency agreement for buyer agency
RF654– Repair/Replacement Proposal	When the sale is contingent on the buyer completing inspections during the inspections period, this form is to be used as a worksheet to negotiate the repairs
RF655– Repair/Replacement Amendment	When the parties agree on repairs, those repairs are listed on this amendment.
RF657– Closing Date/Possession Amendment	To make a change to the closing date and/or possession date specified in the RF401
RF651– Counter Offer	To submit a Counter Offer – this form should ALWAYS be used instead of scratching out portions of the original offer!
RF401 – Purchase and Sale Agreement	As the standard offer to purchase for residential properties
RF304– Disclaimer	Notice by licensees to notify parties they are NOT experts on property condition/inspection issues
RF209– Lead-Based Paint Disclosure	To fulfill statutory requirements for lead-based paint disclosures
RF201– Tennessee Residential Property Condition Disclosure	By the seller to disclose material facts about a property
RF202– Sellers’ Property Update	To update the property condition disclosure

RF305– Personal Interest Disclosure and Consent	To verify disclosure and obtain written consent when the licensee has a present or contemplated personal interest in the property
RF706– Interpleader	When a Broker must interplead Trust Money dispute
RF161– Agreement to Show Property	To obtain a Seller's written consent to market and show their property
RF656– Notification	To adhere to requirements for notice for certain items within the RF401
RF658– Authorized to Make Repairs	When the buyer wants to obtain the seller's consent to have access to the property prior to closing for the purpose of completing repairs
RF481– Trust Money Disbursement and Mutual Release of Purchase of PSA Release	To establish how Trust Money will be dispersed
RF707– Special Stipulations Language	To provide examples of appropriate language to use in the Special Stipulations sections for common issues
RF623– Sellers' Right to Continue to Market Property	Enables seller to give Buyer XX hours to remove certain contingencies in the event an acceptable offer is received
RF624– Sellers' Notice to Buyer of Receipt of Acceptable Offer	Form to give notice of acceptable offer and removal (or non-removal) of contingencies
RF711– Vendor List	When the licensee recommends vendors such as inspectors, lenders, etc.
RF660– Buyers Final Inspection	To properly document Buyer's final inspection
RF203– Tennessee Residential Property Condition Exemption Notification	When a property or transaction is exempt from statutory disclosure requirements
RF204– Tennessee Residential Property Condition Disclaimer	When the Buyer waives their right to receive the Property Condition Disclosure form

RF621– Blank Addendum	Blank, as stated.
RF625– FHA/VA Loan Addendum	When the Buyer is getting a FHA or VA loan
RF714– Water Supply and Waste Disposal Notification	When a property is served by a well, septic or other water or waste system
RF708– Timeline Compliance Checklist for P&S Agreement	As a worksheet to keep up with timelines and deadlines within the RF401
RF208– Subsurface Sewage	To request information from governmental agency charged with keeping septic records
RF205– Additional Required Residential Disclosures	When the property is served by an exterior injection well or when soil absorption rates or percolation tests have been performed. Also includes disclosure for PUD's, sinkholes, house moved from one foundation to another.
RF101– Exclusive Right to Sell Listing Agreement (Designated Agency)	As an Exclusive Right to Sell Listing Agreement for Designated Seller Agency
RF102– Exclusive Right to Sell Listing Agreement (Seller Agency)	As an Exclusive Right to Sell Listing Agreement for traditional Seller Agency

PURCHASE AND SALE AGREEMENT

1. **Purchase and Sale.** For and in consideration of the mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned buyer

_____ (“Buyer”) agrees to buy and the undersigned seller _____ (“Seller”) agrees to sell all that tract or parcel of land, with such improvements as are located thereon, described as follows:

All that tract of land known as: _____ (Address) _____ (City), Tennessee, _____ (Zip), as recorded in _____ County Register of Deeds Office, _____ deed book(s), _____ page(s), and/or _____ instrument number and as further described as:

_____ together with all fixtures, landscaping, improvements, and appurtenances, all being hereinafter collectively referred to as the “Property.”

A. **INCLUDED** as part of the Property (if present): all attached light fixtures and bulbs including ceiling fans; permanently attached plate glass mirrors; heating, cooling, and plumbing fixtures and equipment; all doors, storm doors and windows; all window treatments (e.g., shutters, blinds, shades, curtains, draperies) and hardware; all wall-to-wall carpet; range; all built-in kitchen appliances; all bathroom fixtures and bathroom mirrors; all gas logs, fireplace doors and attached screens; all security system components and controls; garage door opener and all (at least _____) remote controls; an entry key; swimming pool and its equipment; awnings; permanently installed outdoor cooking grills; all landscaping and all outdoor lighting; mailbox(es); attached basketball goals and backboards; TV mounting brackets (but excluding flat screen TVs); antennae and satellite dishes (excluding components); and central vacuum systems and attachments.

B. Other items that **REMAIN** with the Property at no additional cost to Buyer:

C. Items that **WILL NOT REMAIN** with the Property:

D. **LEASED ITEMS:** Leased items that remain with the Property: (e.g., security systems, water softener systems, fuel tank, etc.): _____.

Buyer shall assume any and all lease payments as of Closing. If leases are not assumable, the balance shall be paid in full by Seller at or before Closing.

☐ Buyer does not wish to assume a leased item. (**THIS BOX MUST BE CHECKED IN ORDER FOR IT TO BE A PART OF THIS AGREEMENT.**)

Buyer does not wish to assume Seller’s current lease of _____; therefore, Seller shall have said lease cancelled and leased items removed from Property prior to Closing.

E. **FUEL:** Fuel, if any, will be adjusted and charged to Buyer and credited to Seller at Closing at current market prices.

2. **Purchase Price, Method of Payment and Closing Expenses.** Buyer warrants that, except as may be otherwise provided herein, Buyer will at Closing have sufficient cash to complete the purchase of the Property under the terms of this Purchase and Sale Agreement (hereinafter “Agreement”). The purchase price to be paid is:

\$ _____ U.S. Dollars, (“Purchase Price”) which shall be disbursed to Seller or Seller’s Closing Agency by one of the following methods:

- i. a Federal Reserve Bank wire transfer;
- ii. a Cashier’s Check issued by a financial institution as defined in 12 CFR § 229.2(i); OR
- iii. other such form as is approved in writing by Seller.

A. **Financial Contingency – Loan(s) To Be Obtained.** This Agreement is conditioned upon Buyer’s ability to obtain a loan(s) in the principal amount up to _____ % of the Purchase Price listed above to be secured by a deed of trust on the Property. “Ability to obtain” as used herein means that Buyer is qualified to receive the loan described

herein based upon Lender's customary and standard underwriting criteria. In consideration of Buyer, having acted in good faith and in accordance with the terms below, being unable to obtain financing by the Closing Date, the sufficiency of such consideration being hereby acknowledged, Buyer may terminate this Agreement by providing written notice via the Notification form or equivalent written notice. Seller shall have the right to request any supporting documentation regarding loan denial. Upon termination, Buyer is entitled to a refund of the Earnest Money/Trust Money. Lender is defined herein as the financial institution funding the loan.

The loan shall be of the type selected below (**Select the appropriate boxes. Unselected items will not be part of this Agreement**):

- | | |
|---|--|
| <input type="checkbox"/> Conventional Loan | <input type="checkbox"/> FHA Loan; attach addendum |
| <input type="checkbox"/> VA Loan; attach addendum | <input type="checkbox"/> Other _____ |

Buyer may apply for a loan with different terms and conditions and also Close the transaction provided all other terms and conditions of this Agreement are fulfilled, and the new loan does not increase any costs charged to Seller. Buyer shall be obligated to Close this transaction if Buyer has the ability to obtain a loan with terms as described herein and/or any other loan for which Buyer has applied and been approved.

Loan Obligations: *The Buyer agrees and/or certifies as follows:*

- (1) Within three (3) days after the Binding Agreement Date, Buyer shall make application for the loan and shall pay for credit report. Buyer shall immediately notify Seller or Seller's representative of having applied for the loan and provide Lender's name and contact information, and that Buyer has instructed Lender to order credit report. Such certifications shall be made via the Notification form or equivalent written notice;
- (2) Within fourteen (14) days after the Binding Agreement Date, Buyer shall warrant and represent to Seller via the Notification form or equivalent written notice that:
 - a. Buyer has secured evidence of hazard insurance which will be effective at Closing and Buyer shall notify Seller of the name of the hazard insurance company;
 - b. Buyer has notified Lender of an Intent to Proceed and has available funds to Close per the signed Loan Estimate; and
 - c. Buyer has requested that the appraisal be ordered and affirms that the appraisal fee has been paid.
- (3) Buyer shall pursue qualification for and approval of the loan diligently and in good faith;
- (4) Buyer shall continually and immediately provide requested documentation to Lender and/or loan originator;
- (5) Unless otherwise stated in this Agreement, Buyer represents that this loan is not contingent upon the lease or sale of any other real property and the same shall not be used as the basis for loan denial; and
- (6) Buyer shall not intentionally make any material changes in Buyer's financial condition which would adversely affect Buyer's ability to obtain the Primary Loan or any other loan referenced herein.

Should Buyer fail to timely comply with section 2.A.(1) and/or 2.A.(2) above and provide notice as required, Seller may make written demand for compliance via the Notification form or equivalent written notice. If Buyer does not furnish Seller the requested documentation within two (2) days after such demand for compliance, Buyer shall be considered in default and Seller's obligation to sell is terminated.

- ☐ **B. Financing Contingency Waived (THIS BOX MUST BE CHECKED TO BE PART OF THIS AGREEMENT.)** (e.g. "All Cash", etc.): Buyer's obligation to close shall not be subject to any financial contingency. Buyer reserves the right to obtain a loan. Buyer will furnish proof of available funds to close in the following manner: _____ (e.g. bank statement, Lender's commitment letter) within five (5) days after Binding Agreement Date. Should Buyer fail to do so, Seller may make written demand for compliance via the Notification form or equivalent written notice. If Buyer does not furnish Seller with the requested notice within two (2) days after such demand for compliance, Buyer shall be considered in default and Seller's obligation to sell is terminated. Failure to Close due to lack of funds shall be considered default by Buyer.

In the event this Agreement is contingent upon an appraisal (See Paragraph 2.C. below), Buyer must order the appraisal and provide Seller with the name and telephone number of the appraisal company and proof that appraisal was ordered within five (5) days of the Binding Agreement Date. Should Buyer fail to do so, Seller may make written demand for compliance via the Notification form or equivalent written notice. If Buyer does not furnish Seller with the requested notice within two (2) days after such demand for compliance, Buyer shall be considered in default and Seller's obligation to sell is terminated.

C. Appraisal (Select either 1 or 2 below. The sections not checked are not a part of this Agreement).

- ☐ **1.** This Agreement **IS NOT** contingent upon the appraised value either equaling or exceeding the agreed upon Purchase Price.

- 104 □ 2. This Agreement **IS CONTINGENT** upon the appraised value either equaling or exceeding the agreed
105 upon Purchase Price. If the appraised value is equal to or exceeds Purchase Price, this contingency is
106 satisfied. In consideration of Buyer having conducted an appraisal, the sufficiency of such consideration
107 being hereby acknowledged, if the appraised value of the Property does not equal or exceed the Purchase
108 Price, Buyer shall promptly notify the Seller via the notification form or written equivalent notice. Buyer
109 shall then have 3 days to either:

110 1. waive the appraisal contingency via the notification form or equivalent written notice

111 **OR**

112 2. terminate the agreement by giving notice to seller via the notification form or equivalent written
113 notice. Upon timely termination, Buyer is entitled to a refund of the Earnest money.

114 In the event buyer fails to either waive the appraisal or terminate the agreement as set forth above, this
115 contingency shall be deemed satisfied. Thereafter, failure to appraise shall not be used as the basis for loan
116 denial or termination of contract. Seller shall have the right to request any supporting documentation
117 showing appraised value did not equal or exceed the agreed upon purchase price.

118 **D. Closing Expenses.**

- 119 1. **Seller Expenses.** Seller shall pay all existing loans and/or liens affecting the Property, including all penalties,
120 release preparation costs, and applicable recording costs; any accrued and/or outstanding association dues or
121 fees; fee (if any) to obtain lien payoff/estoppel letters/statement of accounts from any and all associations,
122 property management companies, mortgage holders or other liens affecting the Property; Seller's closing fee,
123 document preparation fee and/or attorney's fees; fee for preparation of deed; notary fee on deed; and financial
124 institution (Bank, Credit Union, etc.) wire transfer fee or commercial courier service fee related to the
125 disbursement of any lien payoff(s). Seller additionally agrees to permit any withholdings and/or to pay any
126 additional sum due as is required under the Foreign Investment in Real Property Tax Act. Failure to do so will
127 constitute a default by Seller.

128 **In the event Seller is subject to Tax Withholding as required by the Foreign Investment in Real Property**
129 **Tax Act, (hereinafter "FIRPTA"), Seller additionally agrees that such Tax Withholding must be collected**
130 **from Seller by Buyer's Closing Agent at the time of Closing.** In the event Seller is not subject to FIRPTA,
131 Seller shall be required as a condition of Closing to sign appropriate affidavits certifying that Seller is not
132 subject to FIRPTA. *It is Seller's responsibility to seek independent tax advice or counsel prior to the Closing*
133 *Date regarding such tax matters.*

- 134 2. **Buyer Expenses.** Buyer shall pay all transfer taxes and recording fees on deed of conveyance and deed of trust;
135 Buyer's closing fee, document preparation fee and/or attorney's fees; preparation of note, deed of trust, and
136 other loan documents; mortgage loan inspection or boundary line survey; credit report; required premiums for
137 private mortgage, hazard and flood insurance; required reserved deposits for insurance premiums and taxes;
138 prepaid interest; re-inspection fees pursuant to appraisal; insured Closing Protection Letter; association fees as
139 stated within paragraph 4.E.; and any costs incident to obtaining and closing a loan, including but not limited to:
140 appraisal, origination, discount points, application, commitment, underwriting, document review, courier,
141 assignment, photo, tax service, notary fees, and any wire fee or other charge imposed for the disbursement of
142 the Seller's proceeds according to the terms of this Agreement.

- 143 3. **Title Expenses.** Cost of title search, mortgagee's policy and owner's policy (rates to be as filed with the
144 Tennessee Department of Commerce and Insurance) shall be paid as follows:

145 _____
146 Simultaneous issue rates shall apply.

147 **Not all of the above items (Seller Expenses, Buyer Expenses and Title Expenses) are applicable to every**
148 **transaction and may be modified as follows:**

149 _____
150 _____
151 **Closing Agency for Buyer:** _____

152 **Closing Agency for Seller:** _____

- 153 3. **Earnest Money/Trust Money.** Buyer has paid or will pay within _____ days after the Binding Agreement Date to
154 _____ (name of Holder) ("Holder") located at
155 _____ (address of Holder), a Earnest
156 Money/Trust Money deposit of \$ _____ by check (OR
157 _____) ("Earnest Money/Trust Money").

- 158 **A. Failure to Receive Earnest Money/Trust Money.** In the event Earnest Money/Trust Money (if applicable) is not
159 timely received by Holder or Earnest Money/Trust Money check or other instrument is not honored for any reason

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by the bank upon which it is drawn, Holder shall promptly notify Buyer and Seller of the Buyer's failure to deposit the agreed upon Earnest Money/Trust Money. Buyer shall then have one (1) day to deliver Earnest Money/Trust Money in immediately available funds to Holder. In the event Buyer does not deliver such funds, Buyer is in default and Seller shall have the right to terminate this Agreement by delivering to Buyer or Buyer's representative written notice via the Notification form or equivalent written notice. In the event Buyer delivers the Earnest Money/Trust Money in immediately available funds to Holder before Seller elects to terminate, Seller shall be deemed to have waived his right to terminate, and the Agreement shall remain in full force and effect.

B. Handling of Earnest Money/Trust Money upon Receipt by Holder. Earnest Money/Trust Money (if applicable) is to be deposited promptly after the Binding Agreement Date or the agreed upon delivery date in this Earnest Money/Trust Money paragraph or as specified in the Special Stipulations paragraph contained at paragraph 19 herein. Holder shall disburse Earnest Money/Trust Money only as follows:

- (a) at Closing to be applied as a credit toward Buyer's Purchase Price;
- (b) upon a written agreement signed by all parties having an interest in the funds;
- (c) upon order of a court or arbitrator having jurisdiction over any dispute involving the Earnest Money/Trust Money;
- (d) upon a reasonable interpretation of the Agreement; or
- (e) upon the filing of an interpleader action with payment to be made to the clerk of the court having jurisdiction over the matter.

Holder shall be reimbursed for, and may deduct from any funds interpleaded, its costs and expenses, including reasonable attorney's fees. The prevailing party in the interpleader action shall be entitled to collect from the other party the costs and expenses reimbursed to Holder. No party shall seek damages from Holder (nor shall Holder be liable for the same) for any matter arising out of or related to the performance of Holder's duties under this Earnest Money/Trust Money paragraph. Earnest Money/Trust Money shall not be disbursed prior to fourteen (14) days after deposit unless written evidence of clearance by bank is provided.

4. Closing, Prorations, Special Assessments and Warranties Transfer.

A. Closing Date. This transaction shall be closed ("Closed") (evidenced by delivery of warranty deed and payment of Purchase Price, the "Closing"), and this Agreement shall expire, at 11:59 p.m. local time on the _____ day of _____, _____ ("Closing Date"), or on such earlier date as may be agreed to by the parties in writing. Such expiration does not extinguish a party's right to pursue remedies in the event of default. Any extension of this date must be agreed to by the parties in writing via the Closing Date/Possession Date Amendment or equivalent written agreement.

1. Possession. Possession of the Property is to be given (Select the appropriate boxes below. Unselected items will not be part of this Agreement):

- ☐ at Closing as evidenced by delivery of warranty deed and payment of Purchase Price;

OR

- ☐ as agreed in the attached and incorporated Temporary Occupancy Agreement;

B. Prorations. Real estate taxes, rents, dues, maintenance fees, and association fees on said Property for the calendar year in which the sale is Closed shall be prorated as of the Closing Date. In the event of a change or reassessment of taxes for the calendar year after Closing, the parties agree to pay their recalculated share. Real estate taxes, rents, dues, maintenance fees, and association fees for prior years and roll back taxes, if any, will be paid by Seller.

C. Special Assessments. Special assessments approved or levied prior to the Closing Date shall be paid by the Seller at or prior to Closing unless otherwise agreed as follows:

D. Warranties Transfer. Seller, at the option of Buyer and at Buyer's cost, agrees to transfer Seller's interest in any manufacturer's warranties, service contracts, termite bond or treatment guarantee and/or similar warranties which by their terms may be transferable to Buyer.

E. Association Fees. Buyer shall be responsible for all homeowner or condominium association transfer fees, related administration fees (not including statement of accounts), capital expenditures/contributions incurred due to the transfer of Property and/or like expenses which are required by the association, property management company and/or the bylaws, declarations or covenants for the Property (unless otherwise specifically addressed herein and/or unless specifically chargeable to Seller under applicable bylaws, declarations, and/or neighborhood covenants).

5. Title and Conveyance.

A. Seller warrants that at the time of Closing, Seller will convey or cause to be conveyed to Buyer or Buyer's assign(s) good and marketable title to said Property by general warranty deed, subject only to:

- (1) zoning;

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- (2) setback requirements and general utility, sewer, and drainage easements of record on the Binding Agreement Date upon which the improvements do not encroach;
- (3) subdivision and/or condominium declarations, covenants, restrictions, and easements of record on the Binding Agreement Date; and
- (4) leases and other encumbrances specified in this Agreement.

If title examination, closing or loan survey pursuant to Tenn. Code Ann. § 62-18-126, boundary line survey, or other information discloses material defects, Buyer may, at Buyer's discretion:

- (1) accept the Property with the defects **OR**
- (2) require Seller to remedy such defects prior to the Closing Date. Buyer shall provide Seller with written notice of such defects via the Notification form or equivalent written notice. If defects are not remedied prior to Closing Date, Buyer and Seller may elect to extend the Closing Date by mutual written agreement evidenced by the Closing Date/Possession Amendment form or other written equivalent. If defects are not remedied by the Closing Date or any mutually agreed upon extension thereof, this Agreement shall terminate, and Buyer shall be entitled to refund of Earnest Money/Trust Money.

Good and marketable title as used herein shall mean title which a title insurance company licensed to do business in Tennessee will insure at its regular rates, subject only to standard exceptions. The title search or abstract used for the purpose of evidencing good and marketable title must be acceptable to the title insurance agent and the issuing title insurance company. Seller agrees to execute such appropriate affidavits and instruments as may be required by the issuing title insurance company.

- B. Deed.** Deed is to be made in the name of _____. The manner in which Buyer takes title determines ownership and survivorship rights. It is the Buyer's responsibility to consult the closing agency or attorney prior to Closing.

6. Lead-Based Paint Disclosure (Select the appropriate box. Items not selected are not part of this Agreement).

- ☐ does not apply. ☐ does apply (Property built prior to 1978).

7. Inspections.

- A. Buyer's Right to Make Inspection(s).** All inspections/reports, including but not limited to the home inspection report, those required/recommended in the home inspection report, Wood Destroying Insect Infestation Inspection Report, septic inspection and well water test, are to be made at Buyer's expense, unless otherwise stipulated in this Agreement. The parties hereto agree that in the event Buyer shall elect to contract with a third party inspector to obtain a "Home Inspection" as defined by Tennessee law, said inspection shall be conducted by a licensed Home Inspector. However, nothing in this paragraph shall preclude Buyer from conducting any inspections on his/her own behalf, nor shall it preclude Buyer from retaining a qualified (and if required by law, licensed) professional to conduct inspections of particular systems or issues within such professional's expertise or licensure, including but not limited to inspection of the heating/cooling systems, electrical systems, foundation, etc., so long as said professional is not in violation of Tenn. Code Ann. § 62-6-301, et seq. as may be amended. **Seller shall cause all utility services and any pool, spa, and similar items to be operational so that Buyer may complete all inspections and tests under this Agreement.** Buyer agrees to indemnify Seller from the acts of himself, his inspectors and/or representatives in exercising his rights under this Purchase and Sale Agreement. Buyer's obligations to indemnify Seller shall also survive the termination of this Agreement by either party, which shall remain enforceable. **Buyer waives any objections to matters of purely cosmetic nature (e.g. decorative, color or finish items) disclosed by inspection. Buyer has no right to require repairs or alterations purely to meet current building codes, unless required to do so by governmental authorities.**

- B. Initial Inspections.** Buyer and/or his inspectors/representatives shall have the right and responsibility to enter the Property during normal business hours, for the purpose of making inspections and/or tests of the Property. Buyer and/or his inspectors/representatives shall have the right to perform a visual analysis of the condition of the Property, any reasonably accessible installed components, the operation of the Property's systems, including any controls normally operated by Seller including the following components: heating systems, cooling systems, electrical systems, plumbing systems, structural components, foundations, roof coverings, exterior and interior components, any other site aspects that affect the Property, and environmental issues.

- C. Wood Destroying Insect Infestation Inspection Report.** If desired by Buyer or required by Buyer's Lender, it shall be Buyer's responsibility to obtain **at Buyer's expense** a Wood Destroying Insect Infestation Inspection Report (the "Report"), which shall be made by a Tennessee licensed and chartered pest control operator.

The foregoing expense may be subject to governmental guidelines relating to VA Loans (See VA/FHA Loan Addendum if applicable).

The inspection shall include each dwelling, garage, and other permanent structure on the Property excluding _____ for evidence of active infestation and/or damage. Buyer shall cause such Report to be delivered to Seller simultaneously with any repairs requested by the Buyer or the end of the Inspection Period, whichever is earlier. If the Report indicates evidence of active infestation, Seller agrees to treat infestation at Seller's expense and provide documentation of the treatment to Buyer prior to Closing. Requests for repair of damage, if any, should be addressed in the Buyer's request for repairs pursuant to Subparagraph 8.D., Buyer's Inspection and Resolution below.

- D. Buyer's Inspection and Resolution.** Within _____ days after the Binding Agreement Date ("Inspection Period"), Buyer shall cause to be conducted any inspection provided for herein, including but not limited to the Wood Destroying Insect Infestation Inspection Report AND shall provide written notice of such to Seller as described below. *In the event Buyer fails to timely make such inspections and respond within said timeframe as described herein, the Buyer shall have forfeited any rights provided under this Section 7, and in such case shall accept the Property in its current condition, normal wear and tear excepted.*

In said notice Buyer shall either:

- (1) In consideration of Buyer having conducted Buyer's good faith inspections as provided for herein, the sufficiency of such consideration being hereby acknowledged, Buyer shall furnish Seller with a list of written specified objections and immediately terminate this Agreement via the Notification form or equivalent written notice. All Earnest Money/Trust Money shall be returned to Buyer upon termination.

OR

- (2) accept the Property in its present "AS IS" condition with any and all faults and no warranties expressed or implied via the Notification form or equivalent written notice. Seller has no obligation to make repairs.

OR

- (3) furnish Seller a written list of items which Buyer requires to be repaired and/or replaced with like quality or value in a professional and workmanlike manner. Seller shall have the right to request any supporting documentation that substantiates any item listed.

- a. Resolution Period. Seller and Buyer shall then have a period of _____ days following receipt of the above stated written list ("Resolution Period") to reach a mutual agreement as to the items to be repaired or replaced with like quality or value by Seller, which shall be evidenced by the Repair / Replacement Amendment or written equivalent(s). *The parties agree to negotiate repairs in good faith during the Resolution Period.* In the event Seller and Buyer do not reach a mutual written resolution during such Resolution Period or a mutually agreeable written extension thereof as evidenced in an Amendment to this Agreement signed by both parties within said period of time, this Agreement is hereby terminated. If terminated, Buyer is entitled to a refund of the Earnest Money/Trust Money.

- ☐ **E. Waiver of All Inspections. THIS BOX MUST BE CHECKED TO BE PART OF THIS AGREEMENT.**

Buyer, having been advised of the benefits of inspections, waives any and all Inspection Rights under this Paragraph 8 (including but not limited to the Wood Destroying Insect Infestation Inspection Report).

- 8. Final Inspection.** Buyer and/or his inspectors/representatives shall have the right to conduct a final inspection of Property on the Closing Date or within ____ day(s) prior to the Closing Date only to confirm Property is in the same or better condition as it was on the Binding Agreement Date, normal wear and tear excepted, and to determine that all repairs/replacements agreed to during the Resolution Period, if any, have been completed. Property shall remain in such condition until Closing at Seller's expense. Closing of this sale constitutes acceptance of Property in its condition as of the time of Closing, unless otherwise noted in writing.

- 9. Buyer's Additional Due Diligence Options.** If any of the matters below are of concern to Buyer, Buyer should address the concern by specific contingency in the Special Stipulations Paragraph of this Agreement.

- A. Survey and Flood Certification.** Survey Work and Flood Certifications are the best means of identifying boundary lines and/or encroachments and easements or flood zone classifications. Buyer may obtain a Mortgage Inspection or Boundary Line Survey and Flood Zone Certifications.

- B. Insurability.** Many different issues can affect the insurability and the rates of insurance for property. These include factors such as changes in the Flood Zone Certifications, changes to the earthquake zones maps, the insurability of the buyer, and previous claims made on the Property. It is the right and responsibility of Buyer to determine the insurability, coverage and the cost of insuring the Property. It is also the responsibility of Buyer to determine whether any exclusions will apply to the insurability of said Property.

- C. Water Supply.** The system may or may not meet state and local requirements. It is the right and responsibility of Buyer to determine the compliance of the system with state and local requirements. [For additional information on

this subject, request the "Water Supply and Waste Disposal Notification" form.]

D. Waste Disposal. The system may or may not meet state and local requirements. It is the right and responsibility of Buyer to determine the compliance of the system with state and local requirements. In addition, Buyer may, for a fee, obtain a septic system inspection letter from the Tennessee Department of Environment and Conservation, Division of Ground Water Protection. [For additional information on this subject, request the "Water Supply and Waste Disposal Notification" form.]

E. Title Exceptions. At Closing, the general warranty deed will be subject to subdivision and/or condominium declarations, covenants, restrictions and easements of record, which may impose obligations and may limit the use of the Property by Buyer.

10. Disclaimer. It is understood and agreed that the real estate firms and real estate licensee(s) representing or assisting Seller and/or Buyer and their brokers (collectively referred to as "Brokers") are not parties to this Agreement and do not have or assume liability for the performance or nonperformance of Seller or Buyer. Buyer and Seller agree that Brokers shall not be responsible for any of the following, including but not limited to, those matters which could have been revealed through a survey, flood certification, title search or inspection of the Property; the insurability of the Property or cost to insure the Property; for the condition of the Property, any portion thereof, or any item therein; for any geological issues present on the Property; for any issues arising out of the failure to physically inspect Property prior to entering into this Agreement and/or Closing; for the necessity or cost of any repairs to the Property; for hazardous or toxic materials; for the tax or legal consequences of this transaction; for the availability, capability, and/or cost of utility, sewer, septic, or community amenities; for any proposed or pending condemnation actions involving Property; for applicable boundaries of school districts or other school information; for the appraised or future value of the Property; for square footage or acreage of the Property; for any condition(s) existing off the Property which may affect the Property; for the terms, conditions, and availability of financing; and/or for the uses and zoning of the Property whether permitted or proposed. Buyer and Seller acknowledge that Brokers are not experts with respect to the above matters and that they have not relied upon any advice, representations or statements of Brokers (including their firms and affiliated licensees) and waive and shall not assert any claims against Brokers (including their firms and affiliated licensees) involving same. Buyer and Seller understand that it has been strongly recommended that if any of these or any other matters concerning the Property are of concern to them, that they secure the services of appropriately credentialed experts and professionals of Buyer's or Seller's choice for the independent expert advice and counsel relative thereto.

11. Brokerage. As specified by separate agreement, Seller agrees to pay Listing Broker at Closing the agreed upon compensation. The Listing Broker will direct the closing agency to pay the Selling Broker, from the compensation received, an amount in accordance with the terms and provisions specified by separate agreement. The parties agree and acknowledge that the Brokers involved in this transaction may receive compensation from more than one party. All parties to this Agreement agree and acknowledge that any real estate firm involved in this transaction shall be deemed a third party beneficiary only for the purposes of enforcing their commission rights, and as such, shall have the right to maintain an action on this Agreement for any and all compensations due and any reasonable attorney's fees and court costs.

12. Default. Should Buyer default hereunder, the Earnest Money/Trust Money shall be forfeited as damages to Seller and shall be applied as a credit against Seller's damages. Seller may elect to sue, in contract or tort, for additional damages or specific performance of the Agreement, or both. Should Seller default, Buyer's Earnest Money/Trust Money shall be refunded to Buyer. In addition, Buyer may elect to sue, in contract or tort, for damages or specific performance of this Agreement, or both. In the event that any party hereto shall file suit for breach or enforcement of this Agreement (including suits filed after Closing which are based on or related to the Agreement), the prevailing party shall be entitled to recover all costs of such enforcement, including reasonable attorney's fees. In the event that any party exercises its right to terminate due to the default of the other pursuant to the terms of this Agreement, the terminating party retains the right to pursue any and all legal rights and remedies against the defaulting party following termination. The parties hereby agree that all remedies are fair and equitable and neither party will assert the lack of mutuality of remedies, rights and/or obligations as a defense in the event of a dispute.

13. Home Protection Plan. This is not a substitution for Home Inspection. Exclusions to coverage may apply. (Select the appropriate box below. Items not selected are not part of this Agreement).

- ☐ **Home Protection Plan.** _____ to pay \$ _____ for the purchase of a limited home protection plan to be funded at Closing. Plan Provider: _____
Ordered by: _____ (Real Estate Company)
- ☐ **Home Protection Plan waived.**

377 **14. Other Provisions.**

- 378 **A. Binding Effect, Entire Agreement, Modification, Assignment, and Binding Agreement Date.** This Agreement
379 shall be for the benefit of, and be binding upon, the parties hereto, their heirs, successors, legal representatives and
380 assigns. This Agreement constitutes the sole and entire agreement between the parties hereto and no modification of
381 this Agreement shall be binding unless signed by all parties or assigns to this Agreement. No representation,
382 promise, or inducement not included in this Agreement shall be binding upon any party hereto. It is hereby agreed
383 by both Buyer and Seller that any real estate agent working with or representing either party shall not have the
384 authority to bind the Buyer, Seller or any assignee to any contractual agreement unless specifically authorized in
385 writing within this Agreement. Any assignee shall fulfill all the terms and conditions of this Agreement. The
386 parties hereby authorize either licensee to insert the time and date of receipt of the notice of acceptance of the final
387 offer and further agree to be bound by such as the Binding Agreement Date following the signatory section of this
388 Agreement, or Counter Offer, if applicable.
- 389 **B. Survival Clause.** Any provision contained herein, which by its nature and effect is required to be performed after
390 Closing, shall survive the Closing and delivery of the deed and shall remain binding upon the parties to this
391 Agreement and shall be fully enforceable thereafter.
- 392 **C. Governing Law and Venue.** This Agreement is intended as a contract for the purchase and sale of real property
393 and shall be governed by and interpreted in accordance with the laws and in the courts of the State of Tennessee.
- 394 **D. Time of Essence.** Time is of the essence in this Agreement.
- 395 **E. Terminology.** As the context may require in this Agreement: (1) the singular shall mean the plural and vice versa;
396 (2) all pronouns shall mean and include the person, entity, firm or corporation to which they relate; (3) the masculine
397 shall mean the feminine and vice versa; and (4) the term day(s) used throughout this Agreement shall be deemed to
398 be calendar day(s) ending at 11:59 p.m. local time unless otherwise specified in this Agreement. Local time shall be
399 determined by the location of Property. **In the event a performance deadline**, other than the Closing Date (as
400 defined in paragraph 4 herein), Date of Possession (as defined in paragraph 4 herein), Completion of Repair
401 Deadline (as defined in the Repair/Replacement Amendment), and Offer Expiration Date (as defined in paragraph
402 20 herein), occurs on a Saturday, Sunday or legal holiday, the performance deadline shall extend to the next
403 following business day. Holidays as used herein are those days deemed federal holidays pursuant to 5 U.S.C. §
404 6103. In calculating any time period under this Agreement, the commencement shall be the day following the initial
405 date (e.g. Binding Agreement Date).
- 406 **F. Responsibility to Cooperate.** Buyer and Seller agree to timely take such actions and produce, execute, and/or
407 deliver such information and documentation as is reasonably necessary to carry out the responsibilities and
408 obligations of this Agreement. Except as to matters which are occasioned by clerical errors or omissions or
409 erroneous information, the approval of the closing documents by the parties shall constitute their approval of any
410 differences between this Agreement and the Closing. Buyer and Seller agree that if requested after Closing, they
411 will correct any documents and pay any amounts due where such corrections or payments are appropriate by reason
412 of mistake, clerical errors or omissions, or the result of erroneous information.
- 413 **G. Notices.** Except as otherwise provided herein, all notices and demands required or permitted hereunder shall be in
414 writing and delivered either (1) in person; (2) by a prepaid overnight delivery service; (3) by facsimile transmission
415 (FAX); (4) by the United States Postal Service, postage prepaid, registered or certified, return receipt requested; or
416 (5) Email. **NOTICE** shall be deemed to have been given as of the date and time it is actually received. Receipt of
417 notice by the real estate licensee or their Broker assisting a party as a client or customer shall be deemed to be notice
418 to that party for all purposes under this Agreement as may be amended, unless otherwise provided in writing.
- 419 **H. Risk of Loss.** The risk of hazard or casualty loss or damage to Property shall be borne by the Seller until transfer of
420 title. If casualty loss prior to Closing exceeds 10% of the Purchase Price, Seller or Buyer may elect to terminate this
421 Agreement with a refund of Earnest Money/Trust Money to Buyer.
- 422 **I. Equal Housing.** This Property is being sold without regard to race, color, sex, religion, handicap, familial status, or
423 national origin.
- 424 **J. Severability.** If any portion or provision of this Agreement is held or adjudicated to be invalid or unenforceable for
425 any reason, each such portion or provision shall be severed from the remaining portions or provisions of this
426 Agreement, and the remaining portions or provisions shall be unaffected and remain in full force and effect. In the
427 event that the contract fails due to the severed provisions, then the offending language shall be amended to be in
428 conformity with state and federal law.

- 429 **K. Contract Construction.** This Agreement or any uncertainty or ambiguity herein shall not be construed against any
430 party but shall be construed as if all parties to this Agreement jointly prepared this Agreement.
- 431 **L. Section Headings.** The Section Headings as used herein are for reference only and shall not be deemed to vary the
432 content of this Agreement or limit the scope of any Section.

433 **15. Seller's Additional Obligations.** If Seller has any knowledge of an exterior injection well, a sinkhole as defined
434 pursuant to Tenn. Code Ann. § 66-5-212(c), and/or a percolation test or soil absorption rate on the Property, Seller shall
435 be obligated to counter this offer by disclosure of the existence of the above including any tests and reports unless
436 disclosure has already been received and acknowledged in writing by Buyer. Seller shall also disclose in the same
437 manner whether any single family residence located on the Property has been moved from an existing foundation to
438 another foundation where such information is known to the Seller. Seller shall also be obligated to counter this offer to
439 disclose if the Property is located in a Planned Unit Development (PUD) as defined pursuant to Tenn. Code Ann. § 66-5-
440 213 unless said disclosure has already been received in writing and acknowledged by Buyer. If the Property is in a PUD,
441 Seller agrees to make available copies of the development's restrictive covenants, homeowner bylaws, and master deed
442 to Buyer upon request.

443 **16. Method of Execution.** The parties agree that signatures and initials transmitted by facsimile, other photocopy
444 transmittal, or by transmittal of digital signature as defined by the applicable State or Federal law will be acceptable and
445 may be treated as originals and that the final Purchase and Sale Agreement containing all signatures and initials may be
446 executed partially by original signature and partially on facsimile, other photocopy documents, or by digital signature as
447 defined by the applicable State or Federal law.

448 **17. Exhibits and Addenda.** All exhibits and/or addenda attached hereto, listed below, or referenced herein are made a part
449 of this Agreement:

450 _____
451 _____
452 _____
453 _____

454 **18. Special Stipulations.** The following Special Stipulations, if conflicting with any preceding paragraph, shall control:

455 _____
456 _____
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479 **19. Time Limit of Offer.** This Offer may be withdrawn at any time before acceptance with Notice. Offer terminates if not
480 countered or accepted by _____ o'clock ☐ a.m./ ☐ p.m.; on the _____ day of _____.

481 **LEGAL DOCUMENTS:** This is an important legal document creating valuable rights and obligations. If you have
482 any questions about it, you should review it with your attorney. Neither the Broker nor any Agent or Facilitator is
483 authorized or qualified to give you any advice about the advisability or legal effect of its provisions.

484 **NOTE:** Any provisions of this Agreement which are preceded by a box "☐" must be marked to be a part of this
485 Agreement. By affixing your signature below, you also acknowledge that you have reviewed each page and have
486 received a copy of this Agreement.

487 **IMPORTANT NOTICE:** Never trust wiring instructions sent via email. Cyber criminals are hacking email accounts
488 and sending emails with fake wiring instructions. These emails are convincing and sophisticated.
489 Always independently confirm wiring instructions in person or via a telephone call to a trusted and verified phone
490 number. Never wire money without double-checking that the wiring instructions are correct.

491 Buyer hereby makes this offer.
492
493 **BUYER** **BUYER**
494 _____ at _____ o'clock ☐ am/ ☐ pm _____ at _____ o'clock ☐ am/ ☐ pm
495 **Offer Date** **Offer Date**

496 Seller hereby:
497 ☐ **ACCEPTS** – accepts this offer.
498 ☐ **COUNTERS** – accepts this offer subject to the attached Counter Offer(s).
499 ☐ **REJECTS** this offer and makes no counter offer.
500
501 **SELLER** **SELLER**
502 _____ at _____ o'clock ☐ am/ ☐ pm _____ at _____ o'clock ☐ am/ ☐ pm
503 **Date** **Date**

504 **Binding Agreement Date.** This instrument shall become a "Binding Agreement" on the date ("Binding Agreement Date")
505 the last offeror, or licensee of the offeror, receives notice of offeree's acceptance.
506 Notice of acceptance of the final offer was received by _____ on
507 _____ at _____ o'clock ☐ am/ ☐ pm
508

For Information Purposes Only:

Listing Company: _____
Listing Firm Address: _____
Firm License No.: _____
Firm Telephone No.: _____
Listing Licensee: _____
Licensee License Number: _____
Licensee Email: _____
Home Owner's / Condominium Association ("HOA/COA"):

Selling Company: _____
Selling Firm Address: _____
Firm License No.: _____
Firm Telephone No.: _____
Selling Licensee: _____
Licensee License Number: _____
Licensee Email: _____

HOA / COA Phone: _____
Property Management Company: _____
Phone: _____

HOA/COA Email: _____
Email: _____

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About the Author

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John Giffen is an award-winning real estate broker, manager, author and real estate educator. He is Director, Broker Services for Benchmark Realty, LLC in Franklin, Tennessee. He previously served as the principal broker for Benchmark for several years. He holds numerous industry designations and certifications including the Certified Real Estate Brokerage Manager (CRB) and Certified Residential Specialist (CRS) designations from the National Association of REALTORS® and the GRI (Graduate, REALTOR® Institute) designation from the Tennessee REALTORS®. He has also earned the Certified Distance Education Instructor (CDEI) designation from the International Distance Education Certification Center affiliated with the Association of Real Estate License Law Officials (ARELLO.)

John is a Tennessee Real Estate Commission (TREC) approved course instructor as well as the author of several TREC approved continuing education courses on real estate contracts, agency, licensing, buyer representation, property marketing, real estate ethics, and transaction behavior. He works closely with Tennessee REALTORS® and other TREC approved real estate education providers in developing new courses for license renewal. He is the author of the current Tennessee REALTORS® TREC Residential, Commercial and Principal Broker Core courses.

In 2014, John was named "REALTOR® of the Year" by the Williamson County Association of REALTORS®. He is a multi-million-dollar sales producer and received numerous awards for his sales production over the years.

About the Company

Real Estate Learning Systems, LLC (RELS) is a professional development and training company based in Franklin, Tennessee. RELS provides in classroom and online continuing education classes in order for real estate agents to renew their Tennessee real estate license and meet professional standards requirements of the National Association of REALTORS®. In addition, the company offers consulting services for real estate brokers, REALTOR® associations and online continuing education providers as well as comprehensive curriculum design and development that meets state regulatory compliance requirements.



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