

**STANDARD CLAUSES
RELATED TO
COLUMBUS REALTORS RESIDENTIAL PURCHASE CONTRACT**

December 2016

WARNING!!

Real estate licensees are not permitted to engage in the practice of law. The clauses set forth below constitute a compilation of standard real estate clauses, the language of which has been approved by the Columbus Realtors' legal counsel, and should simply serve as a checklist of subjects that clients and customers may choose to consider in contracting for the lease or purchase of real estate. Since real estate licensees are prohibited from giving legal advice, clients and customers must be strongly encouraged to consult legal counsel before selecting any language for inclusion in a real estate contract. For further information, please see the Columbus Realtors' White Paper on the proper use of standard real estate clauses.

Caution Clauses:

Sales associates **are not** to utilize these clauses without first reviewing the circumstances and terms with the Broker/Branch Manager or developing the terms of the offer with the close advisement of the Buyer's/Seller's attorney:

PARAGRAPH 1 – PURCHASE PRICE / ADDITIONAL TERMS & CONDITIONS

100 Closing Costs Clause(s) (Seller to pay)

100a Seller agrees to pay at closing up to a maximum of \$_____ of Buyer's allowable closing costs.

OR

100b Seller to pay Buyer's closing costs, which shall include, but not be limited to: origination fee, loan discount points fee, appraisal fee, credit report fee, EPA endorsement, home inspection fee, legal fees, documentation preparation/compliance fees, escrow fee, recording fee, survey; these costs in total not to exceed \$_____.

(If the Buyer's costs paid at closing by the Seller are less than the maximum agreed to be paid, the Seller is not obligated to pay the difference to the Buyer. If the closing costs exceed the maximum amount agreed upon, then the Buyer will pay the additional costs).

101 Release From Prior Contract Clause

Acceptance of this contract is contingent upon Seller obtaining release from a prior contract to purchase dated: _____. The release is to be obtained within _____ calendar days of acceptance of this Offer. This contingency is to be removed or waived in writing, by the Seller, within the time specified or this contract shall become null and void.

102 Agent/Broker Acting as a Principal

It is understood by all parties that (name)_____ is a licensed real estate Agent/Broker in the State of Ohio and is engaging in this transaction only for his own account.

103 Backup (Secondary) Offer Clause(s)

Sellers are presenting this counteroffer as a back-up (secondary) to an existing purchase contract which shall be referred to as the "primary contract." The terms of Buyer's offer are accepted with the following modifications and/or additions:

1. Sellers are presently in contract. This counteroffer, if accepted by Buyers, shall be a back-up (secondary) contract to the existing primary contract, which is scheduled to close on or before _____. If for any reason the primary contract is terminated, Sellers will provide written notice to Buyers, and upon delivery of that notice to Buyers' agent, they will be considered the primary contract.
2. Sellers reserve the right to make modifications and/or additions to the terms and conditions of the primary contract, which shall not in any way affect Buyers' position as the backup (secondary) contract. The Buyers' deposit check shall be due and payable within 24 hours of Buyers receiving written notice that they have moved from backup (secondary) position to primary position.
3. All time periods specified in the contract regarding inspections will not begin to run until Sellers deliver to Buyers written notice that they have moved from secondary positions to primary position.
4. The Buyers acknowledge that they are the backup (secondary) contract, however, they reserve the right to terminate this contract without any liability any time prior to their receipt of written notice from the Sellers putting them in primary position.

104 Multiple Offers – (Seller's Indisputable right to choose)

Seller has received multiple offers for the property located at _____. Seller is submitting a counteroffer for more than one of the offers. Prospective Purchasers are hereby notified that the counteroffers may not contain identical terms and conditions. Seller reserves the right to accept any offer or to make counteroffers to any other person and shall have no obligation to sell the property to any of the Prospective Purchasers. If Seller's counteroffer is accepted by more than one Prospective Purchaser, no acceptance of the Seller's counteroffer shall be binding or constitute a valid purchase agreement until the Seller reaffirms which counteroffer is accepted by acknowledging, validating, and confirming the same by affixing the Seller's signature a second time to the counteroffer Seller chooses to ultimately accept. In that event, all other Prospective Purchaser's counteroffers without said "second reaffirmation" shall become immediately null and void and of no effect.

This multiple counteroffer shall expire not later than ____/____ (date/time), unless the Prospective Purchaser's signed acceptance is received by Seller or Seller's agent. If more than one executed counteroffer is received by the Seller, Seller shall confirm Seller's choice by ____/____ (date/time).

Sellers:_____

Buyers:_____

Sellers:_____

Buyers:_____

VALIDATING ACCEPTANCE AND ACKNOWLEDGMENT

Sellers: _____ Buyers: _____

Sellers: _____ Buyers: _____

105 Loan Assumption Clause

The purchase price to be: \$ _____.
This contract is contingent upon the Buyer assuming the Seller's loan with an approximate balance of \$ _____, with _____ years remaining, and monthly payment of \$ _____, which includes principal, interest, property tax, hazard insurance and mortgage insurance, at an interest rate of _____%. / / Seller / / Buyer (check one) to pay the loan assumption fee up to a maximum of \$ _____. Buyer to make the _____ (if blank, first monthly payment due after the date of closing) monthly payment due after the date of closing and each subsequent monthly payment thereafter. Buyer to purchase Seller's escrow account, which shall be current at the time of closing. The purchase amount for Seller's escrow account shall be / / in addition to / / included in (check one) the purchase price payable at closing.

*(Loan assumptions are one of the most difficult transactions. Questions that need to be addressed include: (i) is the loan assumable – **VERIFY**; and (ii) does the assumption transaction require release of liability? If the Seller must have a release of liability as a condition, this should be stated after this clause. It should be noted that many lenders as a rule of business will never release a Seller, no matter how strong the Buyer is in terms of loan qualification.*

It is advisable to have the Lender confirm in writing what these requirements will be: i.e., owner-occupancy and/or Buyer qualifications. The actual assumability features of the FHA loan are set forth in the mortgage.

The specific down payment will be the difference between the set purchase price and the loan balance at the time of the transaction closing. If the Buyer's down payment funds are limited, consult an attorney prior to changing the recommended clause to include a phrase about limiting the down payment required.

*Please note: the paragraph titled: "**Rentals, Interest, Condominium Charges, Insurance, Utilities and Security Deposits**" of the Real Estate Purchase Contract, calls for a proration of the mortgage interest at the closing. Although **not recommended**, if it is the Buyer's intent not to prorate interest, it should be stated clearly in the loan assumption clause.*

*Although **not recommended**, the Buyer may prefer not to purchase the Seller's escrow account and pro-rate taxes – rather, to simply assume the escrow account. In that situation, strike out the pre-printed words in the paragraph title: "**Taxes and Assessments**" of the Real Estate Purchase Contract, which refer to the tax proration and use the following additional sentence in the loan assumption clause:*

"Seller agrees to assign his property tax escrow account, which shall be current at closing, to the Buyer in lieu of tax proration with the exception of hazard insurance."

106 Seller to Find Suitable Housing Clause

Seller's acceptance of this offer to purchase is contingent upon the Seller's ability to execute a contract to purchase a property within _____ calendar days after acceptance. This contingency is to be removed or waived in writing by the Seller, within the time specified, or this contract shall terminate and the earnest money deposit shall be returned to the Buyer pursuant to paragraph 12.

107 Escape from "Sale of Existing Home" Contingency Clause(s)

Buyer agrees Seller shall have the right to continue to market their property until the Buyer removes or waives the "**Sale of Existing Home**" contingency. In the event Seller receives another bona fide offer to purchase the property, which is not contingent upon the sale of a home, Seller may, at Seller's option, give written notice to Buyer/Buyer's broker that Seller has received a bona fide offer.

Buyer shall have _____ hours from the receipt of the notice to remove or waive the "**Sale of Existing Home**" contingency and proceed to close in accordance with the terms of this contract. If, within the time specified above, Buyer does not remove or waive the "**Sale of Existing Home**" contingency, this contract shall terminate and the earnest money deposit shall be returned to the Buyer pursuant to paragraph 12.

Buyer's removal or waiver of the "**Sale of Existing Home**" contingency shall also be a confirmation that Buyer's financing is not contingent upon the sale of their home.

108 Buyer's Sale of Existing Home Clause

This Contract is contingent upon Buyer's sale and closing of their property located at

_____.

109 Condominium Document Review Clause (attach Condominium Checklist)

Buyer's obligations are contingent upon the Buyer's satisfactory review of the documents requested on the attached **Condominium Checklist**. Seller shall provide the requested documents within _____ calendar days after acceptance of this offer. The Buyer shall have _____ days after receipt of the last delivered documents in which to review the documents.

In the event the Buyer is not satisfied with any of the requested documents within the stated time period for Buyer review, the Buyer shall deliver a written notice of termination and the earnest money shall be returned to the Buyer pursuant to paragraph 12.

If the Buyer does not notify the Seller/Seller's Broker within the stated time period, this contingency shall be waived.

110 Investment Property Purchase Clause

This Offer is contingent upon Buyer's satisfactory review of all leases, rental agreements, deposits, past _____ years' income and expense reports and within _____ calendar days after acceptance of this offer. Seller shall provide such documents and information, representing them to be true and accurate, within _____ calendar days after acceptance. During the pendency and term of this contract, Seller shall not change any existing lease, enter into any new lease or make any substantial alterations or repairs without the consent of the Buyer. Failure by the Buyer to so notify the Seller and/or Seller's Broker in writing, within the calendar days, shall constitute an election by the Buyer to proceed with the transaction.

PARAGRAPH 4 – TAXES & ASSESSMENTS

400 Taxes Proration Clause

Buyer and Seller hereby agree that the definition of “**valuation**” set forth in the paragraph titled “**Taxes and Assessments**” of the primary purchase contract shall mean the final agreed upon purchase price. Buyer and Seller further instruct and authorize the title company and/or attorney administering the closing to properly reflect such adjustments on the closing statements and superseding the terms defined in the paragraph titled: “**Taxes and Assessments**” of the primary contract. In addition, Seller agrees to pay or reimburse Buyer within seven (7) calendar days after written notice from Buyer for any tax assessments or increases against the Real Estate applicable to any time period prior to the closing, yet not properly reflected on the closing statement.

401 Tax Proration Clause (new builds)

The real estate taxes for the premises, for the current year, may change as a result of the transfer of the premises or as a result of a change in the tax rate and valuation. Buyer and Seller understand that real estate valuations may be subject to retroactive change by the governmental authority. The Buyer and Seller agree that each shall pay their respective real estate tax liability for the time period each owns the premises. Therefore, the parties agree that the following adjustments shall be made at the closing, when appropriate, superseding the terms defined in the contract. The proration of taxes shall be calculated using the full sales price as tax valuation and the most recent available tax rate, giving effect to applicable exemptions and recently voted millage, whether or not certified. Buyer and Seller instruct and authorize the title company or person administering the closing to properly reflect such adjustments on the closing statements.

402 Seller’s Tax Letter (new builds)

The real estate taxes for the premises, for the current year, may change as a result of the transfer of the premises or as a result of a change in the tax rate and valuation. Buyer and Seller understand that real estate valuations may be subject to retroactive change by the governmental authority. The Buyer and the Seller agree that each shall pay their respective real estate tax liability for the time period each owns the premises. Therefore, the parties agree that the Seller shall provide at closing a “Seller’s tax letter” stating the Seller shall promptly pay the Buyer, upon presentation of the valid tax bill, any property taxes not credited or paid to the Buyer at the time of closing.

PARAGRAPH 5 - FIXTURES & EQUIPMENT

500 Propane Tank

Propane/Fuel Oil Tank is

Owned

Rented

Rental is with _____.
(company name and phone number)

Remaining propane/fuel oil in the tank will convey, at no additional charge to the buyer, at time of possession. The remaining propane/fuel oil in the tank shall be not less than 20% of its capacity.

PARAGRAPH 6 – INSPECTIONS AND TESTS

600 Radon Readings Clause

Pursuant to the paragraph titled: “**Property Inspection and Test**”, if average radon readings equal or exceed the EPA action level of 4.0 pCi/L, Seller, at Seller’s expense, agrees to professionally mitigate the average radon levels to an average reading below 4.0 pCi/L prior to the closing date of this property.

601 Well Water Flow Test Clause

Buyer at Buyer’s expense, shall have a one-hour flow test conducted from the outside house faucet. Such test shall produce not less than _____ gallons per minute flow rate without fault, or this contract shall become null and void, or renegotiated. Such test must be completed within _____ calendar days of acceptance.

602 Qualified Inspector Clause

The inspection and/or tests provided for in the paragraph titled: “**Inspections and Tests**” shall be conducted by a qualified inspector who is either a registered architect, qualified engineer or an inspector who is a member in good standing of a national home inspection association. Radon inspections must be conducted by a state and/or EPA licensed inspector. The elections available under the paragraph titled: “**Inspections and Tests**” are not available to the Buyer unless the inspection and/or tests are conducted by a qualified inspector.

603 Repairs

Repairs shall be completed prior to the “Final Verification of Condition” (walk-through) made pursuant to paragraph 15.2 unless otherwise agreed to in writing. Repairs to be performed at Seller’s expense may be performed by Seller or through others. Repairs shall be performed in a good, skillful manner with materials of quality and appearance comparable to existing materials. It is understood that exact restoration of appearance or cosmetic items following all repairs may not be possible. Seller shall:

- (i) obtain invoices and paid receipts for repairs performed by others;
- (ii) prepare a written statement indicating the repairs performed by the Seller and the date of such repairs;
- (iii) provide copies of invoices and paid receipts and statements to Buyer prior to final verification of condition; and
- (iv) all warranties and guarantees to be transferred to the Buyer at closing.

PARAGRAPH 9 – TITLE INSURANCE

900 FAST TRANSACTION CLAUSE

(NOTE: This clause reduces the time prior to closing for the Seller to deliver a copy of the title insurance commitment to the Buyer. Also note that delivery of the commitment 10 or fewer days prior to the scheduled closing date allows the Buyer to make objections to title up to the time of closing pursuant to

paragraph 9.3. This clause should only be used in situations where, because of a reduced time from contract acceptance to closing, it is impractical to require the Seller to comply with paragraph 9.2 as set forth in the contract.)

The Buyer and Seller agree that the Real Estate Purchase Contract dated _____ is amended as follows:

Paragraph 9.2 of the contract is deleted, and replaced with the following:

Seller shall deliver, or cause to be delivered, to Buyer or Buyer's Broker, a copy of the Commitment referenced in Paragraph 9.1 above no later than _____ calendar day(s) prior to the date of closing pursuant to this agreement. If the Seller does not deliver the Commitment within the stated time period, Buyer may, by delivering written notice to Seller or Seller's Broker, either terminate this contract, or extend the date of closing to _____ days following Seller's delivery of the Commitment. Upon termination pursuant to this provision, the earnest money deposit shall be returned to the Buyer pursuant to paragraph 12.

All terms and conditions of the contract not inconsistent with the foregoing shall remain in full force and effect.