

...interventions...
respect to the subject matter...
or amendment to this Agreement...
writing and signed by the party to be...
compensation will not affect the validity or scope of...
This Agreement shall be effective as of the first day of...

Dated: 2006 Feb 12

Jim Smith
Signature

Printed Name

AND AGREED TO:

CONTRACTS...

EXPLORING THE REQUIRED ELEMENTS FOR

CONTRACT VALIDITY

IN THE REAL ESTATE PROFESSION

6 HOURS CONTINUING EDUCATION CREDIT TREC # XXXX

ITS SCHOOL OF REAL ESTATE

ITSBUSINESSTRAINING@YAHOO.COM

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ITS SCHOOL OF REAL ESTATE

ITSBUSINESSTRAINING@YAHOO.COM

SCHOOL # 1537

COURSE # 6815

SEPTEMBER 2011

1ST EDITION

Learning Objectives...

This six (6) hour course for continuing education credit is designed not only to help you meet your required educational requirements, but also to examine the essential elements of a valid contract. We will look at a contract first through a historical view. We will learn how the modern contract is simply a product of an evolutionary process of adjustments and tweaks to the English common law contracts we have had for a thousand years.

Secondly, we will break down a valid contract into its necessary and individual elements. We will examine how a contract is really a final formal expression of these multiple elements. We will take each of these elements and discuss them in detail.

Finally, we look at the contract requirements that are unique to the real estate profession. We will then examine the role and purpose of the Statue of Frauds, make sure we know the difference between the binding and acceptance dates, and have a working knowledge of void and voidable contract causes.

I hope you enjoy this study and take something away from this course. Contract laws are an everyday reality for the real estate professional, but how many of us are just filling in the blanks without really understanding the history, necessity, and effects of many of these contract elements.

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___ Contract Course Only

___ 16 Hour CE Package

Please Submit Your Answers to ITSBusinessTraining@gmail.com or FAX 615 472 7985
You will receive an email with your grade promptly, then please submit payment through the
Payment Window on our website... ITSBusinessTraining.com



What is a contract?

Webster's definition: *A binding agreement between two or more parties that is enforceable by law; a formal writing which contains the agreement of the parties, with the terms and conditions, and which serves as a proof of the obligation.*

Cambridge Dictionary's definition: *A legal document that states and explains a formal agreement between two different parties or groups, or the agreement itself.*

Course Definition: *A voluntary agreement between two legally capable parties to perform or refrain from some legal act. This contract must be free of duress and must include some form of legal consideration.*

At first glance, what is your opinion of these definitions? Are these definitions accurate? Specific enough?

As we work through this study of contracts we will refer back to these definitions and you will be asked to develop a new definition that incorporates the elements of validity, the necessary parties, and duties.

Historical Perspective...

Elements in common law...

A common misconception is that the contract law practiced in the United States legal system today is a creation of our founding fathers and lawmakers of early American times, but in reality our contract law crossed the Atlantic with the first English settlers who brought their “common law” with them.

“A basic axiom to remember is that in the history of the world, as people of different cultures mingle through trade, travel, and immigration or war, we pick up pieces of other people’s culture and religions and incorporate them into our own. This evolutionary process is so slow that it is barely noticeable.”

Gene Vitamamti

The term common law...

“Common law is that which is based on custom or usage of the common people as opposed to law imposed from above by a higher source, such as a monarch, dictator, or religious leader. It is a slow process that is always adjusting itself.”

“Note that the common law is designated “common” because it was a law common to all of England and administered by a central court, as distinguished from the customary law that varied, albeit often in minor ways, from county to county, lordship to lordship, or manor to manor.”

Gene Vitamamti

In reality, the 1st elements of the English common law that later evolved into the contract law that we have today began in the 12th century. For the first time, laws were set down to establish the methods by which the evidence or “proofs” of a contract or debt could be proven. Initially there were three options.

1st Proof by Duel... Yes, this is what is implied by the name. As in a Hollywood film, two parties would settle their dispute with weapons. The theory behind this arrangement is that the hand of God would guide the righteous party to victory. For obvious reasons, we are not going to spend a lot of time on this option.

2nd Proof by Witness... The proof of a debt or contract could be proven by the swearing of an oath by two or more witnesses as to the validity of a contract or debt. Initially there were no safe guards, as to the reliability of the witnesses, or the option of examination or defense of the accused party. The simple presentation of two or more witnesses was proof of the debt. We can quickly see how this option could be used a dishonest party to produce “proof” that did not is reality exist.

3rd Proof by Writing... The proof of a contract or debt could be proven by the existence of a written agreement. Initially there was not any set form or required elements, these would come later and by the 15th century this would be the expected and preferred form of proof.

For the past 800 years, the evolution of this common law into today’s contract law has been a continual process of trying to prefect this idea of “proof” while trying to guarantee that the contract is an accurate representation of the original deal or agreement. In this evolutionary process, the idea of consideration, or proof of benefit, was established. The first requirements for written contracts were establish with the first Statue of Frauds, and other rules and requirements for elements of a valid contract were slowly codified.

As we work through this course, if you will examine each element of contract law as it fits into this evolutionary process, its function will become

clearer. Each element of a contract should work to identify the parties or property, articulate the agreement, or prove the existence of the agreement.

What four principles would be in your definition?

1.

2.

3.

4.

Give me your definition of a contract.

Expressed vs. Implied Contracts

Expressed Contract: This is a contract in which the terms are expressed explicitly, either in writing or verbally. The term and scope of this agreement have been detailed and agreed upon beforehand, and the parties have reached an agreement and mutual understanding. In this type of contract, there is no ambiguity as to the details or agreement; it has already been worked out.

- Don't fall into the common trap where students believe expressed contracts can only be in writing, verbal contracts can also be expressed.

Implied Contract: This is a contract in which the terms have not been expressed in words, either orally or in writing. The terms and agreement of the parties can only be determined on inferred by examination of the actions taken by the parties. The evidence of the contract is shown the interaction or subsequent exchange between the parties.

- An Implied Contract can be either *Implied in Fact* or *Implied in Law*

Implied in Fact: This is a contract in which the circumstances imply the parties have reached an agreement even though they have not done so expressly.

An example would be... If you walk into a restaurant, sit down, order a steak, and eat the steak. Upon completion of the meal you are expected to pay for the meal.

Implied in Law: This type of contract can also be called a quasi-contract. It is not as much of a contract as it is a legal determination. This is a situation where one party would be unjustifiably enriched if the courts were to hold that a contract did not exist.

An example would be... An unconscious driver is removed from a vehicle wreck and rushed to an ER where he receives life saving treatment. He is responsible for payment to the hospital for these services.

Bilateral vs. Unilateral Contracts

Bilateral: This is the more common of the two; a bilateral contract is where the agreement involves a promise by both parties. Both parties are liable to each other for performance of their respective promises.

An example would be... John offers to sell his car to Mark for \$3,000. John promises to turn over the car and the title, in exchange Mark promises to pay the agreed upon \$3,000.

In this example, both John and Mark have made promises. In the event of a breach by either party, the other party would have options.

Unilateral: In this type of contract, only one party makes a promise to the other party. This promise acts as an inducement to get the other party to perform some action. In this type of contract, the requirement that acceptance be communicated to the offeror is not required. The offeree accepts by performing the action. When the required action is complete the offeror is liable to the offeree for payment as advertised. In contrast, the offeree is not liable unless he/she performs the action. The offeree can walk away from the offer without recourse.

An example would be a sign in the front yard that offers \$50 to the first person who removes an Oak tree that was blown down in a storm.

Another example would be a \$500 reward for the return of my lost dog, Binky.

In these examples, the offeror is making a promise to induce the offeree to act.

1st To remove the Oak tree

2nd To return Binky to his/her owner

Let's work through some examples

Give four examples of bilateral contracts...

1.

2.

3.

4.

Give four examples of unilateral contracts...

1.

2.

3.

4.

What type of contract is an “Offer to Purchase” contract that is commonly used in the real estate Profession?

Bilateral or Unilateral

Elements required for Validity

Mutual Assent: First and above all, there must be a “*meeting of the minds*”. There must be an expressed or an implied agreement. This is a requirement that both parties enter into this agreement knowingly and of free will.

To have a mutual assent, the agreement must be free of...

1. **Misrepresentations:** *This is an innocent misstatement of a material fact. It must also be a misstatement that is relied upon by another individual that suffered damages of some form. Note, that this is a **MATERIAL** fact.*

2. **Fraud:** *This is an intentional misstatement of a material fact that was intended to deceive an individual, or was an intentional omission of a known material defect.*

3. **Mistake:** *A mistake is a mutual misunderstanding between the two parties. This does not involve a lack of judgment, ignorance, or unprofessional behavior on the part of either party. It is simple a misunderstanding that prevents the two parties from having a true “meeting of the minds”.*

4. **Duress, menace, and undue influence:** *This is to say that both parties must be acting in free will and not under threat or fear of retaliation.*

Consideration: This is by far the most complicated of the required elements. We will study this element in detail in a further section, but for now. Consideration is value promised by the offeror and/or legal detriment promised or preformed by the offeree.

Competent Parties or Capacity: Both parties must have the ability to enter into a legally binding contract. Both parties must also have the ability to understand the terms and the implications of breach and his/her liability within the terms of the contract.

In addition to employees who lack the authorization, children, mentally disabled people, physically stricken and emotionally compromised people can all be ruled as lacking the necessary capacity for entering into a contract.

A corporation is technically a entity and has the capacity to enter into a contract.

Legal Purpose: Regardless of the form or elements found within a contract, if the subject matter or purpose of a contract is illegal... The contract is not valid

The courts will not enforce such a contract. It is said to be void “ab initio” or void for the beginning.

Mutual Right to Remedy: Both parties must have an equal right to remedy in the event of breach by the other party.

Examination of Capacity in more detail...

Give four examples of parties who could be held as lacking capacity.

1.

2.

3.

4.

Now, I want you to brainstorm and give me an example of a potential situation that you might face where capacity is questioned when selling the home of an elderly couple.

Now, I want you to develop a strategy for dealing with the previous situation and by doing so, limiting your own and the firm's liability.

Does your firm have a written policy for dealing with issues of capacity?

Yes or No

Here are some options...

1st Managing Broker involvement and authorization

2nd Next of kin involvement, disclosures and release forms

3rd Use of legal counsel for complex situations

Void, Voidable, and Unenforceable Contracts

Void: This is a contract that never came into existence. It lacked legal purpose or other required elements for validity. This contract is not enforceable upon either party.

For example, a contract with a drug supplier for a purchase of illegal drugs would be void.

Voidable: If one of the parties in a contract has the option to terminate or cannot be held liable, this contract is said to be voidable. It is important to note, that just because the contract is not enforceable on one party, this does not release the liability against the other party in the contract.

An example would be a contract with a minor, the contract can be terminated by the minor.... But this same contract cannot be terminated by the merchant or other party if they have legal capacity.

Unenforceable: This is a contract that may have the required element of validity but neither party can force the other party's obligation.

An example of this could be the verbal agreement to purchase a home for \$100,000 cash. This contract would be unenforceable because the United States Statute of Frauds requires the contracts for the purchase of Realty to be in writing.

- It is important to note that in the above example, if the buyer appeared with the \$100,000 and the seller appeared with the deed, the sale could go through and be a valid sale. The difference is that if either party backed out, there would be no recourse for the other party.

Executed vs. Executory Contracts

Executed Contract: This is an agreement or contract in which both parties have fully performed their obligations.

For example, if John was offering to sell his watch to Mark for \$200 and Mark accepts. This contract would be executed WHEN John handed over the watch and Mark paid the \$200. The obligation would have been fulfilled and thus the contract would be executed.

In contrast...

Executory Contract: This is an agreement or contract in which one or both of the parties have yet to full perform their obligations.

Using the previous example, If John offered to sell his watch to Mark for \$200 at the first of the next month when Mark receives his paycheck. If Mark accepts these terms and agrees to the purchase, this would be an Executory contract because Mark has yet to pay and John has not turned over the watch. These two have a valid contract, but are yet to perform their obligations to each other.

“Subject To” Contracts and Contingencies

If a contract is a “subject to” contract, it may fall in to one of these three categories

1. The parties are immediately bound to the bargain, but they intend to restate the deal in a formalized contract that will not have a different effect.
2. The parties have completely agreed to the terms; but have made the execution of some terms in the contract conditional on the creation of a formalized contract.

3. It is merely an agreement to agree, and the deal will not be concluded until the formalized contract has been drawn up. This is shown in *Masters vs. Cameron (1954) 91 CLR 353*

If a contract specifies “subject to finance”, it imposes obligations on the purchaser.

1. The purchaser must seek finance

2. When offers of finance arrive, the purchaser must make a decision as the suitability of the offers.

Inherent in these conditions is a necessary element of good faith.

Meehan v. Jones (1982) 149 CLR 571

What are four ideas for protecting you client (seller) when presented an offer with a “subject to financing” contingency?

1.

2.

3.

4.

Consideration

I think it is important to take a good hard look at this elusive concept of consideration. It is very possible a real estate professional can have a successful career and never fully gain a working understanding of this antiquated element of contracts.

Under the historical English common law, consideration was required for a contract to be enforceable. Modern interpretation on the other hand has viewed contracts to be enforceable simply upon the principle of promissory estoppel.

Promissory Estoppel: *A doctrine of law that stops one from later denying facts which that person once acknowledged were true and others accepted on good faith.*

The Two Theories on Consideration...

Benefit – Detriment Theory: To constitute consideration, the contract must include an element of consideration that is either to the benefit of the promisor or to the detriment of the promisee.

Benefit to the Promisor

-or-

Detriment to the Promisee

A historical case to examine this concept is from the 36th year of the Reign of Henry VI (1459 A.D.)

The central question, “Is a father’s flippant and off the cuff verbal promise of money made to a suitor in exchange for the suitor’s marriage of the father’s daughter a legal debt?”

The courts were asked to determine... Was there a benefit to the father? Was there a detriment to the suitor?

The judges were unable to reach a unanimous opinion; some judges decided that simply getting rid of the daughter served as viable benefit to the promisor (father) and that having to marry the daughter served as a viable detriment to the suitor (Promisee). The daughter herself was argued to be the actual consideration and therefore this was a legal debt owed by the father.

Ultimately, these judges were overruled and this debt was ruled to be invalid.

I use this example for two reasons. First, this example can create a wildly entertaining argument in a room full of students, and secondly it serves as a good introduction for the second and modern theory of consideration.

The Bargain Theory: The contract is seen to be a product of an exchange or bargain between the two parties. For example an “off the cuff” remark to sell a car for \$50 would not become binding if a bystander yelled, SOLD. In this evolution of consideration theory, the courts will not investigate the adequacy of the consideration, but will rather look for the evidence of a “bargain” or agreement between the two parties. In this theory, the intentions of the parties are investigated to determine if the contract reflects a true and intentional negotiation or offer.

Consideration vs. Earnest Money...

I hope by now we have cleared up some of the misconceptions involving consideration, but there are still some out there who will confuse consideration and earnest money. They will tell your buyers that earnest money is a legal requirement for an offer-to-purchase contract.

Earnest Money: This is money given in addition to an offer to purchase to show sincerity on the part of the purchaser to go through with the deal if the offer is accepted

Breach of Contract

Breach: A breach is a violation of any of a contract's terms without legal excuse.

If the **seller** defaults, the buyer has three alternatives...

1. The buyer may rescind or cancel contract
2. The buyer may sue for "specific performance"
3. The buyer may sue for "compensatory damages"

If **buyer** defaults, the seller has four alternatives...

1. The seller may declare the contract forfeited; the contract may well contain provisions for the seller to retain the earnest money and or be due an additional sum.
2. The seller may sue for "specific performance"
3. The seller may sue for "compensatory damages"
4. The seller may rescind (cancel or terminate)

Liquidated Damages: *A specific sum that is agreed upon by both parties and is to be paid in the event that a future breach occurs. This method is used when establishing damages as a result of breach would be difficult to estimate.*

Compensatory Damages: *All costs or losses actually suffered and proved caused by the breach. This includes incidental (expenses incurred by the non breaching party) and consequential damages (known foreseeable losses).*

Punitive Damages: *Damages awarded to affected party to be paid by the breaching party or wrongdoer as a form of punishment. This is rarely seen in breach of contract cases.*

Specific Performance: *The nonbreaching party (usually the buyer) can ask the court to order the breaching party (the seller) to perform the contract. This does not apply to personal service contracts.*

Three legal excuses for breach of contract

1. Discharge by agreement of both parties

2. Discharge by operation of law

- * Change in law that makes action illegal
- * Statue of Limitations
- * Bankruptcy Decree

3. Impossibility of performance

- * Natural disaster
- * Fire or some other destruction of property

Important Contract Terms

Substantial Performance: This is a contract that is nearly completely fulfilled, this level of performance may be sufficient to force payment by the other party.

Option Contract: An option agreement is a contract between the owner and a potential buyer... This contract allows the potential buyer to buy a piece of property within an agreed upon window of time for an agreed upon price if he or she chooses... The buyer does not have to go through with the purchase. The owner does have to sell, if the option is exercised... This option is usually accompanied by an option price or fee that is not refunded if the buyer does not complete the deal.

Contingency: This is a requirement found in the offer or contract that requires that some action, some duty, or some event be satisfied before the contract can be executed... without satisfaction, the contract will be void.

1st Right of Refusal: The first right of refusal gives the owner of this right the first chance of buying the property if the property owner decides to sell... the owner is not required to sell, the owner of the right is not required to buy...The price does not have to be set in advance.

Assignment: The transfer in writing of interest in a bond, mortgage, lease, or contract

Novation: the substitution of a new contract in place of an older one, this action terminates and replaces the old contract.

Mirror Image Rule: This rules states that if you are to accept an offer, you must accept the offer exactly, without modifications; if you change the offer in any way, this is a counter offer which kills the original offer.

Statute of Frauds

In some circumstances, a contract meeting all of the previous requirements for validity must meet the legal requirement of being in writing to be enforceable. The purpose of this requirement is to have written proof of the contracts existence and to detail the terms.

The Six types of contracts that fall under the Statutes of Frauds...

1. Guaranty of debt contracts
2. Contracts involving an interest in Realty
3. Contracts impossible to perform within one year of formation
4. Contracts for the sale of goods priced at \$500 or more
5. Premarital or Antenuptial Contracts
6. Promises of Executors for Personal Liability for debts of the deceased

The Six types of Realty contracts that fall under the Statutes of Frauds...

1. Real Estate Purchase Contracts
2. Leases of Realty
3. Mortgages of Realty
4. Easements
5. Creation of Life Estate
6. Real Estate Broker Contracts

Interpretation of a Written Contract

Parole Evidence Rule: *A fully integrated and complete contract clearly written cannot be contradicted, varied, or altered by evidence of the parties prior negotiations, prior agreements, or contemporaneous oral agreements*

General Rules of Interpretation...

1. The meanings of terms are assumed to have their ordinary meaning; if technical, their technical meaning.
2. Any and all ambiguities will be construed against the party who drafted the contract.
3. No contradictions... a written contract can be explained, but not contradicted by trade practices, course of performance, or course of dealing.

Uncertainty of Incomplete Contracts

In the event a contract is formed that is incomplete or ambiguous on key elements of validity. This contract is said to have “failed to form” or does not exist. If a key element such as price or terms of the performance is left blank or is yet to be determined, the parties have yet to have reached a “meeting of the minds” and do not have a contract. A contract cannot simply agree to agree at some later date.

The Listing Contract

The most common contract a real estate professional will enter into is the listing contract. This contract will create an agency or fiduciary relationship between you and the client, detail the terms of that relationship, and detail the terms and scope of the contractual engagement. Unlike the contracts that we commonly associated the purchase of a home, this contract is not between a buyer and a seller... it is a contract between YOU and the seller.

Requirements of a valid Listing Agreement...

1. Name and Signatures of both parties... This will also require your appropriate firm information also be supplied
2. Formal property description
3. This contractual arrangement should be for a definite period of time... there must be an expiration date.
4. Formal fee structure and amount to be paid to broker upon completion of assigned task. This does not have to be a percentage; it can be a flat fee, any hourly wage... or some other agreement.
5. Creation of an agency relationship
6. Agreement upon the type of listing the brokerage is to have
7. Asking Price

Termination of an Agency or Listing Agreement

1. Performance or success of the broker
2. Destruction of the property
3. Condemnation of the property

4. Bankruptcy of either party
5. Expiration of the Listing
6. Abandonment by the Agent
7. Cancellation by either party, or by mutual agreement
8. Death or insanity of either party
9. Revocation or lapse of broker's license

The Four Types of Listings

Open Listing: This is a listing arrangement with a seller that is not exclusive to any one brokerage. The seller has the right to employ any number of firms to sell his/her real estate. In addition, the seller reserves the right to pay only the agent who produces the buyer and can withhold payment to all firms if the seller produces the buyer.

Exclusive Agency Listing: In contrast to an *Open Listing*, this type of listing is exclusive to one particular firm. If an agent from ABC Realty signs this seller, then only ABC Realty will market and have the right to collect the listing portion of the sales commission. As with Open Listings, the seller still has the right to produce a buyer, and withhold payment of the commission because the agent did not produce a buyer.

Exclusive Right to Sell: Like an *Exclusive Agency Listing*, this type of listing is limited to only one firm. In contrast to the previous two types, the agent is due a commission regardless of who produces the buyer. The agent need not be the procuring cause of the sale. The agent needs only to be able to prove the existence of this listing to be entitled to his/her share of the commission.

Net Listing: This type of listing arrangement is commonplace and accepted in many industries and parts of the country. The seller gives the broker a fixed price the he or she expects to be paid. The broker is then free to sell the article on behalf of the buyer at any price equal to or greater than the set price given by the seller. The agent is entitled to the entire amount in excess of the set price.

For Example: John lists his farm with agent Bill. They have agreed that any amount that Bill is able to sell the farm for in excess of \$400,000 will be kept by Bill. Bill sells the farm for \$449,000. Bill is entitled to a \$49,000 commission.

Although commonplace in some industries, the Tennessee Real Estate Commission has ruled that *Net Listings* are forbidden for use by licensed real estate agents in Tennessee.

Why do you think net Listings are not legal?

- 1.
- 2.
- 3.

In this course we will use TAR forms, neither the Tennessee Real Estate Commission or contract law requires any set provider of contract forms, but it is strongly advisable that you and your firm use forms that have been created and reviewed by competent legal professionals.

SAMPLE LISTING CONTRACT...



The Robertsons

In the following pages, you will be provided with the necessary information to fill out a *listing contract*, a *buyer agency* contract, and an *offer to purchase* contract. You will not be asked to turn in these forms, but the questions on the final will ask you for your entry on certain lines.

Take note, the questions will ask you for the entry on a certain line number...On a certain date. Follow the information carefully as negotiations progress, because the date of the question will affect your answers.

This process will allow you to be creative and fill in some of the information that is not provide to you...but take care to include the necessary elements of validity.

Listing Contract Information...

Broker: This is the name of the firm where you work; this is your chance to be creative, Give your new firm a name, phone number, and address

The client or sellers: Ken and Mary Robertson

This is the legal description and street address to use...

123 Somewhere street, Small Town, Tn 37777

Rutherford County...Deed book #1, page #1

Asking Price: Your CMA suggest a home value of \$158,000

On 4/15/XX When the Robertson list their home the asking price is \$168,500

On 6/21/XX the asking price is lowered to \$163,900

Your **listing date** is April 15th of this year and expires in 90 days

Your firm does not use a **carryover clause**.

Possession will be given "with deed"

Your assessment of the Robertson's home suggests it will qualify for all types of **financing** and the Robertson's agree.

The Robertson have "2" remotes for the **garage door opener**

The home has a storage building will remain on the property

The home has an above ground swimming pool will be removed prior to closing.

The water softener system is **leased** for \$199 a year, payable ever February 15th

You and the Robertsons have agreed upon a 6% **commission**, they have agreed with a 3/3 split with cooperating MLS member

The Robertsons are not in a position to lease the home

The Robertson choose not to offer a home warranty

Confidentiality... none

Exhibits and Addendums... none

Special Stipulations... none

Lines 338 – 344 ... You will fill out and sign this area and then turn the document over to the Robertsons to sign

EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT (Designated Agency)

1 **BROKER (listing company):** _____

2 **ADDRESS OF COMPANY:** _____

3 **OWNER/SELLER ("Seller" or "Client"):** _____

4 **ADDRESS OF OWNER/SELLER:** _____

5 In consideration of Broker's Agreement to find a ready, willing, and able Buyer and other valuable consideration, the receipt
6 and sufficiency of which is hereby acknowledged, the undersigned Seller hereby grants Broker the Exclusive Right to Sell
7 the hereinafter described Property in accordance with the following terms and conditions:

8 **1. PROPERTY ADDRESS/LEGAL:**

9 _____ (Address)
10 _____ (City), Tennessee, _____ (Zip), as recorded in
11 _____ County Register of Deeds Office, deed book(s), _____
12 pages(s), _____ and further described as:
13 _____

14 together with all fixtures, landscaping, improvements, and appurtenances, all being hereinafter collectively referred to as
15 the "Property".

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

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

25 _____
26 _____
27 **C. Items that will NOT remain** with the Property:

28 _____
29 _____
30 **D. Leased Items:** Leased items that remain with the Property are (e.g. security systems, water softener systems, etc.):

31 _____
32 _____
33 If leases are not assumable, it will be Seller's responsibility to pay balance.

34 **2. THE LISTING PRICE:** \$ _____ (_____ Dollars.)

35 **3. TERM: LISTING DATE:** _____ **LISTING EXPIRATION DATE:** _____
36 If a contract to purchase or lease is signed before this Agreement expires, the term hereof shall continue until final
37 disposition of Purchase and Sales Agreement or lease agreement.

38 **Carry-Over Clause.** Should the Seller contract to sell or exchange, or contract to lease the Property within _____
39 days after the expiration of this Agreement to any Buyer/Tenant (or anyone acting on Buyer's/Tenant's behalf) who has
40 been introduced to the Property, directly or indirectly, during the term hereof, as extended, the Seller agrees to pay the
41 compensation as set forth below. This carry-over clause shall not apply if the Property is listed with another licensed
42 real estate broker at the time of such contract.



4. **POSSESSION OF PROPERTY to be delivered:** _____

5. **TERMS of sale acceptable to Seller (such as FHA, VA, Conventional, etc.):** _____

6. COMPENSATION:

A total of \$ _____, or _____% compensation based on the total sales price which shall be paid by Seller to Broker in readily available funds on the date of closing of Property as evidenced by delivery of warranty deed and payment of purchase price ("Closing"). In any exchange of the Property, Seller consents to Broker receiving compensation from both parties based upon the value of both properties.

In the event that the Property is leased under the terms of this Agreement, Seller agrees to pay a total of \$ _____, or _____% compensation based upon the monthly rental amount which shall be paid by Seller to Broker in readily available funds within five business days of rent being due under the terms of said lease. Said compensation shall be paid by Seller to Broker and shall continue for the duration of the lease agreement with compensation being paid to Broker within five business days of rent being due under the terms of the lease. This obligation to pay said compensation shall survive the natural termination of this Agreement. In the event that the Property is sold during the term of any lease agreement reached under this Agreement or any carry-over period described herein, Seller agrees to pay Broker any remaining compensation based upon future rental payments at the time of closing and/or any compensation that may be due under the terms of this Listing Agreement.

In the event a Buyer is found for said Property during the period above set out, on the terms and at the price specified herein, or for a price and upon terms agreeable to Seller, Seller further agrees to convey said Property by warranty deed to such Buyer, free from all assessments, liens and encumbrances, but subject to all restrictions of record, if any. The compensation payable for the sale of Property is not set in any manner other than between the Broker and the Seller. The Property is offered without regard to race, color, religion, sex, handicap, familial status or national origin. A request from a Seller to observe discriminatory requirements in the sale or lease of the Property will not be granted since it is a violation of the law.

In the event that a ready, willing, and able Buyer is produced and a contract results, the Seller is obligated to compensate the Broker in the event that Seller unlawfully fails to close by Seller's breach of the Purchase and Sale Agreement. In the event this occurs, Seller agrees to compensate Broker in an amount equal to the compensation which would have been due and owing Broker had the transaction closed. Such compensation will be payable without demand. Should the Broker consent to release the Listing prior to the expiration of the term of this Agreement or any extensions, Seller agrees to pay all costs incurred by the Broker to market the Property as a cancellation fee, in addition to any other sums that may be due to the Broker. Seller agrees to pay all reasonable attorney's fees together with any court costs and expenses which Broker incurs in enforcing any of Seller's obligations to pay compensation under this Listing Agreement. The parties hereby agree that all remedies are fair and equitable and neither party will assert the lack of mutuality of remedies as a defense in the event of a dispute.

7. RESPONSIBILITIES AND RIGHTS OF THE PARTIES.

Broker is hereby granted the authority to advertise this listing on the Internet. Broker is additionally permitted to file this listing with any Multiple Listing Services (MLSs) or similar service(s) of which Broker is a member. Seller understands and agrees that by placing the listing on the MLS or these similar services, the listing may be included in a searchable database provided by the MLS or similar service which can be viewed on other agents' websites. Seller also agrees that the listing may also appear on publicly accessible websites sponsored by and/or affiliated with the MLS, the local association of Realtors®, or similar listing services and those who lawfully receive listing information from said entities. Broker shall provide timely notice to MLS of status changes, shall use best efforts to produce a Buyer, and may divide compensation with other real estate licensees for cooperation in connection with the sale of the Property. Broker shall offer a cooperative compensation to any agent who is a member participant of any MLS(s) in which Property is listed in the amount of _____% of Selling Price or \$ _____ to a Selling Agent or Facilitator (an agent who is representing the interests of and/or is working with the Buyer) who is the procuring cause of the transaction. Broker may offer a cooperative compensation to an agent who is not a member participant of the MLS(s) in which the Property is listed. In the event that Broker elects to offer a cooperating compensation to an agent who is not a member participant in the MLS(s) in which the Property is listed, it will be in the amount of _____% of Selling Price or \$ _____ to a Selling Agent or Facilitator (an agent who is representing the interests of and/or is working with the Buyer) who is the procuring cause of the transaction. In this event, Broker shall notify Seller in writing that a cooperative compensation is being offered to that nonmember participant agent. Seller will assist the Broker in any reasonable way in selling Property and will refer to Broker all inquiries regarding this Property during the term of the Agreement, and any extensions or renewals thereof, and authorizes Broker to provide final sales information to the MLS for the purpose of compiling comparable sales data reports.



Broker is authorized to place a real estate sign and lock box on the Property and to remove all other real estate signs; to disseminate the Tennessee Residential Property Condition Disclosure, Disclaimer or Exemption form and the Multiple Listing Profile Sheet as well as the Lead-Based Paint Disclosure form and the Additional Required Residential Disclosures form (F85) (if either is required by law and if such information is not otherwise disseminated); to exhibit said Property to any prospective Buyer; and to have interior/exterior photographs/videos taken, and/or audio recorded for the creation of any advertising materials of said Property to be used and distributed in promoting the sale and to use same to advertise the Property on the Internet or other broadcast media; and to do such advertising as Broker deems appropriate. Seller shall allow the Property to be shown at all reasonable hours and otherwise cooperate with Broker.

Seller agrees that Broker is authorized to receive on behalf of Seller all notices, offers, and other documents incidental to the offering and sale of the Property which is covered by this Agreement. Seller agrees that such receipt by Broker may be deemed to be receipt by Seller if such documents so provide or if the law so requires. Seller agrees to keep Broker informed of Seller's whereabouts in order for Broker to promptly forward all such notices, offers and other information to Seller.

8. FOREIGN INVESTMENT TAX ACT ("FIRPTA") DISCLOSURE.

Seller hereby certifies that he is: (Choose **one** of the following below under **EITHER** A. or B. Items not chosen are not a part of this Agreement):

A. Individual

- ☐ Seller is a U.S. citizen and is not a non-resident alien (as defined in the Internal Revenue Code and Treasury (Tax) Regulations).

OR

- ☐ Seller is not a U.S. citizen and may be considered a non-resident alien (as defined in the Internal Revenue Code and Treasury (Tax) Regulations). Seller is hereby notified to consult with his/her closing attorney and tax professional immediately concerning withholding requirements for the sale of real property under federal law.

B. Company

- ☐ Seller is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as defined in the Internal Revenue Code and Treasury (Tax) Regulations).

OR

- ☐ Seller is a disregarded entity as defined in § 1.1445-2(b)(2)(iii) of the Treasury (Tax) Regulations. Seller is hereby notified to consult with his/her closing attorney and tax professional immediately concerning withholding requirements for the sale of real property under federal law.

9. HOLD HARMLESS AND LIMITATIONS ON BROKER'S AUTHORITY AND RESPONSIBILITY.

Seller agrees to carefully review the information on the Multiple Listing Profile Sheet and to complete either the Tennessee Residential Property Condition Disclosure, Disclaimer, or Exemption form and to sign said documents. Seller also agrees to complete the Lead-Based Paint Disclosure and the Additional Required Residential Disclosures form (F85) if required by law and information has not otherwise been disclosed in writing. Seller has not advised Broker and/or his affiliated Licensees (hereinafter "Agents") of any defects in the Property or the improvements located thereon, except as shall be noted on the Multiple Listing Profile Sheet and the Tennessee Residential Property Condition Disclosure, Disclaimer, or Exemption form signed by the Seller. Seller is not aware of any other defect or environmental factor which would affect the value or structural integrity of the Property or the health of future occupants. Seller agrees that Seller shall be solely responsible for any misrepresentations or mistakes on the listing data wherein Seller has supplied such information on the attached Multiple Listing Profile Sheet, Tennessee Residential Property Condition Disclosure, Disclaimer, or Exemption form; the Lead-Based Paint Disclosure (if required by law); and the Additional Required Residential Disclosures form (F85) (if required by law). Seller further agrees to hold Agents and firm harmless and indemnify them from any claim, demand, action, liability or proceedings resulting from any omission or alleged omission by Seller on said forms and/or for any material fact that is known or should be known by Seller concerning the Property and that is not disclosed to Agents and to provide for defense costs including reasonable attorney's fee for Agents and firm in such an event. Seller is not aware of any other defect, environmental factors or adverse facts (as defined in Tenn. Code Ann § 62-13-102) concerning the Property.

Seller authorizes Broker and/or his affiliated Licensees to conduct or to allow cooperating brokers to conduct key-entry showings or "Open Houses" of the Property. Seller also authorizes Broker and/or his affiliated Licensees to place a lock box on said Property for the purpose of conducting or allowing cooperating brokers to conduct key-entry showings of this Property. Seller represents that adequate insurance will be kept in force to protect Seller in the event of any damage,



losses or claims arising from entry to Property by persons through the above use of the key and agrees to hold Broker, its licensees, salespersons and employees harmless from any loss, theft, or damage incurred as a result thereof.

Seller acknowledges and agrees that Broker:

- A. May show other properties to prospective buyers who are interested in Seller's Property;
- B. Is not an expert with regard to matters that could be revealed through a survey, title search, or inspection; hazardous or toxic materials; square footage; acreage; the availability and cost of utilities or community amenities; conditions existing off the Property that may affect the Property; uses and zoning of Property; the appraised or future value of the Property; termites and wood destroying organisms; building products and construction techniques; the tax or legal consequences of a contemplated transaction; or matters relating to financing (Seller is hereby advised to seek independent expert advice on any of these matters which are of concern to Seller);
- C. Shall owe no duties to Seller nor have any authority to act on behalf of Seller other than what is set forth in this Agreement and the duties contained in the Tennessee Real Estate License Act of 1973, as amended, and the Tennessee Real Estate Commission Rules; and
- D. May make all disclosures required by law and/or the National Association of Realtors® Code of Ethics.

10. EXPERT ASSISTANCE

While Broker has considerable general knowledge of the real estate industry and real estate practices, Broker is not an expert in the matters of law, square footage, acreage, home inspections, wood destroying organisms, taxation, financing, surveying, structural conditions, hazardous materials, engineering, etc. Client acknowledges Broker's advice to seek professional assistance and advice as needed in these and other areas of professional expertise. If Broker provides names or sources for such advice or assistance, Broker does not warrant or guarantee the services and/or products obtained by Client.

11. AGENCY

A. Definitions.

1. Broker.:

In this Agreement, the term "Broker" shall mean a licensed Tennessee real estate broker or brokerage firm and where the context would indicate, the Broker's affiliated licensees.

2. Designated Agent for the Seller:

The individual licensee that has been assigned by his/her Managing Broker and is working as an agent for the Seller or Property Owner in this consumer's prospective transaction, to the exclusion of all other licensees in his/her company. Even if someone else in the licensee's company represents a possible Buyer for this Seller's Property, the Designated Agent for the Seller will continue to work as an advocate for the best interests of the Seller or Property Owner. An agency relationship of this type cannot, by law, be established without a written agency agreement.

3. Facilitator/Transaction Broker (not an agent for either party):

The licensee is not working as an agent for either party in this consumer's prospective transaction. A Facilitator may advise either or both of the parties to a transaction but cannot be considered a representative or advocate of either party. "Transaction Broker" may be used synonymously with, or in lieu of, "Facilitator" as used in any disclosures, forms or agreements. [By law, any Licensee or company who has not entered into a written agency agreement with either party in the transaction is considered a Facilitator or Transaction Broker until such time as an agency agreement is established.]

4. Dual agency:

The licensee has agreements to provide services as an agent to more than one (1) party in a specific transaction and in which the interests of such parties are adverse. This agency status may only be employed upon full disclosure to each party and with each party's informed consent.

5. Adverse Facts:

"Adverse Facts" means conditions or occurrences generally recognized by competent licensees that have a negative impact on the value of the real estate, significantly reduce the structural integrity of improvements to real property or present a significant health risk to occupants of the property.

6. Confidentiality:

By law, every licensee is obligated to protect some information as confidential. This includes any information revealed by a consumer which may be helpful to the other party IF it was revealed by the consumer BEFORE the licensee disclosed any agency relationship with that other party. AFTER the licensee discloses that he/she has an agency relationship with another party, any such information which the consumer THEN reveals must be passed on by the licensee to that other party.



B. Duties owed to all Parties to a Transaction.

Pursuant to the Tennessee Real Estate Broker License Act, every Real Estate Licensee owes the following duties to every Buyer and Seller, Tenant and Landlord (collectively "Buyers" and "Sellers"):

1. To diligently exercise reasonable skill and care in providing services to all parties to the transaction.
2. To disclose to each party to the transaction any Adverse Facts of which licensee has actual notice or knowledge.
3. To maintain for each party in a transaction the confidentiality of any information obtained by a licensee prior to disclosure to all parties of a written agency agreement entered into by the licensee to represent either or both parties in the transaction. This duty of confidentiality extends to any information which the party would reasonably expect to be held in confidence, except for information which the party has authorized for disclosure or information required by law to be disclosed. This duty survives both the subsequent establishment of an agency relationship and the closing of the transaction.
4. To provide services to each party to the transaction with honesty and good faith.
5. To disclose to each party to the transaction timely and accurate information regarding market conditions that might affect such transaction only when such information is available through public records and when such information is requested by a party.
6. To timely account for earnest money deposits and all other property received from any party to a transaction and
7.
 - A. To refrain from engaging in self-dealing or acting on behalf of licensee's immediate family, or on behalf of any other individual, organization or business entity in which licensee has a personal interest without prior disclosure of such personal interest and the timely written consent of all parties to the transaction, and
 - B. To refrain from recommending to any party to the transaction the use of services of another individual, organization or business entity in which the licensee has an interest or from whom the licensee may receive a referral fee or other compensation for the referral, other than referrals to other licensees to provide real estate services, without timely disclosure to the party who receives the referral, the licensee's interest in such referral or the fact that a referral fee may be received.

C. Duties owed to Client.

In addition to the above, the licensee has the following duties to his/her Client if the licensee has become an Agent or Designated Agent in a transaction.

1. Obey all lawful instructions of the client when such instructions are within the scope of the agency agreement between the licensee and licensee's client; and
2. Be loyal to the interests of the client. Licensee must place the interests of the client before all others in negotiation of a transaction and in other activities, except where such loyalty/duty would violate licensee's duties to a customer in the transaction;
3. Unless the following duties are specifically and individually waived in writing by a client, licensee shall assist the client by:
 - A. Scheduling all Property showings on behalf of the client.
 - B. Receiving all offers and counter offers and forwarding them promptly to the client.
 - C. Answering any questions that the client may have in negotiation of a successful purchase agreement within the scope of the licensee's expertise; and
 - D. Advising the client as to whatever forms, procedures and steps are needed after execution of the purchase agreement for a successful closing of the transaction.Upon waiver of any of the duties contained in paragraph 11.C.3., a consumer must be advised in writing by such consumer's agent that the consumer may not expect or seek assistance from any other licensees in the transaction for the performance of said duties.

D. Seller's Authorizations

1. Appointment of Designated Agent. Seller hereby authorizes Managing Broker to appoint the Listing Licensee as Designated Agent for the Seller, to the exclusion of any other licensees associated with Broker. A Designated Agent for the Seller can and will continue to advocate Seller's interests in a transaction even if a Designated Agent for the Buyer (other than the licensee below) is also associated with Broker. The Managing Broker hereby appoints _____ to be the Designated Agent to the Seller in this transaction.



2. **Appointment of Subsequent Designated Agent.** Seller hereby authorizes the Managing Broker, if necessary, to appoint a licensee, other than the licensee named above, as Designated Agent for the Seller, to the exclusion of any other licensees associated with Broker. This shall be accomplished through an amendment to this Agreement, if necessary.

3. **Default to Facilitator in the event both parties are represented by the same Designated Agent.** The Designated Agent shall default to Facilitator status for all showings or transactions *involving the same Designated Agent for both the Seller and a prospective buyer*, immediately notifying (verbally) the Buyer and the Seller of the need to default to this Facilitator status to be confirmed in writing prior to the execution of the contract. Upon any default to Facilitator status, the former Designated Agent must assume a neutral position and will not be an advocate for either the Seller or any prospective buyers.

4. **Resumption of Agency Status.** In the event that the Designated Agent defaults to a Facilitator status, this Facilitator status will only be temporary. The Facilitator status will only last until any transaction or contemplated transaction in which the parties are all assisted by the same Facilitator is resolved (either because the transaction is closed or the transaction or contemplated transaction between these parties is terminated or not accepted and no further negotiations occur between the parties). At that time, the agent will immediately revert to Designated Agency status for the Seller again.

12. **EARNEST MONEY.** Broker is authorized to accept from Buyer a deposit as earnest money to be applied to the purchase price for the Property. Such deposit is to be held by Broker in an escrow account or forwarded to party authorized to hold said funds as set forth in an executed contract for the purchase, lease, exchange, or option agreement until disbursed in accordance with the terms of said agreement.

13. **TITLE.** Seller warrants he is vested with good marketable title to the Property with full authority to execute this Agreement and to sell the Property. Seller shall convey the Property by a good and sufficient general warranty deed.

14. **HOME PROTECTION PLAN.**

☐ Seller agrees to provide a limited Home Protection Plan at a cost of \$_____ to be funded at closing.
Plan company: _____

OR

☐ Home Protection waived.

15. **OTHER PROVISIONS.**

A. **Binding Effect, Entire Agreement, Modification, Assignment, and Binding Agreement Date.**

This Agreement shall be for the benefit of, and be binding upon, the parties hereto, their heirs, successors, legal representatives and permitted assigns. This Agreement may only be assigned with the written consent of both parties. This Agreement constitutes the sole and entire agreement between the parties hereto and no modification of this Agreement shall be binding unless signed by all parties or assigns to this Agreement. No representation, promise, or inducement not included in this Agreement shall be binding upon any party hereto. Any assignee shall fulfill all the terms and conditions of this Agreement.

B. **Governing Law and Venue.** This Agreement is intended as a contract for the purchase and sale of real property and shall be governed by and interpreted in accordance with the laws and in the courts of the State of Tennessee.

C. **Terminology.** As the context may require in this Agreement: (1) the singular shall mean the plural and vice versa; (2) all pronouns shall mean and include the person, entity, firm or corporation to which they relate; (3) the masculine shall mean the feminine and vice versa; and (4) 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 Property. **In the event a performance deadline** occurs on a Saturday, Sunday or legal holiday, the performance deadline shall extend to the next following business day.

D. **Severability.** If any portion or provision of this Agreement is held or adjudicated to be invalid or unenforceable for any reason, each such portion or provision shall be severed from the remaining portions or provisions of this Agreement, and the remaining portions or provisions shall be unaffected and remain in full force and effect.

16. **LEGAL DOCUMENTS.** THIS IS AN IMPORTANT LEGAL DOCUMENT CREATING VALUABLE RIGHTS AND OBLIGATIONS. IF YOU HAVE QUESTIONS ABOUT IT, YOU SHOULD REVIEW IT WITH YOUR ATTORNEY. NEITHER THE BROKER NOR ANY AGENT OR FACILITATOR IS AUTHORIZED OR QUALIFIED TO GIVE YOU ANY ADVICE ABOUT THE ADVISABILITY OR LEGAL EFFECT OF ITS PROVISIONS. BY SIGNING THIS DOCUMENT, YOU ARE CERTIFYING THAT YOU HAVE READ AND ACCEPT THESE TERMS AND ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT.



17. **CONFIDENTIALITY.** Information which the Seller authorizes Broker and his affiliated Licensees to disclose which might otherwise be confidential:

18. **EXHIBITS AND ADDENDA:** All exhibits and/or addenda attached hereto, listed below, or referenced herein are made a part of this Agreement.

19. **SPECIAL STIPULATIONS:** The following Special Stipulations, if conflicting with any preceding paragraph, shall control:

NOTE: Any provisions of this Agreement which are preceded by a "□" must be marked if a part of this Agreement.

The party(ies) below have signed and acknowledge receipt of a copy.

BY: Broker or Licensee Authorized by Broker

BROKER/FIRM

_____ at _____ o'clock ☐ am/ ☐ pm

Date

Address

Print/Type Name

Phone: _____ Fax: _____

Email: _____

The party(ies) below have signed and acknowledge receipt of a copy.

SELLER/OWNER

SELLER/OWNER

Print/Type Name

Print/Type Name

_____ at _____ o'clock ☐ am/ ☐ pm

_____ at _____ o'clock ☐ am/ ☐ pm

Date

Date

Address

Address

Phone: _____ (H) _____ (Cell)

Phone: _____ (H) _____ (Cell)

_____ (W) Email: _____

_____ (W) Email: _____

NOTE: This form is provided by TAR to its members for their use in real estate transactions and is to be used as is. By downloading and/or using this form, you agree and covenant not to alter, amend, or edit said form or its contents except as where provided in the blank fields, and agree and acknowledge that any such alteration, amendment or edit of said form is done at your own risk. Use of the TAR logo in conjunction with any form other than standardized forms created by TAR is strictly prohibited. This form is subject to periodic revision and it is the responsibility of the member to use the most recent available form.



Buyer's Agency and Offer to Purchase Contract...

By chance you meet Mrs. Anita Fuller at the gym, and discovered she is looking to buy a home. She has contacted you and asked that you help her prepare an offer on the home she hopes to purchase.

Please use the following information to fill out the Buyer Agency and Offer-to-Purchase Contract found on the following pages



Buyer Agency...

As with a listing agreement, this is again a contract between yourself and your client. In this case, it is with a potential “buyer”. This contract details the duties and expectations of the two parties to each other, but more importantly it “locks” down a buyer for a single agent.

This “locking in” of a buyer can be one of the most controversial and disruptive practices in the real estate profession. The “issue” is the *disclosure to* and *understanding of* potential buyers. Do we really believe that most buyers who sign this contract are aware of the implications? Does the damage done to inter-firm relationships by unscrupulous agents worth the trouble? Should an agent whose only skill is signing up potential buyers and turning them loose for others to service be paid a commission?

In fairness, there are good reasons to use such a contract... You are investing your time and resources into this potential buyer. When a home is listed with an exclusive listing agreement that seller has been locked in with one particular agent... Why is this different? It may not be.

The question for the Real Estate community to answer is how are these contracts being used? Are they being used as protection or as a preemptive strike? If your client is driving around town and attending open houses without you even knowing, if they are searching the internet and contacting other agents for information...are they your client, really?

My personal position is that these contracts are only to be used when a home has been found and you wish to create an agency relationship with the buyer before beginning a lengthy negotiating process. The process of searching for a home in my opinion is a job interview between yourself and the potential buyer, the buyer should want to use you when they find the first home they wish to buy...they should not be required to. If you need the *Buyer Agency Contract* to keep clients, you might need a new profession. Once again just my opinion...

BUYER AGENCY CONTRACT...MRS. ANITA FULLER

Broker Info: Be creative...

Buyer: Mrs. Anita Fuller – Give her an address

Expires in 90 Days

Mrs. Fuller is looking for a 3 Bedroom Home with at least a half an acre. She doesn't want to spend more than \$150,000, and the home must be in Rutherford County.

You have agreed upon 3% on FSB0

Mrs. Fuller wants a fenced yard is possible

Mrs. Fuller want an enclose garage if possible

Mrs. Fuller is not available for showings before 5pm on workdays and on Sundays.

Line 154... What are some examples of situations where a client might release the agent from normal duties of confidentiality???

1.

2.

3.

You will find a Buyer Agency Contract on the following pages

**BUYER REPRESENTATION AGREEMENT
(EXCLUSIVE RIGHT TO BUY)
BUYER AGENCY**

Broker/Firm: _____

Address of Firm: _____

Buyer: _____

1. TERM.

For and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned

_____ (“Client” or “Buyer”) hereby employs the Firm/Broker of _____ (“Broker”), as Client’s exclusive agent to locate property for Client’s purchase, lease, exchange or option (collectively “Purchase”) during the term of this agreement, and to advocate the Client’s best interests in the negotiation of terms and conditions of any such Purchase. This Buyer Representation Agreement (“Agreement”) begins on this date and terminates at 11:59 p.m. local time on _____, _____, or at closing of any Purchase under this Agreement, if such occurs earlier.

2. TYPE OF PROPERTY SOUGHT BY CLIENT.

A. General Description, Size and Location:

B. Price Range & Terms: _____

C. Sources to be Searched for Property:

D. Other Terms/Conditions:

E. Properties Specifically Exempted from this Agreement:

3. CLIENT DUTIES.

Buyer agrees:

- A. To Purchase property exclusively through Broker during the term of this Agreement;
- B. To furnish Broker on a timely basis with any necessary personal and/or financial information to ensure Client’s ability to Purchase;
- C. That he/she is not under an exclusive right to buy contract with any other agent at this time;
- D. That if Client utilizes the services of another real estate broker or deals solely with a Seller’s Agent at any time during the effective period of this Agreement and then enters into an agreement with a seller/owner to Purchase any property(ies) described above, the Buyer still owes a commission to the Broker provided herein;
- E. To authorize Broker to negotiate for a fee paid by the Seller and/or the Seller’s agent, the payment of which will be fully disclosed to Client. If a fee is not offered or paid to Broker, as could occur, for example, in the purchase of an unlisted property, Client agrees to pay Broker a total of \$ _____ or _____ % compensation based on the total sale. In the event that the amount of any cooperating compensation offered by Seller or Seller’s broker is less than the amount listed above, Buyer agrees to pay Broker the difference at closing. Broker’s fee is earned at the signing by both parties of an agreement to purchase, lease, exchange or the exercise of an option for any property(ies) as described above and is due at the closing of any such transaction. In the event that Buyer defaults on performance of a valid contract for sale, lease, exchange or exercised option, Broker’s fee will be due on



the date of default. Buyer agrees to pay all reasonable attorneys' fees together with any court costs and expenses which Broker incurs in enforcing any of Buyer's obligations to pay compensation under this Agreement. The parties hereby agree that all remedies are fair and equitable and neither party will assert the lack of mutuality of remedies as a defense in the event of a dispute. NOTICE: Real estate fees are not fixed by law. They are set by each broker individually and are negotiable between Client and Broker. The payment of any fee by Seller will not make Broker either the Agent or Subagent of the Seller; and

F. That he/she has reviewed this Agreement and agrees with the terms herein.

4. AGENCY

A. Definitions

1. Broker.

In this Agreement, the term "Broker" shall mean a licensed Tennessee real estate broker or brokerage firm and where the context would indicate, the Broker's affiliated licensees.

2. Agent for the Buyer.

The Licensee's company is working as an agent for the Buyer, owes primary loyalty to the Buyer, and will work as an advocate of the best interests of the Buyer. An agency relationship of this type cannot, by law, be established without a written buyer agency agreement.

3. Designated Agent for the Buyer.

The individual licensee that has been assigned by the Managing Broker and is working as an agent for the Buyer in this consumer's prospective transaction, to the exclusion of all other licensees in his/her company. Even if someone else in the licensee's company represents a Seller in whose property Buyer is interested, the Designated Agent for the Buyer will continue to work as an advocate for the best interests of the Buyer. An agency relationship, by law, can only be established by a written agency agreement.

4. Facilitator/Transaction Broker (not an agent for either party).

The licensee is not working as an agent for either party in this consumer's prospective transaction. A facilitator may advise either or both of the parties to a transaction but cannot be considered a representative or advocate of either party. By law, any licensee or company who has not entered into a written agency agreement with either party in the transaction is considered a Facilitator or Transaction Broker until such time as an agency agreement is established.

5. Dual agency. The licensee has agreements to provide services as an agent to more than one (1) party in a specific transaction and in which the interests of such parties are adverse. This agency status may only be employed upon full disclosure to each party and with each party's informed consent.

6. Adverse Facts.

"Adverse Facts" means conditions or occurrences generally recognized by competent licensees that have a negative impact on the value of the real estate, significantly reduce the structural integrity of improvements to real property or present a significant health risk to occupants of the property.

7. Confidentiality.

By law, every licensee is obligated to protect some information as confidential. This includes any information revealed by a consumer which may be helpful to the other party IF it was revealed by the consumer BEFORE the licensee disclosed any agency relationship with that other party. AFTER the licensee discloses that he/she has an agency relationship with another party, any such information which the consumer THEN reveals must be passed on by the licensee to that other party. Buyer understands that there is a possibility that sellers or sellers' representatives may not treat the existence, terms, or conditions of offers as confidential unless confidentiality is required by law, regulation, or by any confidentiality agreement between the parties.

B. Rights owed to all Parties to a Transaction.

Pursuant to the Tennessee Real Estate Broker License Act, every Real Estate Licensee owes the following duties to every Buyer and Seller, Tenant and Landlord (collectively "Buyers" and "Sellers"):

1. To diligently exercise reasonable skill and care in providing services to all parties to the transaction;
2. To disclose to each party to the transaction any Adverse Facts of which Licensee has actual notice or knowledge;
3. To maintain for each party in a transaction the confidentiality of any information obtained by a Licensee prior to disclosure to all parties of a written agency agreement entered into by the Licensee to represent either or both parties in the transaction. This duty of confidentiality extends to any information that the party would reasonably expect to be held in confidence, except for information which the party has authorized for disclosure or information required by law to be disclosed;



4. To provide services to each party to the transaction with honesty and good faith;
5. To disclose to each party to the transaction timely and accurate information regarding market conditions that might affect such transaction only when such information is available through public records and when such information is requested by a party;
6. To give timely account for earnest money deposits and all other property received from any party to a transaction; and
7. (A) To refrain from engaging in self-dealing or act on behalf of Licensee's immediate family, or on behalf of any other individual, organization or business entity in which Licensee has a personal interest without prior disclosure of such personal interest and the timely written consent of all parties to the transaction; and
(B) To refrain from recommending to any party to the transaction the use of services of another individual, organization or business entity in which the Licensee has an interest or from whom the Licensee may receive a referral fee or other compensation for the referrals, other than referrals to other Licensees to provide real estate services, without timely disclosing to the party who receives the referral, the Licensee's interest in such referral or the fact that a referral fee may be received.

C. Duties Owed to Client.

In addition to the above, the Licensee has the following duties to his/her Client if the Licensee has become an agent or Designated Agent in a transaction:

1. Obey all lawful instructions of the Client when such instructions are within the scope of this agency agreement between the Licensee and the Buyer/Client; and
2. Be loyal to the interests of the Client. A Licensee must place the interests of the Client before all others in negotiation of a transaction and in other activities, except where such loyalty duty would violate Licensee's duties to a customer in the transaction;
3. Unless the following duties are specifically and individually waived in writing by a Client, Licensee shall assist the Client by:
 - A. Scheduling all property showings on behalf of the Client;
 - B. Receiving all offers and counter offers and forwarding them promptly to the Client;
 - C. Answering any questions that the Client may have in negotiation of a successful purchase within the scope of the Licensee's expertise; and
 - D. Advising the Client as to whatever forms, procedures and steps are needed after execution of the purchase agreement for a successful closing of the transaction.

Upon Waiver of any of the above duties listed under subparagraph 4.C.3., the Client may not expect or seek assistance from any other licensees in the transaction for the performance of the above.

D. Agent Disclosure. Pursuant to Tennessee Real Estate Commission Rule 1260-2-.36, Broker must disclose the following to Client prior to the execution of this Agreement:

During the effective period of this Agreement:

1. Client should not contact listing agents directly and should make all arrangements to view and inspect property through Broker;
2. In the event Client comes into contact with a Seller's Agent(s) (for example, at an open house viewing), Client shall immediately inform the Seller's Agent(s) that he/she is represented by Broker; and
3. If Client purchases property(ies) covered by this Agreement through another real estate licensee or a Seller's Agent(s) or directly from a Seller, Client understands that he/she still owes a commission to the Broker as set forth in this Agreement.

E. Buyer's Authorizations.

1. **Appointment of Designated Agent.** Buyer hereby authorizes the Selling Licensee (agent working with Buyer) to become the Designated Agent for the Buyer, to the exclusion of any other Licensee associated with Broker, in the event another Licensee affiliated with the Broker represents the Seller. A Designated Agent for the Buyer can and will continue to advocate Buyer's best interests in a transaction even if an Agent or Designated Agent for the Seller (other than the Licensee below) is also associated with Broker.



2. **Default to Facilitator.** Buyer hereby authorizes Broker and Selling Licensee (agent working with Buyer) to default to Facilitator status (representing the interests of neither the Seller nor the Buyer) in any Property showings, negotiations, or transactions, in which the Broker may also have a representation agreement with the Seller who is also being assisted by the Selling Licensee. In such event, Agent shall immediately notify (verbally) both the Buyer and the Seller of the need to default to this Facilitator status and notification shall be confirmed in writing prior to the execution of the contract. As Facilitator, Broker and Broker's licensee may assist the parties and provide information in subsequent negotiations in that transaction.

5. **CONFIDENTIALITY.**

Information which the Buyer authorizes Broker and his affiliated Licensees to disclose which might otherwise be confidential:

6. **EARNEST MONEY.**

Broker is authorized to accept a deposit of earnest money to be applied to the purchase price for the property. Such deposit is to be held by Broker in an escrow account or forwarded to party authorized to hold said funds as set forth in an executed contract for purchase, lease, exchange or option agreement until disbursed in accordance with the terms of said agreement.

7. **EXPERT ASSISTANCE.**

While Broker and the Licensees associated with Broker have considerable general knowledge, they are not experts in matters of law, tax, financing, surveying, structural conditions, hazardous materials, engineering, etc. Client acknowledges Broker's advice to seek professional assistance and advice in these and other areas of professional expertise as needed. Names or sources provided to Client for such advice or assistance are not warranted or guaranteed by the Broker or the Licensees associated with Broker.

8. **OTHER PROVISIONS.**

A. **Binding Effect, Entire Agreement, Modification, and Assignment.**

This Agreement shall be for the benefit of, and be binding upon, the parties hereto, their heirs, successors, legal representatives and permitted assigns. This Agreement may only be assigned with the written consent of both parties. This Agreement constitutes the sole and entire agreement between the parties hereto and no modification of this Agreement shall be binding unless signed by all parties or assigns to this Agreement. No representation, promise, or inducement not included in this Agreement shall be binding upon any party hereto. Any assignee shall fulfill all the terms and conditions of this Agreement.

B. **Governing Law and Venue.** This Agreement is intended as a contract for buyer's agency representation and shall be governed by and interpreted in accordance with the laws and in the courts of the state of Tennessee.

C. **Terminology.**

As the context may require in this Agreement: (1) the singular shall mean the plural and vice versa; (2) all pronouns shall mean and include the person, entity, firm or corporation to which they relate; (3) the masculine shall mean the feminine and vice versa; and (4) 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 Firm. **In the event a performance deadline** occurs on a Saturday, Sunday or legal holiday, the performance deadline shall extend to the next following business day.

D. **Severability.**

If any portion or provision of this Agreement is held or adjudicated to be invalid or unenforceable for any reason, each such portion or provision shall be severed from the remaining portions or provisions of this Agreement, and the remaining portions or provisions shall be unaffected and remain in full force and effect.

9. **LEGAL DOCUMENTS.** THIS IS AN IMPORTANT LEGAL DOCUMENT CREATING VALUABLE RIGHTS AND OBLIGATIONS. IF YOU HAVE QUESTIONS ABOUT IT, YOU SHOULD REVIEW IT WITH YOUR ATTORNEY. NEITHER THE BROKER NOR ANY AGENT OR FACILITATOR IS AUTHORIZED OR QUALIFIED TO GIVE YOU ANY ADVICE CONCERNING THE ADVISABILITY OR LEGAL EFFECT OF ITS PROVISIONS. BY SIGNING THIS DOCUMENT, YOU ARE CERTIFYING THAT YOU HAVE READ AND ACCEPT THESE TERMS AND ACKNOWLEDGE RECEIPT OF THIS AGREEMENT.



199 **10. EXHIBITS AND ADDENDA:** All exhibits and/or addenda attached hereto, listed below, or referenced herein are made
200 a part of this Agreement.
201 _____
202 _____
203 _____
204 _____

205 **11. SPECIAL STIPULATIONS:** The following Special Stipulations, if conflicting with any preceding paragraph, shall
206 control:
207 _____
208 _____
209 _____
210 _____
211 _____
212 _____
213 _____
214 _____
215 _____
216 _____
217 _____
218 _____

219 The party(ies) below have signed and acknowledge receipt of a copy.

220 _____
221 **BY: Broker or Licensee Authorized by Broker**

BROKER/FIRM

222 _____ at _____ o'clock ☐ am/ ☐ pm
223 Date

Address

224 _____
225 Print/Type Name

Phone: _____ Fax: _____

226 The party(ies) below have signed and acknowledge receipt of a copy.

227 _____
228 **BUYER**

BUYER

229 _____
230 Print/Type Name

Print/Type Name

231 _____ at _____ o'clock ☐ am/ ☐ pm
232 Date

_____ at _____ o'clock ☐ am/ ☐ pm
Date

233 _____
234 Address

Address

235 Phone: _____ (H) _____ (Cell)

Phone: _____ (H) _____ (Cell)

236 _____ (W) Email: _____

_____ (W) Email: _____

NOTE: This form is provided by TAR to its members for their use in real estate transactions and is to be used as is. By downloading and/or using this form, you agree and covenant not to alter, amend, or edit said form or its contents except as where provided in the blank fields, and agree and acknowledge that any such alteration, amendment or edit of said form is done at your own risk. Use of the TAR logo in conjunction with any form other than standardized forms created by TAR is strictly prohibited. This form is subject to periodic revision and it is the responsibility of the member to use the most recent available form.



Offers and Counter-Offers...

The exchange of an offer for an acceptance is the traditional method for determining if an agreement or contract between two parties exists. This contract is said to have been formed if there is an expressed or implied agreement. A contract is said to have come into existence when acceptance of an offer has been communicated to the offeror by the offeree.

Offer: This is an expression of willingness to contract on certain terms, made with the intention that it shall become binding as soon as it is accepted by the person to whom it is addressed, the “offeree”.

An offer can be withdrawn at any time before acceptance by the other party

Counter – Offer: This is simply a follow-up offer to a previous offer... It is important to remember the effect and consequences of a counter-offer. By making this counter, you are formally rejecting the previous offer or counter-offer. Once rejected any attempt to accept a previously rejected offer... is a counter-offer. The original offeree can then choose whether or not he/she will accept their original offer.

Advertising an Offer ? Advertising is generally not considered to be an offer but rather an “invitation to treat.” This is a willingness to negotiate an offer. For example, this could be a shop’s display window or good upon a shelf.

Acceptance: This is a final and unqualified expression of agreement to the terms of the offer.

Revocation: An offer can be revoked at any time before acceptance... Whereas, an acceptance can be revoked at any time before that acceptance is communicated to the other party.

The Acceptance Date: This is the date that the party who has been presented with an offer or counteroffer signs and accepts it. However, a legally enforceable contract is not created until the accepted contract is then delivered back to the party who made the offer or counteroffer.

The acceptance can be withdrawn at any time before it is delivered to the other party.

Binding Agreement Date: The date this signed agreement is returned to the original or other party, this the Binding Agreement Date.

In simple terms, what is the “acceptance date”?

In simple terms, what is the “binding date”?

Can the *acceptance* and *binding* date be two different days?

Purchase and Sale Agreement... Relevant Information

Line 3... Name of Buyer "Anita L. Fuller"

Line 4... Name of Seller "Larry and Susan Estes"

Lines 6 – 9... 400 Blue Jay Dr. Smyrna, Tn 37167 Deed Book 2, Pg 2

Line 18... "2" remotes

The seller has offered to leave an 18 horse power Murray Riding Mower... Mrs. Fuller would like this shown in the contract

The seller will be removing a custom painted "Tennessee Titans Mailbox from the property... Mrs. Fuller is a Cowboys fan is more than willing to agree to this but wants a new mailbox installed.

The house has an installed water softener, the annual lease payments will be the responsibility of the new buyer

The price Anita wants to offer is \$140,000, One hundred and forty thousand dollars"

This offer is contingent upon and appraised value of \$140,000

All cost associated with line 70 will be paid by "buyer"

The closing will be at the Law Office of H.H. Hillman

This offer is contingent upon financing of "90%" of the Offer

Mrs. Fuller will be using a conventional loan

Mrs. Fuller is offering to pay \$500 earnest money to ABC Realty at 200 Main Street, Smyrna TN 37167 within one day.

The closing must be by July 1st of this year

Possession will be with deed

Line 173... none

Line 200... "Anita Lee Fuller"

Line 208... Home was built in 2002

Line 241... No exclusions

Line 248... 15 days

Line 266... 10 days

Line 278... 3 days

Line 314... Home protection plan waived

Line 394... none

Line 400... none

Line 426... Offer terminates at 12:00 PM June 5th of this year

This information represents the Offer you submit on May 20th

of this year for Mrs. Fuller.

DETAILS OF THE NEGOTIATION...

May 20th 20XX... Initial offer by Mrs. Fuller to Mr. and Mrs. Estes

May 21st 20XX... Larry Estes formally rejects the offer with no counter offer

June 1st 20XX... Mrs. Fuller submits a new Offer that has been revised to offer \$146,500 (offer to expire in ten days)

June 3rd 20XX The Realtor for the Estes calls you and suggest the Estes are close, but that they have not signaled any willingness to accept \$146,500

June 4th 20XX... Mrs. Fuller submits an identical offer with the revision of \$148,500 offer

June 5th 20XX... Mr. and Mrs. Estes accept and sign the offer with these changes...

- The buyer will pay \$151,000 for the home

- The seller will not provide a new mailbox

June 6th 20XX... Mrs. Fuller accepts and signs the offer with these changes...

- The buyer will pay \$150,000 for the home

- The seller will provide a new mailbox

June 7th 20XX... Mr. and Mrs. Estes accept and sign the offer

Fill out the following contract as it would be on May 20th...

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 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; 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 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.): _____.

Future lease payments shall be the responsibility of _____. If leases are not assumable, it will be Seller's responsibility to pay balance.

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 at Buyer's expense and paid to Seller or Seller's Closing Agency in the same form as deemed acceptable under the Tennessee Residential Closing Funds Distribution Act of 2005, as amended in Tenn. Code Ann. § 47-32-101, et seq.

A. **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.
- ☐ 2. This Agreement **IS CONTINGENT** upon the appraised value either equaling or exceeding the agreed upon Purchase Price. If appraised value is equal to or exceeds Purchase Price, this contingency is satisfied. If the appraised value of the Property does not equal or exceed the Purchase Price, Buyer may terminate this Agreement by providing written notice to the Seller and providing written proof of the same (for



example, this written proof could include, but is not limited to, a copy of appraisal or a signed letter from Lender) via the Notification form or equivalent written notice. Upon termination, Buyer is entitled to refund of the Earnest Money.

B. Closing Costs and Discount Points.

1. **Seller Expenses.** Seller shall pay all existing loans and/or liens affecting the Property, including all penalties, release preparation costs, and applicable recording costs; Seller's closing fee, document preparation fee and/or attorney's fees; fee for preparation of deed; and notary fee on deed. Seller additionally agrees to permit any withholdings and/or to pay any additional sum due as is required under the Foreign Investment Tax Act. Failure to do so will constitute a default by Seller.

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

2. **Buyer Expenses.** Buyer shall pay all transfer taxes and recording fees on deed of conveyance and deed of trust; Buyer's closing fee, document preparation fee and/or attorney's fees; preparation of note, deed of trust, and other loan documents; mortgage loan inspection or boundary line survey; credit report; required premiums for private mortgage, hazard and flood insurance; required reserved deposits for insurance premiums and taxes; prepaid interest; re-inspection fees pursuant to appraisal; and any costs incident to obtaining and closing a loan, including but not limited to: appraisal, origination, discount points, application, commitment, underwriting, document review, courier, assignment, photo, tax service and notary fees.

3. **Title Expenses.** Cost of title search or abstract, mortgagee's policy and owner's policy shall be paid as follows:

Buyer to receive benefit of simultaneous issue.

Not all of the above items are applicable to every transaction and may be modified as follows:

Closing Agency for Buyer: _____

Closing Agency for Seller: _____

Title Company: _____

or other Closing Agency as mutually agreed by Seller and Buyer.

- C. **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 the event Buyer, having acted in good faith and in accordance with the terms below, is unable to obtain financing, Buyer may terminate this Agreement by providing written notice and a copy of Lender's loan denial letter via the Notification form or equivalent written notice. Upon termination, Buyer is entitled to a refund of the Earnest 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**):

- | | |
|---|--|
| ☐ Conventional Loan | ☐ FHA Loan; attach addendum |
| ☐ VA Loan; attach addendum | ☐ Other _____ |

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

- (1) Within five (5) days after the Binding Agreement Date, Buyer shall make application for the loan and instruct Lender to order credit report and appraisal. Buyer shall immediately notify Seller or Seller's representative of having applied for the loan, Lender's name and contact information, and that Buyer has instructed Lender to order credit report and appraisal via the Notification form or equivalent written notice;
- (2) Buyer shall pay any required fees necessary to complete full loan processing and approval, as soon as permissible as established by governmental regulations. Buyer shall notify Seller when the fees have been paid via the Notification form or equivalent written notice;
- (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;
- (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 2.C.(1) 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 written evidence of loan application by way of providing Lender's name and contact information and notification that Buyer has instructed Lender to order appraisal and credit report within one (1) day after such notice, Seller's obligation to sell is terminated and Buyer shall be considered in default. Buyer may also 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 the 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. Within **twenty (20) days** after Binding Agreement Date, Buyer shall provide to Seller or Seller's representative a conditional commitment letter from Buyer's Lender providing reasonable assurance of Buyer's ability to obtain the financing contemplated by this Agreement. Said letter shall be in a form and substance acceptable to Seller at Seller's reasonable discretion; however, a letter from Lender verifying the following shall be deemed acceptable:

- a. An appraisal has been ordered;
- b. Buyer has available funds to close;
- c. Buyer's credit is acceptable to Lender; and
- d. Buyer has employment or income necessary to obtain said loan.

Seller shall have the right to terminate this Agreement with written notice to Buyer if said letter is not timely received, in which case Earnest Money shall be returned to Buyer.

THIS BOX MUST BE CHECKED IN ORDER FOR IT TO BE A PART OF THIS AGREEMENT.

- ☐ **Financing Contingency Waived** (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. Failure to close due to lack of funds shall be considered default by Buyer.

3. Earnest Money. Buyer has paid or will pay within _____ days after the Binding Agreement Date to _____ (name of Holder) ("Holder") located at _____ (address of Holder), an Earnest Money deposit of \$ _____ by check (OR _____) ("Earnest Money"). In the event any Earnest Money check is not honored, for any reason, by the bank upon which it is drawn, Holder shall promptly notify Buyer and Seller. Buyer shall have one (1) day after notice to deliver good funds to Holder. In the event Buyer does not timely deliver good funds, Seller shall have the right to terminate this Agreement upon written notice to Buyer via the Notification form or equivalent written notice. Earnest Money is to be deposited promptly after the Binding Agreement Date or the agreed upon delivery date in this Earnest Money paragraph or as specified in the Special Stipulations paragraph contained at paragraph 18 herein. Holder shall disburse Earnest 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;
- (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 paragraph. Earnest Money shall not be disbursed prior to fourteen (14) days after deposit unless written evidence of clearance by bank is provided.



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

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

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

- 163 ☐ with delivery of warranty deed and payment of Purchase Price; or
164 ☐ on _____ at _____ o'clock ☐ am/ ☐ pm, local time; or
165 ☐ no later than _____ o'clock ☐ am/ ☐ pm, local time on the ____ day after Closing.
166 ☐ Occupancy Agreement Attached.

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

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

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

177 **5. Title and Conveyance.**

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

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

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

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

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

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

203 **6. Seller's Property Disclosure.** Pursuant to the requirements of the Tennessee Residential Property Condition Disclosure
204 Act at Tenn. Code Ann. § 66-5-201, et seq. as amended, a Property Condition Disclosure Statement, Exemption, or if
205 Buyer waives Disclosure, a Disclaimer, has been or will be provided prior to the Binding Agreement Date.



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

☐ does not apply. ☐ does apply (Property built prior to 1978 – see attached Lead-Based Paint Disclosure).

8. **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. 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 Paragraph 8, and in such case shall accept the Property in its current condition, normal wear and tear excepted.**

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 the Buyer or required by the 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 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 the Seller simultaneously with the delivery of the Buyer Inspection Contingency Removal / Notification or equivalent written notice. 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, may be addressed in the Buyer Inspection Contingency Removal/Notification form or equivalent written notice 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 using the Buyer Inspection Contingency Removal/Notification form or equivalent written notice as described below. **In said notice Buyer shall either:**

(1) furnish Seller with a list of written specified objections and immediately terminate this Agreement, provided Buyer has conducted a Home Inspection or other inspection(s) as allowed herein, and in good faith discovers matters objectionable to Buyer within the scope of such inspection(s). As additional consideration for Buyer's right to terminate, Buyer shall deliver to Seller or Seller's representative, upon Seller's request, a copy of all inspection reports. All Earnest 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. Seller has no obligation to make repairs.

OR



(3) furnish Seller a copy of any and all inspection report(s) and a written list of items set forth in the inspection report(s) which Buyer requires to be repaired and/or replaced with like quality or value in a professional and workmanlike manner.

- 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 Buyer Inspection Contingency Removal/Notification, the Repair Counter Proposal form, or written equivalent(s). 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.

☐ **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).

9. Final Inspection. Buyer and/or his inspectors/representatives shall have the right to conduct a final inspection of Property no later than _____ days 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 the 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.

10. Disclaimer. It is understood and agreed that the real estate firms and real estate licensee(s) representing or assisting Seller 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 Property; for the condition of Property, any portion thereof, or any item therein; for the necessity or cost of any repairs to 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 applicable boundaries of school districts or other school information; for the appraised or future value of Property; square footage of Property; any condition(s) existing off Property which may affect Property; for the terms, conditions, and availability of financing; and/or for the uses and zoning of Property whether permitted or proposed. Buyer and Seller acknowledge that Brokers are not experts with respect to the above matters and that, if any of these matters or any other matters are of concern to them, they should seek independent expert advice 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 Broker(s) involved in this transaction shall be deemed a third party beneficiary and 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 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 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.

13. Home Protection Plan. 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.**



315 **14. Other Provisions.**

316 **A. Binding Effect, Entire Agreement, Modification, Assignment, and Binding Agreement Date.**

317 This Agreement shall be for the benefit of, and be binding upon, the parties hereto, their heirs, successors, legal
318 representatives and assigns. This Agreement constitutes the sole and entire agreement between the parties hereto
319 and no modification of this Agreement shall be binding unless signed by all parties or assigns to this Agreement. No
320 representation, promise, or inducement not included in this Agreement shall be binding upon any party hereto. Any
321 assignee shall fulfill all the terms and conditions of this Agreement. The parties hereby authorize either licensee to
322 insert the time and date of receipt of the notice of acceptance of the final offer and further agree to be bound by such
323 as the Binding Agreement Date following the signatory section of this Agreement, or Counter Offer, if applicable.

324 **B. Survival Clause.** Any provision contained herein, which by its nature and effect is required to be performed after
325 Closing shall survive the Closing and delivery of the deed, and shall remain binding upon the parties to this
326 Agreement and shall be fully enforceable thereafter.

327 **C. Governing Law and Venue.** This Agreement is intended as a contract for the purchase and sale of real property
328 and shall be governed by and interpreted in accordance with the laws and in the courts of the State of Tennessee.

329 **D. Time of Essence.** Time is of the essence in this Agreement.

330 **E. Terminology.** As the context may require in this Agreement: (1) the singular shall mean the plural and vice versa;
331 (2) all pronouns shall mean and include the person, entity, firm or corporation to which they relate; (3) the masculine
332 shall mean the feminine and vice versa; and (4) the term day(s) used throughout this Agreement shall be deemed to
333 be calendar day(s) ending at 11:59 p.m. local time unless otherwise specified in this Agreement. Local time shall be
334 determined by the location of Property. **In the event a performance deadline**, other than the Closing Date
335 (paragraph 4), Date of Possession (paragraph 4), and Offer Expiration Date (paragraph 20), occurs on a Saturday,
336 Sunday or legal holiday, the performance deadline shall extend to the next following business day. In calculating
337 any time period under this Agreement, the commencement shall be the day following the initial date (e.g. Binding
338 Agreement Date).

339 **F. Responsibility to Cooperate.** Buyer and Seller agree to timely take such actions and produce, execute, and/or
340 deliver such information and documentation as is reasonably necessary to carry out the responsibilities and
341 obligations of this Agreement. Except as to matters which are occasioned by clerical errors or omissions or
342 erroneous information, the approval of the closing documents by the parties shall constitute their approval of any
343 differences between this Agreement and the Closing. Buyer and Seller agree that if requested after Closing, they
344 will correct any documents and pay any amounts due where such corrections or payments are appropriate by reason
345 of mistake, clerical errors or omissions, or the result of erroneous information.

346 **G. Notices.** Except as otherwise provided herein, all notices and demands required or permitted hereunder shall be in
347 writing and delivered either (1) in person; (2) by a prepaid overnight delivery service; (3) by facsimile transmission
348 (FAX); (4) by the United States Postal Service, postage prepaid, registered or certified, return receipt requested; or
349 (5) Email. **NOTICE** shall be deemed to have been given as of the date and time it is actually received. Receipt of
350 notice by the real estate licensee or their Broker assisting a party as a client or customer shall be deemed to be notice
351 to that party for all purposes under this Agreement as may be amended, unless otherwise provided in writing.

352 **H. Risk of Loss.** The risk of hazard or casualty loss or damage to Property shall be borne by the Seller until transfer of
353 title. If casualty loss prior to Closing exceeds 10% of the Purchase Price, Seller or Buyer may elect to terminate this
354 Agreement with a refund of Earnest Money to Buyer.

355 **I. Equal Housing.** This Property is being sold without regard to race, color, sex, religion, handicap, familial status, or
356 national origin.

357 **J. Severability.** If any portion or provision of this Agreement is held or adjudicated to be invalid or unenforceable for
358 any reason, each such portion or provision shall be severed from the remaining portions or provisions of this
359 Agreement, and the remaining portions or provisions shall be unaffected and remain in full force and effect.

360 **K. Other.** In further consideration of Buyer's right to legally, properly and in good faith invoke a right to terminate
361 this Agreement pursuant to any specific Buyer contingency as stated herein, Buyer agrees, upon Seller's request, to
362 provide Seller or Seller's representative with copies of any supporting documentation which supports Buyer's right
363 to exercise said contingency, the sufficiency and adequacy of said additional consideration being acknowledged.
364 Any such supporting documents shall be provided for Seller's benefit only and Seller shall not disseminate the same
365 to third parties. However, Buyer shall not be required to provide any documents to Seller in violation of any
366 confidentiality agreement or copyright protection laws, if applicable.



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

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

372 **B. Water Supply.** The system may or may not meet state and local requirements. It is the right and responsibility of
373 Buyer to determine the compliance of the system with state and local requirements. [For additional information on
374 this subject, request the "Water Supply and Waste Disposal Notification" form.]

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

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

383 **16. Seller's Additional Obligations.** If Seller has any knowledge of an exterior injection well and/or a percolation test or
384 soil absorption rate on the Property, Seller shall be obligated to counter this offer by disclosure of the existence of the
385 above including any tests and reports unless disclosure has already been received and acknowledged in writing by Buyer.
386 Seller shall also disclose in the same manner whether any single family residence located on the Property has been
387 moved from an existing foundation to another foundation where such information is known to the Seller. Seller shall
388 also be obligated to counter this offer to disclose if the Property is located in a Planned Unit Development (PUD) unless
389 said disclosure has already been received in writing and acknowledged by Buyer. If the Property is in a PUD, Seller
390 agrees to make available copies of the development's restrictive covenants, homeowner bylaws, and master deed to
391 Buyer upon request.

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

394 _____
395 _____
396 _____
397 _____
398 _____

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

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

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

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

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

Buyer hereby makes this offer.

BUYER

BUYER

_____ at _____ o'clock ☐ am/ ☐ pm

_____ at _____ o'clock ☐ am/ ☐ pm

Offer Date

Offer Date

Seller hereby:

☐ **ACCEPTS** – accepts this offer.

☐ **COUNTERS** – accepts this offer subject to the attached Counter Offer(s).

☐ **REJECTS** this offer and makes no counter offer.

SELLER

SELLER

_____ at _____ o'clock ☐ am/ ☐ pm

_____ at _____ o'clock ☐ am/ ☐ pm

Date

Date

Binding Agreement Date. This instrument shall become a "Binding Agreement" on the date ("Binding Agreement Date") the last offeror, or licensee of the offeror, receives notice of offeree's acceptance. Notice of acceptance of the final offer was provided on _____ day of _____, _____ at _____ o'clock by _____ (Name).

For Information Purposes Only:

Listing Company

Selling Company

Independent Licensee

Independent Licensee

Licensee Email

Licensee Email

NOTE: This form is provided by TAR to its members for their use in real estate transactions and is to be used as is. By downloading and/or using this form, you agree and covenant not to alter, amend, or edit said form or its contents except as where provided in the blank fields, and agree and acknowledge that any such alteration, amendment or edit of said form is done at your own risk. Use of the TAR logo in conjunction with any form other than standardized forms created by TAR is strictly prohibited. This form is subject to periodic revision and it is the responsibility of the member to use the most recent available form.



CONTRACTS QUIZ ... 50 QUESTIONS

1. An expressed contract must be in writing?
 - a. True
 - b. False

2. In a _____ contract, one party makes a promise to do something in order to induce a second party to perform. The second party is not legally obligated to act.
 - a. unilateral
 - b. bilateral

3. A _____ contract is one that is valid on the surface but may be rejected, or disaffirmed by one of the parties?
 - a. valid
 - b. void
 - c. voidable
 - d. unenforceable

4. If a contract is found to have a material mistake, a mutual misunderstanding by the parties and the agent has been in no way negligent. The contract.....
 - a. remains valid
 - b. becomes voidable

5. In Tennessee, earnest money will serve as evidence of the required *consideration*.
 - a. True
 - b. False

6. _____ occurs when there is a substitution of an old contract with a new contract with the intent of extinguishing the old contract.

- a. Novation
- b. Assignment
- c. Assumption
- d. Substitution

7. Under a _____ agreement, the seller has the right to sell his/her own property and not pay a commission, but only XYZ Realty can market the property for the seller.

- a. Open listing
- b. Exclusive Agency
- c. Exclusive Right to Sell

8. *Net listings* require the agent to disclose in writing to both parties the true nature of the commission being paid for it to be legal in Tennessee.

- a. True
- b. False

9. A counter - offer is a formal rejection of any previous offers or counter - offers.

- a. True
- b. False

10. A potential buyer has refused the counter offer he has just received from the owners of a house he is trying to purchase. His agent later implied that he is still interested and the owners decide to accept the terms of the potential buyer's first original offer.

- a. This acceptance by the sellers is binding upon the potential buyer
- b. This acceptance in writing would be a second counter-offer by the sellers

11. The first right of refusal gives the owner of this right the first chance of buying the property if the property owner decides to sell... the owner is not required to sell, the owner of the right is not required to buy...The price does not have to be set in advance.

- a. True
- b. False

12. An option agreement is a contract between the owner and a potential buyer... This contract allows the potential buyer to buy a piece of property within an agreed upon window of time for an agreed upon price if he or she chooses... The buyer does not have to go through with the purchase. The owner does have to sell, if the option is exercised... This option is usually accompanied by an option price or fee that is not refunded if the buyer does not complete the deal.

- a. True
- b. False

13. In an *Executed Contract*, the contract that still has actions or duties still to be performed by one or both of the parties

- A. True
- B. False

14. A *subsequent event* is a requirement found in the offer or contract that requires that some action, some duty, or some event be satisfied before the contract can be executed... without satisfaction, the contract will be void.

- a. True
- b. False

15. Acceptance is the point in which the offer or counteroffer is signed and agreed upon by both parties... This can be withdrawn before communication to the other party.

- a. True
- b. False

16. An expressed contract is a contract in which the parties state the terms and show their intentions in words, either orally or in writing.

- A. True
- B. False

17. In an implied contract the parties state the terms and show their intentions in words, either orally or in writing.

- A. True
- B. False

18. In a unilateral contract, both parties agree to do or not do something.

- A. True
- B. False

19. In a bilateral contract, both parties agree to do or not do something.

- A. True
- B. False

20. In an *Executory Contract*, the contract that still has actions or duties still to be performed by one or both of the parties

- A. True
- B. False

21. A valid contract complies with all the essentials of validity and is binding and enforceable to both parties.

- A. True
- B. False

22. A voidable contract is one that seems to be valid on the surface but may be rejected, or disaffirmed, by one of the parties. A contract agreed to under duress is voidable...as well a contract with a minor.

- A. True
- B. False

23. A void contract is only enforceable on one party

- A. True
- B. False

24. For a contract to be valid, all parties entering into it must have the legal capacity to enter into a contract.

- A. True
- B. False

25. Mutual Assent is not a required element of a valid contract.

- A. True
- B. False

26. Fraud is an intentional misstatement with the intention to mislead.

- A. True
- B. False

27. Consideration is a requirement element of a valid contract.

- A. True
- B. False

28. Earnest money is given by the buyer with an offer to purchase to show sincerity and intent to complete the contract.

- A. True
- B. False

29. "Earnest money" and "consideration" are the same and are interchangeable terms.

- A. True
- B. False

30. For a contract to be valid and meet the requirement of the statute of frauds, a written clear description of the property must be included.

- A. True
- B. False

31. The Parole Evidence Rule states that a fully integrated and complete contract clearly written cannot be contradicted, varied, or altered by evidence of the parties prior negotiations, prior agreements, or contemporaneous oral agreements.

- A. True
- B. False

32. Under the “General Rules of Interpretation”, the meanings of terms are assumed to have their ordinary meaning; if technical, their technical meaning.

- A. True
- B. False

33. Under the “General Rules of Interpretation”, any and all ambiguities will be construed against the party who drafted the contract.

- A. True
- B. False

34. A valid contract can leave the terms of performance and price blank so that these elements can be determined at a later date.

- A. True
- B. False

35. The statute of Frauds requires the establishment of easements over real estate to be in writing.

- A. True
- B. False

Questions 36-40 refer the Mrs. Anita Fuller *Offer to Purchase* Contract and Negotiations

36. If on May 23rd Larry Estes had a change of heart, could he accept the offer of May 20th.

- A. Yes
- B. No

37. On June 3rd, did the Estes make a formal offer?

- A. Yes
- B. No

38. In the final and accepted version of the offer to purchase contract, who will provide the replacement mailbox?

- A. Mrs. Fuller
- B. The Estes Family

39. Mrs. Fuller's June 4th offer revoked her June 1st Offer.

- A. True
- B. False

40. June 7th is the *Acceptance* date for this contract.

- A. True
- B. False

41. According to line #38 of Mrs. Fuller's Buyer's Agency Agreement, If she was to buy a FSBO (For sale by owner)...

- A. The seller would pay 6%
- B. The seller would pay 3%
- C. The buyer would pay 6%
- D. The buyer would pay 3%

42. How much are the Robertsons asking for their home on 6/20/20XX

- A. \$168,500
- B. \$163,900
- C. \$169,900
- D. \$164,900

43. Refer to your listing contract, do you still have a valid listing with Robertsons on 11/4/20XX.

- A. Yes
- B. No

44. A buyer agency agreement must have an expiration date?

- A. True
- B. False

45. Earnest Money is a requirement for a valid contract in TN as described by TREC 206-31-11 (B)

- A. True
- B. False

46. *“Common law is that which is based on custom or usage of the common people as opposed to law imposed from above by a higher source, such as a monarch, dictator, or religious leader. It is a slow process that is always adjusting itself.”*

- A. True
- B. False

47. **Implied in Law:** This type of contract can also be called a quasi-contract. It is not as much of a contract as it is a legal determination. This is a situation where one party would be unjustifiably enriched if the courts were to hold that a contract did not exist.

- A. True
- B. False

48. **Implied in Fact:** This type of contract can also be called a quasi-contract. It is not as much of a contract as it is a legal determination. This is a situation where one party would be unjustifiably enriched if the courts were to hold that a contract did not exist.

- A. True
- B. False

49. **Implied in Law:** This is a contract in which the circumstances imply the parties have reached an agreement even though they have not done so expressly.

- A. True
- B. False

50. **Legal Purpose:** Regardless of the form or elements found within a contract, if the subject matter or purpose of a contract is illegal... The contract is not valid

- A. True
- B. False