



# OREGON PROPERTY SELLER ADVISORY

# 2023

Oregon real estate licensees provide valuable services to property owners who wish to sell their property. This advisory is designed to assist home sellers in meeting their obligations as a seller of real property in Oregon. Common issues that arise in Oregon real property transactions are summarized in this Advisory.

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# Oregon Property Seller Advisory

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## INTRODUCTION

Oregon real estate licensees provide valuable services to property owners who wish to sell their property. A licensed real estate professional can provide a variety of services to Sellers in addition to listing the property and placing it in a multiple listing service. These services include helping the Seller understand their legal obligations, including required disclosures, establishing a fair price, marketing the property, negotiating the sale, and helping the Seller with contract performance. A real estate licensee is not, however, qualified to discover defects, evaluate the physical condition of property, give legal advice, or provide other services beyond the scope of their real estate license.

This Form 10.2 Seller's Advisory is designed to assist home Sellers in meeting their obligations as a Seller of real property in Oregon. Common issues that arise in Oregon real property transactions are summarized in this Advisory. In addition to understanding these common issues, the Seller should tell the licensee with whom they are working about any special concerns or issues regarding the condition of the property, state of the title or other problems that may surface during the transaction.

## SECTION I: LISTING PROPERTY FOR SALE

### LISTING AGREEMENTS

Oregon law requires that an agreement authorizing or employing a broker to sell real estate for compensation or commission be in writing. Such agreements are called "listing agreements." A listing agreement is simply a written contract between the Seller and their broker. The contract will contain the authorizations the broker needs to place the property in a multiple listing service, advertise and otherwise market and sell the property on the Seller's behalf.

Listing agreements contain important terms regarding how the property will be marketed, the asking price for the property, the obligations of both broker and Seller, the duration of the listing, the broker's compensation and other terms and conditions. Many listing agreements contain what are called "liquidated damages" clauses. Such clauses should be read carefully as they establish the damages that may be due the broker if the Seller terminates the listing agreement without cause. Most listing agreements have a provision that determines how any forfeited earnest money will be distributed between Seller and broker.

Sellers should carefully read the listing agreement and go over its terms with their broker before signing.

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## MULTIPLE LISTING SERVICES

A multiple listing service, called an "MLS," provides information to real estate professionals who subscribe to the service about properties that are for sale in the area. Filing a listing with the MLS exposes the property to active real estate professionals in the local area. As such, it is a powerful marketing tool. The MLS is also a way for listing brokers to offer compensation to other brokers who may know of a suitable Buyer. This cooperative feature of the MLS allows the listing brokers to share part of their commission with a Buyer's agent. It is the ability to attract Buyers through their agents that makes the MLS such an effective marketing tool.

MLS data and remarks are a form of advertising and, as such, must be accurate and truthful. Sellers should, therefore, review MLS data and remarks for accuracy and bring any discrepancies or concerns to the attention of their agent. If personal property such as refrigerators, other appliances, furniture, tools, implements, or accessories is listed as "included" in the MLS data, they become part of what is being offered for sale. It is like advertising that a car being sold includes floor mats. Once such items are advertised as "included," the Seller risks legal liability if the items are removed before closing a deal or if the Seller replaced appliances with different or lesser quality versions of the appliances outlined in the listing.

## SQUARE FOOTAGE AND ACREAGE

The square footage of structures and acreage data found in MLS printouts, assessor records and the like are usually just estimates and should not be relied upon. Many Oregon properties have not been surveyed and their exact boundaries are not known. Square footage and land size are often material considerations in a purchase. The Seller should therefore be very careful about making square footage and acreage representations. It is a good idea to warn Buyers that all structures and land should be measured by the Buyer or a licensed surveyor. Such measurement or verification is often made an express contingency of the agreement. If property boundaries are in doubt in any way, the Seller may elect to have the property surveyed prior to putting it up for sale. Any representation of square footage should state the source (e.g. per assessor) and contain a "more or less" or other accuracy disclaimer.

[Licensed surveyors can be found by visiting their website here.](#)

## SECTION II: SALE PROCESS ADVISORIES

### OFFERS AND COUNTEROFFERS

Once the parties accept an offer, the terms in that offer are locked and will not change unless an addendum is signed by both parties. When a Seller receives a Sale Agreement that does not describe the property correctly, states the Seller's name incorrectly (e.g. if Seller is a personal representative, the name of the Seller should not be "ABC Estate", it should be "Seller, Personal Representative of ABC Estate"), or if the offer has terms that the Seller finds unacceptable, Seller can counteroffer on Form 2.1 or request resubmission of the offer with changes using Form 2.20. The Seller should

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describe everything that Seller believes is incorrect in the offer and should describe all contract terms Seller wishes to change. Counteroffering a Buyer's offer rejects the current offer and presents a the new offer to the Buyer, from the Seller. Buyer can accept the terms of the counteroffer, or Buyer can counteroffer in response, rejecting Seller's counteroffer and presenting new terms. It is not uncommon to have multiple rounds of counteroffers before all the terms are accurate.

Normally, an offer or counteroffer will have an expiration date, after this expiration date occurs the Seller/Buyer cannot accept that expired offer. If an offer or counteroffer expires and the parties still want to agree to that offer, they can either (1) fill out a new sale agreement form, update all dates, set a new expiration date, and resubmit the offer, (2) provide a counteroffer that sets a new expiration date, or (3) counteroffer by attaching a Form 2.3 Late Acceptance Addendum to the offer/counteroffer. The Form 2.3 Late Acceptance Addendum is a pre-drafted counteroffer form that modifies no terms other than the expiration date.

## **REAL ESTATE SALES FORM (SALE AGREEMENT)**

A contract for the sale of real property must be in writing to be enforceable in Oregon. *A verbal offer or acceptance should not be made or relied upon.* Contracts for the sale of property are often called "earnest money" or "sale agreements." They are legally binding contracts. Sellers should seek competent legal advice before signing any contract they do not fully understand.

Oregon REALTORS® Sale agreements include provisions concerning who will hold the earnest money and under what conditions it may be refunded to the Buyer or forfeited to the Seller. Sellers should carefully review these provisions in any proposed transaction. The amount of earnest money pledged and the conditions under which it may be refunded or forfeited are important matters that should be carefully negotiated between the Buyer and the Seller.

In Oregon, licensees can use Oregon REALTORS® Forms for real estate sales: Form 1.1 for residential property purchases, Form 1.2 for commercial property purchases, Form 1.3 for manufactured home and houseboat purchases, Form 1.4 for agricultural property purchases, and Form 1.5 for vacant land purchases. These forms contain dispute resolution provisions that require mediation or arbitration of disputes. Arbitration and mediation clauses can affect legal rights, including the right to a judicial determination of a claim and the right to appeal.

Sellers should not accept an offer if the Seller does not find the terms adequate. Real estate licensees can give Sellers important marketing, business and negotiating advice. Real estate licensees can assist in preparation of the sale documents only pursuant to the client's instructions. Real estate licensees are not attorneys and are prohibited by law from giving legal advice. To obtain a referral for a real estate attorney, [visit the Oregon State Bar website](#) or contact them by phone at 503-684-3763 (Local) or 800-452-7636 (Toll Free).

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## **NON-CUSTOMARY DOCUMENTS AND REAL ESTATE LOVE LETTERS**

The Fair Housing Act prohibits the Seller from discriminating in who they sell to and prohibits the Seller from rejecting an offer based on the Buyer's protected characteristics. The federal protected classes include race, color, religion, national origin, sex, gender, disability, familial status, and Oregon additionally protects sexual orientation, gender identity, marital status, source of income, and status as a victim or survivor of domestic violence. Some localities also protect domestic partnerships, ethnicity and age [contact the city or county for that information].

The Oregon Real Estate Agency defines customary documents to include disclosure forms, sales agreements, counteroffer(s), addenda, and reports. Non-customary documents include any documents not listed by OREA as customary, generally this term is used to refer to "Buyer love letters." Buyer love letters are personal letters from the Buyer to Seller and often include personal information or photos of the potential Buyers and may indicate that Buyer belongs to a protected class or that Buyer has protected status. Since the Fair Housing Act prohibits a Seller from favoring or disfavoring a person based on their protected class status, non-customary documents introduce the risk of Seller discrimination towards the Buyer which is prohibited under the National Fair Housing Act. When a Seller has reviewed a non-customary document, there is a risk that Buyers can claim discrimination in any subsequent rejection or acceptance of a third-party offer. Sellers can avoid some discrimination claims by simply not opening or reviewing any Buyer love letters.

## **CONTINGENCIES**

Several provisions in the Purchase and Sale Agreement are called "contingencies." These are actions or events that the Buyer and Seller agree must happen before the contract closes. These are oftentimes requirements that form the foundation of a contract. Some common contingencies include (1) the financing contingency, requiring that the Buyer's loan must be approved and the appraisal must be sufficient for the loan before the deal closes, (2) the title review contingency, requiring that the Buyer be satisfied with the title and public encumbrances on the land before closing, and (3) the inspection contingency, requiring the Buyer to inspect and approve of the condition of the property before closing. There are some contingencies that Buyer and Seller can agree upon and add to the contract, such as a contingency requiring sale of Buyer's property, or a contingency requiring that Seller finds a replacement property. In each contingency, the failure of the contingency can and will often result in termination of the contract.

## **ESCROW**

The parties can choose to have an escrow office as a part of the agreement. Escrow is a neutral third party that collects money and documents and has instructions on

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when and how to release the money and documents. If a Seller is going to be out of town on the closing date, they can sign the documents and the deed and have Escrow hold the documents and the house keys until the Buyer provides the purchase price money and signs all the paperwork.

Earnest money will oftentimes be held in escrow, where the escrow company will await the successful close of the transaction and apply the money to the down payment. If the contract is terminated before successful closing, ORS 696.581(3) prevents escrow from disbursing the earnest money back to the Buyer or sending the earnest money to the Seller unless escrow has dated, separate escrow instructions in writing from both the Buyer and Seller. The purchase and sale contracts will oftentimes instruct parties who is entitled to earnest money in the event of a termination, but escrow will still require instructions from both parties. The Oregon REALTORS® Notices of Termination (Forms 5.3 and 5.4) and Responses to Termination (Forms 5.5 and 5.6) contain escrow instructions that, if identical, allow escrow to distribute earnest money to the money's rightful owners. If the Buyer's instructions to escrow are different from the Seller's instructions to escrow (e.g. Buyer instructs escrow to send earnest money to Buyer, Seller instructs escrow to send earnest money to Seller), escrow will not disburse the funds except as allowed under ORS 696.581(8). ORS 696.581(9) allows escrow to disburse funds if there is an order of a court directing for such disbursement, so parties who cannot agree on who gets the earnest money after termination may need to go through arbitration or small claims court to receive an order granting the earnest money back to the Buyer or granting the money to the Seller.

## **SELLER COSTS AND EXPENSES**

Selling real property involves a certain amount of expense. The Seller's exact costs and expenses depend on the property being sold and the terms of the transaction. Sellers should anticipate these expenses and plan for them at the time they list property for sale. Although accounting and financial advice are beyond the scope of a real estate licensee's expertise, the Seller's real estate agent can help the Seller estimate some of the costs and expenses that could be associated with the sale.

Seller costs and expenses include everything from moving expenses to the mortgage pay off. Certain transaction costs, called "closing costs," are typically paid by the Seller. These include title insurance, escrow fees, legal fees, recording fees and the like. Some real estate contracts have provisions for Seller-paid repairs that are identified during the Buyer's inspection of the property. Depending on the market and other factors, the Seller may agree to pay some of the Buyer's closing costs. Such payments from Seller to Buyer are called "Seller concessions." Typically, at the time of closing, the Seller will pay any sales commissions agreed to in the listing agreement.

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## ALLOCATION OF TAXES, COSTS, FEES

There is a time period between when the Buyer and Seller enter into a contract and when the contract closes, and various costs, fees, and taxes for the Property will arise during the course of the agreement. Oregon REALTOR® Forms establish a constant cost allocation: Buyer pays for everything that is accrued or applies to the property after Closing, and Seller pays for everything that is accrued or applies to the property before Closing. Closing is defined as the date when documents are recorded and sale proceeds are available or otherwise dispatched to the Seller. If a sudden lien or cost is imposed on the property before the proceeds are wired to the Seller, that lien or tax is the responsibility of that Seller.

## DEFAULT, TERMINATION AND RESPONSE

The Purchase and Sale Agreements set out responsibilities and obligations of the parties. Buyer will need to deliver earnest money by a certain day, Seller agrees to clean the property before closing, Seller agrees to put in new smoke alarms, etc. If the Buyer or Seller fails to do something they promised to do, they have breached the contract. The agreements and addendums will specifically state when a Buyer or Seller's breach lets the other party terminate the agreement, generally by stating something to the effect of "*If Buyer fails to do \_\_\_\_\_, Seller may terminate with a Form 5.4 Notice of Termination.*" If the provision that the party breached does not specifically allow a termination, the non-breaching party can send a Form 5.1 or 5.2 Notice of Default, giving the breaching party a period of 3 or more days to fix the problem. We call this 3+ day period the "cure period," because the defaulting party can "cure" the defect and continue the contract as though nothing went wrong.

For example, Form 1.1, the residential purchase and sale agreement, states in section 26 that a Buyer must provide evidence of loan pre-approval before the "pre-approval deadline". If Buyer fails to provide the evidence of pre-approval, the contract does **not** state "*Seller may terminate with a form 5.4 Notice of Termination,*" so a Buyer's failure to provide evidence of pre-approval would require a notice of default, rather than a notice of termination. Claiming someone is in default does not end the contract, but if the default is not fixed, the non-defaulting party has the option to end the contract.

If a problem is not fixed after getting a notice of default, if the problem is unfixable, or if the contract allows termination, the contract will allow a party to send a Form 5.3 or Form 5.4 Notice of Termination, thereby ending the contract. Delivery of the Notice of Termination officially ends the contract, at that point it remains dead unless a judge's orders say the contract was not properly terminated (when a judge undoes a termination, the practice is known as requiring "specific performance" with the terms of the contract). The termination will have escrow instructions detailing where the terminating party believes earnest money should be sent. The non-terminating party is obligated to respond with a Form 5.5 or Form 5.6 Response to Termination, which provides releases and escrow instructions if the parties agree on the termination.

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## LIQUIDATED DAMAGES

The standard of practice in Oregon is that Seller's damages in any event of a termination may never be more than the Earnest Money value. Seller's sole remedy is to recover the earnest money whether the termination is on the first day or the last day of the Sale Agreement. Earnest money is supposed to be a reasonable estimate of the damage that Seller would suffer if the Buyer terminated the transaction. This estimation of costs to Seller is what is called "Liquidated Damages." Liquidated damages must be reasonable in context of the contract and must be agreed to by all parties. Oregon Courts have found that Earnest Money sums that are significant parts of the purchase price (e.g. \$50,000 on a \$500,000 purchase) may be considered a penalty and is not a reasonable estimate of Seller's damages. Similarly, a Seller demanding all the Earnest Money if there is a termination 3 days into a contract may be seen as a penalty rather than a reasonable estimate of the loss to Seller.

For example, Buyer agrees to purchase Seller's property for \$600,000 all cash, with \$30,000 as Earnest Money and Buyer successfully delivers the Earnest Money deposit. Buyer provides a grainy and illegible photograph of a bank statement as their proof of cash funds by day 3, Seller terminates the transaction stating that they are unsatisfied with the Buyer's proof of cash funds, and demands the earnest money in the Seller's escrow instructions. Seller has only had their property off the market for a total of 3 Business Days. If Buyer contested the earnest money disbursement to Seller, it is uncertain that a court or arbiter would give Seller the entire \$30,000, unless housing market values took a sudden plunge during the 3 days that Seller was off the market.

## FIRST RIGHTS

The Parties can negotiate first rights of offer or first rights of refusal. These are separate rights from the regular purchase and sale offer or counteroffer and are standalone contracts between the parties.

A Form 1.6 Right of First Offer allows the Buyer to be the first person to make an offer on Seller's property, even if the property is not on the market. The Buyer would attach a signed a Sale Agreement that has been filled out, but not signed by either party, as an exhibit to Form 1.6 Right of First Offer. By signing and agreeing to a right of first offer, the Seller gets paid a small amount and agrees that if the Seller wishes to market or list their property, they will first sign the attachment Sale Agreement and send it back to Buyer. Buyer then gets to choose whether they want to proceed with the offer they made when the Right of First Offer was given, or if the Buyer wants to pass on the sale. In essence, the right of first refusal lets the Buyer guarantee the sale several months in advance, but also lets the Buyer back out of the offer if their finances or life circumstances have changed. Sellers who disagree with the First Offer Sale Agreement can simply refuse to sign the Right of First Offer.

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A Form 1.7 Right of First Refusal allows the Buyer to match or beat an offer that the Seller has received and plans to accept. The Buyer and Seller would agree to a Form 1.7 Right of First Refusal, and until the expiration date of the Right of First Refusal, the Seller must show the Buyer any offer that Seller receives and plans to accept. Buyer is then given a chance to swoop in and make the exact same offer, with \$100.00 more on the purchase price; and if Buyer executes this right of first refusal, Seller is obligated under the contract to accept Buyer's first refusal offer. If there is an escalation clause, the Buyer's offer would be at \$100.00 over the maximum escalation price. If the Buyer doesn't approve of the offer's terms or does not wish to pay the increased purchase price, Buyers can simply not use the right of first refusal, and Seller will be obliged to proceed with the third party offer.

## **SECTION III: ADVISORIES RELATED TO PURCHASE AND SALE AGREEMENTS**

### **INFORMATION GENERALLY**

Information from third parties regarding real estate and a real property transaction is not usually verified by real estate licensees. It is the responsibility of the Seller to read the documents the Seller is depending on in answering questions about the property. Interpretation of many documents involved in a real property transaction requires the practice of law and is beyond the scope of a real estate licensee's expertise. *Sellers uncertain about the legal effect of transaction documents should consult an attorney.*

### **SELLER-CARRIED FINANCING**

Seller-Carried financing is where the Seller takes the role of the bank and either lends money to the Buyer or enters into a long term repayment process (rent-to-own) with the Buyer for the Property. Buyer and Seller can elect to use Seller-Carried financing by way of a Form 8.2 Promissory Note and Form 8.3 Deed of Trust, or through a Form 8.4 Land Sale Contract. A Promissory Note and Deed of Trust transaction is one where the Buyer borrows money from the Seller to purchase the Property, a deed to the property transfers to Buyer, but Seller remains as the "mortgage holder/bank" for the transaction until fully repaid. Seller will be able to foreclose on the Deed of Trust if things go wrong and auctions the property, paying Buyer for the principal Buyer has accrued in the land. A Land Sale Contract is essentially a "rent-to-own" process, where Buyer lives on the property and makes monthly payments, and when the final payment is made, Seller is obligated to transfer the Property's deed to the Buyer. If Buyer defaults, Seller can seek forfeiture, which cuts the Buyer off from ownership of the house, with no refund of the money Buyer put into the property up to that point. In either case, the Buyer is using the property as collateral to secure the loan.

Under ORS 86A.203 and the Dodd-Frank Act, Buyer and Seller will need a Mortgage Loan Originator or other qualified expert to assist in the transaction if:

- (i) Seller has entered into 3 other Seller-carried transactions to purchase residential dwellings in the last year;

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- (ii) Seller has entered into more than 1 other Seller-carried transactions with a “High-Cost Mortgage” in the last year;
- (iii) Seller has entered into 1 or more other Seller-carried transactions using a Mortgage Loan Originator (MLO, someone who is licensed in Oregon, registered on the National Mortgage Licensing System, and negotiates or takes applications for residential mortgages on family dwellings in exchange for compensation);
- (iv) Seller has 8 other Seller-carried residential mortgage loans at any given time (or 12 Seller-carried residential mortgage loans on manufactured homes if Seller is a limited manufactured structure dealer);
- (v) The parties intend for the Promissory Note or Land Sale Contract to have a balloon payment or adjustable rate;
- (vi) The Seller does not believe, in good faith, that the Buyer can repay the loan

“High-Cost Mortgage” is typically defined in the Truth in Lending Act as a first mortgage at more than 6.50% above the average prime offer rate. (see <https://www.consumerfinance.gov/rules-policy/final-rules/high-cost-mortgage-and-homeownership-counseling-amendments-truth-lending-act-regulation-z-and-homeownership-counseling-amendments-real-estate-settlement-procedures-act-regulation-x/>) The Average Prime Offer Rate is available online at <https://www.ffiec.gov/ratespread/aportables.htm>, and is updated by the Federal Reserve weekly. If the Seller is trying to establish a subordinate or junior mortgage or establishing a mortgage on manufactured dwellings or houseboats that cost less than \$50,000, different rules apply and Seller should seek out a MLO professional to assist with or advise the transaction.

Buyer and Seller may not be required to use a MLO if the dwelling is the Buyer’s primary residence [e.g. Buyer purchasing the house they are renting]; or if the Seller-carried transaction is with a spouse, child, grandchild, sibling, parent, or grandparent, or if Seller constructed the dwelling.

## DEFECTIVE PRODUCTS AND MATERIALS

Some materials used in home construction have been subject to a recall, class action suit, settlement, or litigation. These materials include modern engineered construction materials used for siding, roofing, insulation, or other building purposes. It is critical that a Seller carefully review any notices, settlements, or other information they may have received regarding such materials, and disclose information to Buyer where necessary. The Seller's property disclosure statement contains several questions about such materials.

Homes may also contain products in their systems or fixtures that are, or have been, subject to a recall, class action suit, settlement, or litigation. Plumbing, heating, and electrical systems, among others, may contain such products. It is critical that a Seller carefully review any notices, settlements, or other information they may have received regarding such materials. If there is any doubt about systems or fixtures, the Seller should arrange for a suitable inspection. A real estate licensee can often help the Seller

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find an inspector with the proper knowledge and credentials, but inspection of property for such products is beyond the scope of a real estate licensee's expertise.

## **RESIDENTIAL TENANT OCCUPIED PROPERTIES**

The purchase and sale of real estate that is currently occupied by a tenant brings additional considerations for both the Seller and Buyer that are important to be aware of. As with most areas of the law, there are local, state, and federal laws that must be complied with to protect all parties to a transaction. On the state level, Oregon recently passed [Senate Bill 608](#), which amends/creates new laws surrounding rent increases and no-cause evictions and goes into effect immediately. Within Senate Bill 608, changes have been made to landlord/tenant rights, including notices, timing, applicability and certain exceptions for renovations, demolitions, safety and purchasers planning to use the home as their primary residence.

Due to the complexities of this law, it is important for brokers to stay within the limitations of their real estate license and not provide legal advice. We recommend consulting with an attorney to ensure compliance with all local, state, and federal laws. The Oregon REALTORS® offers guidance regarding the purchase of tenant occupied properties that can be found [here](#). In addition to the new statewide law, many local governments have passed new laws governing tenant-occupied properties. The Cities of Portland and Milwaukie have been particularly active. Sellers should do be sure to understand all local laws and consult an attorney if necessary.

## **HOMEOWNERS' ASSOCIATION DOCUMENTS, COVENANTS, CONDITIONS & RESTRICTIONS**

Covenants, conditions and restrictions, called "CC&Rs," are formally recorded private limitations on the right to use real property. Often, but not always, CC&Rs are enforced by a homeowners' association. Review of the CC&Rs is typically part of a real estate sale. Although real estate licensees are familiar with common CC&R provisions, determining the legal effect of specific provisions is considered the practice of law in Oregon and, therefore, beyond the expertise of a real estate licensee.

Homeowners' association rules and regulations can significantly impact a Buyer's plans for the property and, therefore, affect price or desirability. Planned communities and condominiums are very likely to have detailed homeowners' association governing documents, mandatory fees and ongoing homeowner obligations. Governing documents, fees and homeowner obligations should be reviewed by the Seller prior to marketing so that any potential issues may be identified. The Form 4.4 HOA Addendum will be applicable to sales of properties that are parts of a Home Owner's Association, Townhome Association, Condominium Association, Marina Park Association, or Manufactured Home Park Association. The HOA Addendum will require that the Buyer receives, among other things, the association's CC&Rs, bylaws, articles of incorporation, and budget documents. [For more information on homeowners' associations and CC&Rs, click here.](#)

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## WELLS

If domestic water for the property is supplied by a private well, the Sale Agreement should include a Form 2.8 Well Addendum. The Seller is required by state law to test the well for total coliform bacteria, arsenic, and nitrates through an accredited laboratory, a list of which can be found on the Oregon Health Authorities Domestic Well Safety page by [clicking here](#). The Seller must report the lab results to the Buyer and report results the Oregon Health Authority within 90 days of receiving them. Sellers can report lab results online to the Oregon Health Authority [here](#). A physical Domestic Well Testing Transaction form can also be submitted to the Oregon Health Authority, with the lab test results, and can be found [here](#). The test results are valid for one year and Sellers should verify that the proper sampling and testing procedures are performed when having the well tested. More information on this state law requirement can be found [here](#) under ORS 488.271. Sellers may also want to have the well tested for other potential contaminants to further determine water quality but are not required to do so. Proper procedures need to be used when testing domestic wells. More information on this state law requirement can be found at the Oregon Health Authority FAQ's page [here](#).

Oregon also requires that all private wells not already registered with the state of Oregon be registered at the time the property is transferred. Real estate forms in use in Oregon often delegate to the Buyer the responsibility for registering the well with the Oregon Water Resources Department (OWRD). A useful guide to the OWRD Well Identification Program can be found by [clicking here](#). For more information on Domestic Wells, visit [www.HealthOregon.org/wells](http://www.HealthOregon.org/wells).

## WELL FLOW TESTS

If domestic water is supplied by a private well, the Seller will want to make certain the well provides adequate water for domestic needs. It is strongly recommended that a well flow test be conducted prior to marketing of any property that depends on a well for domestic water. Careful attention should be paid to disclosures or representations about wells. The Seller should not allow the Buyer to rely on a test done for the Seller. The Buyer should be advised to contract and pay for their own well flow test. Sellers should review any well records they may have as Buyers will usually ask to see such records. Interested Sellers can obtain more information about well logs [here](#). To access the well log database online, [click here](#).

While real estate licensees are not trained and do not have the expertise to test wells, they should be able to direct the Seller to the appropriate well professionals. Disclosures and disclaimers regarding domestic wells are common in real estate transactions and should be reviewed with the Seller's agent as part of contract negotiations.

## CROSS CONNECTION AND BACKFLOW PREVENTION

Backflow is the reverse intended flow of contaminated water from a non-potable source to a potable source by way of a cross connection. Properties with irrigation

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systems are required to have devices called backflow prevention assemblies that help regulate water pressure to prevent backflow. These are often placed inside an irrigation box located on or just off the property. Annual testing of these devices is required, and the water provider may shut off water to the property and charge a fine to a property owner who does not comply with backflow testing requirements. Please visit the Oregon Health Authority's [Cross Connection and Backflow Prevention Program](#) to learn more about the regulations requiring Assembly use and testing as well as a list of certified Assembly Inspectors in Oregon, and check with the home's water provider for detailed information about local rules and regulations.

## SEWER AND SEPTIC SYSTEMS

Whether the property is connected to a city sewer, septic system or other on-site wastewater treatment system is important information. The condition of such systems can be highly material in a real estate transaction and a Seller should always verify the type of sewage system present on the property even if this information is provided in the MLS data sheet or Seller's Property Disclosure Statement. If there is an on-site septic or private sewage system, the Sale Agreement should include a Form 2.9 On-Site Sewage Addendum

Real estate licensees are not licensed to do plumbing or septic inspections. If the property is serviced by a septic system, a septic system inspection should be completed by an approved Onsite Wastewater Inspector. Sellers can avoid potential transaction problems by checking permitting and system status prior to marketing. A list of certified Onsite Wastewater Installers and Maintenance Providers, many of whom perform Existing System Evaluations, can be found on the Department of Environmental Quality website [here](#).

If a septic system inspection is completed, be sure to have an "Existing System Evaluation" form completed by the approved Onsite Wastewater Inspector for the Buyer's own records. Additional septic system information for homeowners can be found [here](#). Review [this brochure](#) (provided by the Department of Environmental Quality) regarding how to be "septic smart" as a homeowner.

## LEAD-BASED PAINT DISCLOSURE FORM

Residential property built before 1978 (called "target" housing) is subject to the Residential Lead-Based Paint Hazard Reduction Act of 1992 and the Residential Lead-Based Paint Disclosure Program administered by the Environmental Protection Agency (EPA) and the Department of Housing and Urban Development (HUD). The Act defines a "Lead-based Paint Hazard" as a condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, [and] lead contaminated paint...that would result in adverse human health effects as established by the appropriate Federal agency." This federal law definition of "Lead-based paint hazard," therefore includes more than just lead paint. Lead pipes, lead building materials, and other lead in the property could qualify as "lead based paint hazards" if they are damaging to human health. The Act requires Sellers of target housing to provide the Buyer with a lead-based hazard disclosure and the pamphlet entitled "Protect Your

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Family from Lead in Your Home.” Information about the requirements and samples of the forms can be found on [HUD’s website](#) or by [clicking here](#). The Sale Agreement for any house built before 1978 should include a copy of the Form 2.6 Lead-Hazard Addendum and a copy of the Form 10.3 “*Protect your Family from Lead in the Home*” pamphlet.

Owners of homes built before 1978 should anticipate and discuss with their agents their obligations under the disclosure statute. It is the Seller's responsibility under federal law to see to it that the Buyer receives the disclosure and pamphlet. Sellers of pre-1978 housing should ask their real estate licensee about lead-based paint disclosures. Information about lead based paint and companies certified and licensed to conduct lead-based paint testing or perform abatement, can be found at the Department of Human Resources by [clicking here](#).

If you are planning renovation, repair, or painting (RRP) on a home built before 1978, you should be aware of EPA rules that require such work be done by certified contractors who must follow EPA work guidelines. This may complicate or add expense to such projects. RRP rules in Oregon are jointly administered and enforced by the Construction Contractors Board (CCB) & the Oregon Health Authority. For more information, [click here](#).

Homeowners who do their own work in their own home are exempt from RRP rules. EPA does, however, urge homeowners to read EPA's Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools. Homeowners can also call the National Lead Information Center at 1-800-424-LEAD (5323). For more information or visit EPA's website by [clicking here](#).

## **WOOD STOVES**

The Oregon Department of Environmental Quality (DEQ) has developed a statewide wood stove program to promote the use of cleaner-burning wood stoves and to help homeowners with wood stoves burn wood more efficiently and with less pollution. Sale Agreements for properties that have wood stoves should include a Form 2.13 Wood Stove Addendum. Under Oregon law, no person may sell, offer to sell or advertise to sell a used, non-certified wood stove. Non-certified wood stoves (including fireplace inserts) are older models (mostly pre-1985) that have not been certified by the DEQ or the federal Environmental Protection Agency to meet cleaner-burning smoke emission standards.

Individual communities in Oregon may have additional rules governing the sale of or use of woodstoves and fireplaces. Sellers should ask their agent for assistance or check with appropriate local government agencies. A list of Oregon counties and their websites can be found by [clicking here](#) and a list of Oregon cities can be found by [clicking here](#). General information about [wood stove regulation in Oregon is available here](#).

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Inspection of fireplaces and woodstoves requires special training and expertise. Although a real estate licensee may be able to help you find a local wood stove professional, they cannot themselves inspect or evaluate a wood stove. The DEQ provides a helpful FAQ sheet regarding buying or selling a home with a wood stove that can be accessed [here](#).

## **HISTORIC PROPERTY**

It is important for the Buyer to determine whether a property is considered a historic property and therefore subject to a special assessment providing for tax benefits to the owner of the property. These properties are listed on the National Register of Historic Places. For more information [click here](#). It is important for Buyers to understand how to retain the tax benefits afforded to the property.

The newest version of the Historic Property Tax Benefit Program not only reduces the benefit from 15 to 10 years but provides increased accountability on owners. Additionally, the law allows for a second 10-year renewal of the benefit so long as the local government has not passed a resolution prohibiting the renewal. The lack of a renewal of the special assessment or failing to comply with the requirements and deadlines contained in the law could result in the loss of the special assessment and a substantial increase in the new owner's property taxes as well as potential fines. [More information on the Historic Property Tax benefit Program including statutes, rules and applications can be found here.](#)

Buyers should carefully review closing documents and inquire into all requirements of the Historic Property Tax Benefit Plan when presented with a Form 4.3 Historic Property Addendum. Real estate licensees are not trained or licensed to provide tax advice.

## **FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA)**

Federal tax law requires an additional tax when a foreign person sells property in the United States under the Foreign Investment in Real Property Tax Act (FIRPTA). When the Seller is a foreign person under 26 U.S.C. 1445(f)(3) ["a person other than a United States person," or a foreign corporation that has elected to be treated as a domestic corporation], the Buyer must withhold a certain amount of the "amount realized" in any sale and send that withheld money to the IRS within 20 Calendar Days after Closing the sale to cover the Seller's FIRPTA tax obligations. "Amount realized" is the "sum of money received plus the fair market value of the property (other than money) received," minus real property taxes for that year. The Buyer must withhold the following amounts and send them to the IRS: (i) for sales less than \$300,000; 0% withheld; (ii) for sales between \$300,000 and \$1,000,000; 10% withheld; (iii) for sales over \$1,000,000; 15% withheld.

FIRPTA law requires that Buyer withhold the FIRPTA sums unless there is an affidavit that the Seller is not a foreign person. Even if the Buyer is confident that Seller is not a foreign person, FIRPTA law requires the withholding unless Buyer receives an affidavit that the Seller is either not a foreign person, or is otherwise exempt from

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FIRPTA laws. This means a Seller must provide an affidavit of non-foreign status or an exemption from FIRPTA, otherwise the Buyer is required to withhold money from the sale. If the Buyer withholds too much or if the Seller believes they were actually exempt from FIRPTA, the Seller can contact the Secretary of the Treasury and request a refund of excessive amounts.

If the Seller is not a foreign person, they should ensure that the Buyer receives an affidavit of nonforeign status or an affidavit of exemption to make sure the Buyer does not withhold profits of the sale.

## **TAXES AND TAX WITHHOLDING ON REAL PROPERTY CONVEYANCES**

The sale of real property can generate tax liability at the local, state, and federal levels. Sellers should check with their accountant or tax professional. Tax liability issues are beyond the expertise of a real estate licensee. Information on federal taxes can be found by [clicking here](#). General information about Oregon personal income taxes can be found by [clicking here](#).

Income from conveyance of real property located in Oregon by non-residents is subject to income tax withholding at the time of sale. Certain "authorized agents" (typically escrow companies) must withhold the tax and remit it to the Oregon Department of Revenue. There are several exceptions to the withholding requirement. Some exceptions require the Seller to sign an exempt status statement under penalty of perjury. Others require the advice of a tax professional, review of Oregon statutes and the Internal Revenue Code. Such review and advice are beyond the expertise of an Oregon real estate licensee. Complete information about Oregon's tax withholding law and copies of required forms can be found by [clicking here](#).

## **FINANCING**

The Buyer's ability to finance the property is an important contingency in most residential transactions. Buyers must act in good faith and use best efforts to obtain a loan if the sale is contingent upon obtaining a loan. Buyers often seek pre-approval from a lender prior to writing an offer. Seller's often demand such letters as part of the transaction process. Sellers should discuss the use of pre-approval letters, including such common forms as the Oregon Residential Loan Application Status Report, with their agent.

A pre-approval letter should state that the lender has reviewed the Buyer's credit report, income requirement and cash to close. The lender then pre-approves the Buyer for the loan, subject to an acceptable appraisal of the property. The appraiser will normally work for the lender, not the Seller. Appraiser certification and licensure can be checked by [clicking here](#).

Once the appraisal has been received, the loan underwriter authorizes final loan approval. The Purchase and Sale Agreement forms contain a provision that allows the Buyer to cancel the transaction if the property appraises for less than the purchase

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price. Only when the appraisal and underwriting process is completed will an actual loan be secured.

The entire financing process varies depending on the property and type of financing involved. If the Seller anticipates a "short sale" where the asking or accepted price is insufficient to cover the Seller's total indebtedness, the time necessary to arrange financing may be greatly increased. If the Seller is asked to finance any part of the transaction, the Buyer's financial status will become material to the transaction. A real estate licensee cannot hide material information from any party to a real estate transaction and should not be asked to do so by the Seller or Buyer.

## **PROFESSIONAL HOME INSPECTIONS**

Most real estate licensees in Oregon advise the Buyers they represent that obtaining a professional home inspection is the single most important thing a Buyer can do for their protection. Most Buyers take the advice to heart. Lenders will sometimes require a pest and dry rot inspection before they will lend money on a property. Sellers, therefore, should anticipate one or more professional home inspections will be conducted by inspectors hired by potential purchasers. The resulting inspection reports will provide the Buyer with detailed information about the home's physical condition, its systems and fixtures and usually note any potential future problems.

Oregon REALTORS® Form Purchase and Sale Agreements (Form 1.1, 1.2, 1.3, 1.4, and 1.5) all contain inspection and due diligence contingencies that allow the Buyer to terminate the transaction based on the content of an inspection report. These contingencies are typically what are called "Buyer satisfaction" contingencies. That means the Buyer can terminate the agreement if they are dissatisfied with the overall condition of the property as revealed in the report and do not need to pin-point specific material defects. Buyers may, however, identify specific issues and ask the Seller to make repairs at the Seller's expense. In some cases, particularly under government backed VA or FHA programs, the Buyer's lender may require certain repairs as a condition of the loan. Although the Seller is not required to make such repairs, failure to agree on repairs can lead to the Buyer terminating the transaction.

Should a transaction fail because of an inspection report, the Seller will usually have the contractual right to demand a copy of the inspection report the Buyer is relying upon. It is a good idea for the Seller to demand the report so there will be no question that the Seller deliberately turned a blind eye to potential problems. Under the Seller's property disclosure statute, any professional inspection done within three years of the date of the disclosure must be disclosed. The disclosure of inspections provision is one of those that require additional explanation or documentation. This provides the Seller with a vehicle for disclosing why the sale failed and by providing the inspection report to the next Buyer, Seller can eliminate any later claim the Seller tried to hide the true condition of the property from the next Buyer.

In anticipation of selling the property, some Sellers will have a professional inspection done and any required repairs made prior to marketing the property. If the Seller

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decides to hire an inspector, they should carefully review the inspector's proposal to determine the scope of the inspection. Some home inspectors may not inspect heating and cooling systems, the roof or other systems or components. A home inspection should be done by a home inspector or contractor licensed by the Oregon Construction Contractors Board (CCB).

Inspector requirements and standards of practice for inspectors are available online [here](#). The license status of home inspectors can be checked [here](#). Pest control operators who do inspections and treatment are licensed by the Oregon Department of Agriculture. Sellers can check on licensing of pest control operators and applicators by calling the Oregon Department of Agriculture at (503) 986- 4550 or online by clicking [here](#). If the Seller does have an inspection done, they should not allow a potential Buyer to rely on the Seller's inspection. All Buyers should be advised to contract and pay for their own inspection.

Inspection of property is beyond the scope of expertise of a real estate licensee, but real estate licensees can provide Sellers with a list of local inspectors. Licensees ordinarily will not recommend a specific inspector. Before hiring an inspector, the Seller should check with the CCB to determine the inspector's current license status and whether there are any past or pending claims against the inspector. This can be done by clicking [here](#).

## **PEST AND DRY ROT INSPECTION**

Pest and dry rot inspections are done in many residential real estate transactions and may be required by the lender. Pest control operators who do inspections and treatment are licensed by the Oregon Department of Agriculture. Sellers can check on licensing of pest control operators and applicators by calling the Oregon Department of Agriculture at (503) 986-4635 or online [here](#). Real estate licensees do not have the training or expertise to inspect property for pests or dry rot. Like any property condition report, Buyers should not rely on the report of an inspector they receive from the Seller.

## **RADON**

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Oregon. Additional information regarding radon and radon testing may be obtained from your county health department or from the [Oregon Health Authority by clicking here](#). You can visit the [EPA's website here](#).

## **MOLD**

Molds are one of a variety of biological contaminants which can be present in human structures, including in residential housing. Some molds have been identified as possible contributors to illness, particularly in infants, elderly, people with suppressed immune systems, and those with allergies and asthma. Less well known, and far less common, are certain molds identified as possible contributors to illness, particularly

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in people with allergies. Serious mold problems usually involve property with defective siding, poor construction, water penetration problems, improper ventilation or leaking plumbing.

In a few cases, these problems have led to the growth of molds which caused medical conditions in some people. Sellers who have any knowledge or notice of molds in their property should arrange for inspection by a qualified professional. Information on moisture intrusion and mold problems associated with human structures [can be found here](#).

Inspection, discovery and evaluation of specific water intrusion or mold problems requires extremely specialized training and is well beyond the scope of a real estate licensee's expertise. Sellers are, therefore, advised to hire appropriately trained professionals to inspect the property if the Seller is concerned about the possibility of harmful molds. Any mold condition, whether believed harmful or not, should be disclosed to your agent and any potential Buyer.

## **UNDERGROUND OIL STORAGE TANKS**

Sellers should be aware of potential problems associated with underground oil storage tanks. Such tanks can cause serious problems if they have leaked oil. Underground oil tank leaks can create serious potential liability for Sellers even if they do not know of the leak. Oil storage tanks, including home heating oil tanks, are closely regulated in Oregon. An explanation of Oregon laws concerning home heating oil tanks can be found [here](#).

A Seller who knows or suspects that property has an underground storage tank should take appropriate steps to protect his own interests, including seeking information from the Department of Environmental Quality (DEQ) and, if necessary, consulting with an environmental hazard's specialist or attorney. Sellers are advised to hire appropriately trained environmental professionals to inspect the property if an underground oil storage tank is found or suspected. Knowledge of a tank's existence on the property should also be disclosed to the Buyer in the Seller's Property Disclosure form. If a Seller has had their tank evaluated, drained, cleaned, or decommissioned, the Buyer may request documentation showing completion of these processes.

Oil storage tank inspection, cleanup, and decommissioning requires a special license from DEQ. A database of Oregon licensed providers can be found [here](#). Inspection, cleanup, and decommissioning of oil tanks can take time. Sellers who are aware of the existence of a tank should, therefore, begin the process early to avoid transaction delays. Real estate licensees are not trained or licensed to provide advice or services regarding underground oil storage tanks but can assist the Seller in finding the proper professionals.

For more information on selling a property with an underground oil storage tank, visit the [DEQ underground oil storage tank page](#) or contact the DEQ directly.

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## ENVIRONMENTAL HAZARDS

Environmental hazards include everything from expansive soils to landslides to forest fires, tsunamis, floods, and earthquakes. Environmental hazards can also include indoor air quality (e.g., radon, mold, or carbon monoxide) and hazardous materials, like asbestos. Environmental hazards known to the Seller must be disclosed to all Buyers. Sellers in doubt about such hazards should check with the county in which the property is located.

Wildfire is a concern in some areas of Oregon. Information about the risk of wildfire is available from the Oregon Department of Forestry [here](#). Some Oregon properties are subject to special rules under the State's "Wildland-Urban Interface (WUI) Classification." Properties that fall under this classification include geographical areas with permanent structures that intermingle with wildland vegetative fuels. The WUI status of a property must be disclosed by the Seller to the Buyer in the Seller's Property Disclosure Statement. Owners of a WUI classified property can learn more about the classification and the additional steps required of them to lessen the risk of wildfire can be found [here](#). The passage of OR SB 762 in June of 2021 has prompted changes within the WUI Classification Program. New maps that more accurately depict fire risk on an individual property level are currently under development and are expected to be completed some time during 2023. There is a possibility that homes not currently classified under WUI may be reevaluated and classified under WUI on these new maps. Also expected to change under the new legislation are the rules and responsibilities for WUI property owners. These rules are also yet to be completed but should be available along with the presentation of the new maps.

If flood status is an issue because of insurance restrictions, claims or past history, the Seller should bring the matter to the attention of their agent and be prepared to make the appropriate disclosure to Buyers. Flood plain maps and information are available [here](#). Real estate licensees do not have the expertise to assess flood potential but can often direct Sellers to the appropriate local authorities. If environmental issues have been a problem in the area, or the Seller has any notice of potential problems with air quality, ground or water contamination, or other problems with the area or property, the Seller should bring the matter to the attention of their agent and carefully consider disclosure obligations to potential Buyers. If in doubt about potential hazards, the Seller should [visit the Environmental Protection Agency \(EPA\) website here](#).

Information about specific contaminated sites that have been reported to the government can be found here and, for sites specific to Oregon, [click here](#). Real estate licensees are not trained and do not have the expertise to discover and evaluate environmental hazards. Sellers, therefore, are advised to hire appropriately trained environmental professionals to inspect the property and its systems or fixtures for potential environmental hazards.

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## OMITTED PROPERTY TAX

Oregon statutes require tax assessors to correct tax roll omissions when they are discovered so that everyone pays their fair share of taxes. Property or value that is omitted in error from the tax rolls is called omitted property. County tax assessors often become aware of omitted property at the time a home is being marketed for sale. Some assessors hire people to look at the MLS, sales prices, and other information, searching for indications that remodeling has taken place or other signs that properties are under assessed.

When assessors find omitted property, they notify the owners and add the property to tax rolls. The law allows them to assess the property in previous years as well, up to five years. Once omitted property is added to the tax rolls, the assessment becomes a lien on the property that the owner must pay or risk foreclosure. Because most people are not willing to purchase property with liens for prior years, property owners must pay taxes that are due when they sell the property.

A property tax assessment for omitted property can impact both Buyers and Sellers. Sellers may have to pay an unanticipated part of the sales proceeds to the tax assessor. Sellers may receive a demand for a reimbursement from a title company that had to pay a Buyer for undisclosed tax obligations.

Sellers should consider purchasing a Seller's policy of title insurance. If you have questions or concerns about your property, contact the county tax assessor ([click here](#) for local tax assessor information). Tax liability issues are beyond the expertise of a real estate licensee.

## REPAIRS AND REMODELS

If repairs or remodeling have been done on the property, the Seller will want to make certain the work was properly done and permitted. Buyers will often ask the Seller for any invoices or other documentation for obvious repairs or remodels. Sellers should, therefore, anticipate questions about any recent repairs or remodels and be ready to demonstrate they were done properly with the required permits.

A real estate licensee can help the Seller assess the need to demonstrate building code compliance, but do not themselves have the training or expertise to evaluate building code compliance issues. [Information about building permits can be found here](#). If uncertain about permits, Sellers should check with their city or county building department. [Local building department websites can be found by clicking here](#).

If repairs or remodels have been completed very recently, the Seller should make sure no construction liens have been or will be filed against the property. You can check for construction liens through your title insurance provider or by checking county records. Construction valued at \$50,000 or more done within three months of a sale may trigger additional requirements under the Homebuyer Protection Act. [A complete explanation of the Act and its requirements for Sellers is available from the Construction Contractors Board here](#).

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If any repairs are required during the transaction with a Form 2.5 Repair Addendum, the Seller should make sure a licensed construction contractor is doing the repairs. [You can find information about a specific contractor by clicking here.](#) After the repairs have been done, the Seller should send the Buyer a Form 2.23, Notice of Completion of Repairs. The Form 2.5 Repair Addendum grants the Buyer a right to reinspect any requested repairs for sufficiency and allows the Buyer to present evidence to Seller if repairs were done improperly.

## TITLE REPORT AND COMMITMENT

Most real estate transactions are contingent on the Buyer's approval of the preliminary title report and any conditions, covenants, and restrictions (CC&Rs) attached to the property. The Seller will be required to obtain, and pay for, a report and provide it to the Buyer. The report, produced by a title insurance company, contains important information that should be reviewed by the Seller, if possible, prior to marketing.

In particular, a title report will list certain "exceptions" to the policy the title company will issue for the property. Exceptions can make the Seller's title undesirable or even unmarketable. Title exceptions should, therefore, be carefully reviewed. Questions about the title report and associated documents can be directed to the title or escrow officer issuing the report or to the Seller's attorney. Review of title reports for legal deficiencies involves the practice of law and is beyond the expertise of a real estate licensee.

## SMOKE ALARMS

In Oregon, no person may sell a dwelling unless there is installed in the dwelling unit an approved smoke detector or smoke alarm installed in accordance with the rules of the State Fire Marshal. Because of this state law requirement, most residential real estate sale forms contain a representation by the Seller that, at the earliest date of possession or closing date, the dwelling will have an operating smoke detector as required by law. Sellers should anticipate the smoke alarm requirement and make sure their property is properly equipped prior to marketing the property.

The power supply of a smoke alarm shall be a commercial power source, an integral battery or batteries or combination of both (OAR 837.045). Smoke alarm power source requirement is based on what was required at the time of construction or remodel. Battery operated ionization smoke alarms sold or used in Oregon must have a 10-year battery and a "hush" mechanism which allows a person to temporarily disengage the alarm.

According to the National Fire Protection Association, National Fire Alarm Signaling Code (72-14.4.7.1); "Unless otherwise recommended by the manufacturer's published instructions, single and multiple station smoke alarms installed in one- and two-family dwellings shall be replaced when they fail to respond to operability test but shall not remain in service longer than 10 years from the date of manufacture." (NFPA 72).

All dwellings must have the proper type, number and placement of alarms as required by the building codes at the time the dwelling was constructed but not less than one alarm adjacent to each sleeping area and at least one alarm on each level of the

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dwelling. (Additional rules apply to rental property.) Information about smoke alarm and detector requirements in Oregon can be found on the State Fire Marshal's website by [clicking here](#).

Real estate licensees are not trained in building code or fire code compliance. If there is any doubt about whether a smoke alarm or detector system complies with building and fire code requirements, a licensed home inspector, or the home alarm or detector company, should be contacted. Your real estate agent may be able to assist you in finding the right code compliance professional.

## **CARBON MONOXIDE ALARMS**

Any person transferring a one- or two-family dwelling or multifamily housing (additional rules apply to rental property) that contains a carbon monoxide source (heater, fireplace, appliance, or cooking source that uses coal, wood, petroleum products, and other fuels that emit carbon monoxide as a by-product of combustion. Petroleum products include, but are not limited to, kerosene, natural gas and propane. Fuel burning sources also include wood and pellet stoves, and gas water heaters, or has an attached garage with a door, ductwork, or ventilation shaft that communicates directly with a living space) must provide a properly functioning carbon monoxide alarm(s) installed at the location(s) that provide carbon monoxide detection for all sleeping areas of the dwelling or housing (on all levels of the home where there are bedrooms). Homes built during or after 2011, or which undergo a remodel or alteration that requires a permit, CO alarms are required regardless of the presence of a CO source. The alarm(s) must be installed in accordance with the rules of the State Fire Marshall and in accordance with any applicable requirements of the state building code. Information about carbon monoxide alarms and detector requirements in Oregon can be found on the State Fire Marshal's website by [clicking here](#).

A purchaser or transferee who is aggrieved by a violation of this requirement may bring an individual action in an appropriate court to recover the greater of actual damages or \$250 per residential unit (plus fees, including attorney's fees). Violation of this requirement does not invalidate any sale or transfer of possession. Actions for violations must be brought within one (1) year of the sale or transfer of possession.

Because of this state law requirement, the Purchase and Sale Agreements contain a representation that, at the earlier of possession or closing date, the dwelling will have an operating carbon monoxide detector as required by law. Sellers should anticipate the carbon monoxide alarm requirement as it is also included on the new Seller's property disclosure form.

Real estate licensees are not trained in building code or fire code compliance. If there is any doubt about whether a carbon monoxide alarm complies with the building or fire code requirements, a licensed home inspector, or the alarm company should be contacted.

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## **RISK OF LOSS PROVISIONS**

Risk of Loss provisions in the Purchase and Sale Agreements are meant to guide the rare scenarios when the Property is destroyed or heavily damaged during the sale process. When a wildfire, flood, sinkhole, meteorite, or anything else causes significant damage to the property, the Buyer needs to decide whether to continue with the sale. During that time, the parties should negotiate how they wish to continue, whether the sale price is going to change, who will be responsible for the repairs or rebuild, etc. If the Buyer chooses to continue, the closing date will automatically be extended as long as the parties need to fix the problem, up to 60 calendar days.

## **SELLER'S COMMON LAW DISCLOSURE DUTIES**

Under Oregon law, a Seller must disclose to the Buyer any material defects known to the Seller that would not be readily apparent to a Buyer. Oregon civil law also imposes on all parties to a contract a duty of good faith and fair dealing. This contractual duty prohibits deceit, fraud, or design to mislead in the formation and performance of contracts. Taken together, these legal obligations require certain disclosures to purchasers when selling real property in Oregon.

A Seller in Oregon cannot remain silent if they know of some hidden defect that affects the value or desirability of the property. Such defects are considered "material" and must be disclosed. The "defect" may be in the condition of the property or its title or use or, in some cases, even surrounding conditions or future use. The key is that the defect must be known to the Seller, affect the value or desirability of the property and not be readily apparent to a Buyer. Failure to disclose such defects can result in lawsuits for damages or can lead to rescinding of the sale.

Given the consequences, any doubt about disclosure of potential defects should be resolved in favor of disclosure. For instance, if the roof leaked last winter and was repaired it would be wise to disclose the leak and repair in a sale taking place the following summer. That way, if the repair proves inadequate during the next rainy season, there will be no question that the Sellers misled the Buyer by "hiding" the leak and repairs. At the same time, a problem fixed years ago that has caused no further problems would not need to be disclosed.

Real estate licensees are not property inspectors or legal experts. They can, however, assist Sellers in understanding and meeting their disclosure duties. All real estate licensees in Oregon have an obligation of honesty and fair dealing to all parties to a real estate transaction. Licensees, therefore, cannot be party to any attempt to deceive or mislead a Buyer. Under Oregon law, withholding material information from an agent with the intent that the agent innocently misrepresents the property to another is considered a form of fraud.

## **SELLER'S PROPERTY DISCLOSURE STATEMENT**

In Oregon, most Sellers of residential property are required to fill out, sign and deliver to prospective purchasers a statutory property disclosure form. The Form 3.1 Seller

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Property Disclosure Statement (or comparable form under ORS 105.464), which covers everything from title status to dwelling systems and fixtures, mimics the disclosure requirements set out in ORS 105.464.

Because the form is statutory, it cannot be changed or modified. All questions on the statutory form must be answered based on the actual knowledge of the Seller at the time an offer is made on the property.

Unless the Seller qualifies for one of the narrow exclusions contained in the statute, or the Buyer is not purchasing the property for their immediate family to live in, the completed disclosure form must be delivered to every Buyer who makes a written offer on the property for every dwelling that is being sold. If the Seller fails to comply with the statute, the Buyer is entitled to revoke their offer at any time prior to closing the sale. If the Seller does deliver the disclosure statement, the Buyer's ability to revoke is limited to 5 business days after delivery. It is not sufficient for the Seller to merely make the disclosure statement available as a hyperlink on the MLS listing, the Seller has to affirmatively deliver the document to the Buyer or the Buyer's agent, either physically, or by email.

The exclusions available under the statute are listed on the first page of Form 3.1. They include the first sale of a dwelling never occupied, sales by financial institutions, sales by court appointed receivers, trustees, personal representatives and the like, and sales by government agencies. All other Sellers of residential real property being sold as a residence for the Buyer, or their immediate family, must answer questions the legislature has determined are relevant in the purchase of residential property. If Seller is claiming exclusion as a court appointed trustee, receiver, custodian or personal representative, the Seller should be able to provide the court order appointing Seller to that position if asked.

The disclosure statement questions may be answered "yes," "no," "unknown" or, in limited circumstances, "NA." Answering "unknown" to avoid disclosure of known information can be considered a form of fraud. Several questions, if answered "yes," require that an explanation or copy of a report or other document be attached to the disclosure statement. Because the disclosure statement must be filled out by the Seller based on the Seller's actual knowledge at the time of disclosure, real estate licensees cannot fill out the form for the Seller or influence the Seller's answers in any way. Real estate licensees are however, required to make the Seller aware of the Seller's disclosure duties under the statute.

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## SECTION IV: ADVISORIES UNRELATED TO PURCHASE AND SALE AGREEMENTS

### BASE FORM LIBRARY

There are multiple varieties of forms available in Oregon. Typically, the base form brand is designed to work together with the other addendums and notices developed by that brand. For example, Oregon REALTORS® Forms have been developed to cover the entirety of a property purchase and sale, and the addendums, advisories, and notices have all been written to work together and ensure maximum coverage for Buyer and Sellers, with as little redundancy and overlap between addendums, advisories and sale agreements as possible. Mixing brands and base form libraries can potentially lead to inconsistent terms or gaps in form coverage. Buyer, Sellers, Buyer's Agents, and Seller's Agents should all strive to ensure that the complete transaction is done with a single base form brand.

### WIRE FRAUD ADVISORY

Buyers should beware of wiring instructions sent via email. Cyber criminals may hack or otherwise gain access to email accounts and send emails with false wiring instructions. Buyers should independently confirm wiring instructions in person or by telephone to a trusted and verified person or phone number prior to wiring any money. For more information, read [Mortgage Closing Scams: How to protect yourself and your closing funds.](#)

Electronic fund transfer has become a growing concern nationwide and can result in significant losses to all parties. Sellers should request that buyers exercise extreme caution when wiring funds in real estate transactions. The following steps can be used to avoid possible losses to Sellers:

- At the beginning of the transaction, establish trusted contact information for everyone you will be communicating with. Only communicate using the trusted contact information.
- Talk to your professionals about whether there is a secure portal or other system that can be used to exchange financial and other sensitive information, rather than using email.
- Never send sensitive information, such as social security numbers, routing and account numbers, and/or credit numbers, unless it is done through a secure/encrypted delivery system; and
- Monitor your e-mail account for unrecognized activity and never click on links or attachments in unverified e-mails.

If you believe you have been the victim of a wire fraud, you are advised to contact your bank, escrow agent and real estate professional at a trusted and verified phone number. Please also contact the FBI at (503) 224-4181 and file a complaint using the FBI's Internet Crime Complaint Center (IC3) at <https://www.ic3.gov>.

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## **VIDEO AND AUDIO RECORDING DEVICES**

Some homes may be equipped with recording devices. State and federal privacy laws govern the recording of video and audio of others. Your real estate licensee is not an expert in state and federal privacy laws. Recordings can also raise fair housing concerns because the recording may reveal protected class information about the Buyer. Sellers should consider turning off recording devices when making their home available for tours by Buyers and agents. For more information on laws regarding video and audio recording, consult with an expert in federal and state privacy laws.

## **HOMEOWNERS' INSURANCE**

The insurance claims history for a home may affect the cost of homeowners' insurance, or even its insurability. Most insurance companies use a database service called the Comprehensive Loss Underwriting Exchange (CLUE) to track claims made. Depending on the content of the CLUE report, and the insurance company's policy, home insurance may prove more difficult to get than expected. Sellers who have made claims on their homeowner's insurance (especially for flooding or water intrusion) may want to check their CLUE Report prior to marketing the property to make certain Buyers will not have difficulty obtaining insurance.

## **NEIGHBORHOODS**

Neighborhoods change over time. Some of these changes can affect the value or desirability of property. Building permits, zoning applications and other planning actions are a matter of public record and notice. Any notice of planning actions in the area, or even knowledge of future plans by neighbors or the government, that the Seller has should be discussed with their real estate agent to determine what, if any, disclosure should be made to Buyers.

Information about planning departments can be found on the county or city website. State road building projects information is available from the [Oregon Department of Transportation](#).

Location within a school district can be an important attribute of a neighborhood. School boundaries, however, are subject to change. If location within a particular school district is going to be advertised to attract Buyers or justify the asking price, the Seller should investigate the boundaries and the likelihood of change by contacting the school district directly. Oregon law provides a "just compensation" right for some Oregon property owners if a public entity enacts or enforces a land use regulation that has the effect of reducing the value of the property. Sellers who believe the value of their property is affected by Oregon's property compensation laws are advised to seek the counsel of appraisers, attorneys, or other land use professionals.

## **DEATHS, CRIMES AND EXTERNAL CONDITIONS**

In Oregon, certain conditions on or near real property that may be of concern to Buyers are considered not to be "material" by state law. Oregon Revised Statute 93.275. Ordinarily, "material facts" must be disclosed by the Seller or the Seller's agent.

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However, because state law declares certain facts to be not material, Sellers are not held responsible for disclosing them as might otherwise be the case.

Facts that would be subject to disclosure but for the statute include the fact that the property was the site of a death, crime, political activity, religious activity, or any other act or occurrence that does not adversely affect the physical condition of, or title to, real property, including that a convicted sex offender resides in the area. Although the Seller is not required to disclose such facts, they may elect to- for instance disclosing a pedophile living next door to Buyers with small children. Under Oregon law, neither the Seller nor their agent is allowed to disclose that an owner or occupant of the real property has or had human immunodeficiency virus or acquired immune deficiency syndrome.

## **ADDITIONAL INFORMATION**

[Oregon Real Estate Agency](#)

[Oregon State Government](#)

[Association of Oregon Counties](#)

[League of Oregon Cities](#)

[Oregon Association of REALTORS®](#)

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## **SELLER ACKNOWLEDGEMENT**

### **SELLER ACKNOWLEDGES RECEIPT OF THIS ADVISORY.**

Seller further acknowledges that there may be other issues of concern not listed in this Advisory. Seller is responsible for making all necessary inquiries and consulting with appropriate persons or entities prior to the selling of any property.

The information in this Advisory is provided with the understanding that it is not intended as legal or other professional services or advice. These materials have been prepared for general informational purposes only. The information and links contained herein may not be updated or revised for accuracy.

If you have any additional questions or need for advice, please contact your own attorney or other professional representative.

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