

# CONSUMER'S GUIDE TO AGREEMENT OF SALE



**Pennsylvania  
Association of  
Realtors®**

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A consumer service of the Pennsylvania Association of Realtors®

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# CONSUMER'S GUIDE TO THE AGREEMENT OF SALE ACKNOWLEDGMENT OF RECEIPT

The Consumer's Guide to the Agreement of Sale has been developed by the Pennsylvania Association of Realtors® to help consumers who may be interested in buying or selling a home better understand the major terms of the PAR Standard Agreement for the Sale of Real Estate. This guide is not a substitute for professional advice and counsel from a real estate broker and/or an attorney representing the consumer.

Signing this acknowledgment does not create any contractual relationship between the listed broker and the signing consumer. Any business relationship between the broker and consumer will be established in a separate written agreement between the broker and consumer.

I acknowledge that I have received the Consumer's Guide to the Agreement of Sale.

PRINT NAME \_\_\_\_\_ SIGNED \_\_\_\_\_ DATE \_\_\_\_\_

PRINT NAME \_\_\_\_\_ SIGNED \_\_\_\_\_ DATE \_\_\_\_\_

PRINT NAME \_\_\_\_\_ SIGNED \_\_\_\_\_ DATE \_\_\_\_\_

BROKER (COMPANY NAME) \_\_\_\_\_

PROVIDED BY \_\_\_\_\_ DATE \_\_\_\_\_

- Consumer Copy -

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PROVIDED BY \_\_\_\_\_ DATE \_\_\_\_\_

- Broker Copy -

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Welcome to your guide to the Agreement of Sale. It's designed to help you better understand the **Standard Agreement for the Sale of Real Estate**, which is produced, copyrighted and distributed by the Pennsylvania Association of Realtors®.

This form, often just referred to as “the agreement,” is used by most Realtors® across the state and by many attorneys as well. Because it is the form that sets out all the terms agreed to by the buyer and seller, it may be the single most important form in your transaction.

It is extremely important to read and understand all the terms and conditions in the agreement. This booklet covers many common questions about the form, but it is not a substitute for the professional help of a Realtor® and an attorney. If you don't understand something, ask your Realtor® and/or attorney for more information before signing the agreement.

Be sure to read the notice paragraphs located throughout the agreement. Some of the notices are required by law or regulation, but all contain information that will help you to better understand the content of the agreement.



As you go through this guide, this icon will alert you to “check out” certain notices that relate to a particular paragraph or clause in the agreement or bring your attention to a certain topic.

**As you read the Agreement of Sale, ask your Realtor® if you have any questions.**

### WHAT'S A REALTOR®?

Many consumers believe that the term Realtor® is used for all real estate practitioners. In fact, only real estate professionals who belong to the National Association of Realtors® (as well as the state and local associations) may use the term Realtor®. As a condition of membership, all Realtors® are bound by a Code of Ethics that goes above and beyond the requirements of state licensing law. Ask your real estate agent if he or she is a Realtor®.

## GETTING STARTED

Whether you've done it once, a dozen times or never before, a real estate transaction can be a daunting, stressful and exhilarating experience.

If you're reading this booklet, you've already gotten somewhat involved in the whole process. As a seller, you've made the decision to put your home on the market; as a buyer, you've committed to the homebuying process and may have even seen a few houses.

Now that things are moving along, the next big step for a buyer is to make an offer on a particular property. But when you sit down in front of this 14-page form filled with real estate jargon and legalese, how can you be sure you know what you're doing?

The best advice is to arm yourself with a Realtor® and/or attorney who can guide you through the process, explain your options and answer your questions. Reviewing this booklet **BEFORE** making an offer or considering an offer from a buyer should address many of the questions you're likely to have. Where you still need more information, you'll have plenty of time to ask your Realtor® to clarify things before getting into negotiations.

### Making an Offer

Buyers should never make an offer on a property in haste without fully considering all their options. If the offer is accepted, it now turns into a legally binding contract and may not be easy to get out of. But once a buyer has decided to pursue a particular property, it is wise to start the process as soon as possible. It can

take as long as two hours to complete the Agreement of Sale and there are many decisions that must be made during that time.

Completing the Agreement of Sale will often take place at the Realtor's® office. With the use of computer-generated forms, however, the agreement can be filled out and even signed from almost anywhere - buyers might not even be in the same room as the Realtor® while they're filling it out. If you have particular needs in this regard (for example, you're buying a home in another area of the state and can't easily travel there for more than a day or two at a time), speak to your Realtor® about the technology available in his or her office.

## The Agreement of Sale

The vast majority of residential offers are made by giving the seller a completed Agreement of Sale that lists the terms and conditions requested by the buyer - this is considered the buyer's offer. The buyer and seller negotiate the complete terms of the agreement, and if both sign off on the agreement, the result is a legally binding contract.

Taking a couple of hours to fill out an entire agreement for a property you might not actually end up buying might seem like a lot of effort, and it is. Does it take more time and effort to make an offer with such complete terms? Yes. Experience has shown, however, that the effort helps both the buyer and seller by laying out ALL the terms and conditions desired by both parties so there are fewer surprises during the transaction.

## Everything Is Negotiable

So, what are these terms? The terms are the details and specifics of the agreement, which need to be acceptable to both the buyer and seller.

Although the agreement contains a great deal of preprinted text, perhaps the most important phrase for both the buyer and seller to remember is that "everything is negotiable." Some terms to negotiate can include purchase price, deposit amounts, date of settlement, fixtures to be included or excluded, financing arrangements and property inspections, just to name a few. Most of the time frames for performing under the contract are also negotiable, even though certain time frames are often preprinted in the text for convenience. To protect yourself legally, you may want to have your attorney review the agreement before you sign it.

## What the Buyer Should Bring

Buyers will need to have certain items and information readily available when filling out the Agreement of Sale. Some of these items include:

- If you are providing a deposit on the property, bring your checkbook.
- Information about your finances is also necessary. The seller will almost always want to verify a buyer's financial ability to buy or obtain a mortgage before deciding to accept the agreement. Depending on the practice in your market, a mortgage preapproval may be sufficient. In other markets, sellers might ask buyers to fill out a separate financial information form.
- Have information regarding available funds handy. You will want to make sure you have enough money for your deposit and for settlement.
- All buyers must be present! If you and other people (for example, your spouse or business partner) are buying a property together, you will need to complete and sign the agreement together.
- If you have any questions about what to bring with you when filling out the agreement, ask your Realtor®.



## THE PARTIES

That's you! The buyer and the seller of the property are referred to as "the parties," and the first block on the first page of the agreement is where the legal names of **all** of the buyers and **all** of the sellers should be listed.

On the seller's side, listing all sellers helps to make sure that all owners of record actually sign the agreement. If the property is owned by several individuals and one fails to sign the agreement, the agreement (and possibly the transaction) may not be valid. On the buyer's side, attorneys and title companies will often use the listed buyers' names to prepare the new deed. If a buyer is forgotten, it may hold up the transaction or could require making this legal change after the fact at additional expense.

## THE PROPERTY

The next part of the agreement is a description of the property to be purchased. In most cases, the property will be identified both by the street address (including the municipality, ZIP code, county and school district), as well as by a more thorough legal description of the property. If there is any doubt or confusion about the actual location of the property or the property boundaries, talk to your Realtor® about obtaining a survey. Many buyers are interested in living in a particular ZIP code or sending their children to school in a specific school district, so you are encouraged to double-check this information for accuracy.

## WHO ARE THE BROKERS?

The boxes at the bottom of the front page of the agreement contain information that identifies the broker or brokers who are providing real estate services in the transaction and their relationship(s) with you. It is very important that you understand the relationship you have with each broker and the legal duties that each broker owes you or doesn't owe you.

There are two pieces to identifying who represents you: the brokerage, which is the company you are working with, and the licensee, which is the individual salesperson you are working with. In Pennsylvania, all real estate activity is licensed by the State Real Estate Commission. Licenses are issued to companies to operate as brokerages and to individuals as either brokers or salespersons. A broker can negotiate the sale of real estate, but is also the individual responsible for overseeing the activities of the salespersons working in his or her office (also called a "brokerage").

**Remember, unless you have entered into a written agency contract creating a legal relationship between you and the brokerage, the brokerage may NOT be representing your interests and may be representing the other party. If you have a question about how these relationships work, review the Consumer Notice (the first form the Realtor® gave you) and ask the Realtor® to clarify his or her role in the transaction.**

Pennsylvania allows agents to work as dual agents, which means that they can represent both the buyer and the seller in the same transaction. A dual agent is put in the tricky position of representing you, while at the same time not taking any action that would negatively impact the other party. For example, a dual agent could list your house for sale and later take on a client looking to purchase a house just like yours. While the dual agent would represent both the seller (to sell the house) and the buyer (to buy the house), the dual agent cannot do anything that would harm the seller's or buyer's position in the transaction. If you are concerned about how much help you may or may not get with the transaction, talk to your Realtor® about whether you could have a designated agent. A designated agent is an agent who would represent only you, even though the other party's agent would work for the same brokerage.

## THIS AGREEMENT

The first paragraph of the agreement states the date the contract was first presented as an offer. The date in this paragraph is generally NOT the same as the acceptance date, or execution date, which is the date a valid contract is formed. This date is simply used as a convenience to identify when the buyer's offer was first presented and will be particularly helpful if more than one agreement is submitted by the same buyer at different times.

## PURCHASE PRICE AND DEPOSITS

The purchase price is the first of several terms stated in the agreement. While many buyers and sellers assume that this is the most important part of the agreement, there are other negotiable terms that can be just as important as the purchase price. To make your offer as attractive as possible to the seller, be sure to pay attention to all the terms in the agreement - don't focus only on the purchase price.

How much should a buyer offer to pay for the property? Which offer should the sellers accept? These are decisions that vary from transaction to transaction. You will need to consider things such as whether there are other offers, the recent sale prices of similar homes, how long the property has been on the market and your own personal motivations. Your Realtor® can help you review the issues to consider, but the Realtor® can't make the final decision for you.

### Making a Deposit

Buyers are almost always expected to make a "good faith" deposit (sometimes called "hand money," "earnest money" or "down money") on the property but there is no legal requirement to do so. Deposits can be given in one large deposit or in two (or more) steps.

When a buyer makes an offer, an initial deposit is usually given to the seller along with the agreement, or shortly thereafter, depending on how the agreement is delivered to the seller. In some markets, if the seller accepts the offer, a second deposit is due within a short time after acceptance. In other markets, it is not uncommon for there to be a third deposit at some point later in the transaction. The amount and timing of deposits is often determined by local custom. Ask your Realtor® about what is customary in your area, keeping in mind that these are always negotiable issues. However they are paid, the deposits will be credited toward the total purchase price and/or closing costs at the time of settlement.

**NOTE: Depending on the circumstances, if a buyer backs out of an accepted agreement, the buyer may lose their deposits. Offering a higher deposit could make the buyer's offer look more serious to the seller, but it also means more risk to the buyer.**

The agreement allows the buyer to pay by cashier's check, wired funds or personal check, but only if the deposit is being paid 30 or more days from the settlement date. If a deposit is being made within 30 days of the settlement date, the buyer must pay by cashier's check or wired funds, not by personal check. These specifications can be modified if the parties agree on a change.

**A NOTE ABOUT EMAIL FRAUD: Scammers are increasingly targeting real estate professionals, seeking to comprise their email in order to monitor email correspondences with clients and identify upcoming real estate transactions. During the closing process, scammers send spoofed emails to homebuyers - posing as the real estate agent, settlement agent, legal representative or another trusted individuals - with false instructions for wiring closing funds.**

**Learn how to avoid these scams: [PAREaltors.org/email-fraud/](https://www.parealtors.org/email-fraud/)**



## Escrow Accounts

While the purchase is pending, the buyer's deposits will be held in an escrow account. Typically, the money is held by the Realtor® representing the seller, although it may be traditional in some markets for the Realtor® representing the buyer to hold it. When completing the agreement, the parties will determine who will be holding the deposit. Whichever Realtor® holds the deposits, they will be held in a special bank account called an "escrow account." An escrow account is an account that is held separate from the broker's other funds.

There are laws and regulations governing how brokers must handle money deposited in their escrow accounts, including when money must be deposited and when it may be released. For deposits made with the offer, Pennsylvania law - and the standard agreement - permits the broker to wait until the buyer's offer is accepted before depositing the down payment into an escrow account.

While it may be customary for one of the real estate brokers to hold the deposit, it is not legally required. A third party, such as an attorney or the title company, can also hold the deposit. You should know that if the transaction falls apart and there is a disagreement over which party is entitled to the deposit money, there are restrictions on how and when a real estate broker can release the deposit. This will be further explained in the paragraph on Default, Termination and Return of Deposits.

## SELLER ASSIST

A seller assist is an amount of money a seller is willing to pay toward the buyers' loan or settlement costs. If the buyer is getting a mortgage, it is important to know whether the lender has a limit on how much the seller assist can be. This limit can vary between lenders or even between loan products from the same lender.

## SETTLEMENT AND POSSESSION

### Settlement Date

The settlement date is the day that you would like to officially transfer ownership of the property, so you should choose this date very carefully! Among other factors, the settlement date will depend upon the time it will take to complete any desired property inspections and to obtain a mortgage loan, if one is necessary.

As simple as it seems, it is a good idea to have a calendar handy when dealing with the Agreement of Sale. When picking a settlement date, it is best to avoid weekends and holidays, as well as dates with other conflicts such as vacations or work deadlines. Settlements can often take several hours to a half day, so don't pick a day thinking that you can just squeeze it in at lunch.

### Taxes

In Pennsylvania, a real estate transfer tax is charged when a property is purchased. The state collects a tax on all transactions and there may be a local transfer tax on the transaction as well. Transfer taxes may range from a minimum of 1% to 4% or more of the purchase price. In most areas, the practice is to divide payment of the transfer taxes equally between the buyer and the seller, but this is negotiable.

If the agreement is being assigned to another buyer, meaning the transaction starts with one buyer but then concludes with a different buyer, the assignment may affect the transfer tax on the property. Talk to an attorney if you are planning on assigning your interest in the agreement.

Real estate property taxes and other obligations, such as condominium or homeowner association fees, and interest on mortgage loan assumptions are prorated at settlement. This means that the seller is responsible

only for the portion of the taxes and other assessments up to and including the day of settlement, and the buyer is responsible for paying the taxes and fees after the settlement date. If the seller has already paid these bills, an adjustment can be made that will reimburse the seller for the buyer’s portion.



Review all tax bills carefully to be sure you understand what taxing periods are covered by each. For example, all municipal governments base their bills on a tax year that runs from Jan. 1 to Dec. 31; most school districts have a tax year of July 1 to June 30.

### How Are Taxes Calculated?

By law, transfer taxes are a fixed percentage of the purchase price of the property. Check with your Realtor® to find out what the transfer tax is in the community where the property is located.

Local property taxes are set by the municipality and school district and are based on a percentage of the assessed value of the property. Property taxes may change each year based on the rate set by the municipality (called the “millage”) and the assessed value of your property. The assessed value is not the same as the purchase price (or what may be considered market value). An assessed value is reached by a local government assessor who considers a number of factors to arrive at the value that will be taxed. Factors such as whether the property is income-generating, the assessment of similar properties and the value of recent improvements are all considered in arriving at the assessed value. While these same factors are relevant to the market value, a property’s market value is much more susceptible to outside factors such as local property inventory and interest rates.

Appraisal	Assessment
Determines market value	Determines taxable value
Performed by appraiser, usually at request of lender	Performed by a municipality tax assessor
Can fluctuate depending on many factors	Not as vulnerable to market fluctuation
Typically performed with each property sale	Typically performed every few years, as determined by local ordinance

### Possession

Unless otherwise agreed to, the buyer can expect to receive a copy of the deed (the original will be filed with the Recorder of Deeds office in the county where the property is located) and the keys to a reasonably clean and vacant property at settlement. Of course, “vacant” doesn’t necessarily mean that there will be nothing left in the property. If the parties have agreed that the seller will leave certain items (appliances or furniture, for example), buyers should check for these items during a pre-settlement walk-through inspection. At the same time, it is understood that the seller is responsible for removing all personal items that aren’t included in the sale; the seller is not permitted to just leave behind trash or any other items that they don’t want in their new home.

Sometimes the parties will agree to let the buyer move in before settlement or to let the seller stay after settlement. Make sure this is **IN WRITING**, just like the rest of the agreement. Issues like fees for this extra time of possession and who is responsible for any damages are best dealt with well before settlement. PAR publishes forms covering many of the issues involved in both seller and buyer occupancy.

If the property is tenant-occupied, make sure that leases and security deposits are properly transferred from the seller to the buyer and that the seller has taken care of any remaining obligations to tenants. There is a PAR form for this purpose as well.

## DATES/TIME IS OF THE ESSENCE

### Acceptance Deadline

The buyer will usually want to insert some sort of a deadline for the seller to agree to the terms of the agreement. If the agreement is not accepted by the deadline and the deadline is not extended, the offer will expire. When you set this deadline, consider factors such as local custom, the buyer's or seller's sense of urgency regarding the transaction and the schedules of the parties and brokers.

### Dates and Times

The Agreement of Sale states that "time is of the essence." This is a technical phrase meaning that if you don't do something by an agreed-upon date, you can lose certain rights or be in default of the agreement. For this reason, it is critical that the dates in the agreement be strictly followed, including the time for settlement.

The time for performing under the agreement doesn't start until the parties have reached a final understanding on all terms and have signed the contract to prove their consent. This is known as the "execution date." It is important that every change to the agreement be initialed and dated by both parties as pre-execution negotiations take place so that everyone can keep track of the execution date. Most of the time periods in the agreement are based on that date, so it's essential to know which date starts the clock.

All the deadlines in the agreement are based on calendar days because that is the easiest to count and it is not subject to interpretation. The agreement does not use business days or exclude holidays and weekends, which is why sitting down with a calendar and mapping out each of the deadlines is so important when considering an offer. Considering what needs to be accomplished and selecting realistic time frames for each task is **CRUCIAL**.

Although some of these times are preprinted in the agreement, they are by no means set in stone. If you want to negotiate a different amount of time to complete a certain task, there is room for you to cross out the preprinted numbers and put in a different number. Your Realtor® probably has a good idea about how long it usually takes to do these things in your market area.

## ZONING

Most local governments have a written plan that controls where certain types of buildings can be put, depending on the building's intended use. This is called zoning. The municipality may have divided up the land area to allow sections for families to live, businesses to operate or farming to take place, and many times the uses are intended to be separate. The zoning classification of the property is required in an Agreement of Sale unless the property is in an area primarily zoned to permit single-family dwellings.

**NOTE: If the buyer plans to change the *future* use of the property, it may be wise to make the purchase contingent on getting permission from the municipality to do so. The PAR Zoning Approval Contingency (PAR Form ZA) gives buyers the right to back out of the transaction without penalty if the buyer's intended use is not permitted or a change of zoning is not approved.**

Later, in the inspections paragraph of the agreement, the buyers will be asked to decide whether they want to check the *current* zoning restrictions of the property. If the buyer has certain zoning needs, the buyer should investigate the zoning issues that relate to those needs. Sellers and agents should not guess at what uses would be allowed.

## FIXTURES AND PERSONAL PROPERTY

In most residential transactions, some items of personal property (appliances or lighting fixtures, for example) will be included with the property as part of the sale. These items are sometimes referred to as “fixtures” if they have been attached to or made part of the property in such a way that it would seem the item was intended to stay. **If specific items are to be included or excluded, they must be clearly listed in the agreement.** Any information provided through the multiple listing service (MLS) or any items identified in the Seller’s Property Disclosure Statement should not be relied on; items of personal property aren’t included in the sale if they are not also listed in the agreement.

The agreement contains a list of personal property items that are commonly included in residential sales. It is **EXTREMELY** important for you to carefully review this list to make sure that everything that should stay with the property is included and everything that should go with the seller is excluded. Even though this is a preprinted list, all of the items listed are open to negotiation and can be crossed out. Any item of personal property that isn’t included in the agreement in writing is NOT part of the transaction and does not stay with the property. If there is any confusion about the transaction, the written terms of the agreement will decide what stays and what goes.

## FINANCING AND THE MORTGAGE CONTINGENCY

How much it costs to buy or sell a home is a complicated question! There are many financial aspects to a real estate purchase. These include deposits, taxes, up-front costs such as inspections and permits, settlement costs, the purchase price of the home itself and financial reserves for repairs and other expenses after moving in. Buyers should be sure they fully understand how each element factors into their financial status and how they will find the money to cover each cost. Before signing an Agreement of Sale, both buyers and sellers must receive a copy of the estimated closing costs. Buyers should double-check the estimated cost sheet before making the offer to be sure they are able to afford the listed costs. Sellers should review the cost sheet to be sure that all of the liens will be covered based on the offered purchase price.

### WHAT’S A LIEN?

A lien is a legal interest that a creditor has in someone else’s property. A lien usually lasts until the debt is paid off.

Before even beginning to search for a home, a buyer will probably first review their financial situation with a lender. This will help the buyer understand the different costs associated with a real estate purchase and how they will find money to pay for them. A lender may provide a buyer with a “pre-qualification” or “preapproval” letter indicating how much the buyer can afford to pay for a house. Although this is no guarantee that the buyer will be approved for financing, it is helpful in establishing a price range they should be focusing on and can let the seller have an idea of the buyer’s financial ability.

### What Do “Pre-Qualified” and “Preapproved” Mean?

PRE-QUALIFICATION is when the lender takes a look at some documentation to provide a quick assessment of the buyers’ financial status and estimates the mortgage loan amount for which they might qualify. Pre-qualification may help buyers determine the price range they can afford and can be helpful at the beginning of a search.

PREAPPROVAL is more detailed and takes place when the buyers are closer to making an offer on a house. For a preapproval, the lender will verify the buyers’ earnings and financial situation—often by obtaining a credit report—to determine whether to lend money. Once the buyers are preapproved, the lender will

provide a letter stating the maximum amount the buyer would likely be approved to borrow. A seller may think that a buyer with a preapproval is a “stronger” candidate than one with a pre-qualification and improve the buyer’s chances of coming to an agreement on the purchase price.

### Mortgage Application Checklist for Buyers



Here is a sample checklist of some of the things the buyer may need to provide to the lender when applying for a mortgage loan.

Income information, including:

- Employers’ name, address and phone number for the last two years.
- W-2 statements for the last two years.
- Recent pay stubs (approximately one month’s worth).
- Green card for resident alien.
- If self-employed, the last two years’ tax returns with all schedules and year-to-date profit and loss statements.
- Other income from Social Security, Veterans Affairs and retirement benefits, alimony and child support.

Financial information, including:

- Bank names, account numbers and balances.
- Bank statements for the last three months on all accounts.
- Proof of rent or mortgage payments for the last 12 months.
- Liabilities, including debts, loans and credit card balances.
- Current financial statements listing assets and investments.
- Check to pay for appraisal, credit report and mortgage rate lock.

Other items and information, including:

- Social Security number.
- Landlords’ name and address for the last two years.
- Certificate of Eligibility and/or DD214 for VA loans.
- Leases for rental properties.
- Separation agreement, divorce decree and/or property settlement.
- Agreement of Sale.
- Legal description of the property.

### If the Buyer Needs a Loan

Many buyers will simply not have the funds to buy a home with cash and it is customary to need a loan from a bank. The homebuying process involves many parties outside of this contract between the buyer and the seller, and this is just one example. As a practical matter, the buyer and seller have very little control over these third parties, their requirements and their timelines. In this instance, if the buyer is going to be getting a mortgage, then there are certain principles that will apply to the transaction regardless of whether the mortgage contingency (see below) is elected.

The main principle is that the buyer must submit a timely mortgage application and then cooperate with the lender in good faith. If the buyer is trying to secure a mortgage to help pay for the property, then they need to be honest in their attempt. Providing false information, hiding relevant information from the lender, or delaying the process are things that could cause a lender to deny the application altogether. Also, there is much work to be done by the lender so the sooner the process is started, the more likely it is that the targeted settlement date will be reached without a problem. Meanwhile, the seller has likely taken their property off the market or potentially declined other reasonable offers to pursue this particular contract. It is not fair to the seller to be strung along by a dishonest buyer, which is why any act of self-sabotage by the buyer could lead to a finding of default.

The seller must also cooperate with the mortgage approval process. The lender chosen by the buyer may have certain requirements for issuing a loan. They may want an appraisal or an inspection of the property to ensure that their investment will be sound. For these inspections to be carried out, the seller will have to grant reasonable access to certain individuals so that the buyer's mortgage application can be fully processed. You as the seller may be asked to provide access to a closed-off crawl space, locate an on-lot septic system or allow someone to test the water in your well. Make sure that you discuss these issues with your Realtor® if you have concerns about what will be expected of you.

## FHA and VA Loans

An FHA mortgage is a loan that is insured by the Federal Housing Administration. These loans are issued by traditional lenders, but are secured by the federal government. VA loans are similar in that they may be backed by the Veteran's Administration for eligible borrowers. Because the lender's risk of loss is minimized by the insurance from the FHA or VA, lenders are willing to provide mortgages for buyers who may not qualify under conventional programs. Each program offers different loan types so talk to your Realtor® and loan officer about whether an FHA or VA loan is appropriate for you.

## The Mortgage Contingency

Because most buyers will need a loan from a bank to purchase a home, it is quite common for buyers to elect to include the mortgage contingency as a term of the agreement. If elected, the contingency states that the buyer won't be in breach of the agreement if they are unable to purchase the property because their application for mortgage financing (made in good faith, of course) is denied. However, a buyer may also decide to waive this contingency. If it is waived and the buyer's loan application is denied, then they may be in default of the agreement if they cannot purchase the property. Buyers with a strong financial position or buyers paying cash may choose to waive this contingency. It is important to remember that waiving the contingency is not a waiver of the buyer's right to apply for a mortgage, it merely closes a door for the buyer.

## Two Important Deadlines

The mortgage contingency paragraph of the agreement has two big deadlines for the buyer, one is the time in which the buyer must submit a mortgage application and the second is the date by which the buyer must have an answer from the mortgage lender to give to the seller (referred to as the commitment date). If the buyer doesn't meet these deadlines, the buyer may be in default and the seller may have the option to cancel the agreement.

## Buyer's Mortgage Requirements

To help the seller judge whether a particular buyer is likely to be able to afford the property, the agreement asks buyers to be fairly specific in stating what their mortgage requirements will be, especially if the mortgage contingency is elected. Aside from asking the buyer to identify if multiple loans will be involved, the agreement also asks for information regarding the mortgage amount, the term of the loan(s), the type of loan(s), the name of the lender(s), loan-to-value ratio, interest rate(s) and "points." Sellers may also ask



for certain proof that the buyers have, or can get, the necessary resources to purchase their home. Let's take a closer look at what each of these terms are and what they mean.

### Mortgage Amount

In most transactions, the mortgage amount is calculated by taking the full purchase price of the property and subtracting any deposits already paid by the buyer along with any other cash the buyer will pay out of pocket. In some cases, the buyer may want to borrow more than the full purchase price, for example, where the buyer wants to borrow additional money to cover closing costs or to pay for repairs or renovations. These types of loans are also only available through a limited number of loan programs, so sellers should consider whether a buyer is likely to qualify for those programs.

### Mortgage Term

The “term” of the mortgage is the length of time it will take to repay the loan in full. Although the “traditional” loan is 30 years, other loans are available for 15 years, 20 years or even 40 years. Keep in mind that a monthly payment can vary greatly depending on the term of the loan—the longer the term, the lower the payment. The term of the loan can also affect the interest rate and the buyer's ability to qualify for the loan.

Many pre-qualification or preapproval letters are based on the assumption that a buyer will be applying for a 30-year loan. If the loan term is different, the purchase price that a buyer can afford may change. Be sure to calculate your payments based on the correct information before making an offer.

### Types of Mortgages

Mortgages come in many varieties. Many loans are variations on the traditional “conventional” mortgage loans, but each lender has its own requirements and there are a number of loans and loan guarantee programs available through the federal, state and local governments. Most loans will require a down payment of some sort (often between 5% and 20% of the purchase price), although the amount may differ depending on the lender and the programs for which a buyer qualifies. Some loan products may permit down payments as low as 1% to 3%, and there are even others that will finance 100% or more of the purchase price. Keep in mind that buyers who have down payments of less than 20% may be required to purchase private mortgage insurance (PMI), which is available for an additional fee.

### The Loan-to-Value Ratio

The agreement allows the buyer to set an upper limit on something called a loan-to-value ratio, or “LTV.” The LTV may be used by lenders to help assess the potential risk of a mortgage loan. LTV is determined by dividing the requested loan amount by either the purchase price or the appraised value of the property, whichever is lower. A particular LTV may be necessary to qualify for certain loans, or buyers might be required to pay additional fees if the LTV exceeds a specific level. For example, if the buyer is planning to borrow \$80,000 for a property that appraises at \$100,000, their LTV is 80% ( $\$80,000/\$100,000$ ). Stated another way, the loan (\$80,000) should not be more than 80% of the value of the home (\$100,000). Buyers should talk to their Realtor® about whether this term should be included and, if so, what the maximum LTV should be.

### Mortgage Lenders

While most lenders are very reliable and reputable, some lenders in your market area may be more reliable than others. Including the name of a mortgage lender or lenders in the agreement is not mandatory. Buyers should consult with their Realtor® to determine whether naming the lender would be beneficial. Where an offer is received without a named lender, sellers should discuss with their Realtor® whether to request that the buyer identify one.

Asking buyers to identify the lender they intend to use has two benefits. First, it encourages buyers to research lenders prior to submitting an offer. Since the mortgage contingency paragraph of the agreement gives buyers a limited period of time to submit their actual application (which can't be done until their offer has been accepted), buyers who have identified lenders ahead of time should have an easier time meeting this deadline. Second, having a lender identified in the offer may also help sellers determine the likelihood that a transaction will make it through closing with no delays. If a seller is aware that a particular lender tends to have problems with postponing, or even canceling, planned closings, the seller may be less likely to want to accept that offer.

## Mortgage Rates

There are two interest rates stated in the agreement; the first is the rate that the buyer is hoping to get and the second is the highest rate the buyer is willing to accept. As with other elements of this contingency, buyers should be realistic. If a mortgage is approved with the terms stated in the agreement but the buyer fails to accept or “lock in” the loan with an acceptable interest rate, the buyer may be in default if the rates later rise above the stated interest rate cap and the buyer refuses to accept the loan at that time.

## Fixed Rate vs. Adjustable/Variable Rate Loans

Interest on mortgage loans can be at a fixed rate, which means the monthly payment never changes except for possible increases in taxes and insurance, or a loan may be an adjustable-rate mortgage (ARM) or variable-rate mortgage (VRM), which means the monthly payment on the mortgage loan may change. The calculation of these changes is complicated and should be clearly understood before choosing this type of loan.

## What Are Points?

Points are the fees that the mortgage lender charges buyers for providing certain services. Buyers pay points up front in cash as part of closing costs; the money is not financed as part of the mortgage loan. One “point” is equal to 1% of the mortgage amount. The agreement asks buyers to put in a maximum number of points they are willing to pay—often called a “cap.” For example, if points are capped at three for a \$100,000 loan, the buyer will not be required to buy the property if a lender offers a mortgage commitment requiring the payment of more than three points or \$3,000.

## Conditional Approvals

If the lender has requirements or conditions that are not part of the agreement, then the seller may have the right to terminate the agreement. For any unusual condition on the approval (such as verifying income or selling another property), the buyers have time to satisfy these conditions. Certain types of routine conditions that can only be met at or near settlement don't give sellers the right to terminate, however. Such routine conditions might include a final verification of employment or providing proof of property insurance.

## Lender Requirements

Every lender has their own requirements for approving a loan. These requirements will vary depending on the type of loan being offered and are often based on the buyer's current financial status and financial history.

The value of the property is a major element that weighs into the lender's decision. In the unlikely event that a buyer stops making payments and the lender chooses to foreclose on the property, the lender wants to be sure that the value of the property is high enough that the lender could sell the property and get its money back. Before loaning a buyer the money to purchase the property, the mortgage lender will almost certainly do an appraisal to make sure the house meets the lender's standards for the loan. After appraising the property, the lender will decide the maximum amount of money that may be borrowed.

Keep in mind that the appraised value of the property may be different from the agreed-upon purchase price. Sometimes the appraised value will be too low for the lender to approve the entire amount of the mortgage that has been requested. If the buyer still wants to purchase the property, it will be necessary to find additional money to make up the difference.

### What if the Loan Is Not Approved?

If a mortgage is approved within the terms specified in the agreement, the buyer must proceed with the transaction. If the buyer meets all the obligations spelled out in this contingency and is still turned down for a mortgage, the contract states that the buyer will not have to finalize the purchase and the seller may terminate the agreement.

Remember that this is only true where the buyer has, in fact, done everything required by the terms of the agreement. This means the buyer must have completed the application and locked in the interest rate within the time given, the application had the same terms as were listed in the agreement, the buyer was honest with the seller and mortgage lender regarding buyer's finances and the buyer has fully cooperated with the lender during the processing of the application. If the buyer has failed to meet the obligations agreed to in the agreement, he would likely be in default if the loan is not approved.

## CHANGE IN BUYER'S FINANCIAL STATUS

The successful completion of the transaction depends in large part upon the financial status of the buyer. In the time it takes to complete the sale of a property, unexpected changes in the buyer's finances could take place. If any of those changes affect the buyer's ability to purchase the property, then he is obligated to inform the seller, and any lenders who received mortgage applications, in writing. Buyers should be aware that applying for or incurring additional financial obligations during this time can affect their eligibility for financing along the terms specified in the agreement. It is best to hold off on major purchases, like major appliances or flooring, until after the transaction has closed.

## SELLER REPRESENTATIONS

Because of the way contracts are made in Pennsylvania, the buyer agent often fills in most of the agreement with information gathered from other sources, such as the seller's property disclosure or the MLS. When reviewing an offer, the seller should always double-check the items in this paragraph because once a seller accepts the agreement, the seller is responsible for the truth of these statements. This paragraph explains what the seller knows about the major systems serving the property, whether there are historic preservation or land use restrictions on the property and whether the seller has received any notices about the property from any government or public authority. Remember that if the buyer has special needs or questions on these issues, the buyer should still do inspections and contact a tax professional or attorney, if needed.

### The Seller Disclosure Law

Pennsylvania law requires that before an agreement is signed, the seller in most residential real estate transfers must make certain disclosures regarding the property. A residential real estate transfer is defined as a sale, exchange, installment sales contract, lease with an option to buy, grant or other transfer of an interest in real property of between one and four dwelling units. Disclosures of material defects must be made to all potential buyers in a form defined by the law. A material defect is a problem with a residential real property or any portion of it that would have a significant adverse impact on the value of the property or that involves an unreasonable risk to people on the property.



There are several exceptions where the disclosures do not have to be made:

1. Transfers that are the result of a court order.
2. Transfers to a mortgage lender that result from a buyer's default and subsequent foreclosure sales that result from default.
3. Transfers from a co-owner to one or more other co-owners.
4. Transfers made to a spouse or a direct descendant.
5. Transfers between spouses that result from divorce, legal separation or property settlement.
6. Transfers by a corporation, partnership or other association to its shareholders, partners or other equity owners as part of a plan of liquidation.
7. Transfer of a property to be demolished or converted to non-residential use.
8. Transfer of unimproved real property.
9. Transfers by a fiduciary during the administration of a decedent estate, guardianship, conservatorship or trust.
10. Transfers of new construction that has never been occupied when: 1) the buyer has received a one-year warranty covering the construction, 2) the building has been inspected for compliance with the applicable building code or, if none, a nationally recognized model building code and 3) a certificate of occupancy or a certificate of code compliance has been issued for the dwelling.

**NOTE: It is a common belief that sellers who never lived at the property do not have to complete a property disclosure statement. This is not true. The only exceptions to the requirements are those listed above. While a seller who has not personally resided at the property may not have as much knowledge as one who did occupy the property, they are still required to complete a disclosure statement with the information they have.**

In addition to these exceptions, disclosures for condominiums and cooperatives are limited to the seller's particular unit(s). Disclosures regarding common areas or facilities are not required, as those elements are already addressed in the laws that govern the resale of condominium and cooperative interests.

The Pennsylvania Seller Disclosure Law does not require the seller to do any investigation; the only obligation is for the seller to disclose what they know. If the buyer has any questions about the soundness or function of the property or any part of it, they should consider a home inspection.

### **Public and/or Private Notices and Assessments**

The term "assessment" is used in the Agreement of Sale and in this booklet to refer to some fee or cost paid by a homeowner for an improvement related to the property. For example, a local government might impose an assessment on residents to pay for new sidewalks or sewer pipes, while a condominium or homeowner association might levy an assessment on property owners to pay for the cost of maintaining the public areas overseen by the association.

The term "assessment" is not meant to include property tax assessments or relate to property values. The buyer should research local assessments and tax rates during the process of searching for a suitable home, before submitting an offer.

The seller is required to pay for any assessments made prior to the acceptance of the agreement, and is also responsible to correct violations of zoning, building or safety ordinances when notices of violation have been provided to the seller before the agreement is signed. Even if the assessment or violation hasn't yet been received, if the seller knows that something will be coming it must be disclosed to the buyer in advance.

## WAIVER OF CONTINGENCIES

Many contingencies in the Agreement of Sale specify time periods within which the parties must act. The waiver of contingencies paragraph reminds both the buyer and seller that failure to meet a deadline will result in the waiver of rights under that contingency. For example, if the buyer misses a deadline to request repairs after an inspection, the buyer will be deemed to have accepted the property with no repairs done by the seller. If there is any reason why the preprinted contingency time periods might be problematic be sure to let your Realtor® know so those times can be adjusted.

## DUE DILIGENCE/INSPECTIONS

In most residential transactions, sellers are required to provide buyers with a Seller's Property Disclosure Statement listing known problems with the property. Exceptions to this general rule are listed above and on the PAR Seller's Property Disclosure Statement (Form SPD).

Although this form covers many important aspects of the property, buyers should not rely exclusively on this form in determining the condition of the property. For one thing, the form only asks sellers to disclose conditions they are aware of. There might be many things that would concern a buyer (and the seller, for that matter), but are unknown by the seller. For example, sellers might not know of a weak spot in the roof if it hasn't started leaking; similarly, they might not know that a septic system is getting close to needing a repair if it hasn't started causing problems.

Buyers should strongly consider hiring professional inspectors to review the major elements and systems of the home. This might take the form of obtaining a full "home inspection" of the property, hiring a series of specialists to inspect individual systems (for example, a roofer for the roof, a plumber for the plumbing, etc.) or some combination of the two. Keep in mind that the agreement requires that inspections be done by "licensed or otherwise qualified inspectors," so buyers should always be sure to check out the qualifications of inspectors before hiring them.

In the "inspections" paragraph, the seller agrees to allow access to the property for all inspections agreed upon in the agreement, including any that are required by a lender or property insurer. It also states that the utilities will be on for the inspections and reserves the buyers' right to a pre-settlement inspection of the property.



Although buyers do have the right to attend inspections, buyers are there just as observers. This isn't the time to bring along family members for a tour of the home or to ask a decorator to measure for new curtains. Similarly, the right to a pre-settlement inspection is generally meant to provide an opportunity to look through the property just before settlement to make sure that everything is in the condition agreed to in the agreement. If the buyers have any other need to enter the property before settlement, they should work out the arrangements ahead of time with the seller.

### Are Inspections Required?

When making an offer, it is better to err on the side of caution. As a buyer, if you are unsure of whether you will need any inspections, elect to have them done. Reserving the option to have inspections lets buyers decide later whether they want them. However, if the buyers waive the right to inspections in the agreement, they can't come back later to have them done.

Remember that requesting and allowing inspections are negotiable terms. If sellers have a choice between two similar offers, they may opt for the offer that is contingent upon fewer inspections. At the same time, however, when a buyer waives the right to an inspection, it means that the property will be accepted in its present condition, regardless of what that condition is. This could be very expensive for the buyer if certain conditions need to be fixed after moving into the property. In many ways, deciding on what inspections to have may be one of the most important elements of the agreement.

Sometimes a potential buyer may want to conduct certain types of “inspections” before even making an offer. For example, it is often a good idea to drive around a neighborhood and even talk to a few neighbors before making an offer. This can help identify issues such as ease of access to the neighborhood, noise from nearby roads or factories and many other concerns that might affect the decision. Some buyers might even want to formally inspect the property before making an offer. Talk to your Realtor® to determine whether this is right for you. Doing these sorts of inspections before making an offer can save buyers and sellers a lot of time if it turns out that there is something a buyer doesn’t like.

### How Long Will the Inspections Take?

Buyers should ask their Realtor® for an idea of how long it will take to get the inspections done. All the inspections are subject to a “contingency period” of a certain number of days. The contingency period will be the same for all inspections. Remember to leave a buffer so there is enough time to complete everything within the time given. See the appropriate notices in the agreement for helpful information on property conditions and some information on certain inspections.

### Home/Property and Environmental Hazards Inspection

The agreement’s home/property and environmental hazards inspection provides for inspections of pretty much anything and everything related to the property not covered by later inspections. Some of the common inspections, performed as a single system inspection or as part of a full home inspection, are listed below.

- Electrical system
- Environmental issues
- General appliance condition
- Heat/air conditioning (HVAC)
- Mechanical systems
- Plumbing
- Roof
- Mold and indoor air quality
- Property boundaries
- Building codes compliance
- Site features (condition of driveway, sidewalks, etc.)
- Structural condition
- Water penetration

The Pennsylvania Home Inspection Law applies to “residential real estate transfers,” which is a transfer of between one and four dwelling units. The law also sets certain criteria for home inspectors. Below are definitions of some of the common terms used in a home inspection.



**HOME INSPECTION:** A non-invasive, visual examination of some combination of the mechanical, electrical or plumbing systems or the structural and essential components of a residential dwelling designed to identify material defects in those systems and components. The term does not include an examination that is limited to inspection for, or of, one or more of the following: wood-destroying insects, underground tanks and wells, septic systems, swimming pools and spas, alarm systems, air and water quality, tennis courts and playground equipment, pollutants, toxic chemicals and environmental hazards.

Simply put, a “home inspection” is an inspection that covers multiple systems of the property in a single inspection. For example, if one inspector looks at the roof, plumbing and heating systems during a single inspection, it is a “home inspection,” according to the law. If three different inspectors look at each item separately, those single-system inspections are not “home inspections,” as defined by the law.

**HOME INSPECTION REPORT:** A written report on the results of a home inspection. The report must include a description of the scope of the inspection and a description of any material defects noted during the inspection, along with any recommendation that certain experts be retained to determine the extent of the defects and any corrective action that should be taken.

**HOME INSPECTOR:** An individual who performs a home inspection.



**NATIONAL HOME INSPECTORS ASSOCIATION:** Any national association of home inspectors that: 1) is operated on a not-for-profit basis and is not operated as a franchise, 2) has members in more than 10 states, 3) requires that a person may not become a full member unless the person has performed or participated in more than 100 home inspections and has passed a recognized or accredited examination testing knowledge of the proper procedures for conducting a home inspection and 4) requires that its members comply with a code of conduct and attend continuing professional education classes as an ongoing condition of membership.

If the buyer elects to have a home inspection, make sure the home inspector is properly qualified and operates in compliance with the law. Keep in mind that the law gives certain protection if the inspector provides a “written representation” regarding the home inspector’s qualifications, so be sure to “get it in writing” when selecting an inspector. When hiring other inspectors, check out their qualifications and background, as well as whether they have any required local licenses and permits (for example, certain cities or municipalities might require that a plumber get a local license before being allowed to work).

**MATERIAL DEFECT:** A problem with a residential real property or any portion of it that would have a significant adverse impact on the value of the property or that involves an unreasonable risk to people on the property.

## Wood Infestation

It’s always a good idea to have the property inspected for wood-destroying insect infestation (termites) and it is usually required by mortgage lenders. Remember that it will be the buyer’s responsibility to request treatment or repairs if they are desired.

## Deeds, Restrictions and Zoning

Later in the agreement, it states that the seller will provide good title to the buyer, but that the title will be subject to existing deed restrictions and other types of existing limitations. Buyers will probably want to

be sure that any existing restrictions don't interfere with how they expect to use the property. For example, a buyer who wants to install an in-ground pool may not be able to if it turns out the electric company has an easement for an underground power line that runs right through the yard. Buyers can use this inspection to look at the deed through a title search, as well as examining other property restrictions including zoning issues.

### Water Service

If buyers are concerned about the status of the water system serving the property, they should elect to have the system inspected. This is often elected when the property is served by an on-site system, usually a private well.

There are no state or federal standards for well water, so the buyer may want to have a reputable water testing company analyze the quality of the water and provide a report listing any contamination. Buyers should speak with the testing company about what types of tests it will run and what contaminants it can detect. Different testing may be necessary for different areas. Buyers might also wish to have an inspector test the flow rate of the well, along with the physical structure of the well and its components.

### Radon

Radon is a radioactive gas produced in the ground by the natural decay of radium and uranium and it is very common in Pennsylvania. Extended exposure to high levels of radon can pose serious health risks. If radon gas has been detected on the property through past testing, the seller must disclose this information in the Seller's Property Disclosure Statement. If no disclosure statement is required in your transaction, it may be prudent for a buyer to elect this inspection.

If radon is discovered to be at or higher than the level that is acceptable to the buyer, the buyer can decide which choice to make within the inspection process.

### On-Lot Sewage

The inspection in this paragraph relates only to testing an on-lot sewage system such as a septic system, which can be tested in various ways including by a hydraulic load test. It's a good idea to have the sewage disposal system inspected unless current data and/or documentation is available to verify the current status of the system.

If the property has access to public sewer and buyers want to have an inspector check the flow and condition of the sewage lines it would be done under the home/property inspection found earlier in the agreement. Many municipalities have requirements for testing public sewage lines from the house so you should ask your Realtor® about what's required in your area.

If the inspection shows that the existing system is defective, but can be repaired without expansion or replacement, the parties proceed under the inspection process.

Unlike the other inspection contingencies, there is a second step to this contingency. If fixing the defects identified in the report would require expansion or replacement of the current system, the *seller* decides what action to take. The default terms of the agreement give the seller 25 days to get further testing and present a written corrective proposal (more on this below) to the buyer about expanding or replacing the system. The buyer then has the option to accept the terms of the proposal, take the property with no changes or terminate the agreement and get back any deposit monies

### Property and Flood Insurance

Almost every buyer will want or need to obtain insurance coverage for the property. For buyers getting mortgage financing, the lender may require a minimum amount of insurance coverage. Even for a cash buyer

who isn't required to get insurance by a lender, it is certainly a good idea to insure such a large investment against loss or damage.

Just like mortgage lenders have varying standards for making loans, insurers may have different standards for deciding whether to insure a particular property. These standards will often include the property's insurance history (whether there have been claims by the current or prior owners), the buyer's insurance history (whether the buyer has filed claims in prior homes), the property's condition and value and the buyer's credit history.

The property and flood insurance inspection gives buyers the option to make the agreement contingent on being able to obtain suitable insurance coverage. Electing this paragraph requires the buyer to make an application for insurance within the stated contingency period. If buyers are unable to obtain acceptable insurance within the contingency period, they will have the option to terminate the agreement without being in default.

Periodic changes to the National Flood Insurance Program (NFIP) can result in remapping of flood plains and removal of federal subsidies for the cost of flood insurance premiums. Buyers are cautioned to get quotes from several reputable sources based on current maps and not to rely on the seller's current need for or cost of flood insurance. Buyers should not delay in seeking quotes on the cost of insurance, as the estimates may take several weeks to complete.

### Property Boundaries

If there isn't a valid legal description of the property in the deed, a survey may be required by the title company or attorney performing the title abstract. If so, the seller will pay for it. A buyer who is concerned about the precise location of the boundaries of the property may wish to obtain (and pay for) a survey, unless the property was recently surveyed and the markers/stakes remain. Without a survey, it is unlikely the sellers or Realtors® involved in the transaction will know precisely where the boundary lines are located.

### Lead-Based Paint Hazards

The law provides buyers the right to carry out a risk assessment and/or inspection for the presence of lead-based paint and lead-based paint hazards in properties built prior to 1978. This paragraph allows the buyer to elect such an inspection. You should receive a pamphlet titled *Protect Your Family From Lead in Your Home* and a disclosure from the seller about the seller's knowledge of the lead-based paint on the property if the property was built before 1978.

## INSPECTION CONTINGENCY

If the buyer decides to have any inspections, the Agreement of Sale lays out a process of how to proceed when the time for inspections (called the "contingency period") is over.

This process in the Agreement of Sale requires the buyers to give a copy of all inspection reports to the seller with the buyer's decision to accept the property in the condition reported by the inspector(s), terminate the agreement and get back any deposits or suggest another solution. Buyers make this suggestion by providing a "written corrective proposal" to the seller, which lists the issues the buyer would like to have addressed and what actions they would like the seller to take.

In most instances, buyers are asking for repairs to the property, some sort of a credit or "seller assist" towards the cost of repairs or a reduction in the sale price of the property. Various other alternatives may exist, but whatever the buyers wish to have done should be stated with some specificity in their written corrective proposal.

There are no specific requirements for what a written corrective proposal must look like, nor what must be in the proposal. PAR produces a form called the Buyer's Reply to Inspections/Reports (Form BRI) that can often be used for this purpose, but buyers may create their own proposals if desired. Negotiation during this period may be as formal or informal as the parties like, so long as the final terms of the agreement are put in writing and signed by the parties.

Whatever the format, buyers can make the terms of the proposal as specific as they would like. Depending on the context, this could include things like the name of the contractor and the methods used to do the work.

After receiving the proposal, the buyer and seller have a certain period of time to decide what to do with the buyers' requests. If the seller decides to complete everything as requested in the proposal, the buyers must move forward with the purchase of the property. If the seller chooses to not do everything in the proposal, the buyer and seller have a chance to try to negotiate a solution that works for both. If the time period for negotiation ends, and the parties haven't reached a mutually acceptable written agreement, then the buyer will have a chance to terminate the agreement.

## TITLES, SURVEYS AND COSTS

### Title to the Property

The seller will transfer ownership of the property to the buyer at settlement in the form of a deed. This is known as "taking title to the property." Buyers must request a title search and are encouraged to obtain title insurance; both are generally required by mortgage lenders.

The purpose of a title search is to research the history of the property to determine if there are any financial liens or claims of ownership to the property beyond the seller's ownership. If the title search reveals that the seller can't give "good and marketable title" free of other liens or claims, the buyer may terminate the sale and have all deposit monies returned.

Title insurance is meant to protect against claims or liens that may be discovered after the purchase is complete. For example, if a lien wasn't properly filed against the property and is only discovered several years after purchasing the property, a title insurance policy should pay some or all the costs of addressing that problem. There are several variations on title insurance, including some policies that cover certain property defects or the failure of prior owners to obtain proper permits for work done to the property.

Buyers should talk to their title insurer about the extent of protection offered by the title insurance policy. It is assumed that all rights to the property (sometimes called a "bundle of rights"), including those above and below the ground, transfer with the property unless the agreement specifies otherwise. If the buyer and seller know that not all of these rights will transfer - such as rights for coal mining or oil and gas drilling - they should make sure the agreement explains which rights will be transferred and which rights will not. There is a PAR form for this purpose.

If the property is in an area where coal has been extracted or where the rights to coal have been transferred separately from the rights to surface land, the legally required notice in Paragraph 17(H) informs the buyer that certain below-ground rights (the rights to the coal that may be under your property) might not be transferred with the property. It also advises buyers that damage may occur as a result of mining activity.

## NOTICES, ASSESSMENTS AND MUNICIPAL REQUIREMENTS

### Notices and Assessments

The seller is required to provide to the buyer any notices of assessments or violations received after the agreement has been signed by both parties, along with notice of whether the seller intends to pay the

assessments and/or fix the violations. If the seller does not pay any new assessments or correct any new violations, the buyer then has a choice to accept the property (and pay the assessments or correct the violations) or terminate the sale and get back all deposit monies.

### Certificate of Occupancy or Use and Occupancy Permit

In some municipalities, there is a requirement to obtain a “certificate of occupancy” or a “use and occupancy permit” when a property is sold. This process may include the municipality performing some sort of a physical inspection and reporting any violations of local ordinances. Depending on the ordinances, some or all the violations may need to be fixed before settlement or within a certain period after settlement. If the property has no violations, or if the property is brought into compliance with the ordinances, the owner will receive this certificate/permit.

If any violations are found during this municipal inspection, the seller will decide whether to fix the violations. If the seller agrees to the appropriate repairs, the buyer must move forward with the purchase; if not, the buyer has the choice to accept the temporary certificate issued by the municipality and make the repairs or to terminate the agreement and get back all deposit monies.

## CONDOMINIUM/PLANNED COMMUNITY

### Homeowner Association Notice

There are a number of differences between a “standard” residential property and one that is part of a condominium or planned community. Generally speaking, a condominium owner only owns the interior area of his or her “unit.” The owner also owns, with all other owners, the property surrounding the units, which is called the “common area.” Owners pay a monthly fee to cover maintenance and repairs to the common areas, which generally include sidewalks, parking areas, landscaping, swimming pools and the exteriors of the buildings.

A planned community is similar to a condominium, except the owner usually owns the building and the land directly underneath it. Most of the rest of the planned community would be common areas owned by all the owners and maintained by a homeowner association. Like the condominium, a monthly fee is generally assessed for upkeep of the common areas.

The condominium or homeowner association usually has a board of directors made up of owners. The board makes rules and regulations governing the use of the common areas and is also responsible for overseeing the association’s finances.

When a newly constructed house is being purchased, the Uniform Condominium Act and the Pennsylvania Uniform Planned Community Act require the seller (if also the declarant) to give the buyer a public offering statement. These are slightly different requirements that are in place for the sale of an existing unit or house which, with some exceptions, obligate a seller to give a buyer a “certificate of resale,” along with the rules and regulations of the association before the agreement can become binding. The certificate of resale contains a list of items that the buyer is entitled to review before settlement occurs. Buyers are given five days to review these documents and to terminate the sale if not satisfied for any reason. When purchasing a new unit in a condominium or a new house in a planned community, the developer (seller) is required to give you additional information and more time to review the documents. Ask your Realtor® for details.

### A Word to the Wise

Many buyers are quite surprised to find out what sorts of limitations a condominium or homeowner association can enforce. Limitations can often include rules on choosing exterior paint color, putting up decorations and ornaments, landscaping and other issues. Certain activities may also be restricted, such as

parking, ball playing and bicycle riding. To avoid surprises, buyers should learn as much as possible about the homeowner or condominium association restrictions **BEFORE** buying this type of property.

## REAL ESTATE TAXES AND ASSESSED VALUE

Currently, Pennsylvania property and school taxes are based on a home's fair market value. These assessments are done on a county-wide basis and not upon the sale of the property. If the property owner or taxing authority (school district, township, etc.) disagree with the new assessment, both sides have certain rights of appeal. A successful appeal by either party could result in the taxes going up or down.

## MAINTENANCE AND RISK OF LOSS

It is a common misconception that a property is guaranteed to be in "good" condition at settlement. In reality, buyers are purchasing the property in the condition it is in at the time both parties sign (execute) the Agreement of Sale unless the terms of the agreement state otherwise. This means that if the buyer wants something to be fixed or replaced before settlement, it should be in writing as a term of the agreement or in an addendum.

Generally, the agreement refers to the property as being in its "present condition" at the time the agreement is signed. If the condition changes before settlement, after accounting for normal wear and tear (and any changes made as a result of the inspection contingency process), the agreement says that the seller can either correct the condition or credit the buyer the cost for the correction. If the seller fails to correct the condition or offer a credit, the buyer can terminate the sale.

Let's use the refrigerator as an example and assume that it is included with the sale of the home. If, after the buyer submits an offer, a few small scratches appear on the door of the refrigerator, then the agreement places no obligation on the seller to do anything because that would be considered normal wear and tear. The seller is prohibited, however, from taking the refrigerator that the buyers think they are getting and replacing it with an older or less-expensive one (that is not present condition). If the refrigerator that the buyers are to receive breaks before settlement, then the seller must either repair it, replace it or provide the buyer with a credit. If the seller fails to do any of those three things, then the buyer has the option to terminate the agreement.

Where there is damage from a fire or any other sort of disaster (flood, tornado, etc.) which is not repaired or replaced prior to settlement, the buyer has the choice to accept the property with the seller's insurance reimbursement, if any, or to terminate the agreement and get any deposits returned.

## HOME WARRANTIES

A home warranty is like an insurance policy that covers some or all of the costs to repair or replace certain appliances or systems of a home. In some transactions, a seller might elect to purchase a warranty that would cover the home after it is sold. Other times a buyer might want to purchase the warranty on his own. The types of warranties and their availability will vary from market to market, so check with your Realtor® if you think purchasing a home warranty might be useful.

## RECORDING

After the seller accepts the Agreement of Sale, but before settlement is complete, a buyer technically has an ownership interest in the property. In fact, buyers are sometimes known as "equitable owners" prior to settlement. Paragraph 20 states that the executed Agreement of Sale, which creates this ownership interest, may not be recorded at the courthouse. When settlement is complete, the new deed will be recorded in the public record as evidence of the buyer's full ownership of the property.



## ASSIGNMENT

Occasionally, a buyer might not want his or her identity known to the seller. For example, an investor seeking to buy several homes on the same block might not want the sellers to know that the same buyer is interested in all the lots. In that sort of transaction, the original offer might be submitted with the name of another person or company identified as the buyer. Once the contract is signed, the identified buyer would then “assign” the right to purchase the property to the true buyer via a separate contract.

This can cause problems for sellers, who might find that they are suddenly in a transaction with a buyer they wouldn’t have accepted had they known the buyer’s true identity from the beginning. To avoid this problem, the agreement states that a buyer may not transfer or assign the Agreement of Sale to another buyer without the seller’s permission. That is, if the identified buyer doesn’t have the seller’s permission to make the assignment, the buyer must go forward with the purchase himself or risk being in default and losing all deposits.

If you know in advance that the right to purchase will be assigned, you should talk to your Realtor®.

The buyer may be required to pay additional transfer tax when assigning the right to purchase. Talk to an attorney and/or accountant about the potential impacts.

## GOVERNING LAW, VENUE AND PERSONAL JURISDICTION

Should a legal problem arise during the transaction that results in the filing of a lawsuit, the parties agree to file and defend the lawsuit within Pennsylvania courts, using Pennsylvania law.

## FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT OF 1980

Typically, the transfer of an interest in real estate is a taxable event. FIRPTA permitted the Internal Revenue Service (IRS) to impose a tax on foreign persons upon the transfer of real estate located within the U.S. A “foreign person” can be a nonresident alien individual, a foreign corporation, a foreign partnership, a foreign trust or a foreign estate. The term does not apply to resident aliens. Foreign persons must inform buyers of their status and provide an affidavit setting forth the information needed to properly record the tax. When purchasing real estate from a foreign person, the buyers are required to act as withholding agents and withhold a percentage of the profit as tax. Failure to properly withhold could result in the buyer being liable for the tax, so it is wise to consult an attorney or accountant if involved in this type of transaction.

## NOTICE REGARDING CONVICTED SEX OFFENDERS (MEGAN’S LAW)

Pennsylvania law requires those convicted of certain sexual offenses to register with the state police under a program commonly known as Megan’s Law. The purpose of Megan’s Law is to provide community notification of the presence of certain individuals in a particular area. The state police website ([www.pameganslaw.state.pa.us](http://www.pameganslaw.state.pa.us)) provides a searchable database for the public’s use.

A search of this nature is not an inspection, nor is the proximity of an offender a material defect that must be disclosed under the Seller Disclosure Law. Buyers who are concerned should make use of the resources available to them prior to submitting an offer.

## REPRESENTATIONS

During the course of a transaction, many people say many things. Buyers will probably hear or read information about the property provided by the seller, the seller’s Realtor® and the buyer’s own Realtor®. Sellers will likely have gotten certain information about the buyers and their financial position from the buyers’ Realtor® or the buyers themselves.

With all this additional information floating around, it is important to remember that the transaction is ruled ONLY by what is written in the agreement and any addenda. If there is something about the transaction that isn't in writing and included as part of the agreement, neither side can rely on it. If you want something to be done, get it in writing even if the other party verbally says they'll take care of it. If there is a proposed term written in the agreement that you dislike or disagree with, delete it before signing the form; if a term is in the agreement you will be bound by it, even if the other party stated that it wouldn't be a big deal. Take the time to read and understand all relevant portions of the agreement and any addenda. The time to deal with any issues is well before settlement, not at the settlement table or after the purchase is complete!

## DEFAULT, TERMINATION AND RETURN OF DEPOSITS

If a party fails to do something that is required by the agreement, that party could be in default. If this happens, the other party may have certain legal rights and other rights granted by the terms of the agreement.

In most transactions, the buyer will have some amount of money paid as a deposit being held in escrow by a broker. The default paragraph of the agreement states that where the buyer is in default (usually for failing to do something necessary to keep the transaction moving forward), the seller will get to keep the buyer's deposits. There is also a choice for the seller to decide whether those damages will be the complete remedy for the default or if the seller will reserve the right to also file a lawsuit for any additional remedy that might be provided by law.

Where the seller is in default, the buyer's rights are primarily defined by law, not by the agreement. If the buyer wants to move forward with the purchase, but the seller backs out for a reason not permitted in the agreement, the buyer may be able to bring a lawsuit for damages or to force the seller to complete the sale.

There are many places in the agreement where your action (or inaction) could lead to a default. Your Realtor® can help keep track of your various deadlines and responsibilities to make sure you don't inadvertently end up in default.

Any deposits will be given to the real estate broker (unless another "escrow agent" is named in the agreement) and will be applied to the purchase price. State laws strictly outline a real estate broker's escrow duties and dictate that deposits be kept in an escrow account separate from the real estate broker's regular business account.

## MEDIATION

It used to be that if a dispute between a buyer and seller couldn't be resolved amicably between the parties, the only other option was to go to court.

In many areas of Pennsylvania, the local association of Realtors® offers a mediation process that brings the parties together with a trained mediator at a moderate cost to encourage an amicable solution. The language in this paragraph indicates that the buyer and seller agree in advance to mediate using the mediation process offered by the local association of Realtors® if a dispute arises. If the dispute cannot be resolved, the parties are still free to go to court. You can ask your Realtor® for more information.

## RELEASE

Depending on the terms negotiated by the parties, the buyer may have various opportunities to renegotiate or to terminate the agreement. Where the buyer elects to move forward with the transaction or misses a deadline, the agreement states that the buyer will accept the property and agree to this release.

In general terms, the release states that the buyers understand that if they accept the property with certain conditions, they can't then come back and file suit against the seller over those conditions. For example, if the buyer does an inspection that detects roofing problems, but chooses to move forward without asking the seller to fix the roof, the buyer can't come back later after the roof starts leaking and sue the seller for the cost of making repairs to the roof.

It is important to note that the release does NOT protect the seller in the case of fraud or any other default by the seller. So if the seller agrees to fix a problem with the roof but then lies about getting the repair done, the buyer is probably not bound by the release language of the agreement. Because the release is so important, it is a good idea to ask your Realtor® or an attorney if you have any questions.

## REAL ESTATE RECOVERY FUND

Pennsylvania law can protect consumers in the unlikely event that there is misconduct on the part of the real estate licensees involved in the transaction. If you successfully sue the licensee or licensees for their actions but are unable to collect your judgment from them, the Real Estate Recovery Fund can be a source to collect some, if not all, of your funds.

## COMMUNICATIONS WITH BUYER AND/OR SELLER

Communication between the parties and their Realtors® is the key to a smooth, successful transaction. Copies of important documents, such as the time-sensitive Loan Estimate and Closing Disclosure, should be provided to your Realtor® as soon as you receive them.

In most cases, communicating something to a buyer agent is viewed as the same as communicating something to the buyer. The same holds true for the seller agent and the seller. The only exception to this rule is the resale certificates for condominiums and planned communities. These certificates must be delivered to the buyer before the buyer's time to review these documents would begin, so this allows the seller's agent to send those documents to the buyer directly rather than going through the buyer agent.

## HEADINGS

You will see that each of the paragraphs (and some subparagraphs) in the agreement are labeled with a heading. The headings are to help organize and locate information and are not interpreted as providing any rights or responsibilities to the parties or their agents.

## SPECIAL CLAUSES

During the negotiation process, both the buyer and seller will probably make a number of changes to the preprinted text of the agreement. Sometimes these changes will just help clarify the preprinted text (changing the number of days for an inspection, for example), and sometimes they will substantially alter the text (perhaps by crossing out and rewriting a paragraph to better reflect the parties' intention). In certain other cases, the buyer and seller will decide that there is a need to include something completely new in the agreement.

The special clauses paragraph provides the parties some space to add new or different terms that aren't included in the preprinted text. There is also a list of some commonly used PAR addenda that the parties might decide to use if they are relevant to the transaction, along with some blank lines to indicate that some other addenda are attached.

