

RESIDENTIAL REAL ESTATE PURCHASE & SALE AGREEMENT**GENERAL COMMENTS:**

- A. **Use.** Do not use this form for sale of anything other than a house. Use other NWMLS forms for a condominium (No. 28), vacant lot or land (No. 25), or a manufactured home (No. 23).
- B. **Fill in Completely.** Be sure it is completely filled in. The only blanks that are not required to be filled are the MLS number, tax parcel number and counter offer expiration date. It may be legally unenforceable if anything other than these blanks are not filled in. If unenforceable, you could be liable for malpractice to the Buyer or Seller. If a blank is not applicable to this sale, mark it "N/A," or line out the sentence or clause.
- C. **Common Mistakes.** The most frequent causes for this Agreement being legally unenforceable are: failure to check a box, lack of, or an incomplete legal description; lack of all signatures; incomplete payment terms; and failure to attach a note and deed of trust (or real estate contract) if there is Seller financing.
- D. **Potential Malpractice Liability.** Under the "Heritage House" and other cases, the courts will hold you to the malpractice standards of an attorney in filling in this form. If an attorney would have done it differently, you could be liable for malpractice. Also, you can only fill in blanks of attorney written forms (such as this one) or insert attorney drafted or approved special clauses. Some attorney prepared special clauses appear at the front of this Manual.

ASSISTANCE FILLING IN THE BLANKS: The following numbers refer to the numbers on the sample form shown in this Manual:

1. **Date.** The date the Agreement is prepared. The exact date is not too important because the actual date the Buyer and Seller sign the Agreement is inserted by their signatures below. This is just a reference date to be used when referring to the Agreement. This is not the date of mutual acceptance (unless mutual acceptance happens to occur on this date).

NOTE: The date of mutual acceptance is important because it triggers many of the time lines in the Purchase and Sale Agreement. There is no blank to insert the date of mutual acceptance of the Agreement. Mutual acceptance occurs when a party accepts an offer by signing it without making any changes and delivering the signed Agreement to the other party. You can confirm the date of mutual acceptance with a facsimile confirmation sheet if the acceptance was faxed to the other party. A "received" stamp will also confirm the day that the acceptance was delivered. Alternatively, you may make a note of the day on which you received or delivered the final acceptance.

2. **MLS Number.** Insert the NWMLS listing number for the Property. This is for reference only and is not a material term of the Agreement.
3. **Names of Buyer and Seller.** Insert the names of all the Buyers and Sellers and describe their status. For instance, if the Buyer or Seller consists of a husband and wife, insert both their names and explain their status as husband and wife. For example:

Mary A. and John D. Smith, husband and wife.

If there is only one individual signing, explain the status in which they are purchasing or selling the Property. For example:

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Mary A. Smith, a married person dealing with her sole and separate property
or

Mary A. Smith, a single person

If it is a corporation or other entity, describe the type of entity. For example:

ABC LLC, a Washington limited liability company

NOTE: Be careful about using “and/or assigns.” It is common for the Buyer to be identified as, for example, “John Q. Smith and/or assigns.” From a Buyer’s perspective, that language generally allows the Buyer to assign the right to purchase the Property to someone else. However, from a Seller’s perspective, it could be trouble for the Seller if the Buyer assigns to another Buyer who is a poor credit risk or is a shell corporation. If you represent the Seller, you could be liable to the Seller in such cases. To provide protection to the Seller, you can add language stating “and/or assigns approved by Seller.”

4. **Tax Parcel Numbers.** Insert the tax parcel number or numbers. This is for reference only and is not a material term of the Agreement.

NOTE: Do not rely on the tax parcel number as a replacement for the legal description. The description of the Property in the tax records is often not a complete legal description.

5. **County.** Insert the county in which the Property is located.
6. **Street Address.** Insert the street address of the Property.
7. **Zip Code.** Insert the zip code for the Property.
8. **Included Items.** Check the items that will be included as part of the sale. Write in any items that are not otherwise identified as a Specific Term or in General Terms paragraph c, “Included Items,” but which will be included in the sale.

NOTE: Paragraph c of the General Terms provides that the items listed in Specific Term No. 4 are included only if the corresponding box is checked for that item. In addition to the items listed in Specific Term No. 4, a laundry list of items included in the sale appears in paragraph c.

NOTE: If any of the Included Items are leased or encumbered, paragraph c requires that Seller acquire and clear title to such items at or before Closing.

9. **Legal Description.** Insert the legal description or attach it as an exhibit. Be sure the legal description is correct and complete. A street address is not sufficient. Do not use an abbreviated description because it does not contain the entire legal description. A complete legal description may be obtained from the Seller’s deed or the deed of trust on the Property. The best place to get a legal description is from a title insurance company. You can photocopy the legal description from the Preliminary Title Commitment or the Seller’s deed and attach it as an exhibit to the Purchase and Sale Agreement. This reduces the risk of transcription errors.

DO NOT USE PARCEL NUMBERS OR TAX STATEMENTS FOR LEGAL DESCRIPTIONS. Tax statements contain abbreviated and often times incomplete descriptions of the property.

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NOTE: General Term d, "Condition of Title," states that the Selling Licensee, Listing Agent or Closing Agent may insert, attach or correct the legal description of the property. If the legal description is not attached at the time of mutual acceptance, it should be attached immediately after. The Buyer or Seller can revoke this authority. Thus, if the legal description has not been corrected before the Buyer or Seller wants out of the deal, the Agreement could be unenforceable.

10. **Purchase Price.** Insert the Purchase Price. It is advisable to both spell out and insert the numbers, e.g. "One Hundred Thousand Dollars (\$100,000.00)."
11. **Earnest Money.** Check the appropriate box to indicate whether the Earnest Money will be held by the Selling Broker or Closing Agent. Note that if the parties elect to have the Earnest Money held by Selling Broker, General Term b, "Earnest Money," permits the Selling Broker to transfer the Earnest Money to the Closing Agent.

Paragraph b of the General Terms states that Buyer must deliver the Earnest Money within two days after mutual acceptance of the Agreement. However, it is common for Selling Brokers and Licensees to require that the Earnest Money be delivered to Selling Licensee upon the initial presentation of the offer to Seller. In fact, it is generally in the Buyer's interest to have paid their Earnest Money upon the presentation of Buyer's offer because this will make Buyer look like a serious purchaser.

Selling Licensee then deposits any check to be held by Selling Broker within three days after receipt of the check or three days after mutual acceptance, whichever occurs later. If, for instance, Buyer delivers a check to Selling Licensee upon presentation of the offer but the Agreement is not accepted by Seller for another week, Selling Licensee is not obligated to deposit the check until three days after mutual acceptance by the Seller. On the other hand if the Buyer does not deliver the check until after mutual acceptance of the Agreement, then Selling Licensee has three days after receipt from the Buyer to deposit the check. If the Earnest Money is cash, the Washington Administrative Code requires that the Selling Licensee deposit the cash the next banking day.

12. **Form and Amount of Earnest Money.** Insert the amount of the Earnest Money next to the line indicating the method of payment. For instance, if the Earnest Money is \$10,000 paid by check, insert "10,000.00" on the line following personal check. If the Buyer has already delivered the Earnest Money to the Selling Licensee, the Selling Licensee can acknowledge receipt on this line (e.g. "Received by Selling Licensee 1/7/99").

If the Earnest Money is to be paid by a note, you may wish to use NWMLS Form 31, the Earnest Money Promissory Note. If the Seller accepts Earnest Money in the form of a promissory note, consider making it payable "on acceptance by Seller," or "on Buyer's waiver or satisfaction of the inspection contingency." In any event, do not insert the words "payable on closing." If the sale never closes, the note may never be payable. Instead if the parties wish the Earnest Money note to be payable on the Closing Date, insert the calendar date on which closing is to occur, e.g., "December 15, 1998." If the Closing Date is later extended you should amend the promissory note and indicate an extension of the note due date accordingly.

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13. **Default.** Check the appropriate box to indicate what remedy Seller will have upon Buyer's breach of the Agreement. Check "Forfeiture of Earnest Money" if the parties agree that the Seller's sole remedy in the case of Buyer's breach is to retain that portion of the Earnest Money which does not exceed five percent of the Purchase Price. Check the "Seller's Election of Remedies" box if the parties agree that the Seller will have the full range of remedies available at law (e.g., Seller may keep the Earnest Money as liquidated damages, sue for actual damages or seek specific performance of the Agreement).

NOTE: Recent case law suggests that it may be necessary to have the Buyer and Seller initial next to the Forfeiture of Earnest Money Clause in the General Terms of the Agreement in order for the forfeiture clause to be enforceable. Unfortunately the law is unclear on this issue. If the parties wish to ensure that the Forfeiture of Earnest Money clause will be enforceable, they should use the Statutory Safe Harbor clause on NWMLS's Form 22D, Optional Clauses Addendum. This clause specifically provides places for the parties to initial. It is important that if the Buyer uses this Statutory Safe Harbor clause, that the Seller's initials be obtained below the clause as well. If the Seller does not initial by the forfeiture clause, the clause and the Agreement itself are likely to be enforceable.

Here is some background explaining the law on this issue: In the *Lind* case decided in 1989, the Washington Court of Appeals ruled that a seller could not retain earnest money as liquidated damages unless the seller could prove at trial that the seller actually was damaged by the buyer's breach of the purchase and sale agreement. In the *Lind* case, the seller sold the property for a higher price to someone else after the buyer's breach. The buyer argued that the seller was not damaged by the buyer's breach and the court found that the seller was not entitled to keep the earnest money.

In response to the *Lind* case, the legislature passed RCW 64.04.005, commonly referred to as the safe harbor statute, which provides that a seller can retain the earnest money as the seller's sole and exclusive remedy for the buyer's breach if the amount forfeited does not exceed 5% of the purchase price. The statute also provides that if the property is primarily for personal, family or household purposes, then the clause must be separately initialed or signed by the buyer and seller.

Subsequently, the Washington Supreme Court disapproved the *Lind* case and made it clear that a seller does not have to prove that it was actually damaged in order to retain the earnest money under the common law. However, these cases were decided based on agreement entered into before the safe harbor statute came into effect.

A 1998 Court of Appeals case, *Meyer v. Consumer's Choice, Inc.*, decided after the statute came into effect, indicates that the statute may be mandatory. In other words, in residential type transactions, the parties would be required to initial next to the language stating that forfeiture of the earnest Money is the seller's sole remedy.

In summary, it is unclear at this time whether Washington law requires the initials of the parties to have a forfeiture of earnest money provision be enforceable. NWMLS decided to keep the lines for initials out of Form 21 and create an optional clause if the parties wish to initial by the forfeiture language. This is because the spaces for initials was creating an offer-counteroffer situation in cases where the buyer initialed the safe harbor paragraph but the seller did not.

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Generally speaking, sellers would want to choose “Seller’s Election of Remedies” option. This is because the seller generally does not want to limit its available remedies to forfeiture of the earnest money. However, if the seller determines that the damages caused by a buyer default are likely to be insubstantial, then the seller may consider using the “Forfeiture of Earnest Money” option.

Buyers, on the other hand typically want to initial the “Forfeiture of Earnest Money” option because this limits their risk to the loss of the earnest money rather than exposing themselves to possible claims for specific performance or actual damages. However, a forfeiture of the earnest money could allow a seller to obtain a windfall from a buyer’s failure to close if the seller was not actually harmed (i.e., seller netted more from the resale after deducting carrying costs and costs of sale). In other words, the “Forfeiture of Earnest Money” clause is most likely to disadvantage the buyer in a rising market because if the price increases after buyer’s breach, a seller would have a more difficult time proving actual damages.

14. **Title Insurance Company.** Insert the name of the title insurance company. A Seller who has already ordered a preliminary title commitment may wish to use the same title company to issue the policy.
15. **Closing Agent.** Check the appropriate box to indicate whether the Closing Agent will be (1) a qualified Closing Agent of Buyer’s choice or (2) a named Closing Agent. When filling in a specific name for the Closing Agent use the company name, not the individual escrow officer’s name. Never insert words like “as agreed to” or “to be agreed to later.” If the agreement is contingent on financing, a Buyer may wish to choose “a qualified Closing Agent of Buyer’s choice” so that it can use an agent designated by Buyer’s lender as the Closing Agent.
16. **Closing Date.** Insert the date on which the sale must be closed. Putting a specific day or time period provides certainty to both the Buyer and the Seller, especially because one of them may be without a place to live for some period. If the parties wish to have a period of time in which closing will occur, be specific about the time period in which Closing can occur. For instance you can insert “after December 5, 1998, but no later than December 10, 1998, at the option of Buyer.” You should identify whether it is the Buyer or Seller who chooses the specific day on which the Closing will occur within that time frame. If the Closing Date is inadvertently scheduled on a Saturday, Sunday, or legal holiday, General Terms paragraph f provides that closing shall occur on the next day that is not a Saturday, Sunday, or legal holiday.

NOTE: If the parties later wish to change the Closing Date, this modification of the Agreement must be made in writing.

17. **Possession Date.** Check the appropriate box to indicate when Buyer will be entitled to possession (1) “on Closing;” (2) “_____ calendar days after Closing;” or (3) some other arrangement. Note that the second option refers to calendar days, so weekends and holidays are included in the calculation of time. Also note that if you want to give the Seller a full three days of post-closing possession, not counting the day of Closing itself, you should fill in “third calendar day after Closing.” If the parties agree to possession after Closing, be sure that the Buyer’s insurance policy will provide coverage during the time the Buyer is not in

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physical possession of the Property. General Terms paragraph f requires Seller to deliver keys to the Property on the Closing Date or Possession Date, if the Possession Date differs from the Closing Date. This may not be suitable in all transactions, such as a situation where the Seller retains possession on closing pursuant to a lease back agreement, in which case, it may be appropriate for the Buyer to receive a set of keys on Closing.

If the Property is subject to an existing lease, check the third box and write in for example “on Closing subject to an existing lease expiring June 30, 1999. Buyer is entitled to the rent following Closing.”

18. **Offer Expiration Date.** Insert the date by which the Buyer’s initial offer must be accepted. Note that an acceptance is not legally effective until it is delivered to the Buyer, Selling Licensee, or at the branch office of the Selling Broker. Acceptance must be delivered by 9:00 p.m. of the specified date or the offer expires.
19. **Counteroffer Expiration Date.** Insert the date by which the Buyer must deliver acceptance of a Seller’s counteroffer, if any. Most Buyers making an offer will not complete this blank. Instead, it will be completed by the Seller if the Seller makes a counteroffer. As with the initial offer, acceptance of a counteroffer is not legally effective until acceptance is delivered to the other party. In other words, acceptance is not effective until it is delivered to the Seller, Listing Agent or at the branch office of the Listing Broker.

If the parties do not insert a Counteroffer Expiration Date on the initial presentation of the offer, General Terms paragraph s, “Acceptance or Counteroffer,” provides that if no expiration date is specified for a future counteroffer, the counteroffer shall expire at 9:00 p.m. on the second day after the counteroffer is signed by the last party making the counteroffer, unless sooner withdrawn.

NOTE: Once an offer or counteroffer is made, deliver it to the other party as soon as possible. Delay could result in the other party claiming that it is your fault that he or she did not have time to consider or sign the offer before it was withdrawn or expired.

WITHDRAWALS OF OFFERS OR COUNTEROFFERS. General Terms paragraph s, “Acceptance or Counteroffer,” states that the Buyer has until 9:00 p.m. of the Counteroffer Expiration Date to accept the counteroffer, “unless withdrawn.” An offer or counteroffer can be withdrawn before acceptance is delivered to the other party. Withdrawal of a counteroffer or offer must be communicated in writing. General Term k, “Notices,” specifically states “Any notice required or permitted in, or related to, this Agreement (including revocations of offers or counteroffers) must be in writing.” If a party decides to withdraw an offer or counteroffer, use NWMLS Counteroffer Withdrawal Form No. 36A.

NOTICES. Notices may be drafted on NWMLS Form 34. There are too many varieties of Notices to print in hard copy and stock a full selection. However, a variety of typical Notice forms are available on Xpress Forms only.

HANDLING OFFERS AND COUNTEROFFERS. Always try to use the separate NWMLS Counteroffer Addendum Form No. 36 and be sure it is dated and signed. It is common to make changes right on the Purchase and Sale Agreement and have all the parties initial and date in the margin. This is all right when both parties are in complete agreement

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and are sitting in front of you. However, this rarely happens and, therefore, each change made by a party is a “counteroffer.” Since the Buyer and Seller will be signing separately, use a separate counteroffer addendum even on something as simple as a price change. This also makes the Purchase and Sale Agreement easier to read, especially after faxing or copying. If you do make changes to the Purchase and Sale Agreement form, have the parties initial next to each change and be sure that they put a date beside each initial.

20. **Addenda.** Insert each addendum and attachment in this space. You should identify the form number and the title, *e.g.*, “22A Financing Addendum, 22B Contingency Addendum, and 35 Inspection Addendum.”

NOTE: It is important to identify all addenda to ensure they will be incorporated by reference as part of the Agreement. This is the only place that identifies that there are contingencies such as financing or inspection.

If you represent the Seller, do not reference Form 17, the Residential Real Estate Property Disclosure Form, because it may become a part of the contract. Making Form 17 part of the contract has several results, including that the attorneys’ fees provision applies and the longer six-year statute of limitations applies (as opposed to the three-year statute of limitations period for misrepresentations). In addition, Form 17 specifically says it is not a part of the contract. Referencing the form in the contract only confuses the issue.

21. **Selling Licensee Disclosure.** Check the appropriate box to indicate which party the Selling Licensee represented.

NOTE: The disclosure for the Selling Broker is made in General Terms paragraph t, “Agency Disclosure,” which states that the “Selling Broker represents the same party that Selling Licensee represents.” This paragraph goes on to disclose that the Selling Broker is acting as a dual agent if the Listing Broker also represents the Seller.

COMMISSION. RCW 18.85.230(13) states that a licensee may not charge or accept compensation from more than one party in a transaction “without first making full disclosure in writing of all the facts to all the parties interested in the transaction.” Also, the Agency Reform Act requires that all parties must consent to an agent’s receiving compensation from more than one party. In situations where the Selling Broker or the Listing Broker is entitled to receive compensation from more than one party, full disclosure must be made to all parties in writing even though General Terms paragraph u contains the consent of both the Seller and Buyer.

22. **Listing Agent Disclosure.** Check the box to indicate whether the Listing Agent represented the Seller or both parties.

NOTE: The disclosure for the Listing Broker is made in General Terms paragraph t, “Agency Disclosure,” which states, “Listing Broker represents the same party that the Listing Licensee represents.” The paragraph goes on to disclose that the Listing Broker is acting as a dual agent if the Listing Broker also represents the Buyer.

23. **Services of Closing Agent for Payment of Utilities.** Check the box to indicate whether the parties request the services of the Closing Agent in paying off unpaid utility charges or

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whether they waive these services. RCW 60.80 provides that unless the Buyer and Seller waive in writing the services of a Closing Agent in paying off unpaid utility charges, then the Seller must include in the Purchase and Sale Agreement a request to the Closing Agent to disburse settlement funds necessary to satisfy unpaid utility charges affecting the Property. The request to the Closing Agent must include the names and addresses of all utilities having lien rights. Closing Agents may charge a fee for these services. If the services are not waived, attach NWMLS Form 22K Identification of Utilities Addendum. This form requires the Seller to list the names and addresses of the utility providers.

We specifically use the word “waive” to make it easier for licensees to explain to Buyers and Sellers that the Seller is required to include a request to the Closing Agent in the Agreement unless both parties waive those services in writing. Note that General Terms paragraph h, “Closing Costs and Prorations,” provides that the parties request the services of Closing Agent unless they check the “waived” box in Specific Term No. 16.

24. **Signatures and Dates.** The Buyer and Seller should sign and date the Agreement. If husband and wife, both must sign.

If the Buyer or Seller is a corporation, partnership, limited liability company, estate or trust, put (1) the entity name (2) the word “By” to indicate the person is signing as a representative of the entity (3) the signature of the officer, trustee, personal representative or partner and (4) the individual’s title. For example:

ABC Corp., By: _____, Its President

or

Smith Family Trust dated December 10, 1998, By: _____,
Trustee

If it is being signed by a Power of Attorney, the person signing should indicate they are acting as the attorney-in-fact. For example:

John Q. and Mary Smith, By: _____, their Attorney-in fact.

If the Agreement is signed by someone with a Power of Attorney, ask to see a copy of the Power of Attorney. If the Power of Attorney has not been recorded, the Closing Agent will need the original to record at Closing. Corporations, limited liability companies, trusts and guardians cannot sign by a Power of Attorney.

25. **Addresses.** Insert the street and apartment or unit, if appropriate.
26. **City, State and Zip.** Insert the city, state and zip code to complete the address.
27. **Phone and Fax Numbers.** Insert the Buyer’s and Seller’s phone number and facsimile numbers, including area code.
28. **E-mail.** Insert Buyer’s and Seller’s e-mail addresses, if available. The parties may receive documents and other correspondence related to the purchase and sale by e-mail. However, e-mail transmissions are not effective to give Notice or to communicate and offer or acceptance, even with electronic signatures unless the parties otherwise agree in writing.

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29. **Selling and Listing Brokers.** Insert the name under which the Broker is licensed. If the Broker is a company, insert the company name, *e.g.*, “ABC Realty, Inc.” If the Broker is an unincorporated proprietorship, insert the owner/proprietor’s name as shown on the license. In the past, there has been much confusion about this issue — the easiest solution is to look at the company real estate license and insert whatever it says. It is important that this information be filled in because it is a part of the Agency Disclosure. If it is an in-house transaction, insert the Broker’s name in both the Selling Broker and Listing Broker spaces.
30. **MLS Office Number.** Insert the NWMLS number assigned to the office. A list of all offices and their office numbers can be found in the membership information function in the Locator System and also in the Office-Agent Roster.
31. **Selling Licensee and Listing Agent.** Insert the names of the Selling Licensee and Listing Agent. If the same agent represented both parties, insert the agent’s name in both the Selling Licensee and Listing Agent spaces.
32. **Phone and Fax Numbers of Agents.** Insert the phone and facsimile numbers of the Selling Licensee and Listing Agent’s branch offices.
33. **Initials of Buyer and Seller.** It is advisable to have the Buyer(s) and Seller(s) initial in these spaces to confirm that the second, third and fourth pages are in fact the ones they signed.

ADDENDA CHECKLIST: Consider whether it is appropriate to attach the following NWMLS forms to the Purchase and Sale Agreement.

Miscellaneous Addenda

- 22A Financing Addendum
- 22B Buyer’s Home Contingency Addendum
- 22F FHA Importance of Home Inspections Notice
- 22C Payment Terms Addendum
- 22M Residential Promissory Note
- 22N Optional Clauses for residential Promissory Note
- LPB Form 22 Deed of Trust
- LPB Form 44 Real Estate Contract
- 22D Optional Clauses Addendum
- 22E Certification Under the Foreign Investment in Real Property Tax Act (“FIRPTA”)
- 22J Lead Based Paint Disclosure Addendum
- 22K Identification of Utilities Addendum
- 31 Earnest Money Note
- 26 Presale Addendum
- 26A Presale Addendum Optional Clauses
- 33 Cooperative Apartment Addendum
- 35 Inspection Addendum
- 38A Back-Up Addendum
- 39 Second Buyer’s Addendum
- 43 Reservation Agreement
- 65 Rental Agreement - Occupancy Prior to Closing

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Local Addenda

- 22G Snohomish County “Right to Farm” Disclosure Statement
- 22H Snohomish County “Right to Practice Forestry” Disclosure Statement
- 22I Snohomish County “Designated Mineral Land” Disclosure
- 22Z Snohomish County Smoke Detector Certification Addendum
- 37 King County Percolation Disclosure Form
- 22L King County Addendum
- 22P Skagit County Right to Farm Disclosure

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- 1. **Date:** _____, 200____ **MLS No.:** _____
- 2. **Buyer:** _____
- 3. **Seller:** _____
- 4. **Property: Tax Parcel Nos.:** _____ (_____ County)
Street Address: _____ Washington _____
Included Items: stove/range refrigerator washer dryer dishwasher hot tub fireplace insert
 wood stove satellite dish security system other _____
Legal Description: _____
- 5. **Purchase Price:** _____
- 6. **Earnest Money:** (To be held by Selling Broker Closing Agent)
Personal Check: _____
Note: _____
Other (_____): _____
- 7. **Default:** (check only one) Forfeiture of Earnest Money Seller's Election of Remedies
- 8. **Title Insurance Company:** _____
- 9. **Closing Agent:** a qualified closing agent of Buyer's choice _____
- 10. **Closing Date:** _____
- 11. **Possession Date:** on Closing _____ calendar days after Closing _____
- 12. **Offer Expiration Date:** _____
- 13. **Counteroffer Expiration Date:** _____
- 14. **Addenda:** _____
- 15. **Agency Disclosure:** Selling Licensee represents Buyer Seller both parties neither party
Listing Agent represents Seller both parties
- 16. **Services of Closing Agent for Payment of Utilities:** Requested (Attach NWMLS Form 22K) Waived

Buyer's Signature Date

Buyer's Signature Date

Buyer's Address

City, State, Zip

Phone Fax

Buyer's E-mail Address

Selling Broker MLS Office No.

Selling Licensee (Print)

Phone Fax

Seller's Signature Date

Seller's Signature Date

Seller's Address

City, State, Zip

Phone Fax

Seller's E-mail Address

Listing Broker MLS Office No.

Listing Agent (Print)

Phone Fax

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GENERAL TERMS
(continued)

- a. **Purchase Price.** Buyer agrees to pay to Seller the Purchase Price, including the Earnest Money, in cash at Closing, unless otherwise specified in this Agreement. Buyer represents that Buyer has sufficient funds to close this sale in accordance with this Agreement and is not relying on any contingent source of funds or gifts, except to the extent otherwise specified in this Agreement. 1
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- b. **Earnest Money.** Buyer agrees to deliver the Earnest Money within 2 days after mutual acceptance of this Agreement. Selling Licensee will deposit any check to be held by Selling Broker as Earnest Money within 3 days after receipt or mutual acceptance whichever occurs later. If the Earnest Money is held by Selling Broker and is over \$10,000.00 it shall be deposited into an interest bearing trust account in Selling Broker's name provided that Buyer completes an IRS Form W-9. Interest, if any, after deduction of bank charges and fees, will be paid to Buyer. Buyer agrees to reimburse Selling Broker for bank charges and fees in excess of the interest earned, if any. If the Earnest Money held by Selling Broker is over \$10,000.00 Buyer has the option to require Selling Broker to deposit the Earnest Money into the Housing Trust Fund Account, with the interest paid to the State Treasurer, if both Seller and Buyer so agree in writing. If the Buyer does not complete an IRS Form W-9 before Selling Broker must deposit the Earnest Money or the Earnest Money is \$10,000.00 or less, the Earnest Money shall be deposited into the Housing Trust Fund Account. Selling Broker may transfer the Earnest Money to Closing Agent. Buyer agrees to pay financing and purchase costs incurred by Buyer. If all or part of the Earnest Money is to be refunded to Buyer and any such costs remain unpaid, the Selling Broker or Closing Agent may deduct and pay them therefrom. 5
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- c. **Included Items.** Any of the following items located in or on the Property are included in the sale: built-in appliances; wall-to-wall carpeting; curtains, drapes and all other window treatments; window and door screens; awnings; storm doors and windows; installed television antennas; ventilating, air conditioning and heating fixtures; trash compactor; fireplace doors, gas logs and gas log lighters; irrigation fixtures; electric garage door openers; water heaters; installed electrical fixtures; lighting fixtures; shrubs, plants and trees planted in the ground; and all bathroom and other fixtures. However, items identified in Specific Term No. 4 are included only if the corresponding box is checked. If any of the above Included Items are leased or encumbered, Seller agrees to acquire and clear title at or before Closing. 18
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- d. **Condition of Title.** Buyer and Seller authorize Selling Licensee, Listing Agent or Closing Agent to insert, attach or correct the Legal Description of the Property. Unless otherwise specified in this Agreement, title to the Property shall be marketable at Closing. The following shall not cause the title to be unmarketable: rights, reservations, covenants, conditions and restrictions, presently of record and general to the area; easements and encroachments, not materially affecting the value of or unduly interfering with Buyer's reasonable use of the Property; and reserved oil and/or mining rights. Monetary encumbrances not assumed by Buyer shall be paid by Seller on or before Closing. Title shall be conveyed by a Statutory Warranty Deed. If this Agreement is for conveyance of a buyer's interest in a Real Estate Contract, the Statutory Warranty Deed shall include a buyer's assignment of the contract sufficient to convey after acquired title. 25
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- e. **Title Insurance.** Seller authorizes Buyer's lender or Closing Agent, at Seller's expense, to apply for a standard form owner's policy of title insurance, with homeowner's additional protection and inflation protection endorsements if available at no additional cost, from the Title Insurance Company. The Title Insurance Company is to send a copy of the preliminary commitment to both Listing Agent and Selling Licensee. The preliminary commitment, and the title policy to be issued, shall contain no exceptions other than the General Exclusions and Exceptions in said standard form and Special Exceptions consistent with the Condition of Title herein provided. If title cannot be made so insurable prior to the Closing Date, then as Buyer's sole and exclusive remedy, the Earnest Money shall, unless Buyer elects to waive such defects or encumbrances, be refunded to the Buyer, less any unpaid costs described in this Agreement, and this Agreement shall thereupon be terminated. Buyer shall have no right to specific performance or damages as a consequence of Seller's inability to provide insurable title. 34
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BUYER: _____ DATE: _____ SELLER: _____ DATE: _____ 45

RESIDENTIAL REAL ESTATE PURCHASE AND SALE AGREEMENT
GENERAL TERMS
(continued)

- f. **Closing.** This sale shall be closed by the Closing Agent on the Closing Date. If the Closing Date falls on a Saturday, Sunday, or legal holiday as defined in RCW 1.16.050, the Closing Agent shall close the transaction on the next day that is not a Saturday, Sunday, or legal holiday. "Closing" means the date on which all documents are recorded and the sale proceeds are available to Seller. Seller shall deliver keys to Buyer on the Closing Date or on the Possession Date if the Possession Date differs from the Closing Date. 46
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- g. **Possession.** Buyer shall be entitled to possession at 9:00 p.m. on the Possession Date. Seller agrees to maintain the Property in its present condition, normal wear and tear excepted, until the Buyer is entitled to possession. 51
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- h. **Closing Costs and Prorations.** Seller and Buyer shall each pay one-half of the escrow fee unless this sale is FHA or VA financed, in which case it shall be paid according to FHA or VA regulations. Taxes for the current year, rent, interest, and lienable homeowner's association dues shall be prorated as of Closing. Buyer agrees to pay Buyer's loan costs, including credit report, appraisal charge and lender's title insurance, unless provided otherwise in this Agreement. If any payments are delinquent on encumbrances which will remain after Closing, Closing Agent is instructed to pay them at Closing from money due, or to be paid by, Seller. Buyer agrees to pay for remaining fuel in the fuel tank if, prior to Closing, Seller obtains a written statement as to the quantity and current price from the supplier. Seller agrees to pay all utility charges, including unbilled charges. Unless waived in Specific Term No. 16, Seller and Buyer request the services of Closing Agent in disbursing funds necessary to satisfy unpaid utility charges in accordance with RCW 60.80 and Seller agrees to provide the names and addresses of all utilities providing service to the Property and having lien rights (attach NWMLS Form 22K Identification of Utilities or equivalent). 53
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- i. **Sale Information.** The Listing Agent or Selling Licensee are authorized to report this Agreement (including price and all terms) to the Multiple Listing Service that published it and to its members, financing institutions, appraisers, and anyone else related to this sale. Buyer and Seller expressly authorize all lenders, financial institutions, Closing Agents, appraisers, title insurance companies, and others related to this Sale, to furnish the Listing Agent and/or Selling Licensee, on request, any and all information and copies of documents concerning the status, progress and final disposition of financing, appraisal, Closing, title condition, and any other matter concerning this sale, including buyer's credit report. In addition, Buyer shall provide any additional consent or authorization necessary to permit Buyer's lender or financing institution to provide information concerning the status, progress and final disposition of financing to the Listing Agent and/or Selling Licensee. 64
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- j. **FIRPTA - Tax Withholding at Closing.** The Closing Agent is instructed to prepare a certification (NWMLS Form 22E or equivalent) that Seller is not a "foreign person" within the meaning of the Foreign Investment In Real Property Tax Act. Seller agrees to sign this certification. If Seller is a foreign person, and this transaction is not otherwise exempt from FIRPTA, Closing Agent is instructed to withhold and pay the required amount to the Internal Revenue Service. 73
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- k. **Notices.** Unless otherwise specified in this Agreement, any notice required or permitted in, or related to, this Agreement (including revocations of offers or counteroffers) must be in writing. Notices to Seller must be signed by at least one Buyer and shall be deemed given only when the notice is received by Seller, by Listing Agent or at the licensed office of Listing Agent. Notices to Buyer must be signed by at least one Seller and shall be deemed given only when the notice is received by Buyer, by Selling Licensee or at the licensed office of Selling Licensee. Receipt by Selling Licensee of a Real Property Transfer Disclosure Statement, Public Offering Statement and/or Resale Certificate shall be deemed receipt by Buyer. Selling Licensee and Listing Agent have no responsibility to advise of receipt of a notice beyond either phoning the party or causing a copy of the notice to be delivered to the party's address shown on this Agreement. Buyer and Seller must keep Selling Licensee and Listing Agent advised of their whereabouts in order to receive prompt notification of receipt of a notice. 77
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- l. **Computation of Time.** Unless otherwise specified in this Agreement, any period of time stated in this Agreement shall start on the day following the event commencing the period and shall expire at 9:00 p.m. of the last calendar day of the specified period of time. If the last day is a Saturday, Sunday or legal holiday as defined in RCW 1.16.050, the specified period of time shall expire on the next day that is not a Saturday, Sunday or legal holiday. Any specified period of 5 days or less shall not include Saturdays, Sundays or legal holidays. Time is of the essence of this Agreement. 87
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BUYER: _____ DATE: _____ SELLER: _____ DATE: _____ 93

RESIDENTIAL REAL ESTATE PURCHASE AND SALE AGREEMENT
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(continued)

- m. Facsimile and E-mail Transmission.** Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either party, or the Closing Agent, the parties will confirm facsimile transmitted signatures by signing an original document. E-mail transmission of any document or notice shall not be effective unless the parties to this Agreement otherwise agree in writing.
- n. Integration.** This Agreement constitutes the entire understanding between the parties and supersedes all prior or contemporaneous understandings and representations. No modification of this Agreement shall be effective unless agreed in writing and signed by Buyer and Seller.
- o. Assignment.** Buyer may not assign this Agreement, or Buyer's rights hereunder, without Seller's prior written consent, unless provided otherwise herein.
- p. Default.** In the event Buyer fails, without legal excuse, to complete the purchase of the Property, then the following provision, as identified in Specific Term No. 7, shall apply:

 - i. Forfeiture of Earnest Money.** That portion of the Earnest Money that does not exceed five percent (5%) of the Purchase Price shall be forfeited to the Seller as the sole and exclusive remedy available to Seller for such failure.
 - ii. Seller's Election of Remedies.** Seller may, at Seller's option, (a) keep the Earnest Money as liquidated damages as the sole and exclusive remedy available to Seller for such failure, (b) bring suit against Buyer for Seller's actual damages, (c) bring suit to specifically enforce this Agreement and recover any incidental damages, or (d) pursue any other rights or remedies available at law or equity.
- q. Attorneys' Fees.** If Buyer or Seller institutes suit against the other concerning this Agreement, the prevailing party is entitled to reasonable attorneys' fees and expenses.
- r. Offer.** Buyer agrees to purchase the Property under the terms and conditions of this Agreement. Seller shall have until 9:00 p.m. on the Offer Expiration Date to accept this offer, unless sooner withdrawn. Acceptance shall not be effective until a signed copy is actually received by Buyer, by Selling Licensee or at the licensed office of Selling Licensee. If this offer is not so accepted, it shall lapse and any Earnest Money shall be refunded to Buyer.
- s. Counteroffer.** Seller agrees to sell the Property under the terms and conditions of this Agreement. If Seller makes a counteroffer, Buyer shall have until 9:00 p.m. on the Counteroffer Expiration Date to accept the counteroffer, unless sooner withdrawn. Acceptance shall not be effective until a signed copy is actually received by Seller, by Listing Agent or at the licensed office of Listing Agent. If the counteroffer is not so accepted, it shall lapse and any Earnest Money shall be refunded to Buyer. If no expiration date is specified for a future counteroffer, the counteroffer shall expire at 9:00 p.m. on the second day after the counteroffer is signed by the last party making the counteroffer, unless sooner withdrawn.
- t. Agency Disclosure.** Selling Broker represents the same party that Selling Licensee represents. Listing Broker represents the same party that the Listing Agent represents. If Selling Licensee and Listing Agent are different salespersons affiliated with the same Broker, then both Buyer and Seller confirm their consent to that Broker representing both parties as a dual agent. If Selling Licensee and Listing Agent are the same salesperson representing both parties then both Buyer and Seller confirm their consent to that salesperson and his/her Broker representing both parties as dual agents. All parties acknowledge receipt of the pamphlet entitled "The Law of Real Estate Agency."
- u. Commission.** Seller and Buyer agree to pay a commission in accordance with any listing or commission agreement to which they are a party. The Listing Broker's commission shall be apportioned between Listing Broker and Selling Broker as specified in the listing. Seller and Buyer hereby consent to Listing Broker or Selling Broker receiving compensation from more than one party. Seller and Buyer hereby assign to Listing Broker and Selling Broker, as applicable, a portion of their funds in escrow equal to such commission(s) and irrevocably instruct the Closing Agent to disburse the commission(s) directly to the Broker(s). In any action by Listing or Selling Broker to enforce this paragraph, the prevailing party is entitled to court costs and reasonable attorneys' fees.

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