

# ADVANTAGE

## Real Estate

Dear \_\_\_\_\_,

On behalf of Advantage Real Estate and myself, I'd like to welcome you as a client. I look forward to acting as your agent in finding the right property for you. I have provided you with an Oregon Real Estate Agency Disclosure Pamphlet that explains agency relationships between Oregon real estate licensees and their clients. Please, let me take this opportunity to explain how we here at Advantage Real Estate work on behalf of our buyer clients.

I will work with you to find property that meets your requirements. I will help you negotiate for the purchase of the property and I will assist you in your performance of the contract to purchase. Our relationship will terminate upon closing of the transaction. I will continue to maintain any confidences you have shared with me after termination of our relationship.

In order to serve you, you must make certain I am aware of your property requirements, needs and concerns. If you have specific plans for the property or anticipate major changes to the property once purchased, you must make certain your plans are appropriate for the property you choose. If you do not keep me informed of your plans, needs and concerns, I will not be able to help you find the right property or suggest other professionals, like home inspectors, engineers, land use consultants, lawyers, accountants and so forth on matters related to the transaction that are beyond my expertise as a real estate licensee.

There are a great many decisions to be made and things to consider when purchasing real property. Although I can advise you on the business aspects of real property transactions, I cannot give you legal or tax advice or be responsible for inspecting or determining the physical condition of the property, its systems or potential defects. You are advised to seek the assistance of other professionals like lawyers, home inspectors, engineers, accountants, land use consultant and so forth on matters related to the transaction that are beyond my expertise as a real estate licensee.

To help you understand the role a real estate licensee plays in real property transactions, and better understand some of the pitfalls a buyer can face, I have provided you with an Oregon Property Buyer Advisory. Unless you advise me otherwise, I will assume you have read the Oregon Property Buyer Advisory and are proceeding with that knowledge. I cannot stress enough the importance of you informing yourself regarding real property transactions. **I will proceed with the understanding that you have obtained this critical information unless you specifically inform me otherwise.**

I look forward to helping you find the right property and assisting you negotiating for its purchase. In this process, I will advise you as a real estate professional familiar with the local real estate market and the business considerations necessary to a successful transaction. If during our relationship you have concerns about the physical condition of a specific property, or legal questions, please let me know so I can direct you to a professional trained in those areas. Please do not hesitate to express to me any concerns you may have as we go forward. **And, please, read the Oregon Property Buyer Advisory.**

Continued - ->



205 E Olive Street

Newport, OR 97365

[www.AdvantageRealEstate.com](http://www.AdvantageRealEstate.com)

(541) 265-2200



## BUYER ACKNOWLEDGMENT

**Buyer acknowledges receipt of this Engagement Letter.** Unless otherwise agreed in writing, Agent's duties shall be limited to those described in this Engagement Letter and Buyer shall be responsible for making all other necessary inquiries and consulting appropriate persons or entities prior to the purchase of any property. **Buyer acknowledges their responsibility to read the Oregon Real Estate Agency Initial Agency Disclosure Pamphlet and the Oregon Property Buyer Advisory.**

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Buyer signature

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Date

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Buyer signature

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Date

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Buyer signature

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**Broker signature**

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*Date*

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**Broker signature**

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*Date*



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Newport, OR 97365

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**THIS ADVISORY CONTAINS IMPORTANT INFORMATION ABOUT RISKS, RIGHTS AND OBLIGATIONS  
RELATED TO THE PURCHASE OF REAL PROPERTY IN OREGON**

This Advisory is an educational companion document for Buyer to consult throughout the home buying process. The Advisory is designed to provide important information and support regarding a wide array of situations that could arise in a real estate transaction.

**To protect Buyer's interests and prevent disputes related to property conditions or contract rights and terms, Buyer should read this entire document before writing or accepting an offer or counteroffer and consult this document throughout the home buying process.**

Within this Advisory, there are three distinct sections, each focusing on separate elements of a sale transaction. Those sections are as follows:

**Section 1: Purchase Process Advisories**

This Section contains information relevant to the purchase process, providing information on interpreting the Multiple Listing Service data; context for the offer and counteroffer procedure; warnings about certain fair housing risks that can be brought into transactions; advising about waiver and release of Buyer rights; explanations regarding escrow and allocations of costs at closing; descriptions of the termination process; and usages of First Right modifications to offers.

**Section 2: Advisories Related to Purchase and Sale Agreements**

This Section contains information regarding the actual purchase and sale agreement document and addenda that parties use to create the contract. It provides information on various provisions like FIRPTA and the new construction provisions; explains tests and inspections that Buyers are encouraged to do; gives Buyers some resources to locate inspectors and specialists who work on particular home systems (septic, wells, radon, etc.); outlines certain dangers and risks that may be present on the property; provides the procedure for repair and remodel negotiations; describes some title issues that could arise; highlights the rules and requirements related to smoke and carbon monoxide alarms; states the Buyer's rights with regards to the Seller Property Disclosure Statement; flags some concerns for Buyers of vacant land; and describes the risk that omitted property tax can pose to a Buyer.

**Section 3: Other Important Advisories**

This Section contains additional information that is important for the Buyer to know and protects the Buyer from potential risks or liabilities. It contains information on protections from wire fraud; advisories regarding audio and video recording devices in homes; explanations of homeowners insurance; descriptions of property-relevant statistics and where to find them; explanations of the process for short sales and REO sale properties [deed in lieu of foreclosure property]; and warnings about lasting rights of artists in their creations that may be present on the Property.

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# OREGON PROPERTY BUYER ADVISORY

## INTRODUCTION

A real estate licensee is vital to the home buying process and can provide a variety of services in locating property, negotiating the sale, and advising the Buyer. A real estate agent is generally not qualified to discover defects or evaluate the physical condition of property; however, a real estate agent can assist a Buyer in finding qualified inspectors and provide the Buyer with documents and other resources containing vital information about a prospective new home. This Buyer's Advisory is designed to assist home Buyers in meeting their obligation to satisfy themselves as to the condition and desirability of property they are interested in purchasing. Common issues in real property transactions that home Buyers often decide to investigate or verify are summarized in this Advisory. In addition to investigating or verifying these common issues, the Buyer should tell the licensee with whom they are working about any special concerns or issues the Buyer may have regarding the condition of the property or surrounding area. Such special concerns are not addressed in this Advisory.

## SECTION I: PURCHASE PROCESS ADVISORIES

### MLS INFORMATION

Most properties marketed for sale by real estate licensees are listed in a Multiple Listing Service (MLS). Information about the listing, provided to the MLS by the listing broker, is made available to all subscribing members of the MLS. This information is typically contained in what is called an MLS "printout" or "data sheet." Most of the information contained in an MLS data sheet or printout is obtained from the Seller or third parties like the county assessor's office or other governmental entity. MLS data may be incomplete, an approximation or otherwise inaccurate. If the Buyer wishes to have the personal property included in the sale, that personal property should be cited on the MLS data sheet and should be included in the purchase agreement.

Buyers should not rely on MLS provided information if that information is considered an important factor in the Buyer's decision to purchase the property. The MLS provided information is oftentimes provided by the Seller, usually based on information that the Seller believes to be true; there can be errors in things like square footage, dates that repairs or renovations were done, or even whether there are water rights. It is the Buyer's sole responsibility to verify this information, unless the Buyer & real estate licensee agree that the licensee will verify the information.

### SQUARE FOOTAGE AND ACREAGE

The square footage of structures and acreage data found in MLS printouts, assessor records and the like are usually just estimates and should not be relied upon. Many Oregon properties have not been surveyed and their exact boundaries are not known. If square footage or land size is a material consideration in a purchase, Buyer should get Seller's approval to have all structures and land measured by the Buyer or a licensed surveyor prior to entering into a sale agreement, confirmation of square footage and/or land size should be made an express contingency of the agreement. You can find a licensed surveyor in your area by visiting [Oregon State Board of Examiners for Engineering & Land Surveying website](#).

### REAL ESTATE SALE FORM (SALE AGREEMENT)

A contract for the sale of real property must be in writing to be enforceable in an Oregon court. A verbal offer or acceptance should not be made or relied upon. Contracts for the sale of property are often called "earnest money" or "sale" agreements. They are legally binding contracts. Buyers and Sellers should seek competent legal advice before signing any contract they do not fully understand. Sale agreements usually include provisions concerning who will hold the earnest money and under what conditions it may be refunded to the Buyer or forfeited to the Seller. Both Buyers and Sellers should carefully review these provisions. The amount of earnest money pledged and the conditions under which it may be refunded or forfeited are important matters that should be carefully negotiated between the Buyer and the Seller. In Oregon, licensees can use Oregon Real Estate Forms (OREF) or Oregon REALTORS® Forms for real estate sales. These forms contain dispute resolution provisions that require small claims court, mediation or arbitration of disputes. Arbitration and mediation clauses can affect legal rights, including limiting the right to a judicial determination of a claim or modifying the right to appeal.

Buyers and Sellers are responsible for selecting the terms and conditions of their agreement. The forms are designed to address the most common issues that come up in a real estate transaction. Modifications to the sale agreement can be accomplished through addendums or through a counteroffer. While real estate licensees can give Buyers important marketing, business and negotiating advice and information and can assist in preparation of the sale agreement, real estate licensees are not attorneys and are prohibited by law from giving legal advice. To obtain a referral for a real estate attorney, visit the [Oregon State Bar 'Getting Legal Help' website](#) or contact by phone at 503-620-0222 (Portland metro) or 800-452-8260 (greater Oregon).

### OFFERS AND COUNTEROFFERS

Once the parties accept an offer, the terms in that offer are locked in and will not change unless an addendum is signed by both Buyer and Seller. When a Seller receives a Sale Agreement that does not describe the property correctly, states the Seller's name wrong (e.g. if Seller is a Personal Representative, the name of the Seller should not be "ABC Estate", it should be "Seller, Personal Representative of ABC Estate"), or the offer has information that the Seller finds unacceptable, Seller can counteroffer or can request a resubmission of the offer. In that counteroffer, the Seller should correct everything that is incorrect and add everything they wish to change. Counteroffering rejects the current offer and presents a new offer to the Buyer with the Seller's changes. Buyer can accept the terms of the counteroffer, or Buyer can counteroffer in response. Buyer counteroffering will operate as Buyer rejecting Seller's counteroffer and presenting new terms. It is not uncommon to have multiple rounds of counteroffers before all the terms are accurate.

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

### **OFFERING BUYER COMPENSATION**

A Listing Agreement can, but is not required to, provide payment to the Buyer's Broker. The Buyer will typically hire or engage their agent with a Buyer Representation Agreement. In those instances, the Buyer Agent will be paid by the Buyer at Closing, however the Seller can choose to offer a credit to pay the Buyer's Agent as a means of enhancing the listing. If Seller offers to pay the Buyer's Agent, the amount the Buyer pays the Buyer Broker has the Seller's offer of payment subtracted from the total. The parties can use the Sale Agreement to handle the separate agreement of the parties to establish this seller credit. If Seller offers to provide the full amount than Buyer was planning to pay the Buyer's Agent, Buyer will not end up paying the Buyer Broker out-of-pocket. If Seller offers a payment that is less than the total amount Buyer was planning to pay Buyer's Broker, the Buyer will be responsible for paying the remaining portion of that Buyer Broker compensation amount. For example, Buyer plans to pay Buyer Broker \$100, Seller offers to credit \$75 of Buyer Agent compensation; at Closing, Buyer will pay the agent \$25, and the remaining \$75 will come from the Seller's credit.

### **FAIR HOUSING, NON-CUSTOMARY DOCUMENTS AND REAL ESTATE LOVE LETTERS**

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

For fear of implicating Fair Housing laws, it is advisable that the Buyer does not send any "Buyer love letters" or other documents non-customary to the transaction to the Seller. The Oregon Real Estate Agency defines customary documents to include disclosure forms, sales agreements, counteroffer(s), addenda, and reports. Non-customary documents include any documents not listed by OREA as customary. Generally, this term is used to refer to "Buyer love letters." Buyer love letters are personal letters from the Buyer to Seller and often include personal information or photos of the potential Buyers and may indicate that Buyer belongs to a protected class or that Buyer has protected status. While Sellers are prohibited from discriminating against Buyers based on a protected class or protected status, discrimination does happen, and love letters can unintentionally disclose information about a Buyer's protected class. These disclosures can occasionally invite discriminatory conduct. One way to avoid possible discrimination against Buyers is to simply not send love letters or non-customary documents.

Buyers who have been discriminated against can contact any of the following:

U.S. Department of Housing and Urban Development: 1-800-669-9777

Oregon Bureau of Labor & Industries: 971-673-0761 or [help@boli.state.or.us](mailto:help@boli.state.or.us)

Oregon Housing and Community Services: 503-986-2000

Fair Housing Council of Oregon: 503-223-8197 or [inquiries@fhco.org](mailto:inquiries@fhco.org)

Disability Rights Oregon: 503-243-2081

### **CONTINGENCIES**

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

### **WAIVER AND RELEASE**

Several provisions of the Purchase and Sale Agreements will permit the Buyer or Seller to waive or release their rights. Waivers are instances where a Buyer or Seller gives up a right before it has become active. For example, by waiving the right to an inspection at the moment of the offer; the Buyer will never have a chance to utilize the inspection period. Releases are instances where a Buyer or Seller gives up a right after it has become active. For example, a Buyer enters an agreement, begins a 20-day-long inspection period, the inspection comes back 2 days later, Buyer is satisfied and wishes to end the inspection period early as a show of good faith to the Seller. Buyer can release their right to terminate the agreement based on disapproval of an inspection.

Real estate licensees are not permitted to advise a Buyer or Seller on whether it is the right decision to give up a legal right by waiver or release. If either party is uncertain about whether they should give up their rights or what it means to give up their rights or obligations under the agreement, they should seek the advice of an attorney.

### **ESCROW**

The parties can choose to have an escrow office as a part of the agreement. Escrow is a neutral third party that collects money and documents and has instructions on when and how to release the money and documents. If a Seller is going to be out of town on the closing date, they can sign the documents and the deed and have Escrow hold the documents and the house keys until the Buyer provides the purchase price money and signs all the paperwork.

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

#### ALLOCATION OF TAXES, COSTS, FEES

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

#### DEFAULT, TERMINATION AND RESPONSE

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

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

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

#### FIRST RIGHTS

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

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

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

## SECTION II: ADVISORIES RELATED TO PURCHASE AND SALE AGREEMENTS

### INFORMATION GENERALLY

Real estate licensees do not independently verify information from third parties contained in the many documents associated with a real property transaction. It is the responsibility of the Buyer to read documents provided and to ask questions if uncertain or concerned. Interpretation of many



real property transaction documents involves the practice of law and is, therefore, beyond the scope of a real estate licensee's expertise. *Buyers uncertain about the legal effect of documents should consult an experienced real estate attorney.*

#### **BASE FORM LIBRARY**

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

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

Federal tax law requires an additional tax withholding when a foreign person sells property in the United States under the Foreign Investment in Real Property Tax Act (FIRPTA). When property is bought from a foreign person, the Buyer must withhold a certain amount of the "amount realized" in that sale and send that withheld money to the IRS within 20 Calendar Days after closing the sale. "Amount realized" is the "sum of money received plus the fair market value of the property (other than money) received," minus real property taxes for that year. In other words, it is the amount of money that the Seller is expecting to make on the sale. Normally, escrow will act as the "Qualified Substitute" and ensure that all FIRPTA laws are followed, and that Buyer withholds the proper amounts if there is a foreign Seller.

If parties are not using an Escrow company or for some reason Escrow refuses to act as the Qualified Substitute and the parties can't find a replacement, the Buyer should withhold the following amounts and send them to the IRS: (i) for sales less than \$300,000; 0% withheld; (ii) for sales between \$300,000 and \$1,000,000; 10% withheld; (iii) for sales over \$1,000,000; 15% withheld. There may be unique circumstances that modify the withholding scheme above, so Buyers are highly encouraged to consult a tax specialist before closing a FIRPTA sale.

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

#### **SELLER-CARRIED FINANCING**

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

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

- (i) Seller has entered into 3 other Seller-carried transactions to purchase residential dwellings in the last year;
- (ii) Seller has entered into more than 1 other Seller-carried transactions with a "High-Cost Mortgage" in the last year;
- (iii) Seller has entered into 1 or more other Seller-carried transactions using a Mortgage Loan Originator (MLO, someone who is licensed in Oregon, registered on the National Mortgage Licensing System, and negotiates or takes applications for residential mortgages on family dwellings in exchange for compensation);
- (iv) Seller has 8 other Seller-carried residential mortgage loans at any given time (or 12 Seller-carried residential mortgage loans on manufactured homes if Seller is a limited manufactured structure dealer);
- (v) The parties intend for the Promissory Note or Land Sale Contract to have a balloon payment or adjustable rate;
- (vi) The Seller does not believe, in good faith, that the Buyer can repay the loan.

"High-Cost Mortgage" is typically defined in the Truth in Lending Act as a first mortgage at more than 6.50% above the average prime offer rate.

(For more information, visit the [Consumer Financial Protection Bureau's "High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act \(Regulation Z\) and Homeownership counseling Amendments to the Real Estate Settlement Procedures Act \(Regulation X\)"](#))

The Average Prime Offer Rate is available online at [Federal Financial Institutions Examination Council's "'Average Prime Offer' Rates"](#), and is updated by the Federal Reserve weekly. If the Seller is trying to establish a subordinate or junior mortgage or establishing a mortgage on manufactured dwellings or houseboats that cost less than \$50,000, different rules apply and Seller should seek out a MLO professional to assist with or advise the transaction.

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

#### **DEFECTIVE PRODUCTS AND MATERIALS**

Some materials used in home construction are, or have been, subject to a recall, class action suit, settlement, or litigation. These materials are typically, but not limited to, modern engineered construction materials used for siding, roofing, insulation, or other building purposes. It is critical that a Buyer carefully review any disclosures or representations of the Seller regarding such materials. A real estate licensee may assist the Buyer in



that review, but inspection of property for defective products, systems, fixtures, or materials is beyond the scope of expertise of a real estate licensee. The Buyer, therefore, should make certain inspections for such materials is within the scope of any home inspection ordered by the Buyer. Like any property condition report, Buyers should not rely on the report of an inspector they did not hire. Similarly, homes may contain products in their systems or fixtures that are, or have been, subject to a recall, class action suit, settlement, or litigation. Plumbing, heating, and electrical systems, among others, may contain such products. It is critical that a Buyer carefully review any disclosures or representations of the Seller regarding such products. The Buyer should, therefore, make certain inspection for such products is within the scope of any home inspection ordered by the Buyer. A real estate licensee can help the Buyer find a suitable inspector.

### **HOMEBUYER PROTECTION ACT**

The Homebuyer Protection Act of 2003 requires Sellers of certain new and recently remodeled or renovated residential property to provide Buyers with protection from unrecorded construction liens. Information about construction liens can be found in the [Oregon Construction Contractors Board's "Construction Liens" online brochure](#). If the Buyer is entitled to protection under the Homebuyer Protection Act, the Seller must choose one of five statutory protections and provide Buyer with a Notice of Compliance form indicating the protection chosen. Real estate licensees are not trained or experienced in construction lien law. If a Notice of Compliance form is part of the transaction, or either party is uncertain about their rights or obligations under the Act, they should seek the advice of an attorney. Real estate licensees cannot interpret legal documents or give legal advice.

### **RESIDENTIAL TENANT OCCUPIED PROPERTIES**

The purchase and sale of real estate that is currently occupied by a tenant brings additional consideration for both the Seller and Buyer that are important to be aware of. As with most areas of the law, there are local, state, and federal laws that must be complied with to protect all parties to a transaction. On the state level, the 2019 Oregon legislature passed [Senate Bill 608](#), which amends/creates new laws surrounding rent increases and termination of tenancies. Senate Bill 608 caps annual rent increases at 7% plus inflation and eliminates the ability of a landlord to terminate a tenancy without cause, except in limited circumstances. One of those circumstances is when the home is sold to a person who will occupy it as their primary residence. However specific notice requirements and timelines must be followed. If purchasing a tenant-occupied property as primary residence, Buyer should verify that Seller has complied with all laws regarding the termination of the tenancy. Due to the complexities of this law, it is important for brokers to stay within the limitations of their real estate license and not provide legal advice. We recommend Buyers consult with an attorney to ensure compliance with all local, state, and federal laws. The Oregon REALTORS® offers guidance regarding the purchase of tenant occupied properties that can be found [Oregon REALTORS® "Selling Tenant-Occupied Homes" webpage](#). In addition to the new statewide law, many local governments have passed new laws governing tenant-occupied properties. The Cities of Portland and Milwaukie have been particularly active. Buyers should do be sure to understand all local laws and consult an attorney if necessary.

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

Covenants, conditions, and restrictions, called "CC&Rs," are formally recorded private limitations on the right to use real property. Often, but not always, CC&Rs are enforced by a homeowners' association. Review of the CC&Rs is typically part of a real estate sale. Although real estate licensees are familiar with common CC&R provisions, determining the legal effect of specific provisions is considered the practice of law in Oregon and, therefore, beyond the expertise of a real estate licensee. If the subdivision in which the property is located is governed by a homeowners' association, the CC&Rs may be very restrictive. Homeowners' associations are often governed by their own articles of incorporation, bylaws, rules, and regulations. Homeowners' association rules and regulations can significantly impact a Buyer's plans for the property the Buyer wants to purchase. Planned communities and condominiums are very likely to have detailed homeowners' association governing documents, mandatory fees, and ongoing homeowner obligations. Governing documents, fees and homeowner obligations should be reviewed by the Buyer during the transaction. There may be costs associated with requesting HOA documents. If purchasing a condo your real estate licensee can use the Form 4.4 HOA Addendum to address disclosures and governance document review. This document contains language creating contractual rights and responsibilities related to producing and paying for HOA documents and includes provisions on if and when the Buyer can terminate the transaction and receive an earnest money refund based on disapproval of the HOA documents. Review these provisions carefully. The HOA Addendum will be applicable to purchases of properties that are parts of a Home Owner's Association, Townhome Association, Condominium Association, Marina Park Association, or Manufactured Home Park Association. The HOA Addendum will require that the Buyer receives, among other things, the association's CC&Rs, bylaws, articles of incorporation, and budget documents. The purpose of these documents is to put the Buyer on notice of any unique rules, expenditures, or penalties of the association and to allow the Buyer to terminate the offer if the documents prove unacceptable.

If you have questions about CC&Rs or your legal rights and remedies under homeowners' association governing documents, you should have your attorney review the documents for you. A real estate licensee is prohibited by law from giving legal advice. For more information on homeowners' associations and CC&Rs, visit the [Homeowners Protection Bureau's "Oregon HOA Laws and Resources" webpage](#).

### **WELLS**

If domestic water for the property is supplied by a private well, the Sale Agreement should include a Well Addendum. The Seller is required by state law to test the well for total coliform bacteria, nitrates and arsenic through an accredited laboratory (a list of accredited laboratories is available on the [Oregon Health Authority's "Environmental Laboratory Accreditation" webpage](#). The Seller must provide well reports to the Buyer and report the lab results to the Oregon Health Authority within 90 days of receiving them. The tests results are valid for one year and Buyers should verify that the Seller uses proper procedures when having the well tested. More information on this state law requirement can be found on the [Oregon Health Authority's "Domestic Well Safety" webpage](#). Buyers may also want to have the well tested for other potential contaminants not required by Oregon law to determine water quality. For more information on domestic wells, go [Oregon Health Authority's "Groundwater Protection and Well Stewardship" webpage](#).

Buyers should verify that the Seller uses proper procedures when having the well tested. Oregon state law also requires that all private wells not

registered with the State of Oregon be registered at the time the property is transferred. Real estate forms in use in Oregon often delegate to the Buyer the responsibility of registering the well with the Oregon Water Resources Department (OWRD).

A useful guide to the well identification program can be found on the [State of Oregon website's "Well Identification Program" webpage](#).

*Well Flow Tests:* If domestic water is supplied by a private well, the Buyer should verify to the extent possible whether the well provides adequate water for domestic needs. It is strongly recommended that a well flow test be conducted prior to the purchase of any property that depends on a well for domestic water. Careful attention should be paid to any disclosures or representations by the Seller.

Buyers should review all available well records. More information on well logs and the well log database are available on the [Oregon Water Resources Department's Well Report Query](#). Buyers are advised to have well flow tested by a professional. While real estate licensees are not trained and do not have the expertise to test wells, they may be able to direct you to the appropriate well professionals. Even when wells are inspected and tested, it is impossible to guarantee a continued supply of water.

Catastrophic events can and do occur that can change the well quality virtually overnight. Other events, such as development and drought, can affect the quality of an aquifer over time. Any test of a well is merely a snapshot in time and is not an indication of a well's performance in the future. Any kind of well report should be viewed in this light. *Professional inspection, well log review, contaminant testing and flow tests are critical in determining the condition of a private well.*

## **CROSS CONNECTION AND BACKFLOW PREVENTION**

Backflow is the reverse intended flow of contaminated water from a non-potable source to a potable source by way of a cross connection. Properties with irrigation systems are required to have devices called backflow prevention assemblies that help regulate water pressure to or event backflow. These are often placed inside an irrigation box located on or just off the property. Annual testing of these devices is required, and the water provider may shut off water to the property and charge a fine to a property owner who does not comply with backflow testing requirements. Buyers should inquire with the property Seller about whether a backflow prevention device is required and installed and whether the device is in compliance with annual testing requirements. Please visit the Oregon Health Authority's [Cross Connection and Backflow Prevention Program](#) to learn more about the regulations requiring Assembly use and testing as well as a list of certified Assembly Inspectors in Oregon, and check with the home's water provider for detailed information about local rules and regulations.

## **SEWER AND SEPTIC SYSTEMS**

It is important to determine if the property is connected to a city sewer or if the property is serviced by a septic system. The Buyer should always verify the type of sewage system present on the property even if this information is provided in the MLS data sheet or Seller's Property Disclosure Statement. If there is an on-site septic or private sewage system, the Sale Agreement should include an On-Site Sewage Addendum.

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

If a septic system inspection is completed, be sure to have an "Existing System Evaluation" form completed by the approved Onsite Wastewater Inspector for the Buyer's own records. Additional septic system information for homeowners can be found [Oregon Department of Environmental Quality's "Oregon Septic Smart" webpage](#).

## **SEWER SCOPE INSPECTIONS**

Once you have verified the property is connected to a city sewer, don't overlook the importance of a sewer scope inspection. A sewer scope inspection is used to determine the condition of a property's sewer line. A video camera is inserted into the sewer line to determine the location and depth of any obstructions or problem areas such as holes, root intrusions, cracks, or separated pipes. Regardless of age of home, a prudent Buyer will have the sewer line inspected. A sewer backup can be a nasty and potentially expensive event to repair. Although a real estate licensee may be able to help you find a local sewer scope inspector, they cannot themselves perform the sewer scope inspection or evaluate any results. The Oregon REALTORS® worked with other partners to create the Clean Water Loan program to assist Oregonians with septic repairs. Clean Water Loans can pay for up to 100 percent of costs associated with a septic repair or replacement project. The program is administered through Craft3, a nonprofit finance institution. More information can be found at [Oregon Department of Environmental Quality's "Onsite Septic Resources in Oregon"](#).

## **LEAD-BASED HAZARD DISCLOSURE FORM**

Residential property built before 1978 (called "target" housing) is subject to the Residential Lead-Based Paint Hazard Reduction Act of 1992 and the Residential Lead-Based Paint Disclosure Program administered by the Environmental Protection Agency (EPA) and the Department of Housing and Urban Development (HUD). The Act defines a "Lead-based Paint Hazard" as a condition that causes exposure to lead from lead-contaminated dust, lead contaminated soil, [and] lead contaminated paint...that would result in adverse human health effects as established by the appropriate Federal agency". This federal law definition of "Lead based paint hazard," therefore includes more than just lead paint. Lead pipes, lead building materials, and other lead in the property could qualify as "lead based paint hazards" if they are damaging to human health. The Act requires Sellers of target housing to provide the Buyer with a lead-based hazard disclosure and the pamphlet entitled "Protect Your Family from Lead in Your Home." Information about the requirements and samples of the forms can be found [HUD's "About Lead-Based Paint" Webpage](#) or the [EPA's "Protect Your Family from Lead in Your Home- Real Estate Disclosure" webpage](#). The Sale Agreement for any house built before 1978 should include a copy of the Lead-Hazard Addendum and a copy of the "Protect your Family from Lead in the Home" pamphlet.

If you make an offer on a home built before 1978 and do not receive the disclosure and pamphlet, you should ask your real estate licensee about lead-based hazard disclosures. For more information and to locate companies certified and licensed to conduct lead-based paint testing or perform abatement, visit the [Oregon Health Authority's "Inspection and Abatement Professionals" webpage](#).

If after the sale you are planning renovation, repair, or painting (RRP) on a home built before 1978, you should be aware of EPA rules that require

such work be done by certified contractors who must follow EPA work guidelines. This may complicate or add expense to such projects. RRP rules in Oregon are jointly administered and enforced by the Construction Contractors Board (CCB) & the Oregon Health Authority. The [Oregon Health Authority's "Renovation, Repair, and Painting \(RRP\) Rule"](#) webpage provides more information. Homeowners who do their own work in their own home are exempt from RRP rules. EPA does, however, urge homeowners to read EPA's Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools. Homeowners can also call the National Lead Information Center at 1-800-424-LEAD (5323) for more information or [visit EPA's website](#).

## **WOOD STOVES**

The Department of Environmental Quality has developed a statewide wood stove program to promote the use of cleaner-burning wood stoves and to help homeowners burn wood more efficiently and with less pollution. Sale Agreements for properties that have wood stoves should include a Wood Stove Addendum. Under Oregon law, any uncertified wood stove must be removed from the property when a home is sold. It is the Seller's responsibility, unless the Buyer and Seller agree otherwise, to remove and destroy any uncertified woodstove when a property is sold and to notify DEQ. If the Buyer assumes responsibility for the removal of the uncertified stove, the stove must be removed and destroyed, and DEQ notified, within 30 days of the closing date on the home. Non-certified woodstoves (including fireplace inserts) are older models (mostly pre-1986) that have not been certified by the DEQ or the federal Environmental Protection Agency to meet cleaner-burning smoke emission standards.

Individual communities in Oregon may have additional rules governing the sale or use of woodstoves and fireplaces. Buyers should ask their agent for assistance or check with appropriate local government agencies. An online list of Oregon counties and their websites is available in the [Oregon Blue Book website under 'County Government'](#) and a list of Oregon cities can also be found in the Oregon Blue Book under 'Local Government'. General information about wood stove regulation in Oregon is available on the [Oregon Department of Environmental Quality's "Residential Resources- Wood Stoves" webpage](#).

The DEQ along with city and county programs across the state can sometimes offer financial assistance to those who need to replace wood stoves with more efficient heat sources that meet the DEQ's requirements. More information on this program can be found [Oregon Department of Environmental Quality's "Residential Resources- Wood Stoves" webpage](#).

Buyers should contact their insurer early in the home buying process to determine what, if any, effect, a fireplace or wood stove may have on the availability or cost of fire insurance. Inspection of fireplaces and woodstoves requires special training and expertise. Although a real estate licensee may be able to help you find a local wood stove professional, they cannot themselves inspect or evaluate a woodstove. The DEQ provides a helpful FAQ sheet regarding buying or selling a home with a wood stove that can be accessed via [Oregon Department of Environmental Quality's "Residential Resources- Buying or selling Wood Stoves" webpage](#).

## **HISTORIC PROPERTY**

It is important for the Buyer to determine whether a property is considered a historic property and therefore subject to a special assessment providing for tax benefits to the owner of the property or restrictions on alterations that can be made to the structure. These properties are listed on the National Register of Historic Places. For more information, visit the [Oregon Heritage State Historic Preservation Office website](#). It is important for Buyers to understand how to retain the tax benefits afforded to the property.

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

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

## **HOME WARRANTY POLICY**

A home warranty is a service contract. Home warranties for existing homes are common in today's real estate market. The warranty generally covers the repair and replacement of equipment and appliances such as dishwashers, plumbing systems, electrical systems, and so on. Optional coverage may be available at additional costs for pools, built-in spa equipment, well pumps and other systems. Coverage and price vary considerably among warranty companies. Be aware that pre-existing property conditions are generally not covered. The length of coverage can vary but is often one year. A home warranty can be included as a term of a purchase agreement. Buyers should discuss home warranties with their agent prior to purchasing a home. In addition, Buyers should thoroughly read the home warranty contract to understand coverage, limitations, exclusions, and costs associated with the policy. Your agent can provide you with information on companies offering home warranties for purchase.

## **FINANCING / LOAN INFORMATION & DOCUMENTS**

The Buyer's ability to finance the property is an important contingency in most residential transactions. Buyers must act in good faith and use best efforts to obtain a loan if the sale is contingent upon obtaining a loan. Buyers often seek pre-approval from a lender prior to writing an offer. A pre-approval letter should state that the lender has reviewed the Buyer's credit report, income requirement and cash to close and pre-approves the Buyer for the loan, subject to an acceptable appraisal of the property. The appraisal is conducted by a third party and will normally be ordered by the lender, with the Buyer's approval and authorization for payment. To check the status of an appraiser, visit the [Appraiser Certification and Licensure Board website](#). Once the appraisal has been received, the underwriter authorizes final loan approval. Only when the underwriting process is completed will an actual loan be secured. The entire financing process normally takes approximately 30-45 days.

If the Seller is asked to finance any part of the transaction, the Buyer's financial status will become material to the transaction. Any material defect in the Buyer's financial status must be fully disclosed to the Seller. Because of the risks involved for the Seller, the Buyer should anticipate that the

Seller will fully investigate the Buyer's credit worthiness prior to agreeing to carry financing for the Buyer. A real estate licensee cannot hide material information from any party to a real estate transaction and should not be asked to do so by the Buyer or Seller. Depending on the type of property Buyer is purchasing, a Seller providing financing may be required to be a licensed mortgage loan originator. Your real estate licensee may not advise whether a Seller must be a licensed mortgage loan originator. If applicable, a Buyer should consult with an attorney, and visit the [Oregon Division of Financial Regulation website](#).

### PROFESSIONAL HOME INSPECTIONS

Obtaining a professional home inspection is the single most important thing a Buyer can do for their protection. A professional home inspection report will provide the Buyer with detailed information about the home's physical condition, its systems and fixtures and usually note any potential future problems. The Buyer should carefully review an inspector's proposal to determine the scope of the inspection. Some home inspectors may not inspect heating and cooling systems, the roof or other systems or components. A home inspection should be done by a home inspector or contractor licensed by the Oregon Construction Contractors Board (CCB). To inspect two or more components (i.e., roof, siding, structural), the home inspector must be certified, and either be a licensed construction contractor or work for a licensed construction company. Also, a home inspector is not allowed to perform the repairs within a twelve-month period following the inspection. The [Oregon Construction Contractors Board provides an online informational document](#) that lays out standards that home inspectors must abide by and also provides an important online "Home Inspection Consumer Notice" Additional information about inspections and inspectors is also available from the [Oregon Association of Home Inspectors website](#) and the [American Association of Home Inspectors](#).

Inspection of property is beyond the scope of expertise of a real estate licensee, but real estate licensees can provide Buyers with a list of local inspectors. Licensees ordinarily will not recommend a specific inspector. Before hiring an inspector, the Buyer should check with the CCB to determine the inspector's current license status and whether there are any past or pending claims against the inspector. This can be done by using the ["Contractor License Search" tool on the Construction Contractors Board website](#). Buyers should not rely upon reports done for others (previous Buyers and/or Sellers), because the report may not be accurate, and Buyers may have no recourse against an inspector they have not retained.

The Due Diligence Contingency clause in the Sale Agreement allows the Buyer to withdraw from the agreement by giving the Seller a Buyer's Notice of Termination if a professional inspection they have done shows defects in the property. You will want to take advantage of this important right by obtaining your own professional home inspection report from a licensed professional inspector within the time frame specified in the sale contract. Unless otherwise provided for in the Sale Agreement, the cost of the inspection will not be refunded should you withdraw from the Agreement.

### PEST AND DRY ROT INSPECTION

Pest and dry rot inspections are done in many residential real estate transactions and may be required by the lender. A pest and dry rot inspection may or may not be included in a whole home inspection. If a pest and dry rot inspection is desired or required and the Buyer is obtaining a whole home inspection, the Buyer should verify that the inspection obtained covers pest and dry rot and the inspector is properly licensed. Pest control operators who do inspections and treatment are licensed by the Oregon Department of Agriculture.

Buyers can check on licensing of pest control operators and applicators by calling the Oregon Department of Agriculture at (503) 986-4635 or online using the [Oregon Department of Agriculture Pesticide Licensee search tool](#). Real estate licensees do not have the training or expertise to inspect property for pests or dry rot. Like any property condition report, Buyers should not rely on the report of an inspector they did not hire. A pest and dry rot inspection is a limited inspection and is no substitute for a complete whole home inspection by a licensed home inspector.

### RADON

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Oregon. Additional information regarding radon and radon testing may be obtained from your county health department or from the [Oregon Health Authority's Oregon Radon Awareness Program](#), or the [EPA's "Radon" webpage](#). Real estate licensees do not have the expertise to advise Buyers on radon testing requirements but can often direct Buyers to the appropriate professionals.

### MOLD

Molds are one of a variety of biological contaminants which can be present in human structures, including in residential housing. Some molds have been identified as possible contributors to illness, particularly in infants, elderly, and people with suppressed immune systems and those with allergies or asthma. Such cases usually involve property with defective siding, poor construction, water penetration problems, improper ventilation or leaking plumbing. In a few cases, these problems have led to the growth of molds which caused medical conditions in some people. Buyers, if concerned about potentially harmful molds, should arrange for inspection by a qualified professional. Information on moisture intrusion and mold problems associated with human structures can be found on the [Oregon Health Authority's "Mold in Your Home" webpage](#).

Inspection, discovery and evaluation of specific water intrusion or mold problems requires extremely specialized training and is well beyond the scope of a real estate licensee's expertise. Buyers are advised to hire appropriately trained professionals to inspect the property if the Buyer is concerned about the possibility of harmful molds.

### UNDERGROUND OIL STORAGE TANKS

Buyers should be aware of potential problems associated with underground oil storage tanks. Such tanks can cause serious problems if they have leaked oil, and cleanup can be expensive. Oil storage tanks, including home heating oil tanks, are closely regulated in Oregon. The Oregon Department of Environmental Quality published this ["The Most Important Things New Underground Storage Tank Owners Need to Know", a fact sheet](#) for homebuyers purchasing a property that has an underground oil storage tank. An explanation of Oregon laws concerning home heating oil tanks can be found [Oregon Department of Environmental Quality's "Heating Oil Tanks" webpage](#).

Sellers should disclose whether an oil storage tank exists on the property. If you are purchasing a property in which the Seller has disclosed that an



oil tank exists on the property, ensure to request the proper documentation showing completion of any cleaning, inspections, or drainage that has been performed on the tank. The Seller may also disclose that the existing tank has been “decommissioned” which means it has been cleaned and filled with inert material so it can no longer be used.

Buyers who know or suspect that an underground oil storage tank exists on the property are advised by the Department of Environmental Quality (DEQ) to hire an appropriately trained professional to locate and evaluate the tank. Oil storage tank inspection, decommissioning and cleanup requires a special license from the DEQ. A list of licensed providers can be found on the [Oregon Department of Environmental Quality’s “Heating Oil Tank Service Providers” webpage](#). Real estate licensees are not trained or licensed to provide advice or services regarding underground oil storage tanks, but they can assist the Buyer in finding the proper professionals.

If you knowingly purchase a property that has an oil storage tank that has not been evaluated, you become responsible for any costs of inspection, clearing, contamination cleanup, or tank decommissioning. Buyers intent on recovering any costs from the Seller should contact a licensed attorney.

For more information on purchasing a property with an underground oil storage tank, visit the [Oregon Department of Environmental Quality’s “Buying or Selling a Home with a Heating Oil Tank” webpage](#) or contact the DEQ directly.

## **ENVIRONMENTAL HAZARDS**

Buyers should carefully review the Seller’s Property Disclosure Statement and any inspection reports available to determine if any of several potential environmental hazards may require further investigation. Environmental hazards include everything from expansive soils to landslides, forest fires, tsunamis, floods, and earthquakes. Environmental hazards can also include indoor air quality (e.g., radon, mold, or carbon monoxide) and hazardous materials, like asbestos. Buyers concerned about external environmental hazards should check with the county in which the property is located. Contact information for every Oregon county is available on the [Association of Oregon Counties website](#). Flood plain maps and information are available on the [Federal Emergency Management Agency \(FEMA\) “Flood Insurance” webpage](#). The [Environmental Protection Agency \(EPA\) “Indoor Air Quality \(IAQ\) webpage](#) provides a great deal of information about indoor hazards. Superfund sites are areas that have been listed by the federal government as contaminated. A wealth of information on superfund sites, including their locations, [is available by visiting the EPA’s website](#). More information on Oregon superfund and other contaminated sites can be obtained from the [Oregon Health Authority](#). Real estate licensees are not trained, and do not have the expertise, to discover and evaluate environmental hazards. Buyers, therefore, are advised to hire appropriately trained environmental professionals to inspect the property and its systems or fixtures for environmental hazards. Wildfire is a concern in some areas of Oregon. General information about the risk of wildfire is available on the [Oregon Department of Forestry website](#). Some Oregon properties are subject to special rules under the State’s “Wildland-Urban Interface (WUI) Classification”. Properties that fall under this classification include geographical areas with permanent structures that intermingle with wildland vegetative fuels. The WUI status of a property must be disclosed by the Seller to the Buyer in the Seller’s Property Disclosure Statement. Prospective Buyers of a WUI classified property can learn more about the classification and the additional steps required of WUI property owners to lessen the risk of wildfire can be found on the [Oregon State Fire Marshal “Wildfire Urban Interface \(WUI\) webpage](#). The passage of OR SB 762 in June of 2021 has prompted changes within the WUI Classification Program. New maps that more accurately depict fire risk on an individual property level are currently under development as of Spring 2024. There is a possibility that homes not currently classified under WUI may be reevaluated and classified under WUI on these new maps. Also expected to change under the new legislation are the rules and responsibilities for WUI property owners. These rules are also yet to be completed but should be available along with the presentation of the new maps.

Real estate licensees do not have the expertise to advise Buyers on fire protection requirements but can often help direct Buyers to the appropriate professionals.

## **REPAIRS AND REMODELS**

Buyers should look for signs of repairs or remodeling when viewing property. If repairs or remodeling have been done, the Buyer will want to make certain the work was properly done. Buyers can ask the Seller for any invoices or other documentation for the work but, as with other questions of property condition, there is no substitute for professional inspection. A real estate licensee can help the Buyer assess the need for a building code compliance inspection but do not themselves have the training or expertise to evaluate building code compliance. Information about building permits can be found [Oregon Building Codes Division “Local Building Department Directory”](#), a service of the Department of Consumer & Business Services Building Codes Division. If building permits were required for work done on the property (such permits are typically required for structural changes, new additions, and new plumbing and electrical work), the Buyer should check with the city or county building department to make sure the permits are in order. If permits were not properly obtained, the new property owner could be held responsible. Ask your agent for assistance or you can find the website for the county in which the property is located on the [Association of Oregon Counties website](#). Websites for cities can be found on [League of Oregon Cities “City Directory” webpage](#). If repairs or remodels have been completed very recently, the Buyer should take steps to determine if there is any possibility of construction liens being filed against the property after the sale has closed. This can be done by the Buyer raising the issue with their title insurance provider.

If any repairs are being required during the transaction with a Repair Addendum, the Buyer should ensure a licensed construction contractor is doing the repairs, and can request copies of any invoices from Seller. After the repairs have been done, Seller should provide a Notice of Completion of Repairs. The Addendum gives the right to have the repairs re-inspected, and Buyer should consider having a re-inspection done to assure the repairs were done properly.

## **TITLE REPORT AND COMMITMENT**

The title report, or commitment to insure, produced by a title insurance company contains important information that must be reviewed by the Buyer. In particular, the report will list certain “exceptions” to the policy the company will issue. Buyers should request copies of any documents mentioned in the report that are not understood or raise concerns about the state of the title. Questions about the title report and associated documents can be directed to the title or escrow officer issuing the report or to the Buyer’s attorney or surveyor. Review of title reports for legal

deficiencies involves the practice of law. Visit the [American Land Title Association's "Home Closing 101" website](#) for more general information about title issues.

### **SMOKE ALARMS**

In Oregon, no person may sell a dwelling without an approved smoke detector or smoke alarm installed in accordance with the rules of the State Fire Marshal. Because of this state law requirement, most residential real estate sale forms contain a representation by the Seller that, at the earlier of possession or closing date, the dwelling will have operating smoke alarm(s)/detector(s) as required by law. Types of smoke alarms available include photoelectric, ionization, dual-sensing ionization and photoelectric, and combination smoke and carbon monoxide.

The smoke alarm power source requirement is based on what was required at the time of construction or remodel. The power supply of a smoke alarm shall be a commercial power source, an integral battery or batteries, or combination of both. Solely battery-powered ionization smoke alarms must have a 10-year battery and a "hush" mechanism which allows a person to temporarily disengage the alarm.

Photoelectric, dual-sensing ionization/photoelectric, combination smoke/carbon monoxide, and hardwired alarms do not require a 10-year battery or a hush feature. Ten-year batteries should not be placed in smoke alarms unless they are recommended by the manufacturer.

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

All dwellings must have the proper type, number and placement of alarms as required by the building codes at the time the dwelling was constructed but not less than one alarm adjacent to each sleeping area and at least one alarm on each level of the dwelling. (Additional rules apply to rented property.) For information about smoke alarm and detector requirements in Oregon, [visit the Oregon State Fire Marshal's website](#).

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

### **CARBON MONOXIDE ALARMS**

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

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

Because of this state law requirement, the Purchase and Sale Agreements contain a representation that, at the earlier date of possession or closing date, the dwelling will have an operating carbon monoxide detector as required by law. Sellers should anticipate the carbon monoxide alarm requirement as it is also included on the new Seller's property disclosure form. Real estate licensees are not trained in building code or fire code compliance. If there is any doubt about whether a carbon monoxide alarm complies with the building or fire code requirements, a licensed home inspector, or the alarm company should be contacted.

### **RISK OF LOSS PROVISIONS**

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

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

In most cases, residential property Sellers in Oregon must provide a Seller's Property Disclosure Statement (or comparable form under ORS 105.464) to each residential Buyer who makes a written offer for each dwelling that is being sold. The form used by the Seller is mandated by state law. The Seller's representations regarding the property are based upon the Seller's actual knowledge at the time the disclosure statement is made and are not the representations of any financial institution that may have made or may make a loan pertaining to the property, or that may have a security interest in the property, or any real estate licensee engaged by the Seller or Buyer. Licensees are not responsible for misrepresentations by the Seller unless they know of the misrepresentation and fail to disclose it.

A Buyer should carefully review Seller's disclosures and verify, or ask their licensee to verify, any statements of concern. While a real estate licensee can get clarification from the Seller as to statements on the Seller's disclosures, real estate licensees cannot inspect or warrant the condition of the property. Review of the Seller's property disclosure statement is no substitute for professional inspections. Your real estate licensee will provide you with the Seller's Property Disclosure Statement completed by the Seller. Buyers can revoke their offer and undo the sale if they provide the Seller with a Statutory Revocation of Offer within 5 Business Days of receiving the Seller's Property Disclosure Statement.

## PURCHASING VACANT LAND

When a Buyer is purchasing property that is vacant (has no dwellings or no current commercial, agricultural, or industrial uses), certain normal provisions will not apply. Since there is no dwelling place (location to sleep), no smoke alarms are required, and there is no requirement to provide a Seller's Property Disclosure Statement. Nonetheless, the Buyer will receive the Seller's Vacant Land Disclosure (SVLD) that will provide the Buyer with preliminary information about the property. Buyer can waive the SVLD, but should note that the disclosure form contains many pieces of information that can help guide the Buyer's searches and Due Diligence Inspections and reviews. Even beyond guiding the Buyer's diligence, the SVLD should contain basic information about the property, such as presence of wells or other water sources on the property and whether the property has the ability to be hooked up to utilities.

Vacant Land Buyers will have a period of time to inspect the property, have soil tests done, to review the land use codes of the area, and to generally learn whether the property is right for the Buyer's intended uses. During this timeframe, the Buyer is advised to have the vacant land surveyed. Oftentimes, the borders and boundaries of vacant land are not visible or clearly marked. Even if there are fences, they can encroach or overlap into the vacant property. A surveyor will take the original boundary description of the property and map out the precise location of the property, which will tell the Buyer whether there are neighboring houses or structures that have been built on the property line. If a neighboring house or structure is over the property line, the neighbor may be able to claim adverse possession of the area and keep using it. The Buyer should always discuss with the Seller about encroachments, and potentially may wish to terminate the agreement or seek out an attorney to resolve the encroachment issue.

Vacant property may also contain some environmental issues like buried storage tanks or buried debris. The Buyer should consider having the property inspected for these sorts of tanks, fill dirt, or debris. Storage tanks and contaminated soils can sometimes cause significant environmental clean up costs for the Buyer and could restrict future development of the property.

The Buyer should also consider looking into zoning, governmental restrictions on use, whether the property is in a flood plain, and whether there are special tax assessments. If the property is subject to any of these scenarios, the Buyer could find themselves incurring significant expenses to maintain and develop the property. Buyer should consult a land use professional or land use attorney to determine whether these specific scenarios apply.

## PROPERTY TAXES

Real property in Oregon is taxed under a complicated formula that involves more than just valuation of the property. Some properties (typically, but not exclusively, farm or forest) are specially assessed, and taxes deferred. The sale of such property can result in changes in the tax status and result in the levy of additional taxes. If a new home is being constructed and the closing precedes completion of the home, the full taxes that will be due upon completion may not be reflected in the closing statement.

Buyers should carefully review closing documents and property taxes and seek the advice of a tax professional if concerned about the valuation, the taxes assessed, potential changes in the tax status, or assessed value of the property after closing. Real estate licensees are not trained or licensed to provide tax advice.

## OMITTED PROPERTY TAX

Oregon statutes require tax assessors to correct tax roll omissions when they are discovered so that everyone pays their fair share of taxes.

Property or value that is omitted in error from the tax rolls is called omitted property. County tax assessors often become aware of omitted property at the time a home is being marketed for sale. Some assessors hire people to look at the MLS, sales prices, and other information, searching for indications that remodeling has taken place or other signs that properties are under-assessed.

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

Buyers are protected from liability for taxes for prior tax years by reviewing their title reports, because any taxes for prior years will appear there. Taxes cannot be a lien unless they were shown on the public record as due and owing at the time a bona fide purchaser bought the property. A property tax assessment for omitted property can impact both Buyers and Sellers. Sellers may have to pay an unanticipated part of the sales proceeds to the tax assessor. Although Buyers are protected from taxes for years prior, Buyers may incur a tax increase for the current and subsequent tax years if the assessor discovers omitted property.

If you have questions or concerns about a property, contact the county tax assessor where the property is located (the [Oregon Department of Revenue "Property Tax" webpage](#) Provides local tax assessor information). Real estate licensees are not trained to provide tax advice.

## SECTION III: OTHER IMPORTANT ADVISORIES

### WIRE FRAUD ADVISORY

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

Electronic fund transfer has become a growing concern nationwide and can result in significant losses to Buyers. Buyers should exercise extreme caution when wiring funds in real estate transactions. The following steps are also advised:

- At the beginning of the transaction, always discuss in person or over the telephone with verified licensed professionals the wiring process, intended timelines, parties, details of the planned transaction, etc.
- At the beginning of the transaction, establish trusted contact information for everyone you will be communicating with. Only communicate using



the trusted contact information.

- Do not rely solely on electronic communications (e-mail, text messages, etc.) when conducting wire transfers.
- Always independently confirm wiring instructions (including account and routing information), either in person or by telephone, with a trusted and verified person before taking final steps to wire funds; when confirming wiring instructions by telephone, always use a trusted phone number that is verified independently of the communication containing the wiring instructions.
- Talk to your professionals about whether there is a secure portal or other system that can be used to exchange financial and other sensitive information, rather than using email.
- Never send sensitive information, such as social security numbers, routing and account numbers, and/or credit numbers, unless it is done through a secure/encrypted delivery system; and
- Monitor your e-mail account for unrecognized activity and never click on links or attachments in unverified e-mails.

If you believe you have been the victim of a wire fraud, you are advised to contact your bank, escrow agent and real estate professional at a trusted and verified phone number. Please also contact the FBI at (503) 224-4181 and file a complaint using the at [FBI's Internet Crime Complaint Center \(IC3\) website](#).

#### AUDIO AND VIDEO RECORDING

We are living in the age of “smart homes” and “connected devices” so Buyers should be aware that some homeowners may have devices outside or inside their home that record video and/or audio. While this Advisory does not get into a detailed discussion of Oregon law regarding recording devices, to protect their interests home Buyers should assume that there is a possibility that they are being recorded when they tour a home for sale. Buyers should be careful not to discuss matters that could put them at a disadvantage in the negotiation process. Rather, Buyers should take note of issues they would like to discuss and then bring them up with their real estate licensee once they leave the premises.

#### HOMEOWNERS' INSURANCE

The insurance claims history for a home may affect the cost of homeowners' insurance, or even its insurability. Most insurance companies use a database service called the Comprehensive Loss Underwriting Exchange (CLUE) to track claims made. Depending on the content of the CLUE report, and the insurance company's policy, home insurance may prove more difficult to get than expected. The Buyer's claims history and credit report may also be used to determine insurability. Insurers have used CLUE reports and other information, coupled with termination provisions in the policy, to cancel coverage after closing.

*It is critical that Buyers arrange for homeowners' insurance early in the process of purchasing property rather than waiting until closing to get insurance.* If difficulty is experienced in obtaining the insurance, the Buyer can ask the Seller to furnish them with a copy of the CLUE report on the property. Homeowners can obtain a copy of the report for their property online by using the online [Lexis Nexis C.L.U.E.® Property tool](#). Buyers may want to talk to the licensee they are working with about whether obtaining suitable homeowners' insurance should be made a contingency of the sale. More information on homeowners' insurance in Oregon can be found on the Oregon Insurance Information Council's “Oregon Home Insurance FAQs” webpage.

#### FLOOD INSURANCE DISCLOSURE

Your mortgage lender may require you to purchase flood insurance in connection with your purchase of this property. The National Flood Insurance Program provides for the availability of flood insurance but also establishes flood insurance policy premiums based on the risk of flooding in the area where properties are located. Due to recent amendments to federal law governing the NFIP and the installment of the NFIP's Risk Rating 2.0 methodology, those premiums are increasing, and in some cases may rise by a substantial amount over the premiums previously charged for flood insurance for the property. For more information on these updates visit [FEMA's “NFIP's Pricing Approach” webpage](#). As a result, you should not rely on the premiums paid for flood insurance on this property previously as an indication of the premiums that will apply after you complete your purchase. In considering your purchase of the property you should consult with one or more carriers of flood insurance for a better understanding of flood insurance coverage, the premiums that are likely to be required to purchase such insurance and any available information about how those premiums may increase in the future. Real Estate licensees do not have the expertise to assess flood potential and probable insurance premiums. For more information & flood plain maps, visit [FEMA's “Flood Insurance” webpage](#).

#### NEIGHBORHOODS

Neighborhoods change over time so a Buyer cannot expect the area surrounding their home to stay as it is. Buyers concerned about potential development in the surrounding area should check with governmental authorities to determine if any large-scale building projects are scheduled for the area. Building permits, zoning applications and other planning actions are a matter of public record. In Oregon, local governments must develop comprehensive plans that guide development over long periods of time. These plans may include “overlay zones” that can have a significant effect upon development.

Oregon cities with a population over 25,000 as well as all cities with over 1,000 people within the Metro urban growth boundary must update their zoning codes to allow for multiple housing types on single family lots, including duplexes, 3-plexes, 4-plexes and cottage clusters. Cities between 10,000 and 25,000 in population must allow for duplexes on single family lots. The legislature enacted these changes to address Oregon's shortage of housing supply. Check with your city or county to learn more about local zoning code changes in response to HB 2001.

If concerned about development, Buyers should check with local government planning departments. Information about planning departments can be found on the county or city website. Website and contact information for counties can be found on the [Association of Oregon Counties website](#). Contact information and websites for cities can be found on the [League of Oregon Cities “City Directory” webpage](#). For information on state road building projects, check with the [Oregon Department of Transportation](#).

Location within a school district can be an important attribute of a neighborhood. School boundaries, however, are subject to change. If location within a particular school district is material to the purchase of real property, the Buyer should investigate the boundaries and the likelihood of

change by contacting the school district directly.

Oregon law provides a “just compensation” right for some Oregon property owners if a public entity enacts or enforces a land use regulation that restricts the use of property and has the effect of reducing the value of the property. The law allows, but does not require, governing bodies to modify, remove, or not apply land use regulations in lieu of paying compensation. Property that has been in single ownership or held in a family over a long period of time may have more development potential and, therefore, value than has a neighboring property purchased more recently. At the same time, some property may be less valuable because of the potential for un-zoned, property specific uses on neighboring property. Real estate licensees are not trained to predict the contingent and uncertain potential effects of complex laws like Oregon compensation laws. Clients who believe their decision to sell or purchase Oregon real estate may be affected by Oregon’s property compensation laws are advised to seek the counsel of appraisers, attorneys, or other land use professionals.

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

In Oregon, certain social conditions that may be of concern to Buyers are considered not to be “material” by state law. Oregon Revised Statutes 93.275. Ordinarily, “material facts” must be disclosed by the Seller or the Seller’s agent. Because state law declares certain facts that may be important to a Buyer to be not material, Buyers cannot rely on the Seller disclosing this kind of information. Buyers should undertake their own investigation if concerned that the property or a neighboring property has been the site of a death, crime, political activity, religious activity, or any other act or occurrence that does not adversely affect the physical condition of, or title to, real property, including that a convicted sex offender resides in the area. Concerned Buyers can contact their local police for more information. Website and contact information for counties can be found on the [Association of Oregon Counties website](#). Contact information and websites for cities can be found on the [League of Oregon Cities “City Directory” webpage](#). Some large cities (e.g., Portland) publish crime maps (e.g., [the PortlandMaps “Crime Statistics” online map](#)) on their website. Information about registered sex offenders can be found on the online [Oregon State Police Sex Offender Registry](#). Buyers concerned that neighborhood properties may have been used for illegal drug manufacture can visit the website of the [Building Codes Division](#), for more information. Information on Oregon’s Drug Lab Clean Up Program and meth labs can be found on the [Oregon Health Authority’s “Drug Lab Cleanup Procedures” webpage](#). Under Oregon law, neither the Seller nor their agent is allowed to disclose that an owner or occupant of the real property has or had human immunodeficiency virus or acquired immune deficiency syndrome.

### **AGGREGATE SITE**

Home Buyers in rural areas may be interested in whether the home they are considering purchasing is near a mine site, such as a rock quarry or sand and gravel pit. Resource uses, such as mining, may conflict with the type of lifestyle that new home Buyers anticipate or expect living in Oregon’s rural communities. Mining uses are a common part of businesses that operate in these rural zones. Buyers concerned about this have several resources available to them to determine if a mining use is located near the home they are considering purchasing. Oregon’s Department of Geology and Mineral Industries (DOGAMI) [website has an interactive map](#) that lists all mine sites under the state agency’s jurisdiction. Additionally, each [county government](#) maintains their own inventory of mine sites that have county land use authority. Home Buyers interested in where mine sites are located should look at both sources before considering the purchase of their next home.

### **SHORT SALE PROPERTIES**

A short sale is any sale where the purchase price will not result in sufficient proceeds to pay off the mortgage, or other liens, and clear the title. Short sales are typically made using a short sale addendum that makes the transaction contingent upon the Seller obtaining the consent from their creditors permitting a reduction in the closing costs sufficient to close the transaction for the purchase price. The creditor’s consent to the short sale may be accompanied by additional obligations or changes to the sale agreement, in which case, the Seller must thoughtfully consider whether they are able to complete the sale. Many lenders will require that the Seller be able to continue marketing the property and seeking out better offers while under contract, which can make the transaction less stable for the Buyer. There is no guarantee that the lender will accept the terms of the Buyer’s offer on a short sale, nor are there guarantees that the transaction will close. Because the transaction is contingent upon the consent of one or more third parties, subject to continued marketing, and subject to rejection by Seller if the lenders terms are too strict, short sales often fail. Buyers should understand and plan for the resulting uncertainty. Contract deadlines and termination provisions must be carefully considered in a short sale. Creditors will often demand changes in the terms of the sale agreement as a condition of giving their consent. Buyers should be prepared to deal with the additional uncertainty created by the potential for multiple offers and third-party demands. Real estate licensees can give Buyers important marketing, business and negotiating advice and information and can assist in preparation of the sale agreement but only pursuant to the client’s instructions. Real estate licensees are not attorneys and are prohibited by law from giving legal advice.

### **REAL ESTATE OWNED PROPERTIES**

When a lender forecloses on a property, obtains title in lieu of foreclosure or otherwise obtains title to real property as a result of a mortgage or lien, the property becomes what is called “Real Estate Owned” or REO property. Lenders typically sell REO property using the same listing and marketing techniques as ordinary homeowners. REO property, however, is almost always sold using forms and procedures developed by the lender. Such forms and procedures can significantly affect a Buyer’s rights and obligations in the transaction. For instance, many REO forms delay formation of the contract until right before closing, or otherwise reserve to the Seller the right to cancel the contract. Buyers should understand and plan for the resulting uncertainty. REO forms typically contain very detailed clauses that shift responsibility for the condition of the property to the Buyer and make it difficult or impossible for the Buyer to sue the Seller if a defect is discovered after closing. Real estate licensees can give Buyers important marketing, business and negotiating advice and information and can assist in preparation of the sale agreement but only pursuant to the client’s instructions. Real estate licensees are not attorneys and are prohibited by law from giving legal advice.

### **VISUAL ARTISTS RIGHTS ACT OF 1990 (VARA)**

In 1990, Congress passed a law giving special protections to artists of certain “visual works of art.” The law let artists prevent any “intentional

distortion, mutilation, or other modification” of the artists’ work that could somehow damage the artist’s “honor or reputation” and allowed artists to prevent destruction of works that were of “recognized stature.” Damaging an artist’s work can result lawsuits for \$750 to \$30,000 per work of art damaged, but if the destruction of the art was willful, the law allows up to \$150,000 in damages for each work that is damaged or destroyed. If the work can be removed without destruction or modification (such as removing the drywall that a mural is painted on in one single piece) VARA requires that the building owner needs to make a “diligent, good faith” effort to provide notice to the artist in writing of that removal and the artist has to either remove the work or pay for its removal within 90 days of receiving that notice. If the art cannot be removed without destroying the work, it cannot be removed without the artist’s consent. These rights exist for the life of the artist, but the rights can be waived by the artist. If the rights have not been waived, VARA protections apply even when the artist no longer owns the work of visual art (e.g. an artist sells their artistically customized home to Buyer A, who lives there for ten years then sells the custom home to Buyer B; artist’s protections still exist even though Buyer B never met the artist).

Where VARA can come into play when an artist-owner paints a mural on the wall or carves something on a wooden door or banister, or otherwise incorporates a piece of art into the property itself. The artist’s protections will continue to exist beyond the sale of that property to the Buyer, and in some cases can seriously limit the Buyer’s ability to modify their own property. The owner of the property with the work of art in it can allow the art to decay over time due to the passage of time (there is no requirement that you protect and maintain the art), but they are not necessarily permitted to modify or destroy the work.

To avoid VARA violations, Buyers should consider the following:

- Obtaining a waiver from the artist, permitting the Buyer to modify or destroy art on the property after the Buyer becomes the property-owner.
- Obtaining a waiver or statement from the Seller stating that no VARA claims exist, to the best of Seller’s knowledge.
- Request information regarding whether title insurance will protect against damage caused by VARA.

#### **ADDITIONAL INFORMATION**

[Consumer Financial Protection Bureau](#)

[Oregon Real Estate Agency](#)

[Oregon State Government](#)

[Association of Oregon Counties](#)

[League of Oregon Cities](#)

[Oregon REALTORS®](#)

[National Association of REALTORS®](#)

**OREGON REAL ESTATE AGENCY**

# **Initial Agency Disclosure Pamphlet**

*Consumers: This pamphlet describes the legal obligations of Oregon real estate licensees to consumers. Real estate brokers and principal real estate brokers are required to provide this information to you when they first contact you. A licensed real estate broker or principal broker need not provide the pamphlet to a party who has, or may be reasonably assumed to have, received a copy of the pamphlet from another broker.*

***This pamphlet is informational only. Neither the pamphlet nor its delivery to you may be interpreted as evidence of intent to create an agency relationship between you and a broker or a principal broker.***

## **Real Estate Agency Relationships**

An “agency” relationship is a voluntary legal relationship in which a licensed real estate broker or principal broker (the “agent”) agrees to act on behalf of a buyer or a seller (the “client”) in a real estate transaction. Oregon law provides for three types of agency relationships between real estate agents and their clients:

- **Seller’s Agent** -- Represents the seller only.
- **Buyer’s Agent** -- Represents the buyer only.
- **Disclosed Limited Agent** -- Represents both the buyer and seller, or multiple buyers who want to purchase the same property. This can be done only with the written permission of all clients.

The actual agency relationships between the seller, buyer and their agents in a real estate transaction must be acknowledged at the time an offer to purchase is made. Please read this pamphlet carefully before entering into an agency relationship with a real estate agent.

## **Definition of “Confidential Information”**

Generally, licensees must maintain confidential information about their clients.

“Confidential information” is information communicated to a real estate licensee or the licensee’s agent by the buyer or seller of one to four residential units regarding the real property transaction, including but not limited to price, terms, financial qualifications or motivation to buy or sell.

“Confidential information” does not mean information that:

- The buyer instructs the licensee or the licensee’s agent to disclose about the buyer to the seller, or the seller instructs the licensee or the licensee’s agent to disclose about the seller to the buyer.
- The licensee or the licensee’s agent knows or should know failure to disclose would constitute fraudulent representation.

## **Duties and Responsibilities of a Seller’s Agent**

Under a written listing agreement to sell property, an agent represents only the seller unless the seller agrees in writing to allow the agent to also represent the buyer.

An agent who represents only the seller owes the following affirmative duties to the seller, the other parties and the other parties’ agents involved in a real estate transaction:

1. To deal honestly and in good faith;
2. To present all written offers, notices and other communications to and from the parties in a timely manner without regard to whether the property is subject to a contract for sale or the buyer is already a party to a contract to purchase; and
3. To disclose material facts known by the agent and not apparent or readily ascertainable to a party.

A seller’s agent owes the seller the following affirmative duties:

1. To exercise reasonable care and diligence;
2. To account in a timely manner for money and property received from or on behalf of the seller;
3. To be loyal to the seller by not taking action that is adverse or detrimental to the seller’s interest in a transaction;
4. To disclose in a timely manner to the seller any conflict of interest, existing or contemplated;
5. To advise the seller to seek expert advice on matters related to the transaction that are beyond the agent’s expertise;
6. To maintain confidential information from or about the seller except under subpoena or court order, even after termination of the agency relationship; and
7. Unless agreed otherwise in writing, to make a continuous, good faith effort to find a buyer for the property, except that a seller’s agent is not required to seek additional offers to purchase the property while the property is subject to a contract for sale.

None of these affirmative duties of an agent may be waived, except (7). The affirmative duty listed in (7) can only be waived by written agreement between seller and agent.

Under Oregon law, a seller’s agent may show properties owned by another seller to a prospective buyer and may list competing properties for sale without breaching any affirmative duty to the seller.

Unless agreed to in writing, an agent has no duty to investigate matters that are outside the scope of the agent’s expertise, including but not limited to investigation of the condition of property, the legal status of the title or the seller’s past conformance with law.

## Duties and Responsibilities of a Buyer's Agent

An agent, other than the seller's agent, may agree to act as the buyer's agent only. The buyer's agent is not representing the seller, even if the buyer's agent is receiving compensation for services rendered, either in full or in part, from the seller or through the seller's agent.

An agent who represents only the buyer owes the following affirmative duties to the buyer, the other parties and the other parties' agents involved in a real estate transaction:

1. To deal honestly and in good faith;
2. To present all written offers, notices and other communications to and from the parties in a timely manner without regard to whether the property is subject to a contract for sale or the buyer is already a party to a contract to purchase; and
3. To disclose material facts known by the agent and not apparent or readily ascertainable to a party.

A buyer's agent owes the buyer the following affirmative duties:

1. To exercise reasonable care and diligence;
2. To account in a timely manner for money and property received from or on behalf of the buyer;
3. To be loyal to the buyer by not taking action that is adverse or detrimental to the buyer's interest in a transaction;
4. To disclose in a timely manner to the buyer any conflict of interest, existing or contemplated;
5. To advise the buyer to seek expert advice on matters related to the transaction that are beyond the agent's expertise;
6. To maintain confidential information from or about the buyer except under subpoena or court order, even after termination of the agency relationship; and
7. Unless agreed otherwise in writing, to make a continuous, good faith effort to find property for the buyer, except that a buyer's agent is not required to seek additional properties for the buyer while the buyer is subject to a contract for purchase.

None of these affirmative duties of an agent may be waived, except (7). The affirmative duty listed in (7) can only be waived by written agreement between buyer and agent.

Under Oregon law, a buyer's agent may show properties in which the buyer is interested to other prospective buyers without breaching an affirmative duty to the buyer.

Unless agreed to in writing, an agent has no duty to investigate matters that are outside the scope of the agent's expertise, including but not limited to investigation of the condition of property, the legal status of the title or the seller's past conformance with law.

## Duties and Responsibilities of an Agent Who Represents More than One Client in a Transaction

One agent may represent both the seller and the buyer in the same transaction, or multiple buyers who want to purchase the same property, only under a written "Disclosed Limited Agency Agreement" signed by the seller and buyer(s).

Disclosed Limited Agents have the following duties to their clients:

1. To the seller, the duties listed above for a seller's agent;

2. To the buyer, the duties listed above for a buyer's agent; and
3. To both buyer and seller, except with express written permission of the respective person, the duty not to disclose to the other person:
  - a. That the seller will accept a price lower or terms less favorable than the listing price or terms;
  - b. That the buyer will pay a price greater or terms more favorable than the offering price or terms; or
  - c. Confidential information as defined above.

Unless agreed to in writing, an agent has no duty to investigate matters that are outside the scope of the agent's expertise.

When different agents associated with the same principal broker (a real estate licensee who supervises other agents) establish agency relationships with different parties to the same transaction, only the principal broker will act as a **Disclosed Limited Agent** for both the buyer and seller. The other agents continue to represent only the party with whom the agents have already established an agency relationship unless all parties agree otherwise in writing. The principal real estate broker and the real estate licensees representing either seller or buyer shall owe the following duties to the seller and buyer:

1. To disclose a conflict of interest in writing to all parties;
2. To take no action that is adverse or detrimental to either party's interest in the transaction; and
3. To obey the lawful instructions of both parties.

No matter whom they represent, an agent must disclose information the agent knows or should know that failure to disclose would constitute fraudulent misrepresentation.

***You are encouraged to discuss the above information with the licensee delivering this pamphlet to you. If you intend for that licensee, or any other Oregon real estate licensee, to represent you as a Seller's Agent, Buyer's Agent, or Disclosed Limited Agent, you should have a specific discussion with the agent about the nature and scope of the agency relationship. Whether you are a buyer or seller, you cannot make a licensee your agent without the licensee's knowledge and consent, and an agent cannot make you a client without your knowledge and consent.***



## **ADVANTAGE**

### Real Estate

#### Suggested Vendor List

##### **Home Inspection:**

Rising Tide Home Inspection  
& sewer scope  
Neal Frechette | 541-206-1347  
Risingtide2019@aol.com  
<https://www.risingtide2020.net/>

Applegate Inspections LLC  
David Applegate, CPI  
541-272-4799  
[www.applegateinspectionsllc.com](http://www.applegateinspectionsllc.com)  
applegateinspectionsllc@gmail.com

All Corners Inspection  
Erik Haluzak | 541-250-9447  
<https://allcornersinspections.com/>  
allcornersinspection@gmail.com

Christopher J Smith  
Inspect-A-Home Inspections  
(541) 521-0479  
inspections541@gmail.com  
<https://www.inspectoregon.net/>

Peter Barton Home Inspections  
541-764-8956 | 866-722-7836  
inspector@pbhomeinspections.com  
<https://www.pbhomeinspections.com/>

Oregon Certified Inspection Services  
Lance Harskjold, Inspector/Owner  
(541) 272-2924 |  
Lance@OCISLC.COM  
<https://ocislsc.com/index.html>

Quality Check Home Inspections  
Jacob & Josh Nelson | 541-232-6223  
qcheckinspections@gmail.com  
<https://qcheckinspections.com/>

Western Infrared  
Larry Tyler | 541-351-8855  
larry@WesternInfrared.com  
<https://westerninfrared.com/>

##### **Pest Treatment:**

Swanson's Pest Management  
Blake Smith | [www.Swansonspm.com](http://www.Swansonspm.com)  
1-800-622-8993 | C: 541-554-8976

Pointe Pest Control  
844-356-7016 | 541-497-7167  
<https://pointepestcontrol.com/>

##### **Pest Treatment cont.:**

Pro Pest Solutions  
541-961-5627 | 877-541-5590  
<https://www.propestsolutions.net/>

1<sup>st</sup> Choice Pest Control  
Waldport, OR  
541-563-3661 | [bugman@peak.org](mailto:bugman@peak.org)

##### **Oil Tank Inspection & Removal:**

Alpha Environmental (+ mold & sewer scope)  
Zach Goodman | C: 503-319-2675  
zachary@alphaenvironmental.net  
<https://alphaenvironmental.net/>

Bill Goff Construction | 503-559-8670  
1357 Talbot Road SE, Jefferson, OR  
<https://www.billgoffconstruction.com/>

##### **Mold Inspection & Remediation**

Disaster Master | 541-992-2080  
<https://coastdisastermaster.com/>

ServPro 541-745-2097 | 503-393-9999  
<https://www.servpro.com/>

Summit Cleaning & Restoration  
800-769-1553  
<https://www.summitclean.com/>

Service Master | 541-996-2255  
<https://www.servicemasterrestore.com>

##### **Septic Inspection:**

T & L Septic  
1121 SW Highway 101, Lincoln City  
541-994-6551  
[www.tandlsepticentank.com/](http://www.tandlsepticentank.com/)

Edgewater Environmental  
P.O. Box 130, Newport, OR  
541-265-8389 |  
[www.edgewaternw.com](http://www.edgewaternw.com)

Northwest Septic Services  
Peter Robertson | 541-994-6977  
<https://northwestsepticsservice.com/>

M & E Septic Service  
P.O. Box 1839, Waldport, OR 97365  
541-563-3867

##### **Septic Inspection cont.:**

Bill Zekan Consulting  
Newport, OR 97365  
541-961-8824

##### **Well Inspection:**

Robertson Environmental LLC  
Paul Robertson, MSc  
Environmental Scientist, Owner  
2124 NE Reef Ave., Lincoln City, OR  
<http://www.robertsonenvironmental.com/>  
Paul@Robertsonenvironmental.com  
541-921-4969

Aqua Pro Pump Services  
541-791-4202  
35967 Plagmann Dr NE, Albany  
[AquaProPumpService.com](http://AquaProPumpService.com)

Coast Range Equipment & Repair  
Larry Whitehurst  
330 NE 1<sup>st</sup> St., Newport, OR 97365  
541-265-4465

Jones Drilling & Pumps  
29400 Santiam Hwy, Lebanon  
541-367-2560 or 541-451-2686  
[www.jonesdrillingandpump.com/](http://www.jonesdrillingandpump.com/)

Stutzman Services  
Philomath, OR | 541-928-8942  
[www.stutzmanservices.com/](http://www.stutzmanservices.com/)

5E Pump and Well Service  
541-913-5951  
[5epumpandwellservice@Gmail.com](mailto:5epumpandwellservice@Gmail.com)  
<https://5epumpandwellservice.com/>

##### **Lead Based Paint Inspection:**

Envirolead | 541-404-2788  
<https://envirolead.us/>

Homecheck | 541-914-0559  
homecheck@hchomeinspections.com

##### **Environmental Testing:**

Alpha Environmental (+ mold & sewer scope). info@alphaenvironmental.net  
Zach Goodman | C: 503-319-2675  
[www.alphaenvironmental.net](http://www.alphaenvironmental.net)

## **Land Survey:**

Nyhus Surveying, Inc.  
Gary Nyhus | 541-528-3234  
<https://www.nyhussurv.com/>

Swinehart Surveying  
Stephen Swinehart | 541-961-4374

Ferguson Surveying (Linc. City Only)  
Darius Ferguson | 541-994-5854

Land Markers Surveying  
503-581-0911  
<https://landmarkerssurveying.com/>

## **Land Use Consulting:**

Richard Diaz, Attorney  
423 N Coast Hwy, Newport  
541-265-8881  
<https://mggdllaw.com/>

Jeff Pridgeon, Attorney  
515 W. Olive St., Newport  
541-265-2217

## **Geological/Engineer:**

Mel McCracken, PE, GE  
Geotechnical Engineer  
OGD Consulting, PC  
541-738-0895 (O) | 541-760-8023 (C)  
<https://foundationengr.com/>

Oregon Geotechnical Services  
David Reich, Principal Eng. Geologist  
*Pre-Purchase Evaluations Available*  
503-720-6886  
DavidReich@comcast.net  
<https://oregongeotech.com/>

HG Schlicker & Associates  
Doug Gless  
<https://www.hgschlicker.com/>  
503-655-8113 | 800-305-8113

## **Structural Engineer:**

R.K. (Roy) MacMillan  
MacMillan & Associates  
503-939-7666  
[rm@macmillan-group.com](mailto:rm@macmillan-group.com)

Stricker Engineering  
Garibaldi, OR | 503-322-2442  
<https://www.strickerengineering.com/>

## **Lenders:**

BMO | Kevin Battles  
248 SW Coast Hwy, Newport, OR  
541-265-9444  
kevin.battles@bmo.com

Movement Mortgage | Larry Urbanski  
949-813-1312 (C) | 503-495-8270 (O)  
Larry.Urbanski@movement.com  
<https://movement.com/lo/larry-urbanski>

Cross Country Mortgage  
Jessica Steenkolk  
1547 N Coast Hwy, Ste 1, Newport  
C 541-961-0609; O 541-735-9861  
Jessica.Steenkolk@ccm.com  
<https://crosscountrymortgage.com/jessica/>

TLC Federal Credit Union  
1625 N. Coast Hwy., Newport, OR  
541-265-8182 | <https://fibrecu.com/>

Oregon Coast Bank | Becky Lytwyn  
909 SE Bay Blvd., Newport, OR  
O 541-265-9000 | C 541-270-9005  
becky@oregoncoastbank.com  
<https://www.oregoncoastbank.com>

Washington Federal Inc. | Kim Smith  
Kimberlie.smith@wafd.com  
<https://www.wafdbank.com/newport>  
505 N. Coast Hwy. Newport, OR  
541-265-2269

Oregon State Credit Union  
Jaimy Herbert | Mortgage Loan officer  
541-602-5754 (C) | 541-714-4153 (O)  
<https://www.oregonstatecu.com>

Director's Mortgage Inc.  
Lincoln City, OR 97367  
541-994-6003  
lincolncity@directorsmortgage.net  
<https://www.directorsmortgage.com/oregon/>

Umpqua Bank  
1250 N. Coast Hwy., Newport, OR  
541-265-7000  
[www.umpquabank.com](http://www.umpquabank.com)

## **1031 Asset Exchange:**

Asset Preservation  
877-615-1031  
<https://apiexchange.com/>

## **1031 Asset Exchange cont.:**

IPX1031  
Doug Blackwell | Milissa Ormiston-Hall | 503-223-3911  
[doug.blackwell@ipx1031.com](mailto:doug.blackwell@ipx1031.com)  
[www.ipx1031.com/blackwell](http://www.ipx1031.com/blackwell)

CHEX Exchange Service Company  
1-800-559-9737 | 360-828-8931  
[www.CHEX1031.com](http://www.CHEX1031.com)

## **Home Warranty Insurance:**

First American Home Warranty  
Kim Peterson | Area Manager  
541-521-3302  
<https://homewarranty.firstam.com>

American Home Shield  
800-735-4663  
[www.ahs.com/home-warranty](http://www.ahs.com/home-warranty)

America's Preferred Hm Warranty, Inc. | Anne Keddington  
C: 971-712-4736 | TF: 800-648-5006  
akeddington@aphw.com |  
<https://www.aphw.com/>

## **Foundation/Soil Stabilization:**

PLI Systems | [www.plisystems.com](http://www.plisystems.com)  
3045 SE 61<sup>st</sup> Ct. Hillsboro, OR 97123  
503-649-8111 | [info@plisystems.com](mailto:info@plisystems.com)

Ram Jack | 503-967-4006  
[www.ramjack.com/portland/](http://www.ramjack.com/portland/)

Terra Firma Foundation Systems  
13110 SW Wall St. Portland, OR  
1-844-311-8051  
[www.goterrafirma.com](http://www.goterrafirma.com)

## **Real Estate Attorneys:**

Yaquina Law, Traci McDowall  
541-272-5500  
<https://yaquinalaw.com/>

Macpherson Ginter and Diaz  
541-265-8881  
<https://mggdllaw.com/>

Jeff Ouderkirk and Hollen  
541-574-1630  
<https://www.ouderkirkhollen.com/>

Minor, Bandonis and Haggerty  
541-265-8888