Contents

STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS")

INTRODUCTION

A. USE OF THE FORMS:

These forms are ideally suited for transactions involving the purchase and sale of improved residential properties. The provisions of the contract presume that there are residential improvements on the property. With some revision and adaptation, the form can be used as a contract for the purchase of vacant residential property. Use of the forms for non-residential properties e.g., the purchase of a commercial building is not recommended. Agents are encouraged to seek legal advice and assistance in such transactions.

B. CHOICE OF FORMS:

The contract provides a choice between two basic forms — the Residential contract for Sale and Purchase ("Standard Form") and the "As-Is" Residential contract for Sale and Purchase the ("As-Is Form"). In addition, the Comprehensive Rider provides a variety of special purpose Riders, disclosures and addendums which are discussed later in this manual.

This Manual covers the terms and provisions of the Standard Form. Discussion of the As-Is Form is found later in this Manual.

The choice of using the Standard Form or the As-Is Form will depend primarily upon the intent and the objectives of the buyer who initiates the offer and somewhat upon market conditions. The essential differences are:

1. The Standard Form imposes an obligation on the seller to pay the cost of remediating certain deficiencies discovered through inspections conducted by the buyer; the As-Is Form does not impose such an obligation and, with some limitations, requires the buyer to accept the property in as-is condition.

2. The As-Is Form permits the buyer to inspect the property and, within the Inspection Period, cancel the contract for any reason (or no reason at all), essentially providing an option to cancel. The Standard Form contains no option to cancel.

   Buyers often find the As-Is Form preferable because of this cancellation option. In a buyer's market, the option to cancel enables a buyer to make simultaneous offers on multiple properties without the risk of being bound on any particular contract. If defects and deficiencies are discovered the seller will sometimes volunteer to remedy deficiencies or offer repair credits in order to induce the buyer not to cancel the contract. A seller may prefer the Standard Form thereby eliminating the uncertainty created by the cancellation option. On the other hand, the seller benefits under the As-Is Form by avoiding the cost of repairs/remediation.

Comprehensive Rider L (Right to Inspect and Right to Cancel) offers a hybrid approach which preserves the buyer's inspection rights and cancellation option but also imposes remediation obligations on the seller in the event the buyer elects not to cancel. The Standard Form can be converted to "As-Is" by using Comprehensive Rider K.

C. PREPARATION AND STANDARD OF CARE:

Improperly prepared real estate contracts containing errors, omissions or ambiguities can produce headaches for the parties to the transaction and liabilities for the broker and sales associate ("agent"). If the buyer and seller are motivated to complete the transaction, such problems with the contract are frequently overcome. However, a remorseful buyer or seller seeking to avoid his/her obligations will first look to the contract itself for drafting defects that might provide an exit.

The contract is the single most important document involved in real estate transactions. It formalizes negotiations, defines the rights and obligations of the parties and provides a framework for closing the deal. The Florida Statute of Frauds requires that the contract be in writing and signed by the parties to be bound or by authorized agents. Errors, omissions and poor drafting can lead to a failed transaction, loss of commission and potential liability on the part of the agent.

The agent must have a working familiarity with the printed provisions of the contract forms. The contract provides that handwritten and typewritten provisions will control in the event of a conflict with printed provisions. Therefore, to know whether it is necessary to negate, amend or supersede a printed provision, the agent must first know the content and substance of the printed provisions.

D. CONTRACT DEADLINES:

Standard F of the contract provides that "Time is of the essence in this contract." These legal words of art mean that deadlines and time periods expressed in the contract are strict, and, except as otherwise provided, cannot be unilaterally extended. Failure to perform within the applicable deadline can serve as a basis for a claim of default on the part of the non-performing party resulting in possible rescission of the contract and/or a claim for damages.

The contract forms contain numerous provisions establishing time periods and deadlines. In some instances, these deadlines are part of the printed form. Other dates and time periods are in a "fill in the blank" format. A "default" time period is included in the printed form to apply in the event that the blank is not completed. Insert time periods and deadlines which are realistic and internally consistent.

The contract forms include line numbers in the left hand margin. Some of these line numbers show an asterisk (*) indicating that there is a need to check the box or fill in the blank on that particular line. Contract computer programs typically highlight these blanks and boxes reducing the risk of omission.

Following the execution of the contract by all parties, the agent should consider producing a written schedule of contract deadline dates and furnishing a copy of that schedule to the parties involved in the transaction. The agent has a vested interest in making sure that the parties perform in a timely manner and to render assistance when needed.

E. PREPARING TO PREPARE THE CONTRACT:

It is important to have the information constituting the basic terms of the agreement prior to preparation. Being fully familiar with the terms and conditions of the offer and having that essential information will help ensure that the contract offer is prepared efficiently and in proper form. The following is a list (not necessarily a complete list) of pre-preparation considerations.

1. Proper identification of the buyer and seller.
2. Correct legal description.
3. Inventory of included and excluded personal property.
4. Price, deposits, financing and closing date.
5. If a financing contingency is to be included, what are the desired terms of financing and are those terms realistic given market conditions?
6. If a purchase money mortgage is involved, what are the terms (principal amount, interest rate, method of payment) being offered by the buyer?
7. Amount of General Repair Limit, WDO Repair Limit and Permit Limit.
8. Is there a prior title insurance policy and survey?
9. What addenda or riders are required/desired?
10. If the property is a condominium unit obtain the information necessary to complete the required Condominium Association Rider included as part of the Comprehensive Rider e.g., association approval process, time for approval, interviews, right of first refusal, amount of regular assessments, pending or threatened special assessments, assigned parking spaces, storage spaces, restrictions relating to pets and children, etc.
11. If the property is governed by a homeowner's association, obtain information necessary to complete the required Homeowner's Association/Community Disclosure e.g., association approval process, amount of regular assessments and pending or threatened special assessments, use restrictions, architectural controls, etc.

PARTIES, PROPERTY DESCRIPTION, BASIC TERMS

1* **PARTIES:** _____ ("Seller"),
2* and _____ ("Buyer"),
3 agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property
4 (collectively "Property") pursuant to the terms and conditions of this Residential Contract For Sale And Purchase and
5 any riders and addenda ("Contract"):

A. DESCRIBING THE SELLER:

1. Who owns the property? The name of the seller(s) should be consistent with the manner in which title to the property is held. Information derived from the county property appraiser's office or from MLS listing data is not always reliable. A better source is the deed vesting title in the seller and/or a prior title insurance policy.

2. Homestead/Joint Ownership: Improved residential property owned in the individual name of a married person and occupied as a principal residence is likely subject to the Florida homestead laws which require the joinder of the spouse in a deed conveying the property. Therefore, the spouse should be joined as a party to the contract. If the property is held by spouses as tenants by the entirety, both must sign. If owned by two or more individuals as joint tenants or tenants in common, all co-owners must sign the contract.

3. Corporations: If owned by a corporation, enter the exact name of the corporation and indicate whether it is a Florida corporation or a corporation of another state. Require execution by the president or vice president of the corporation. A determination should be made that the corporation is in good standing. Corporate status of Florida entities and registration of foreign entities can be obtained by a record search on the Florida Department of State, Division of Corporations web site — *www.ccfcorp.dos.state.fl.us,* or *www.sunbiz.org*.

4. Foreign Seller: If the seller is not a U.S. citizen or entity, the provisions of the Foreign Investment in Real Property Tax Act (FIRPTA) may require withholding of a portion of the sales proceeds for payment of taxes. A FIRPTA Rider (Comprehensive Rider I) should be attached.

5. Partnerships:

a. General Partnerships. General partnerships are not legal entities under Florida law but are authorized to hold title to real property. As with corporations, the parties signing the contract should be the same individuals who are required to sign a deed. The problem with general partnerships is that, in many cases there is no public record identifying the partners or the limitations on their authority to bind the partnership. The authority of a partner to sign a contract and convey partnership property can be determined from an examination of the partnership agreement and/or the recording of a partnership affidavit as provided for in Section 689.045(3), Florida Statutes. In addition, if a general partnership has registered with the Florida Department of State and filed a Statement of Partnership Authority the partner(s) named in the Statement of Authority is the proper party to sign on behalf of the seller partnership. The foregoing also applies to general partnerships qualifying as limited liability partnerships under Section 620.9001, Florida Statutes.

b. Limited Partnerships. Limited partnerships are legal entities under Florida law. They are composed of one or more general partners and any number of limited partners. Limited partners by law have no authority to bind the limited partnership. As with corporations, a determination should be made as to whether the limited partnership is in good standing. This can be determined by record search at the web site of the Florida Department of State Division of Corporations. That search will reflect the identity of the general partners. A general partner has the authority to bind the limited partnership unless (a) pursuant to Section 620.1103 (4) (f), Florida Statutes, an affidavit has been recorded on the public records which limits the authority of a general partner(s) and/or (b) the property sale involves substantially all the assets of the limited partnership, in which case approval of all general partners and a majority of limited partners may be required.

6. Limited Liability Companies. As with other entities, a determination should be made that the limited liability company is in good standing. An LLC is either manager-managed or member-managed. A search of the records at the Florida Department of State, Division of Corporations web site will identify the manager (or member(s) if member-managed) authorized to bind the LLC.

Any manager of a manager-managed LLC or any member of a member-managed LLC may bind the LLC on the contract unless a statement of authority is filed with the state and a certified copy is recorded on the public records limiting the authority of LLC managers/members, in which case the statement of authority will control. (See Sections 605.0302 and 605.04074 (3), Florida Statutes.)

7. Estates: If the property is an asset of an estate, the party should be described as "_____ _ as the Personal Representative of the Estate of _____ deceased." If the Personal Representative does not have the power of sale in the will, the contract should be conditioned upon the approval of the probate court. Upon the death of an owner, title to real property immediately vests in heirs or devisees under a will. There may be circumstances where consent or joinder of heirs/devisees may be necessary in order to create a binding contract with an estate. Agents are advised to consult with a qualified attorney in such cases.

8. Trusts: If the seller is a trust, the proper party is the trustee of the trust, not the trust itself. Once again, the authority of the trustee to sell and convey trust property depends on trust documents which are typically not available on the public records. If title is held by the popular form of grantor revocable trust and if the deed vesting title in the trustee contains trustee powers language prescribed by Section 689.073, Florida Statutes, then execution of the contract by the trustee identified in the deed is sufficient. In other situations, the trust documents should be examined to determine whether the trustee is authorized to convey trust property. In some cases, the trust document will require the approval of a majority or greater percentage of multiple trustees and/or the approval of all or some of the beneficiaries.

9. Use of Powers of Attorney: Provided the individual seller or buyer (not an entity) executing the power of attorney ("P/A") is competent, an effort should be made to obtain the party's signature on the contract. P/A's should be used and accepted as a matter of necessity, not convenience. In this age of PDF and electronic signing, signatures can be obtained easily and quickly. The contract can be signed by an authorized agent although the agent's authority should be evidenced by some form of notarized appointment signed by the party.

It is preferable, however, to obtain a formal P/A sufficient for purposes of executing a deed or mortgage meeting these requirements:

a. The P/A is signed by the principal, two subscribing witnesses and acknowledged by the principal before a notary public; or

b. If executed outside of the state of Florida, the P/A complies with the law of the state in which it was executed; and

c. The P/A plainly states that the attorney-in-fact has the authority to sell and convey (or purchase) real property (specific reference to the subject property not necessary) and contains no limitations or conditions; and

d. There is no reason to suspect (1) the prior revocation of the P/A, (2) incompetency (except in the case of a durable P/A) or (3) the prior death of the principal.

The preferred method for an attorney-in-fact to execute the contract is to sign in the party's name by himself as agent e.g., "Peter Principal by Allen Agent, his attorney-in-fact".

10. Conclusion: Identifying the proper party as the seller is not as simple as it would seem, particularly with respect to partnerships, trusts and other entities. Care should be taken and due diligence exercised to determine the authority of individuals executing the contract. If the individual signing the contract on behalf of the seller lacks authority, then the partnership, trust or other entity may not be bound by the contract, a problem typically discovered later in the transaction.

B. BUYERS:

1. How will title be taken? Ideally, the buyer should be identified in the same manner as the buyer would be described on the deed. Typically, a married couple purchasing a principal residence will want to hold title as husband and wife; thus, both should sign the contract. The manner in which title to real property is taken may raise tax and estate planning issues. In such instances, the buyer should be encouraged to consult with an attorney experienced in such matters. If, at the time the contract is executed, the buyers are uncertain as to how they wish take title to the property, then the contract should allow assignment under the provisions of Paragraph 7 allowing time for a decision to be made prior to closing.

2. Partnerships, Trusts and other Entities. The inquiries and determinations recommended in Subsection A above also apply with respect to partnerships, trust and entities purchasing real property. Keeping in mind that the primary objective is to create a clear and unambiguous contract which is binding on the buyer and seller, the agent should exercise reasonable due diligence to ensure that the person executing the contract on behalf of a partnership, trust or other entity is authorized to do so.

PROPERTY DESCRIPTION

1. PROPERTY DESCRIPTION:

(a) Street address, city, zip:_____

(b) Located in: _____ County, Florida. Property Tax ID #:_____

(c) Real Property: The legal description is_____

_____

_____

together with all existing improvements and fixtures, including built-in appliances, built-in furnishings and attached wall-to-wall carpeting and flooring ("Real Property") unless specifically excluded in Paragraph 1(e) or by other terms of this Contract.

(d) Personal Property: Unless excluded in Paragraph 1(e) or by other terms of this Contract, the following items which are owned by Seller and existing on the Property as of the date of the initial offer are included in the purchase: range(s)/oven(s), refrigerator(s), dishwasher(s), disposal, ceiling fan(s), light fixture(s), drapery rods and draperies, blinds, window treatments, smoke detector(s), garage door opener(s), thermostat(s), doorbell(s), television wall mount(s) and television mounting hardware, security gate and other access devices, mailbox keys, and storm shutters/storm protection items and hardware ("Personal Property").

Other Personal Property items included in this purchase are:_____

_____

Personal Property is included in the Purchase Price, has no contributory value, and shall be left for the Buyer.

(e) The following items are excluded from the purchase:_____

_____

A. DESCRIBING THE REAL PROPERTY

1. Legal Description. A legal description is a formal manner by which real property is described. A description of the real property is an essential term of the contract and if the location of the property cannot be determined from the description the contract may unenforceable. Reliable sources for a correct legal description include the deed vesting title in the seller or a prior title policy.

2. Types of Legal Description. When property has been platted the legal description typically refers to lots, blocks and parcels appearing on the plat. If platted, the legal description should include a reference to the name of the plat and the plat book and page number where the plat is recorded in the public records. If the property is unplatted or if the property being conveyed is a portion of a lot, parcel or tract, "metes and bounds" descriptions are commonly employed. This is a method of describing the boundaries of the property by courses and distances and creating such descriptions typically requires the services of a surveyor.

3. Other Methods of Describing the Real Property. The contract form provides for other methods of locating and describing the real property including a street address and a real property tax ID number. This information will supplement a legal description and provide additional certainty as to the location and description of the real property. The real property tax ID number is a number created and assigned by the local county property appraiser's office. This number is commonly noted in the MLS listing data. The agent should consider reviewing the search program available on the county property appraiser's web site to ensure that the real property tax ID number actually describes the real property being sold. It is possible that the ID number may describe a larger parcel of which the property being sold is a part.

4. Fixtures. Paragraph 1(c) makes it clear that the real property includes improvements and fixtures. Fixtures are items that originally may have been personal property which have been affixed to either the soil itself or to some structure in a manner that the removal thereof would likely cause damage to the real property. Subject to further discussion below, fixtures are generally included in the sale of the real property and improvements without the need to specifically identify them.

B. IDENTIFYING PERSONAL PROPERTY:

1. Personal Property. Paragraph 1(d) of the contract identifies certain items of personal property, some of which may constitute "fixtures", which are included in the sale unless specifically excluded in Paragraph 1(e). The items listed are included only if they are "existing on the Property" at the time of the initial offer.

2. Other Items of Personal Property. In addition to those items of personal property and fixtures described in Paragraph 1(d) if there are other items which are included describe those items in the space provided.

3. Personal Property Inventory. If the buyer is purchasing other personal property from the seller e.g., furniture, furnishings, etc., these items should be specifically described on a personal property inventory attached to the contract as an exhibit making reference to that exhibit in Paragraph 1(d). On occasion, this is accompanied by an allocation of the purchase price between the value of the real property and the personal property. This allocation can be of significance with respect to the payment of Florida documentary stamp taxes (which are assessed on the value of the real property) and future appraisals by the county property appraiser for real property tax purposes.

4. No Contributory Value. The contract assumes that personal property has no intrinsic value separate and apart from the value of the real property, improvements and fixtures. If that is not the case and a specific value is to be assigned to personal property items, a special provision or addendum should be added.

PURCHASE PRICE

PURCHASE PRICE AND CLOSING

2. PURCHASE PRICE (U.S. currency): ..... **$**_____

(a) Initial deposit to be held in escrow in the amount of **(checks subject to Collection)** ..... $_____
The initial deposit made payable and delivered to "Escrow Agent" named below
(CHECK ONE): (i) ☐ accompanies offer or (ii) ☐ is to be made within _____ (if left blank, then 3) days after Effective Date. IF NEITHER BOX IS CHECKED, THEN OPTION (ii) SHALL BE DEEMED SELECTED.
Escrow Agent Name: _____
Address: _____ Phone: _____
E-mail: _____ Fax: _____

(b) Additional deposit to be delivered to Escrow Agent within _____ (if left blank, then 10) days after Effective Date ..... $_____
(All deposits paid or agreed to be paid, are collectively referred to as the "Deposit")

(c) Financing: Express as a dollar amount or percentage ("Loan Amount") see Paragraph 8..... _____

(d) Other: _____ ..... $_____

(e) Balance to close (not including Buyer's closing costs, prepaids and prorations) by wire transfer or other Collected funds (See STANDARD S)..... $_____

A. COMPLETING THE PURCHASE PRICE SECTION:

1. Purchase Price. The gross purchase price of the property should be inserted in the first line of this Paragraph. Subparagraphs (a) through (e) are intended to reflect the allocation of the purchase price between deposit(s), financing and cash due on closing. The amounts entered in Subparagraphs (a) through (e) should total the gross purchase price.

2. Initial Deposit(s). Paragraph 2(a) is completed by inserting the amount of the initial deposit to be made by the buyer, identifying the escrow agent and inserting contact information for the escrow agent. The format provides for check-the-box options indicating whether the initial earnest money deposit is to be paid at the time the offer is submitted or within a period of days following the acceptance of the offer.

3. Additional Deposit. Subparagraph 2(b) provides for an additional deposit to be paid at some time after the Effective Date of the contract. Additional deposits are typically payable following the satisfaction of certain conditions, (e.g., obtaining a loan commitment, completing inspections, etc.)

4. Purpose and Importance of Earnest Money Deposit(s). As the name itself suggests, a buyer's deposit on a real estate contract reflects the buyer's earnest intent to enter into a contract with a seller. The law does not specify any particular amount that must or should be paid as a deposit. A real estate contract is enforceable without a deposit. The deposit should be an amount which is sufficient to induce the buyer to perform and which will fairly compensate the seller in the event the buyer defaults under the contract. Under the default provisions of Paragraph 15(a) of the contract, the seller's most convenient remedy in the event of a buyer default is to declare a forfeiture and retain the earnest money deposit(s) as liquidated damages.

5. Financing. Paragraph 2(c) is completed by inserting the amount of financing which the buyer is seeking to obtain pursuant to Paragraph 8(b) (New Third Party Financing), 8(c) (Assumption of an Existing Mortgage) and 8(d) (Purchase Money Mortgage to Seller).

6. Other. Paragraph 2(d) is intended to describe any form of payment of the purchase price other than those specified in Paragraph 2. This might include a direct exchange for other real property or the payment of the purchase price in some form other than money.

7. Balance to Close. Paragraph 2(e) is intended to reflect the balance of the cash to be paid at closing after adjustment of the purchase price for financing, deposits and other credits. As noted, the balance to close is further subject to being increased or decreased by closing costs, prepaids and prorations.

8. Collected Funds. The contract uses the term "Collected" funds. This term is defined in Standard S of the contract as funds being held in an escrow or closing agent's account which have "become actually and finally collected". This addresses the fact that a check may clear an account (i.e., the depository bank would honor a check written on the account) but not be finally collected. Cleared funds may be subject to stop payment orders and wire recalls. Collected funds are not. Note that Paragraph 2(e) requires the balance of the purchase price to be paid by wire transfer or other form of collected funds. Earlier editions of the contract permitted payment by locally issued cashier's or official bank checks. While a closing agent may permit payment in this form, these forms of checks are not considered "Collected" funds until deposited, cleared and collected. Because of the increase in fraudulent cashier's and bank checks, many closing agents require funding by bank wire only. Under Standard S the closing agent may delay the closing until collection occurs.

TIME FOR ACCEPTANCE OF OFFER AND COUNTER-OFFERS; EFFECTIVE DATE

> **3. TIME FOR ACCEPTANCE OF OFFER AND COUNTER-OFFERS; EFFECTIVE DATE:**
> (a) If not signed by Buyer and Seller, and an executed copy delivered to all parties on or before _____, this offer shall be deemed withdrawn and the Deposit, if any, shall be returned to Buyer. Unless otherwise stated, time for acceptance of any counter-offers shall be within 2 days after the day the counter-offer is delivered.
> (b) The effective date of this Contract shall be the date when the last one of the Buyer and Seller has signed or initialed and delivered this offer or final counter-offer ("Effective Date").

A. WHEN DOES THE OFFER BECOME A CONTRACT?

1. Execution and Delivery: The contract requires that an executed copy be delivered to all parties on or before the acceptance date specified. Keep in mind, however, that Standard 0 of the contract permits facsimile and electronic (including pdf) copies of the contract. Therefore, the contract becomes binding at such time as both parties have fully signed and initialed the contract and caused a copy thereof to be delivered to the other party by one of the permitted means on or before the acceptance deadline set forth in Paragraph 3(a).

2. Time for Acceptance. The date for acceptance should take into account the time period that the buyer wishes to allow the seller to consider and accept the offer. There may also be practical considerations such as whether the seller is immediately available to consider the offer. This provision automatically extinguishes the offer if not accepted prior to the acceptance deadline. If a seller accepts the offer after the acceptance deadline the deadline should either be changed and initialed by all parties or some other form of written waiver should be obtained.

3. Counteroffers: The contract contemplates that the parties might engage in negotiations and imposes a deadline of two (2) days for acceptance of a counteroffer. As is discussed later in this manual, the contract provides that all time periods are measured in calendar days producing a potentially short period of time. Agents need to be keenly aware of acceptance deadlines.

4. Effective Date. The date on which the last one of the buyer and seller have completely signed, initialed and delivered the contract is defined as the "Effective Date". Agents should ensure when a party signs the contract or initials a change, the date of signing or initialing is inserted and a record of the delivery date is established. Many time periods and deadlines for performance set forth in the contract depend upon the Effective Date. Confusion as to exactly when the Effective Date occurred creates similar confusion with respect to establishing other time periods and deadlines.

CAUTION: The contract provides for buyer and seller initialing of all pages of the contract (except for the final signature page). The apparent purpose is to authenticate and document the party's acceptance of all pages of the contract. While the inadvertent omission of a party's initial at the bottom of any particular page may not necessarily render the contract incomplete or unenforceable, in a contract dispute the absence of such initials could enable a party to claim that material provisions of the contract were not accepted and that therefore a contract never came to existence. Care should be taken to ensure that the parties initial each page of the contract.

CLOSING DATE

4. CLOSING; CLOSING DATE: The closing of this transaction shall occur when all funds required for closing are received by Closing Agent and Collected pursuant to STANDARD S and all closing documents required to be furnished by each party pursuant to this Contract are delivered ("Closing"). Unless modified by other provisions of this Contract, the Closing shall occur on _____ ("Closing Date"), at the time established by the Closing Agent.

A. DATE AND TIME OF CLOSING:

1. Closing Date. This provision not only establishes the date of closing but also requires that the Closing Agent be in receipt of all documentation and Collected funds. A delayed delivery of documents or funds could result in a default unless excused by "force majeure" (see Standard G), some other provision of the contract or waiver by the performing party.

2. Unless Modified by Other Provisions. Note the preface of this Paragraph "Unless modified by other provisions of this contract...." There are numerous time periods and deadlines for performance set forth in the contract and if any of these provisions would require or allow performance to take place after the specified closing date, the closing date would be automatically extended by such provisions. The agent should be aware of the interaction of these time periods with the closing date and avoid conflict whenever possible.

3. Time of the Essence. As previously discussed, Standard F of the contract provides that "time is of the essence in this contract." Typically, parties to a residential real estate contract intend that the closing date be of the essence subject to various extension provisions contained in the contract.

CAUTION: In transactions involving mortgage financing, a closing date which is less than 30 days from the effective date may be impossible to achieve due to lending regulations. Allow sufficient time for the mortgage loan process. Given the potential for closing date extensions due to lending regulations, back to back closings may be disrupted. A seller or buyer seeking to purchase/sell other property simultaneous with the closing should include special provisions in the contract conditioning the obligation to close on the closing of the simultaneous transaction and possibly provide for an option to extend the closing date in order to allow the simultaneous purchase/sale to close.

EXTENSION OF CLOSING DATE

> **5. EXTENSION OF CLOSING DATE:**
> (a) In the event Closing funds from Buyer's lender(s) are not available on Closing Date due to Consumer Financial Protection Bureau Closing Disclosure delivery requirements ("CFPB Requirements"), if Paragraph 8(b) is checked, Loan Approval has been obtained, and lender's underwriting is complete, then Closing Date shall be extended for such period necessary to satisfy CFPB Requirements, provided such period shall not exceed 7 days.
> (b) If an event constituting "Force Majeure" causes services essential for Closing to be unavailable, including the unavailability of utilities or issuance of hazard, wind, flood or homeowners' insurance, Closing Date shall be extended as provided in STANDARD G.

A. UNDER WHAT CIRCUMSTANCES MAY THE CLOSING DATE BE EXTENDED?

1. The closing dated may be extended as a result of any of the following:

a. Mutual agreement: This would require an amendment to the contract which should be documented by written addendum or amendment signed by the buyer and seller.

b. Operation of Other Provisions: As discussed, Paragraph 4 starts with the phrase "Unless modified by other provisions of this contract...." There are a variety of time periods provided for in the contract which have the potential for extending the closing date. For example, if title objections are made under Standard A of the contract, the seller is given an initial period of thirty (30) days (which can be extended by the buyer for an additional 120 days) within which to cure title defects.

c. Closing Disclosure Notice Requirements: Paragraph 5 (a) recognizes that the regulations of the Consumer Financial Protection Bureau (CFPB) impose mandatory waiting periods after delivery of the Closing Disclosure to a buyer/borrower. A loan closing cannot occur until these waiting periods have expired. Provided a Loan Approval has been obtained and the lender's underwriting is complete, this provision allows for a closing date extension of up to seven (7) days in order to satisfy the Closing Disclosure delivery requirements.

d. Force Majeure: As defined in Standard G, "force majeure" generally extends the time for performance by either party to the contract. Paragraph 5 (b) pertains solely to extension of the closing date and clarifies the Standard G definition to include events and occurrences which cause services essential for closing to be unavailable.

OCCUPANCY AND POSSESSION

6. OCCUPANCY AND POSSESSION:

(a) Unless Paragraph 6(b) is checked, Seller shall, at Closing, deliver occupancy and possession of the Property to Buyer free of tenants, occupants and future tenancies. Also, at Closing, Seller shall have removed all personal items and trash from the Property and shall deliver all keys, garage door openers, access devices and codes, as applicable, to Buyer. If occupancy is to be delivered before Closing, Buyer assumes all risks of loss to the Property from date of occupancy, shall be responsible and liable for maintenance from that date, and shall have accepted the Property in its existing condition as of time of taking occupancy (see Rider T PRE-CLOSING OCCUPANCY BY BUYER), except with respect to any items identified by Buyer pursuant to Paragraph 12, prior to taking occupancy, which require repair, replacement, treatment or remedy.

(b) * ☐ **CHECK IF PROPERTY IS SUBJECT TO LEASE(S) OR OCCUPANCY AFTER CLOSING**. If Property is subject to a lease(s) or any occupancy agreements (including seasonal and short-term vacation rentals) after Closing or is intended to be rented or occupied by third parties beyond Closing, the facts and terms thereof shall be disclosed in writing by Seller to Buyer and copies of the written lease(s) shall be delivered to Buyer, all within 5 days after Effective Date. If Buyer determines, in Buyer's sole discretion, that the lease(s) or terms of occupancy are not acceptable to Buyer, Buyer may terminate this Contract by delivery of written notice of such election to Seller within 5 days after receipt of the above items from Seller, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. Estoppel Letter(s) and Seller's affidavit shall be provided pursuant to STANDARD D, except that tenant Estoppel Letters shall not be required on seasonal or short-term vacation rentals. If Property is intended to be occupied by Seller after Closing, see Rider U. POST-CLOSING OCCUPANCY BY SELLER.

A. DELIVERY OF POSSESSION:

1. Possession Delivered at Closing: Paragraph 6 imposes an obligation on the seller to vacate the property as of the date and time of closing removing all personal items and trash from the property. The seller is further required to deliver all keys, garage door openers, access devices and codes, as applicable, to buyer. Occasionally, a seller may be reluctant to completely vacate the property prior to a closing and the payment of purchase money. This issue should be addressed in the contract by providing for an increased earnest money deposit, or, perhaps, an escrow of closing proceeds. The agent should make it clear to the seller that the property must be vacated at the time of closing unless otherwise agreed.

2. Pre-Closing Possession by Buyer. The parties may agree that the buyer will take possession of the property prior to the closing date. In this situation, Comprehensive Rider T (Pre-closing Occupancy by Buyer) should be used. This Rider provides that the contract is contingent upon the buyer and seller reaching an agreement on a written lease. It further provides that the buyer assumes the obligation to maintain the property and assumes all risk of loss from the date of taking possession. Unless otherwise agreed, the seller remains responsible with respect to repair, replacement, treatment or remedy obligations reported under Paragraph 12 of the contract.

3. Subject to Leases or Occupancy by Third Parties: If the property is to be conveyed subject to a lease or occupancy by one or more third parties, check the box in Section 6(b). This provision should be read together with Standard D. The provision requires delivery of the written lease(s) to the buyer within five (5) days of the Effective Date. The buyer is given a discretionary option to cancel the contract within five (5) days after delivery. Estoppel letters from tenants or, if unobtainable, a seller's affidavit, are required to be delivered by Seller under Standard D, unless the lease is a seasonal lease or short-term vacation rental.

4. Insurance: A buyer's pre-closing occupancy or a seller's post-closing occupancy raises insurance issues. Special care should be taken to make sure that proper fire, casualty and liability insurance is obtained. When the property is used for rental purposes, existing insurance may no longer afford appropriate coverage.

CAUTION: Pre-closing occupancy by the buyer is not an ideal arrangement due to the risk of loss, insurance and lease issues that arise. If, after taking occupancy, the air conditioner compressor self destructs or the roof leaks, the buyer may have second thoughts about closing. The task of preparing a lease should be assigned to qualified legal counsel.

ASSIGNABILITY

84 * 7. **ASSIGNABILITY: (CHECK ONE):** Buyer ☐ may assign and thereby be released from any further liability under
85 * this Contract; ☐ may assign but not be released from liability under this Contract; or ☐ may not assign this Contract.
86 IF NO BOX IS CHECKED, THEN BUYER MAY NOT ASSIGN THIS CONTRACT.

A. RESTRICTIONS ON THE BUYER'S RIGHT TO ASSIGN:

1. Free Assignability: Absent restrictions on the right to assign, a real estate contract is freely assignable by the buyer.

2. Limiting the Buyer's Right to Assign: Paragraph 7 offers three options relating to assignment by the buyer: (a) allowing the assignment and releasing the buyer, (b) allowing the assignment without releasing the buyer and (c) prohibiting assignment. Failure to select one of these options by checking the appropriate box by default is a selection of (c) – assignment prohibited. Option (a) is infrequently selected. Option (b) allows assignment but the original buyer effectively guarantees the performance of the assignee. There may be good reasons for the seller to prohibit an assignment by selecting option (c). If the contract includes a financing contingency the financial condition of the buyer is critical to obtaining a loan commitment. If the property being sold is a condominium unit or includes a club membership, there may be reasons why a particular buyer would be approved by the association whereas an assignee may not be approved.

3. Identified Assignee: Occasionally a buyer may execute a contract with the intention of assigning the contract before closing to a spouse, trust, family member, corporation or other related party or entity. In these cases, insert a provision in Paragraph 20 specifically identifying the intended assignee and indicating whether the buyer/assignee is released from liability under the contract.

4. And/or Assigns: The agent should avoid identifying the buyer in the Parties section of the contract as, for example, "John Smith and/or Assigns." Doing so could make the contract freely assignable and may create inconsistencies with Paragraph 7.

FINANCING

FINANCING

8. FINANCING:

☐ (a) This is a cash transaction with no financing contingency.

☐ (b) This Contract is contingent upon, within _____ (if left blank, then 30) days after Effective Date ("Loan Approval Period"): (1) Buyer obtaining approval of a ☐ conventional ☐ FHA ☐ VA or ☐ other _____ (describe) mortgage loan for purchase of the Property for a **(CHECK ONE):** ☐ fixed, ☐ adjustable, ☐ fixed or adjustable rate in the Loan Amount (See Paragraph 2(c)), at an initial interest rate not to exceed _____ % (if left blank, then prevailing rate based upon Buyer's creditworthiness), and for a term of _____(if left blank, then 30) years ("Financing"); and (2) Buyer's mortgage broker or lender having received an appraisal or alternative valuation of the Property satisfactory to lender, if either is required by lender, which is sufficient to meet the terms required for lender to provide Financing for Buyer and proceed to Closing ("Appraisal") .

(i) Buyer shall make application for Financing within _____ (if left blank, then 5) days after Effective Date and use good faith and diligent effort to obtain approval of a loan meeting the Financing and Appraisal terms of Paragraph 8(b)(1) and (2), above, ("Loan Approval") within the Loan Approval Period and, thereafter, to close this Contract. Loan Approval which requires Buyer to sell other real property shall not be considered Loan Approval unless Rider V is attached.

Buyer's failure to use good faith and diligent effort to obtain Loan Approval during the Loan Approval Period shall be considered a default under the terms of this Contract. For purposes of this provision, "diligent effort" includes, but is not limited to, timely furnishing all documents and information required by Buyer's mortgage broker and lender and paying for Appraisal and other fees and charges in connection with Buyer's application for Financing.

(ii) Buyer shall, upon written request, keep Seller and Broker fully informed about the status of Buyer's mortgage loan application, loan processing, appraisal, and Loan Approval, including any Property related conditions of Loan Approval. Buyer authorizes Buyer's mortgage broker, lender, and Closing Agent to disclose such status and progress and release preliminary and finally executed closing disclosures and settlement statements, as appropriate and allowed, to Seller and Broker.

(iii) If within the Loan Approval Period, Buyer obtains Loan Approval, Buyer shall notify Seller of same in writing prior to expiration of the Loan Approval Period; or, if Buyer is unable to obtain Loan Approval within the Loan Approval Period but Buyer is satisfied with Buyer's ability to obtain Loan Approval and proceed to Closing, Buyer shall deliver written notice to Seller confirming same, prior to the expiration of the Loan Approval Period.

(iv) If Buyer is unable to obtain Loan Approval within the Loan Approval Period, or cannot timely meet the terms of Loan Approval, all after the exercise of good faith and diligent effort, Buyer may terminate this Contract by delivering written notice of termination to Seller prior to expiration of the Loan Approval Period; whereupon, provided Buyer is not in default under the terms of this Contract, Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract.

(v) If Buyer fails to timely deliver any written notice provided for in Paragraph 8(b)(iii) or (iv), above, to Seller prior to expiration of the Loan Approval Period, then Buyer shall proceed forward with this Contract as though Paragraph 8(a), above, had been checked as of the Effective Date; provided, however, Seller may elect to terminate this Contract by delivering written notice of termination to Buyer within 3 days after expiration of the Loan Approval Period and, provided Buyer is not in default under the terms of this Contract, Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract.

(vi) If Buyer has timely provided either written notice provided for in Paragraph 8(b)(iii), above, and Buyer thereafter fails to close this Contract, the Deposit shall be paid to Seller unless failure to close is due to: (1) Seller's default or inability to satisfy other contingencies of this Contract; or (2) Property related conditions of the Loan Approval (specifically excluding the Appraisal valuation) have not been met unless such conditions are waived by other provisions of this Contract; in which event(s) the Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

☐ (c) Assumption of existing mortgage (see Rider D for terms).

☐ (d) Purchase money note and mortgage to Seller (see Rider C for terms).

FINANCING THE PURCHASE PRICE:

This Paragraph describes four options. The first option in Paragraph 8(a) provides that the buyer will pay cash for the property without a financing contingency. Selecting this option does not necessarily mean that the buyer may not obtain third party financing but doing so is not a condition of the buyer's obligations under the contract. Paragraphs 8(b), (c) and (d) describe methods of financing the purchase price.

A. THIRD PARTY MORTGAGES: Paragraph 8(b), if checked, anticipates that the buyer will be seeking a loan approval from, in most cases, an institutional lender. Obtaining such a loan approval is a condition of the buyer's obligation to close.

1. Know the Mortgage Market: The agent should have a working knowledge of the mortgage market including information on current interest rates, origination points, time for processing applications, etc. The terms and conditions of the mortgage being sought by the buyer should be consistent with prevailing rates and terms then being offered by institutional lenders.

2. Conventional/FHA or VA Loans: If an FHA or VA loan is being sought by the buyer, use Comprehensive Rider E which takes into account government regulations applicable to these types of mortgages.

3. The Financing Contingency: The obligation of the buyer to close on the purchase is conditioned upon (1) obtaining approval of a mortgage loan with terms as described and (2) the lender, or mortgage broker, receiving an acceptable appraisal of the Property, both to be accomplished within the Loan Approval Period. Once these two conditions are met, the contract is not contingent upon a subsequent successful closing of the loan unless the loan fails to close because of events described in Paragraph 8(b) (vi). The boxes and blanks in this paragraph should be completed by entering the terms of the loan (type, amount, interest rate, term) to be sought by the buyer. The agent should discourage a buyer from seeking loan terms which are inconsistent with the current mortgage loan market.

COMMENT: NOTICE IN SECTION 8 (b) (1) THAT THE TERM, "LOAN APPROVAL" INCLUDES BOTH THE LENDER APPROVAL AND A SUFFICIENT APPRAISAL. A LENDER APPROVAL WITHOUT A COMPLETED, SUFFICIENT APPRAISAL IS NOT A "LOAN APPROVAL". PRIOR EDITIONS OF THE FR/BAR CONTRACT DID NOT REQUIRE AN APPRAISAL TO BE OBTAINED PRIOR TO THE END OF THE LOAN APPROVAL PERIOD. UNDER PRIOR FR/BAR FORMS, IF A LOAN APPROVAL WAS OBTAINED, AND NOTICE GIVEN, A BUYER COULD LATER CANCEL THE CONTRACT IF THE LENDER REFUSED TO CLOSE BECAUSE OF AN INSUFFICIENT APPRAISAL. TIMING MAY BE A PROBLEM UNDER THIS REVISED PROVISION. A LENDER WILL NEED TO BE INFORMED AT THE TIME OF LOAN APPLICATION THAT THE BUYER WILL NEED BOTH A LOAN APPROVAL AND A SATISFACTORY APPRAISAL BY THE PRESCRIBED DEADLINE. THIS MAY NOT BE CONSISTENT WITH THE LENDER'S NORMAL PROCEDURES. THE DEADLINE SELECTED IN THIS PROVISION SHOULD ALLOW SUFFICIENT TIME TO SATISFY BOTH CONDITIONS.

4. Prompt Application: This provision imposes an obligation on the buyer to apply for a mortgage loan within five days from the Effective Date unless a shorter or longer period is inserted in the blank. Except under unusual circumstances, it is normally possible for the buyer to make an almost immediate application and the agent should take steps to ensure that the buyer proceeds promptly and diligently to submit the application. Federal regulations specify the minimum information that must be furnished by a buyer/borrower in order to constitute a "loan application". Failure to submit the application within the time limit could be regarded as a default on the part of the buyer entitling the seller to exercise remedies (e.g., forfeiture of the deposit).

5. Good Faith and Diligent Effort: Paragraph 8 (d) (i) requires the buyer to use good faith and diligent effort to obtain a Loan Approval meeting the financing terms described in Paragraph 8 (b). "Good faith" means that the buyer is making a bona fide effort to obtain Loan Approval and is not attempting to sabotage the prospects of obtaining Loan Approval in an effort to cause the financing contingency to fail. "Diligent effort" is expressly defined to include "timely furnishing of all documents and information and paying for the appraisal and all other fees and charges" requested by the lender. When a buyer notifies the seller that a Loan Approval was not obtained within the Loan Approval Period, the seller has a right to question whether the buyer met the good faith/ diligent effort requirement. If the buyer fails to meet this requirement the buyer is in default.

6. Loan Approval with Conditions: Loan approvals issued by lenders often have further conditions that the buyer must satisfy before the lender is willing to close the loan. For example, the approval may be conditioned on the submission for additional credit information, verification of information submitted, no material change of financial condition etc. Such conditions do not prevent the approval from qualifying as a Loan Approval under the contract with one exception. Section 8 (b) (i) provides that if the approval requires the buyer to sell other real property, that approval will not be considered a Loan Approval as defined by the contract unless Rider V (Sale of Buyer's Property) is part of the contract. In addition, under Section 8 (b) (vi), if the Loan Approval includes "Property related conditions" (e.g., roof repairs) which are not met, the buyer can terminate the contract.

7. Loan Approval, Delivery of Notice: When the buyer obtains Loan Approval Section 8 (b) (iii) requires the buyer to give written notice to the seller prior to the expiration of the Loan Approval Period. Alternatively, if the buyer has not obtained Loan Approval (as defined) the buyer may give notice of intent to proceed to closing without Loan Approval, in which case the Loan Approval condition is waived.

8. Loan Approval Not Received during Loan Approval Period: Paragraph 8 (b) (iv) provides that the buyer must act prior to the end of the Loan Approval Period and give written notification to the seller that a Loan Approval has not been obtained. In the notice the buyer must tell the seller whether the buyer is (1) electing to terminate the Contract or (2) waiving the Loan Approval requirement. Under Paragraph 8 (b) (v) if the buyer fails to notify the seller of receipt or non-receipt of the Loan Approval prior to the end of the Loan Approval Period then Loan Approval is waived. However, because the seller may have reasonable doubts as to whether the buyer will be able to close, notwithstanding the failure to notify, the seller is given the option to terminate by giving written notice to the buyer within 3 days following the expiration of the Loan Approval Period.

9. Loan Approval Received-Further Conditions: Although obtaining a Loan Approval is the event that satisfies the financing contingency, there are circumstances where the buyer may be excused from the obligation to close even though Loan Approval has been obtained. Paragraph 8 (b) (vi) sets forth two circumstances that will excuse the buyer: (1) seller defaults or other conditions fail, and (2) the Loan Approval contains conditions related to the property (e.g., repair requirements), which, unless waived by other provisions of the Contract, are not met.

CAUTION: Paragraph 8 (b) has the potential for creating uncertainty as to the rights and obligation of the parties:

1. There is no requirement that a copy of the lender's Loan Approval (or equivalent) be delivered to the seller. The only evidence of Loan Approval is a notice from the Buyer.

2. The buyer can give a notice of inability to obtain a Loan Approval at any time during the Loan Approval Period. However, the provision imposes good faith and due diligence obligations on the buyer. Failure to obtain Loan Approval must be based on a bona fide effort.

3. Waiver of Loan Approval not only occurs when the buyer fails to notify the seller of non-receipt of Loan Approval but also where the buyer obtains Loan Approval but fails to notify the seller of receipt under Paragraph 8 (b) (iii). A seller with a more favorable back-up contract in hand could terminate the contract under Paragraph 8 (b) (v).

4. Many buyers seeking a mortgage loan are unable to close without obtaining financing. Failure to notify the seller that the buyer is unable to obtain Loan Approval can have serious consequences for a buyer who lacks the funds to close. Remember that time is of the essence. Neglecting this deadline can result in a default by the buyer and forfeiture of the deposit.

B. ASSUMPTION OF EXISTING MORTGAGE:

1. Is an Existing Mortgage Assumable? Residential real estate transactions rarely involve the assumption of an existing mortgage. Generally, institutional lenders will not consent to the assumption of the existing mortgage. Institutional mortgages typically contain a due on sale clause which allows the lender to call the loan upon the sale or disposition of the property. Non-institutional mortgages, however, may be assumed without the consent of the mortgagee absent a due on sale clause or other restrictions or conditions on assumption contained in the mortgage.

2. Terms and Provisions of Existing Mortgage: The agent should determine in advance of any contract offer whether an existing mortgage may be assumed. If assumable, the agent should obtain a copy of the mortgage and promissory note.

3. Contract Provisions: Paragraph 8(c) makes reference to Rider D to be attached. To complete the Rider the agent will need to determine the amount of the principal balance of the existing mortgage, the interest rate, whether the interest rate is fixed or variable and whether there are any fees, charges or other conditions in the existing mortgage and note relating to assumption.

C. PURCHASE MONEY MORTGAGES:

1. Seller Financing: Paragraph 8(d) is referring to purchase money mortgage financing being offered by the seller. If this option is selected, Comprehensive Rider C (Seller Financing) should be used. See complete discussion of Rider C later in this manual.

CAUTION: While the essential terms of the purchase money mortgage and note are provided for in comprehensive Rider C, the possibility exists that the buyer and seller may later disagree on other terms and conditions of the mortgage and note. Ideally, negotiations in a real estate transaction should conclude upon execution of the contract. Leaving the terms of a purchase money mortgage and note open to further discussions and negotiations between the buyer and seller invites the potential for disagreement and a failed closing. Therefore, it is recommended that the form of purchase money mortgage and note be prepared in advance and made a part of the contract. A special provision should be inserted in Paragraph 20 of the contract stating, in substance, that the parties agree that the purchase money mortgage and note shall be in the form attached as an exhibit. This is one of those occasions when the agent should seek the assistance of competent legal counsel to prepare the mortgage and note forms.

CLOSING COSTS, FEES AND CHARGES

CLOSING COSTS, FEES AND CHARGES

9. CLOSING COSTS; TITLE INSURANCE; SURVEY; HOME WARRANTY; SPECIAL ASSESSMENTS:

(a) **COSTS TO BE PAID BY SELLER:**

- Documentary stamp taxes and surtax on deed, if any
- Owner's Policy and Charges (if Paragraph 9(c)(i) is checked)
- Title search charges (if Paragraph 9(c)(iii) is checked)
- Municipal lien search (if Paragraph 9(c)(i) or (iii) is checked)
- Charges for FIRPTA withholding and reporting
- HOA/Condominium Association estoppel fees
- Recording and other fees needed to cure title
- Seller's attorneys' fees
- Other:_____

Seller shall pay the following amounts/percentages of the Purchase Price for the following costs and expenses:

(i) up to $ _____ or _____ % (1.5% if left blank) for General Repair Items ("General Repair Limit"); and

(ii) up to $ _____ or _____ % (1.5% if left blank) for WDO treatment and repairs ("WDO Repair Limit"); and

(iii) up to $ _____ or _____ % (1.5% if left blank) for costs associated with closing out open or expired building permits and obtaining required building permits for any existing improvement for which a permit was not obtained ("Permit Limit").

If, prior to Closing, Seller is unable to meet the Maintenance Requirement as required by Paragraph 11 or the repairs, replacements, treatments or permitting as required by Paragraph 12, then sums equal to 125% of estimated costs to complete the applicable item(s) (but not in excess of applicable General Repair, WDO Repair, and Permit Limits set forth above, if any) shall be escrowed at Closing. If actual costs of Maintenance Requirement or required repairs, replacements, treatment or permitting exceed applicable escrowed amounts, Seller shall pay such actual costs (but not in excess of applicable General Repair, WDO Repair, and Permit Limits set forth above). Any unused portion of escrowed amount(s) shall be returned to Seller.

(b) **COSTS TO BE PAID BY BUYER:**

- Taxes and recording fees on notes and mortgages
- Recording fees for deed and financing statements
- Owner's Policy and Charges (if Paragraph 9(c)(ii) is checked)
- Survey (and elevation certification, if required)
- Lender's title policy and endorsements
- HOA/Condominium Association application/transfer fees
- Municipal lien search (if Paragraph 9(c)(ii) is checked)
- Other:_____
- Loan expenses
- Appraisal fees
- Buyer's Inspections
- Buyer's attorneys' fees
- All property related insurance
- Owner's Policy Premium (if Paragraph 9(c)(iii) is checked)

A. COSTS TO BE PAID BY SELLER: Paragraph 9(a) itemizes transaction costs which are customarily paid by the seller. The cost relating to the owner's title insurance policy and title search expenses refers to Paragraph 9(c) which offers options for charging these costs to the buyer or the seller.

B. GENERAL REPAIR LIMIT, WDO REPAIR LIMIT AND PERMIT LIMIT:

1. Limits on Seller's Costs: This provision places a limit on the cost of repairs and remediation that may be incurred by the seller under the inspection provisions of Paragraphs 12(b) ("General Inspection), (c) ("WDO Inspection") and (d) ("Permit Inspection"). The default provision applicable if a different amount is not inserted is 1.5% of the purchase price for each category of deficiencies. See discussion of Paragraph 12 inspections later in this manual.

2. Repairs, Replacements, Treatments and Permitting Not Completed Prior to Closing: Paragraph 9(a) addresses a situation that arises when a seller is unable to complete General Repairs, WDO Repairs and/or remediate permitting problems prior to closing. It also includes the inability to meet the Maintenance Requirement as defined in Paragraph 11 of the contract. The seller is required to escrow a sum of money at closing equal to 125% of the estimated cost to complete the applicable items but not exceeding the monetary or percentage limits set forth earlier in this provision. If actual costs exceed the applicable escrowed amounts, the seller is responsible to pay the excess but in no event more than the monetary or percentage limits previously provided.

CAUTION: This provision fails to identify the escrow agent that will hold the escrow funds. Details of the terms of the escrow must be provided by separate agreement. There are no provisions in the contract requiring a cost estimate for the Maintenance Requirement or permitting remediation and therefore determining the amount of the escrow for these items may be problematic. This provision anticipates that the closing takes place and presumes that the seller will continue to be responsible for seeing to it that the repairs and permit remediation are completed. After closing and escrowing funds, actual costs exceeding the limits are no longer the responsibility of the seller and would apparently have to be paid by the buyer. Note that Paragraph 12(d) provides that if permitting remediation cannot be completed by closing due to "delays by the governmental entity", the closing will be extended for up to ten (10) days and if permit remediation is not completed within the extended period, either party may cancel the contract. There is no closing extension applicable to general repairs, WDO repairs/treatment or the maintenance requirement causing some question as to whether permit remediation belongs in the category of escrowed costs. There are better solutions than post closing escrow arrangements. The parties can agree to a closing date extension allowing the seller time to complete these obligations. Alternatively, the parties can reach an agreement on a purchase price credit to the buyer, releasing the seller from further obligations.

C. COSTS PAYABLE BY BUYER: Paragraph 9(b) itemizes transaction costs which are customarily paid by the buyer. Charges for owner's policies and charges are subject to negotiation as to whether they are paid by the buyer of the seller and that agreement is evidenced by the selection made in Paragraph 9(c).

CLOSING COSTS; TITLE INSURANCE; SURVEY; HOME WARRANTY; SPECIAL ASSESSMENTS (CONTINUED)

(c) **TITLE EVIDENCE AND INSURANCE:** At least _____ (if left blank, then 15, or if Paragraph 8(a) is checked, then 5) days prior to Closing Date ("Title Evidence Deadline"), a title insurance commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see STANDARD A for terms) shall be obtained and delivered to Buyer. If Seller has an owner's policy of title insurance covering the Real Property, Seller shall furnish a copy to Buyer and Closing Agent within 5 days after Effective Date. The owner's title policy premium, title search and closing services (collectively, "Owner's Policy and Charges") shall be paid, as set forth below. The title insurance premium charges for the owner's policy and any lender's policy will be calculated and allocated in accordance with Florida law, but may be reported differently on certain federally mandated closing disclosures and other closing documents. For purposes of this Contract "municipal lien search" means a search of records necessary for the owner's policy of title insurance to be issued without exception for unrecorded liens imposed pursuant to Chapters 153, 159 or 170, F.S., in favor of any governmental body, authority or agency.
(**CHECK ONE):**

☐ (i) Seller shall designate Closing Agent and pay for Owner's Policy and Charges, and Buyer shall pay the premium for Buyer's lender's policy and charges for closing services related to the lender's policy, endorsements and loan closing, which amounts shall be paid by Buyer to Closing Agent or such other provider(s) as Buyer may select; or

☐ (ii) Buyer shall designate Closing Agent and pay for Owner's Policy and Charges and charges for closing services related to Buyer's lender's policy, endorsements and loan closing; or

☐ (iii) [**MIAMI-DADE/BROWARD REGIONAL PROVISION**]**:** Buyer shall designate Closing Agent. Seller shall furnish a copy of a prior owner's policy of title insurance or other evidence of title and pay fees for: (A) a continuation or update of such title evidence, which is acceptable to Buyer's title insurance underwriter for reissue of coverage; (B) tax search; and (C) municipal lien search. Buyer shall obtain and pay for post-Closing continuation and premium for Buyer's owner's policy, and if applicable, Buyer's lender's policy. Seller shall not be obligated to pay more than $_____ (if left blank, then $200.00) for abstract continuation or title search ordered or performed by Closing Agent.

(d) **SURVEY:** At least 5 days prior to Closing Date, Buyer may, at Buyer's expense, have the Real Property surveyed and certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date.

(e) **HOME WARRANTY:** At Closing, ☐ Buyer ☐ Seller ☐ N/A shall pay for a home warranty plan issued by _____ at a cost not to exceed $_____. A home warranty plan provides for repair or replacement of many of a home's mechanical systems and major built-in appliances in the event of breakdown due to normal wear and tear during the agreement's warranty period.

(f) **SPECIAL ASSESSMENTS:** At Closing, Seller shall pay: (i) the full amount of liens imposed by a public body ("public body" does not include a Condominium or Homeowner's Association) that are certified, confirmed and ratified before Closing; and (ii) the amount of the public body's most recent estimate or assessment for an improvement which is substantially complete as of Effective Date, but that has not resulted in a lien being imposed on the Property before Closing. Buyer shall pay all other assessments. If special assessments may be paid in installments **(CHECK ONE):**

☐ (a) Seller shall pay installments due prior to Closing and Buyer shall pay installments due after Closing. Installments prepaid or due for the year of Closing shall be prorated.

☐ (b) Seller shall pay, in full, prior to or at the time of Closing, any assessment(s) allowed by the public body to be prepaid. For any assessment(s) which the public body does not allow prepayment, OPTION (a) shall be deemed selected for such assessment(s).

IF NEITHER BOX IS CHECKED, THEN OPTION (a) SHALL BE DEEMED SELECTED.

This Paragraph 9(f) shall not apply to a special benefit tax lien imposed by a community development district (CDD) pursuant to Chapter 190, F.S., or special assessment(s) imposed by a special district pursuant to Chapter 189, F.S., which lien(s) or assessment(s) shall be prorated pursuant to STANDARD K.

A. TITLE EVIDENCE AND INSURANCE:

1. Quality of Title: Standard A of the contract requires the conveyance of marketable title to the buyer. Unless otherwise agreed, this requires that title be conveyed free and clear of encumbrances. The prevailing use of title insurance in the state of Florida is the customary method of proving and insuring that the title being conveyed to the buyer is marketable and meets the requirements of the contract. Prior to the closing, this takes the form of a title insurance commitment being issued by a Florida licensed title insurance company. This is accomplished through company owned or independent title insurance companies and real estate attorneys who are issuing agents for title insurance companies.

2. Delivery of the Title Insurance Commitment: The deadline for delivering the title insurance commitment is established by filling in the blank in Paragraph 9(c). The deadline is measured with reference to the closing date, not the Effective Date. The default timing applicable if the blank is not filled in recognizes that if there is a contingency for third party institutional mortgage financing, lenders will require delivery of a mortgagee title insurance commitment well ahead closing so that the Closing Disclosure Notice timing requirements can be met.

3. Standard A: This Paragraph is augmented by Standard A of the contract which will be discussed later in this manual. Standard A describes various permitted title exceptions which are common in transactions involving residential properties.

4. Delivery of Prior Title Policy: The seller is required to deliver to the buyer, within 5 days following the Effective Date, any prior owner's title insurance policy. A prior owner's title insurance policy will expedite the issuance of a title commitment and may serve as a basis for reducing the premium charge.

5. Closing Services: The title insurance company or agent issuing the owner's title insurance commitment and policy typically serves as the closing agent for the transaction. Closing agent services include the preparation of all documents necessary to meet the requirements of the title insurance commitment and close the transaction. If third party financing is involved, the title insurance company or agent will, in most instances, issue a mortgagee title insurance commitment and provide closing services for the lender.

6. Payment of Costs: Paragraph 9(c) recognizes that the responsibility for selecting the closing agent and paying the cost for title insurance related title services may be negotiated between the seller and the buyer. Costs of title related services include title search, municipal lien search, settlement fees and similar costs. Three check-the-box options are offered in this provision. The first option provides that the seller will pay for the owner's policy premium, charges for the owner's policy endorsements, title search and closing services (which are defined as "Owner's Policy and Charges") but excluding any premiums and charges relating to the buyer's lender's policy, endorsements and loan closing. The second option allows the buyer to select the closing agent and charges the buyer for all premiums and charges related to owner's and mortgagee's title insurance policies and related closing services. Paragraph 9 (c) advises the parties that, when mortgage financing is involved, charges for title insurance premiums may appear on the Closing Disclosure in a manner different from the terms of the contract. This is due to CFPB regulations that require the line item for title insurance and other charges to be reflected as a buyer's expense. Closing agents will typically provide an additional closing statement to the parties detailing the costs and allocation of the title insurance premiums which will reconcile the CFPB requirements with the contract terms.

7. South Florida Provision: The third option is a special provision describing the local variation of the customary manner in which title searches and title insurance are handled in Miami-Dade and Broward counties.

B. SURVEY:

Paragraph 9(d) imposes a deadline (5 days prior to the Closing Date) on the buyer's right to obtain a survey of the property conducted by a registered Florida surveyor. The seller is required to deliver to the buyer a copy of any prior survey within 5 days after the Effective Date. A prior survey will expedite the issuance of an updated survey. Title insurance provides coverage for survey matters provided a current survey (typically within 90 days of closing) is submitted to the title insurance company. Alternatively, title insurance coverage for survey matters may sometimes be obtained on the basis of a prior existing survey accompanied by an affidavit of the seller attesting to no physical changes to the property and the satisfaction of other underwriting conditions. Standard B (discussed later in this manual) sets forth the standards that the survey must meet and describes various objectionable survey defects which the seller would be required to remedy. As is the case with title, the contract is designed to protect the buyer from survey defects e.g., encroachments, set-back violations, etc. The agent should always encourage the buyer to obtain a survey.

C. HOME WARRANTY:

When a third party warranty plan is to be issued to the buyer at closing, this clause can be used to identify the company providing the warranty and assigning the cost thereof to either buyer or seller subject to a limitation as to the cost.

D. SPECIAL ASSESSMENTS:

1. Seller Pays: Paragraph 9(f) is referring to special assessments imposed by governing bodies most commonly arising from the construction of public improvements such as roads, sewers, water lines, etc. Consistent with the contractual concept that the seller is required to deliver title to the property free and clear of encumbrances, the obligation is placed on the seller to pay those special assessment liens that are certified, confirmed and ratified before the closing date. In addition, the seller is required to pay in full the amount of the most recent estimate or assessment for public improvements which are substantially complete but which have not yet resulted in a lien being imposed on the property. Since such pending liens are based upon an estimate, it may be appropriate to include a special provision in Paragraph 20 requiring a post closing adjustment between the parties based upon the actual assessment amount, when known.

2. Buyer Pays: Notice that the buyer will be responsible for the payment of special assessments which do not meet the criteria imposing the obligation on the seller. This could include public improvement projects that are planned or under construction but not substantially complete as of the closing date. The existence of potential special assessments would likely be a matter requiring seller's disclosure under Paragraph 10(j).

3. Installments: Paragraph (f) recognizes that some public bodies permit special assessments to be paid in installments. Paragraph (f) (a), if checked, provides that the buyer will assume and pay installments accruing after the Closing Date. Paragraph (f) (b), if checked, requires the seller to pay the assessment in full at or prior to the closing unless the public body imposing the assessment will not permit prepayment, in which event the buyer assumes installments after the Closing Date as if Paragraph (f) (a) was checked. The agent should investigate the details of any special assessments and ensure that the buyer is fully aware of any post-closing obligation.

4. Community Development Districts: The provision also recognizes that the property may be within the boundaries of a special taxing district known as a Community Development District which has the power to levy special assessments collected through local tax collectors. The provision expressly excludes these types of assessments and directs that they be prorated in accordance with Standard K.

DISCLOSURES

DISCLOSURES

10. DISCLOSURES:

(a) **RADON GAS:** Radon is a naturally occurring radioactive gas that, when it is 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 Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

(b) **PERMITS DISCLOSURE:** Except as may have been disclosed by Seller to Buyer in a written disclosure, Seller does not know of any improvements made to the Property which were made without required permits or made pursuant to permits which have not been properly closed or otherwise disposed of pursuant to Section 553.79, F.S. If Seller identifies permits which have not been closed or improvements which were not permitted, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of such open permits or unpermitted improvements.

(c) **MOLD:** Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or desires additional information regarding mold, Buyer should contact an appropriate professional. See Rider I MOLD INSPECTION.

(d) **FLOOD ZONE; ELEVATION CERTIFICATION:** Buyer is advised to verify by elevation certificate which flood zone the Property is in, whether flood insurance is required by Buyer's lender, and what restrictions apply to improving the Property and rebuilding in the event of casualty. If Property is in a "Special Flood Hazard Area" or "Coastal Barrier Resources Act" designated area or otherwise protected area identified by the U.S. Fish and Wildlife Service under the Coastal Barrier Resources Act and the lowest floor elevation for the building(s) and/or flood insurance rating purposes is below minimum flood elevation or is ineligible for flood insurance coverage through the National Flood Insurance Program or private flood insurance as defined in 42 U.S.C. §4012a, Buyer * may terminate this Contract by delivering written notice to Seller within _____ (if left blank, then 20) days after Effective Date, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract, failing which Buyer accepts existing elevation of buildings and flood zone designation of Property.

(e) **ENERGY BROCHURE:** Buyer acknowledges receipt of Florida Energy-Efficiency Rating Information Brochure required by Section 553.996, F.S.

(f) **LEAD-BASED PAINT:** If Property includes pre-1978 residential housing, a lead-based paint disclosure is mandatory.

(g) **HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE: BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE, IF APPLICABLE.**

(h) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.

(i) **FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA"):** Seller shall inform Buyer in writing if Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act ("FIRPTA"). Buyer and Seller shall comply with FIRPTA, which may require Seller to provide additional cash at Closing. If Seller is not a "foreign person", Seller can provide Buyer, at or prior to Closing, a certification of non-foreign status, under penalties of perjury, to inform Buyer and Closing Agent that no withholding is required. See STANDARD V for further information pertaining to FIRPTA. Buyer and Seller are advised to seek legal counsel and tax advice regarding their respective rights, obligations, reporting and withholding requirements pursuant to FIRPTA.

(j) **SELLER DISCLOSURE:** Seller knows of no facts materially affecting the value of the Real Property which are not readily observable and which have not been disclosed to Buyer. Except as otherwise disclosed in writing Seller has received no written or verbal notice from any governmental entity or agency as to a currently uncorrected building, environmental or safety code violation.

DISCLOSURES:

Paragraph 10 contains disclosures on various subjects some of which are required by law to be disclosed.

A. RADON GAS: This disclosure is required to be made with respect to all sales and leases of any building, residential or otherwise, except for leases having a term of 45 days or less. Section 404.056(5), Florida Statutes prescribes the disclosure language.

B. PERMITS DISCLOSURE: This disclosure compliments Paragraph 12(d) of the contract. Paragraph 12(d) allows the buyer an opportunity to investigate whether there exists any open or expired building permits or unpermitted improvements. This disclosure is a representation that the seller has no knowledge of any unpermitted improvements or open permits that have not been properly closed or disposed of under Section 553.79, Florida Statutes. A seller having knowledge of such permit issues is obligated to disclose them. The failure to do so would be a material non-disclosure which could allow the buyer to rescind the contract, rescind the transaction if it has closed and/or sue for damages. The provision requires the seller to provide written disclosure of any known permit issues and deliver any written documents or information related to open permits or unpermitted improvements. Problems with open permits and unpermitted improvements may have been caused by a prior owner of the property and the current seller may in fact have no knowledge of these problems. Paragraph 12(d) imposes the obligation to remediate these problems on the seller.

C. MOLD: This provision is expressed in the form of a disclosure to the buyer that mold may cause a "health risk or damage to the property." The contract does not require the seller to remedy mold contamination even if toxic levels exist, although the failure of the seller to disclose known water damage or mold contamination may constitute a material non-disclosure (see Paragraph 10(j). Rider I can be used to allow the buyer to obtain a mold inspection and to cancel the contract if mold contamination is discovered and the cost of remediation exceeds the dollar amount stated in the Rider.

D. FLOOD ZONE: ELEVATION CERTIFICATE: Although this provision is in the Disclosures section of the contract, it includes a condition allowing the buyer to cancel the contract within a prescribed period if (1) the property is located in (a) a Special Flood Hazard Area or (b) a Coastal Barrier Resources Act ("CBRA") designated area or (c) a protected area designated by the U.S. Fish and Wildlife Service pursuant to CBRA and (2) the lowest floor elevation for flood insurance rating purposes is below minimum flood elevation or flood insurance through the National Flood Insurance Program or private flood insurance as defined in 42 U.S.C. Section 4012a is otherwise unavailable. These determinations are made by obtaining a Flood Elevation Certificate routinely furnished by licensed surveyors. Buyers should not rely upon dated Flood Elevation Certificates. FEMA criteria for determining flood and floor elevations are revised periodically.

CAUTION: Buyers should be advised to make the inquiries necessary to determine whether the property is in one of the areas mentioned above and , if so, an elevation certificate reflecting floor and flood elevations should be obtained. Failure to exercise a right to cancel by deadline waives that right. This could be particularly troublesome if the buyer is obtaining financing from a lender that requires flood insurance. Buyers should also be made aware that local building and zoning regulations typically impose minimum floor elevations above flood elevation. A residence that fails to meet these requirements may be "grandfathered" as a non¬conforming permitted structure but these governmental regulations typically restrict future additions, improvements and/or restoration in the event of casualty.

E. ENERGY BROCHURE:

1. All Buildings Intended for Occupancy: Section 553.96, Florida Statutes requires that the buyer be given a copy of the Florida Energy Efficiency Rating Information Brochure at the time of or prior to the buyer's execution of the contract. Agents should have these brochures on hand and ideally obtain a written receipt from the buyer substantiating a delivery period. Copies of the brochure can be obtained from the Florida Department of Community Affairs and Standards Office, Tallahassee, Florida.

2. New Residential Buildings: If the property is a new residential building, Section 553.9085, Florida Statutes, requires that the energy performance level be disclosed at the request of the buyer. Use Comprehensive Rider 0 — Insulation Disclosure for New Residence to comply with this requirement. In addition, an energy performance display card certified by the builder as accurate and correct must be attached to the contract as an addendum. The display cards are furnished by the local building department and should be available from the owner or builder.

3. Rights of Buyer: This disclosure is simply an acknowledgment that the buyer has received the Florida Energy-Efficiency Rating Information Brochure. The buyer is not given a right to question or object to the energy efficiency rating absent a special provision to this effect.

F. LEAD BASED PAINT: If a residential structure located on the property was constructed prior to 1978 a Lead Based Paint Disclosure is required by federal law (42 U.S.C. Section 4852). Use Comprehensive Rider P — Lead Based Paint Disclosure. Notice that this Rider offers the buyer an option (if initialed and checked) to conduct a risk assessment or inspection for the presence of lead based paint or lead based paint hazards. Interestingly, it does not offer the buyer a right to cancel if lead based paint or lead based paint hazards are discovered unless otherwise provided in the contract. Failure to provide the required disclosures (set forth in Comprehensive Rider P) is a violation of this federal law and could subject the seller to civil penalties and liabilities.

G. HOMEOWNERS ASSOCIATIONS/COMMUNITY DISCLOSURE: If the property is located in a subdivision or community where membership in a homeowners association is required, Section 720.401, Florida Statutes, requires the delivery of a disclosure summary prior to execution of the contract. Compliance with this law is accomplished by using Comprehensive Rider B—Homeowners Association/Community Disclosure. The disclosure should be completed by inserting the required information and signed and initialed by the parties.

CAUTION: Single family and mixed-use communities are frequently governed by recorded covenants which, among other things, may create a homeowners association in which membership of property owners is mandatory. The community is further governed by the organizational documents of the association, by-laws, rules and regulations and the provisions of Chapter 720, Florida Statutes. A major function of the association is to maintain the roads, common areas and common facilities located within the community. The association is typically granted the power to assess property owners and enforce liens for collection. Other important functions of the association are to administer architectural controls and enforce the restrictive covenants. To a prospective buyer in one of these communities, the enforceability of restrictive covenants and the functioning of a well managed homeowners association are important factors in making the decision to purchase.

Agents should be aware that the Florida Marketable Record Title Act (Chapter 712, Florida Statutes) ("MRTA") may have the effect of extinguishing restrictive covenants which have been of record for thirty years or more. An association may avoid extinguishment by renewing the restrictive covenants for a period not exceeding and additional thirty years by following the procedures contained in Sections 712.05 and 712.06, Florida Statutes. Most professionally managed homeowners associations are aware of the extinguishing effects of MRTA and take the required steps to renew the restrictive covenants and keep their associations functioning. Occasionally, however, thirty years elapse without action being taken. In these unfortunate situations, the homeowners association becomes a "voluntary" association and loses its authority to impose and collect assessments and enforce restrictive covenants. Use restrictions and architectural requirements are no longer enforceable. A procedure is available under sections 720.403-720.407, Florida Statutes to revive covenants that have lapsed should a community find itself in that situation.

Prior to 1975 comprehensive restrictive covenants and mandatory homeowners associations were rare. After that date they became increasingly more common. If the transaction involves a community with restrictive covenants and a mandatory homeowners association which was developed thirty or more years previously (or is approaching the lapse date) the agent should make an inquiry as to whether the association has taken steps to renew restrictive covenants. Lapsed restrictive covenants is likely a subject requiring disclosure under Paragraph 10(j) of the contract.

H. PROPERTY TAX DISCLOSURE SUMMARY: This is a disclosure to the buyer that the purchase of the property may result in an increase of the assessment of the property's value for property tax purposes. An increase in tax assessment value and resulting increase in the amount of property taxes can be dramatic in those cases where the property is currently benefiting from a homestead tax exemption. This disclosure is required by Section 689.261, Florida Statutes.

I. FIRPTA TAX WITHHOLDING: If the seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act ("FIRPTA"), a withholding of up to 15% of the gross purchase price may be required. IRS regulations impose the obligation to withhold on the buyer and the failure to withhold can expose the buyer to liability for the amount that should have been withheld. This provision requires the seller to inform the buyer in writing as to whether the seller is a foreign person. Typically, if FIRPTA applies, the closing agent retains the withholding and remits to IRS. Standard V provides details as to the requirements, procedures and exemptions relating to FIRPTA withholding.

CAUTION: While the buyer is the "withholding agent" for FIRPTA withholding, a seller may be reluctant, for good reason, to have the withheld amount actually paid to the buyer for remittance to IRS. The seller's tax liability is not satisfied by withholding but only by actual receipt of the withheld amount by IRS. Trusting a buyer (whom the seller may have never met) to make proper remittance, or hold funds pending receipt of a withholding certificate, could be risky. For this reason, FIRPTA sellers should require a contract provision designating the escrow or closing agent as the FIRPTA withholding agent.

J. SELLER DISCLOSURE: This provision reflects Florida law relating to material non-disclosure established by the Florida Supreme Court case of *Johnson v. Davis*, 480 So. 2nd 625 (FLA. 1985) wherein the court stated: "Accordingly, we hold that where the seller of a home knows of facts materially affecting the value of the property which are not readily observable and are not known to the buyer, the seller is under a duty to disclose them to the buyer." This case has been characterized as completely extinguishing the doctrine of caveat emptor (i.e. buyer beware) with respect to the sale of residential properties. Agents may also be exposed to liability for failure to disclose adverse facts known to them which the seller would be obligated to disclose under the *Johnson v. Davis* holding. Material non¬disclosure falls into the same category as affirmative fraudulent misrepresentation. The failure to disclose when required to do so creates a cause of action in favor of the buyer. Possible remedies of the buyer include rescission of the contract prior to closing, a rescission of the transaction after the closing and/or a suit for damages.

Paragraph 10 (j) also includes a representation that, unless disclosed in writing, the seller has not received any notice or citation from any governmental agency related to an uncorrected building, environmental or safety code violation. The provision recognizes that such violations may not be easily discoverable by a buyer through the inspections obtained under the provisions of Paragraph 12. Note, however, that the representation does not state that no such violations exist; only that the seller has not received any notice. Standard A provides some additional protection for the buyer by including a seller representation that there are no violations of any "requirements imposed by governmental authorities". A misrepresentation or failure to disclose by the seller could be a basis for rescission of the contract/transaction or a suit for damages.

PROPERTY MAINTENANCE, CONDITION, INSPECTIONS AND EXAMINATIONS

PROPERTY MAINTENANCE, CONDITION, INSPECTIONS AND EXAMINATIONS

11. PROPERTY MAINTENANCE: Except for ordinary wear and tear and Casualty Loss, and those repairs, replacements or treatments required to be made by this Contract, Seller shall maintain the Property, including, but not limited to, lawn, shrubbery, and pool, in the condition existing as of Effective Date ("Maintenance Requirement"). See Paragraph 9(a) for escrow procedures, if applicable.

A. PROPERTY MAINTENANCE: This provision requires the seller to maintain the property, including lawn, shrubbery and pool, in the condition existing as of the Effective Date subject to three exceptions:

1. Ordinary wear and tear.
2. Casualty Loss — seller's obligations for repair and restoration are set forth in Standard M of the contract.
3. Changes in condition occasioned by repairs, replacements or treatments required to be made under the contract. (See Paragraph 12).

B. ESCROW FOR COST: As previously noted, Paragraph 9(a) of the contract treats the Maintenance Requirement in the same manner as repairs, replacements, treatments or permitting as required by Paragraph 12 and provides that if the seller is unable to meet these requirements as of the closing date, funds necessary to comply with the Maintenance Requirement will be escrowed at closing. Whether or not the seller has met the Maintenance Requirement is typically determined at or about the time of closing. An escrow pursuant to Paragraph 9 for the costs necessary to satisfy the Maintenance Requirement would presumably require that the cost to remedy any deficiencies be estimated in some manner and escrowed in accordance with Paragraph 9. For example, if the seller has neglected the landscaping while closing was pending, a last minute effort would have to be made to determine the cost of restoring the condition existing as of the Effective Date. Note that there is no limit on the cost necessary to meet the Maintenance Requirement. Whether or not the seller has met the Maintenance Requirement may be a contentious issue arising immediately before closing. The seller's agent would be well advised to avoid this issue by monitoring the condition of the property during the time period between the Effective Date and the closing date and taking steps to prevent deterioration and adverse changes.

PROPERTY INSPECTION AND REPAIR

12. PROPERTY INSPECTION AND REPAIR:

(a) **INSPECTION PERIOD:** Buyer shall have _____ (if left blank, then 15) days after Effective Date ("Inspection Period"), within which Buyer may, at Buyer's expense, conduct "General", "WDO", and "Permit" Inspections as described below. If Buyer fails to timely deliver to Seller a written notice or report required by (b), (c), or (d) below, then, except for Seller's continuing Maintenance Requirement, Buyer shall have waived Seller's obligation(s) to repair, replace, treat or remedy the matters not inspected and timely reported. If this Contract does not close, Buyer shall repair all damage to Property resulting from Buyer's inspections, return Property to its pre-inspection condition and provide Seller with paid receipts for all work done on Property upon its completion.

A. INSPECTION PERIOD: Paragraph 12 offers the buyer an opportunity to conduct three types of inspection/investigations relating to the property. These are (a) a General Inspection under Paragraph 12(b), (b) a WDO inspection under Paragraph 12(c) and (c) a Permit Inspection under Paragraph 12(d).

1. Deadlines: The buyer is allowed a period of time to conduct inspections and report deficiencies and permit problems by written notice to the seller. A blank is provided to insert the number of days constituting the Inspection Period. The default period is 15 days from the Effective Date. With respect to each of the three inspection/investigation categories, the seller has certain specified obligations to remedy deficiencies. In "quick closing" situations (30 days for less) the buyer may be hard pressed to conduct these inspections and investigations in a thorough manner. In addition, after the inspection reports are delivered, the seller would have precious little time to obtain estimates and remedy deficiencies increasing the likelihood that an escrow under Paragraph 9(a) would be required. These considerations should be taken into account when scheduling the closing date.

2. Failure to Deliver Notice/Report: A failure on the part of the buyer to complete inspections and report deficiencies within the required time period provided results in a waiver of the seller's obligation to repair, replace, treat or remedy those deficiencies.

3. Repair Damage: If the transaction fails to close, the buyer is required to repair all damage resulting from inspections and to return the property to its pre-inspection condition, providing seller with paid receipts evidencing compliance.

4. Inform the Parties: The inspection provisions of the contract and the obligation of the seller to remedy deficiencies should be fully explained to the buyer and seller prior to entering into the contract to ensure that the parties have a clear understanding of their rights and obligations. See Standard L which requires the seller to allow access for inspections/appraisals and to provide utility service.

5. Long Term Closings: If the transaction is not scheduled to close in the short term (for example, closing is scheduled more than 60 days from the Effective Date) consider inserting a special provision which would extend the time period for conducting inspections and reporting deficiencies. If a closing date is 6 months hence, the General Inspection and WDO Inspection may be obsolete by the closing date. Any extension of the deadline for these inspections should take into account and allow sufficient time for the seller to remedy deficiencies.

GENERAL PROPERTY INSPECTION AND REPAIR

(b) **GENERAL PROPERTY INSPECTION AND REPAIR:**
(i) **General Inspection:** Those items specified in Paragraph 12(b) (ii) below, which Seller is obligated to repair or replace ("General Repair Items") may be inspected ("General Inspection") by a person who specializes in and holds an occupational license (if required by law) to conduct home inspections or who holds a Florida license to repair and maintain the items inspected ("Professional Inspector"). Buyer shall, within the Inspection Period, inform Seller of any General Repair Items that are not in the condition required by (b)(ii) below by delivering to Seller a written notice and upon written request by Seller a copy of the portion of Professional Inspector's written report dealing with such items.
(ii) **Property Condition:** The following items shall be free of leaks, water damage or structural damage: ceiling, roof (including fascia and soffits), exterior and interior walls, doors, windows, and foundation. The above items together with pool, pool equipment, non-leased major appliances, heating, cooling, mechanical, electrical, security, sprinkler, septic, and plumbing systems and machinery, seawalls, dockage, watercraft lift(s) and related equipment, are, and shall be maintained until Closing, in "Working Condition" (defined below). Torn screens (including pool and patio screens), fogged windows, and missing roof tiles or shingles shall be repaired or replaced by Seller prior to Closing. Seller is not required to repair or replace "Cosmetic Conditions" (defined below), unless the Cosmetic Conditions resulted from a defect in an item Seller is obligated to repair or replace. "Working Condition" means operating in the manner in which the item was designed to operate. "Cosmetic Conditions" means aesthetic imperfections that do not affect Working Condition of the item, including, but not limited to: pitted marcite; tears, worn spots and discoloration of floor coverings, wallpapers, or window treatments; nail holes, scrapes, scratches, dents, chips or caulking in ceilings, walls, flooring, tile, fixtures, or mirrors; and minor cracks in walls, floor tiles, windows, driveways, sidewalks, pool decks, and garage and patio floors. Cracked roof tiles, curling or worn shingles, or limited roof life shall not be considered defects Seller must repair or replace, so long as there is no evidence of actual leaks, leakage or structural damage.
(iii) **General Property Repairs:** Seller is only obligated to make such general repairs as are necessary to bring items into the condition specified in Paragraph 12(b) (ii) above. Seller shall within 10 days after receipt of Buyer's written notice or General Inspection report, either have the reported repairs to General Repair Items completed at Seller's expense, or have repairs estimated by an appropriately licensed person and a copy delivered to Buyer, or have a second inspection made by a Professional Inspector and provide a copy of such report and estimates of repairs to Buyer. If Buyer's and Seller's inspection reports differ and the parties cannot resolve the differences, Buyer and Seller together shall choose, and equally split the cost of, a third Professional Inspector, whose written report shall be binding on the parties.
If cost to repair General Repair Items equals or is less than the General Repair Limit, Seller shall have repairs made in accordance with Paragraph 12(f). If cost to repair General Repair Items exceeds the General Repair Limit, then within 5 days after a party's receipt of the last estimate: (A) Seller may elect to pay the excess by delivering written notice to Buyer, or (B) Buyer may deliver written notice to Seller designating which repairs of General Repair Items Seller shall make (at a total cost to Seller not exceeding the General Repair Limit) and agreeing to accept the balance of General Repair Items in their "as is" condition, subject to Seller's continuing Maintenance Requirement. If neither party delivers such written notice to the other, then either party may terminate this Contract and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

A. GENERAL INSPECTION AND REPAIR:

1. General Repair Items: Section 12(b) (ii) describes those property conditions which the seller is obligated to remedy (defined as "General Repair Items"). The buyer is required to engage a Professional Inspector who either holds an occupational license as such or holds a Florida license to repair and maintain the items inspected.

2. Reporting Deficiencies: Within the time limit provided in Paragraph 12(a) the buyer is required to deliver to the seller written notice of deficiencies and if requested by seller, a copy of the portion of the Professional Inspector's written report dealing with such items (the latter is recommended).

3. Covered Items: Not all parts and components of the property and improvements qualify as General Repair Items. Paragraph 12(b) (ii) describes those conditions which require remedy by the seller. Ceilings, roof (including fascia and soffits), exterior and interior walls, doors, windows and foundation must be free of leaks, water damage or structural damage. In addition, these items together with various other

components of the structure and property must be in "Working Condition." "Working Condition" is defined in the contract as "operating in the manner in which the item was designed to operate." For example, the air conditioning system may be working but if it's necessary to recharge the compressor with refrigerant once a month, it is not in "Working Condition" as defined in the contract.

4. Cosmetic Conditions: This provision describes a number of property and improvement conditions which are not required to be remedied by the seller, unless the Cosmetic Condition resulted from a defect in an item which seller is otherwise obligated to repair or replace. Missing roof tiles or shingles are required to be replaced, but cracked roof titles, curling or worn shingles or limited roof life are not considered an objectionable deficiency absent evidence of leaks or structural damage.

5. Engaging Inspectors: Many inspection companies are familiar with the inspection provisions of the contract and will limit their report to objectionable deficiencies. When selecting home inspection companies the agent should ensure that the company is aware of the scope of the inspections permitted by the contract.

6. General Property Repairs: Upon receipt of notice and/or the General Inspection report the seller is given two options:

a. Obtain a cost estimate from an appropriately licensed person and deliver a copy of the estimate to the buyer; or
b. Obtain a second inspection from a Professional Inspector, providing a copy of the report and estimate of repairs to the buyer. If the reports differ and the buyer and seller cannot resolve the differences, the buyer and seller choose and split the cost of a third Professional Inspector who will render a binding written report.

CAUTION: Allowing the seller to trigger a form of dispute resolution by obtaining an additional inspection may create a timing problem and a need to extend the closing date. Consider obtaining multiple inspection reports only with respect to major repair items (e.g., can the roof be repaired or does it need to be replaced?). Such situations are often contentious and there is no assurance that the buyer and seller will be able to reach agreement on the selection of a third professional inspector thus creating additional confusion as to the seller's contractual obligations to make repairs.

7. Making Repairs: The cost estimates obtained by the seller should determine whether the General Repair Limit set forth in Paragraph 9(a) has been exceeded. If the limit has not been exceeded, the seller is obliged to conduct repairs. If the estimated cost exceeds the General Repair Limit then:

a. The seller may elect to pay the excess by delivering written notice to the buyer; or
b. The buyer may select those General Repair Items which the buyer will require the seller to remedy thereby accepting the balance of the General Repair Items in their as-is condition.

The selection of either alternative requires written notice to the other party within five days after receipt of the last estimate of cost. Failure to select one of the alternatives by written notice allows either party to cancel the contract.

WOOD DESTROYING ORGANISM ("WDO") INSPECTION AND REPAIR

(c) **WOOD DESTROYING ORGANISM ("WDO") INSPECTION AND REPAIR:**
(i) **WDO Inspection:** The Property may be inspected by a Florida-licensed pest control business ("WDO Inspector") to determine the existence of past or present WDO infestation and damage caused by infestation ("WDO Inspection"). Buyer shall, within the Inspection Period, deliver a copy of the WDO Inspector's written report to Seller if any evidence of WDO infestation or damage is found. "Wood Destroying Organism" ("WDO") means arthropod or plant life, including termites, powder-post beetles, oldhouse borers and wood-decaying fungi, that damages or infests seasoned wood in a structure, excluding fences.
(ii) **WDO Repairs:** If Seller previously treated the Property for the type of WDO found by Buyer's WDO Inspection, Seller does not have to retreat the Property if there is no visible live infestation, and Seller, at Seller's cost, transfers to Buyer at Closing a current full treatment warranty for the type of WDO found. Seller shall within 10 days after receipt of Buyer's WDO Inspector's report, have reported WDO damage estimated by an appropriately licensed person, necessary corrective treatment, if any, estimated by a WDO Inspector, and a copy delivered to Buyer. Seller shall have treatments and repairs made in accordance with Paragraph 12(f) below up to the WDO Repair Limit. If cost to treat and repair the WDO infestations and damage to Property exceeds the WDO Repair Limit, then within 5 days after receipt of Seller's estimate, Buyer may deliver written notice to Seller agreeing to pay the excess, or designating which WDO repairs Seller shall make (at a total cost to Seller not exceeding the WDO Repair Limit), and accepting the balance of the Property in its "as is" condition with regard to WDO infestation and damage, subject to Seller's continuing Maintenance Requirement. If Buyer does not deliver such written notice to Seller, then either party may terminate this Contract by written notice to the other, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.
(d) **INSPECTION AND CLOSE OUT OF BUILDING PERMITS:**

A. WDO INSPECTION:

1. Definition of WDO: This provision defines "Wood Destroying Organism" in a manner substantially similar to the definition contained in the Florida Structural Pest Control Act (Section 482.021, Florida Statutes).

2. Deadlines: Paragraph 12(a) applies and requires that the inspection be completed and a notice or report delivered to the seller by the end of the Inspection Period.

3. Inspector: The inspector must be a Florida licensed pest control business.

B. WDO REPAIRS:

1. Treatment and Repairs: Seller has an obligation to treat present WDO infestation and to repair damage caused by a present or past infestation. "Treatment" presumably refers to fumigation activities. Infestation or damage caused by present or prior infestation to fences is expressly not an objectionable condition. However, WDO damage to other structures such as wood decking and retaining walls would be objectionable.

2. Procedures: The buyer is required to deliver a copy of the WDO Inspector's report to the seller within the time limit provided. Within 10 days after receipt of the report the seller is required to obtain an estimate of the cost of treatment (estimated by a WDO Inspector) and/or an estimate of the cost of damage repair (from an appropriately licensed person) and deliver a copy of those estimates to the buyer. If the estimated costs do not exceed the WDO Repair Limit set forth in Paragraph 9(a), the seller is obligated to proceed with treatment and repair.

3. Estimated Costs Exceed WDO Repair Limit: If the estimated costs exceed the WDO Repair Limit then within 5 days after the receipt of the seller's cost estimate, the buyer is given three options: (a) deliver a written notice agreeing to pay the excess or (b) select which WDO repairs seller shall make accepting the balance of the property "as-is" with regard to WDO infestation and damage; or (c) deliver no such notice following which either party has the right to cancel the contact.

CAUTION: Notice the sentence in this provision which states that the seller is not required to "re-treat the property if there is no visible live infestation and seller, at seller's cost, transfers to the buyer at closing a current full treatment warranty for the type of WDO found." The wording of this sentence suggests that if the seller does not have or is unable to obtain "a current full treatment warranty" there may be an obligation to re-treat prior infestation.

Unlike general repair items, the seller has no right to agree to pay cost in excess of the WDO repair limit essentially giving the buyer an option to cancel the contract if the cost estimates exceed the WDO limit. This different approach is probably due to the stigma attached to residences and structures infested or previously infested with termites. A prudent listing agent will encourage the seller to obtain a WDO inspection at the time the property is listed for sale.

INSPECTION AND CLOSE-OUT OF BUILDING PERMITS

(d) **INSPECTION AND CLOSE-OUT OF BUILDING PERMITS:**
(i) **Permit Inspection:** Buyer may have an inspection and examination of records and documents made to determine whether there exist any open or expired building permits or unpermitted improvements to the Property ("Permit Inspection"). Buyer shall, within the Inspection Period, deliver written notice to Seller of the existence of any open or expired building permits or unpermitted improvements to the Property. If Buyer's inspection of the Property identifies permits which have not been properly closed or improvements which were not permitted, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of such open permits or unpermitted improvements.
(ii) **Close-Out of Building Permits:** Seller shall, within 10 days after receipt of Buyer's Permit Inspection notice, have an estimate of costs to remedy Permit Inspection items prepared by an appropriately licensed person and a copy delivered to Buyer. No later than 5 days prior to Closing Date, Seller shall, up to the Permit Limit, have open and expired building permits identified by Buyer or known to Seller closed by the applicable governmental entity, and obtain and close any required building permits for improvements to the Property. Prior to Closing Date, Seller will provide Buyer with any written documentation that all open and expired building permits identified by Buyer or known to Seller have been closed out and that Seller has obtained and closed required building permits for improvements to the Property. If final permit inspections cannot be performed due to delays by the governmental entity, Closing Date shall be extended for up to 10 days to complete such final inspections, failing which, either party may terminate this Contract, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.
If cost to close open or expired building permits or to remedy any permit violation of any governmental entity exceeds Permit Limit, then within 5 days after a party's receipt of estimates of cost to remedy: (A) Seller may elect to pay the excess by delivering written notice to Buyer; or (B) Buyer may deliver written notice to Seller accepting the Property in its "as is" condition with regard to building permit status and agreeing to receive credit from Seller at Closing in the amount of Permit Limit. If neither party delivers such written notice to the other, then either party may terminate this Contract and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

A. PROTECTION FROM PERMIT PROBLEMS:

1. Importance: There are three types of permit problems covered in this provision. The most serious is the construction of improvements without a permit. An open permit suggests that the work authorized by the permit may have been completed but not finally inspected by the building department. An expired permit means that the time limit for seeking a final inspection has expired. The improvements may or may not have been completed.

2. No Permit: Occasionally it may be discovered that additions or changes may have been made to a structure without obtaining a building permit. This might be detected by comparing the floor plan shown on the county Property Appraiser's records to the actual condition of improvements. Resolution of this kind of permit problem can be expensive and time consuming and may require engaging a general contractor, submitting building plans, obtaining a permit, correcting violations and non-conformities and extending the closing date.

3. Open/Expired Permits: Prior to October 2019, a discovery of open/expired permits presented difficulties for the seller. Occasionally, the contractor who pulled the permit was out of business. Other contractors worried about assuming responsibility for the work completed. Effective October 1, 2019, Section 553.79, Florida Statutes, was amended to simplify the resolution of open and expired permits by making it quicker and easier to close them. An owner can go through the process without hiring a contractor. Any engaged contractor is not responsible for the work of the original contractor identified on the original permit. If work under an expired permit has been completed, the building department can close the permit without a new permit being issued and any incomplete work can be done according to the building code in effect at the time the permit was issued. Additionally, the building department may close any permit 6 years after its issuance if there are no apparent safety hazards.

4. Discovering Permit Problems: The FR/BAR Contract, prior to 2010, did not address building permits under Section 12. Today, remediation of permit problems is required by the contract due in large part to the fact that building permit information is readily available online. A personal visit to the building department to examine records is no longer necessary. A permit search is now routine in real estate transactions.

5. Building Code Violations: Paragraph 12(d) does not address building code violations unrelated to open permits or unpermitted improvements. During the General Inspection, the inspector may discover deficiencies in the nature of building code violations. Violations may not fit squarely in the category of repairs that the seller is required to make under Paragraph 12(b). It should be recognized that a condition which might constitute a violation of the current building code may be grandfathered and therefore not a violation. Building codes are frequently revised. There is some protection for the buyer under Standard A of the contract which provides that there exists at closing no violation of "requirements imposed by governmental authorities." Standard A expressly excludes building code violations as a title defect. It would appear, therefore, that there is some uncertainty regarding seller's obligation to cure building code violations (other than permit related violations) unless the violation is related to an item which the seller is otherwise required to repair/replace under Paragraph 12(b).

B. CONDUCTING THE INSPECTION: As is the case with General and WDO Inspections, it is the buyer's obligation to initiate the Permit Inspection. Under Paragraph 10(b) a representation is made that the seller has no knowledge of any unpermitted improvements or open permits. Similar to the General Repair Inspection and WDO Inspection, within the Inspection Period, the buyer must complete investigations and deliver written notice to the seller if there are any open or expired building permits or unpermitted improvements. Under Paragraph 12 (d) if the buyer's inspection report identifies permits not closed or unpermitted improvements, the seller must deliver to the buyer all plans, written documentation or other information relating thereto.

C. SELLER'S OBLIGATIONS TO REMEDY: If the buyer discovers the existence of any open or expired building permits or unpermitted improvements and has given timely and proper notice to the seller, the seller has 10 days from the date of the receipt of the buyer's Permit Inspection notice within which to obtain and deliver an estimate of costs to remedy Permit Inspection items. The seller is then given a time period ending 5 days prior to the closing date within which to have open and expired building permits which were identified by the buyer or known to the seller closed by the applicable governmental entity and to obtain and close any required building permits for unpermitted improvements on the property. Prior to the closing date the seller is required to provide written documentation evidencing that the permitting issues have been remedied. The provision allows an extension of the closing date for up to 10 days "if final permit inspections cannot be performed due to delays by the governmental entity." If the inspections are not concluded within said 10 day extension, either party has the right to cancel the contract. This closing extension provision is narrow in scope and applies only if the failure to obtain final inspections is due to "delays by the governmental entity."

D. COSTS EXCEED PERMIT LIMIT: Assuming no building code violations, an open permit issue may be resolved by simply obtaining a final inspection and approval by a building official. Resolving unpermitted improvements will likely take more time and involve greater expense. If the cost estimate exceeds the Permit Limit (set forth in Paragraph 9(a) then within 5 days after receipt of the cost estimate either: (a) the seller may elect to pay the excess by delivering written notice to the buyer, or (b) the buyer may deliver written notice to the seller accepting the property is as-is condition with respect to building permit status and receive a credit from the seller at closing in the amount of the Permit Limit. If neither party delivers such a written notice within the 5 day period, then either party has a right to terminate the contract.

CAUTION: While the provisions of this paragraph dealing with the remediation of permit issues are well intended and provide additional protections for the buyer, the provision has the potential for creating timing and other problems for the parties.

(1) In those situations where unpermitted improvements are discovered, remediation may take significantly more time than is allowed under this provision, particularly if building code violations exist.

(2) The provision for extension of the closing date due to delays by the governmental entity in conducting final inspections appears to be inconsistent with the concept of escrowing funds at closing under Paragraph 9(a). In the context of resolving permit issues, Paragraph 9(a) provides that if the seller is unable to meet the seller's responsibilities for resolving permitting issues the estimated costs will be escrowed at closing and presumably, the efforts to resolve these problems would continue after closing. Obviously, one situation where the seller would be unable to meet the permitting remediation obligation would be a delay in obtaining final permit inspections. This paragraph while allowing a 10 day extension to the closing date provides that the parties may terminate the contract if the final permit inspections cannot be performed. This appears to be inconsistent with the escrow approach expressed in Paragraph 9(a).

ADVICE FOR AGENTS: In many counties and municipalities, the history of issuance and status of building permits can easily be determined by a web search of building department records. If you are the listing agent, conduct this search when the listing agreement is signed. Instruct the seller to remedy any permit deficiencies prior to sale.

Consider the same pre-emptive approach with respect to the General and WDO Inspections. Unless it's a "tear down" situation, obtain these inspections prior to an offer being submitted. The cost of inspections is relatively inexpensive. Advise the seller to remedy deficiencies and make repairs prior to contract. This is good practice even if the "As-Is" Contract will be used. Waiting for a future buyer to make inspections and report deficiencies creates unnecessary time pressure, potential disputes and an increased risk of a failed transaction.

WALK-THROUGH INSPECTIONS/RE-INSPECTION

(e) **WALK-THROUGH INSPECTION/RE-INSPECTION:** On the day prior to Closing Date, or on Closing Date prior to time of Closing, as specified by Buyer, Buyer or Buyer's representative may perform a walk-through (and follow-up walk-through, if necessary) inspection of the Property solely to confirm that all items of Personal Property are on the Property and to verify that Seller has maintained the Property as required by the Maintenance Requirement, has made repairs and replacements required by this Contract, and has met all other contractual obligations.

PRE-CLOSING INSPECTIONS

Paragraph 12(e) specifies that the buyer is entitled to a pre-closing walk-through inspection on either the day of closing or the day prior to closing. This inspection is in addition to the inspections provided by Paragraph 12 taking place during the Inspection Period. The purpose of this inspection is to confirm that items of included personal property are on the property, to verify that seller has met the Maintenance Requirement, has made the repairs and replacements required by the contract and has met all other contractual obligations. It may be prudent for the buyer to have the property re-inspected by the Professional Inspector previously engaged by the buyer to conduct the General Inspection. Any uncorrected deficiencies should be reported to the seller and, if necessary, the escrow provisions of Paragraph 9(a) invoked. A "follow-up walk-through" inspection is permitted, if necessary.

REPAIR STANDARDS; ASSIGNMENT OF REPAIR AND TREATMENT CONTRACTS AND WARRANTIES

(f) **REPAIR STANDARDS; ASSIGNMENT OF REPAIR AND TREATMENT CONTRACTS AND WARRANTIES:** All repairs and replacements shall be completed in a good and workmanlike manner by an appropriately licensed person, in accordance with all requirements of law, and shall consist of materials or items of quality, value, capacity and performance comparable to, or better than, that existing as of the Effective Date. Except as provided in Paragraph 12(c)(ii), at Buyer's option and cost, Seller will, at Closing, assign all assignable repair, treatment and maintenance contracts and warranties to Buyer.

QUALITY OF REPAIRS: Paragraph 12(f) sets forth the quality standard that must be met with respect to repairs and replacements in response to the General Inspection, WDO Inspection and Permit Inspection. The seller is required to engage appropriately licensed contractors/vendors for the purpose of conducting repairs and replacements. Work must be conducted in a good and workmanlike manner and materials or replacements must be of a quality, value, capacity and performance comparable to or better than that existing as of the Effective Date. The provision requires that seller to assign all assignable repair, treatment and maintenance contracts and warranties to the buyer arising out of the repairs and replacement work if requested to do so by buyer. Any costs involved in making the assignment are the responsibility of the buyer.

ESCROW AGENT AND BROKER

ESCROW AGENT AND BROKER

13. ESCROW AGENT: Any Closing Agent or Escrow Agent (collectively "Agent") receiving the Deposit, other funds and other items is authorized, and agrees by acceptance of them, to deposit them promptly, hold same in escrow within the State of Florida and, subject to Collection, disburse them in accordance with terms and conditions of this Contract. Failure of funds to become Collected shall not excuse Buyer's performance. When conflicting demands for the Deposit are received, or Agent has a good faith doubt as to entitlement to the Deposit, Agent may take such actions permitted by this Paragraph 13, as Agent deems advisable. If in doubt as to Agent's duties or liabilities under this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties agree to its disbursement or until a final judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as amended and FREC rules to timely resolve escrow disputes through mediation, arbitration, interpleader or an escrow disbursement order.

In any proceeding between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in any proceeding where Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred, to be paid pursuant to court order out of the escrowed funds or equivalent. Agent shall not be liable to any party or person for mis-delivery of any escrowed items, unless such mis-delivery is due to Agent's willful breach of this Contract or Agent's gross negligence. This Paragraph 13 shall survive Closing or termination of this Contract.

A. HOLDING AND DISBURSING FUNDS: Funds representing the earnest money deposit(s) are held by the Escrow Agent identified in Paragraph 2(a). Monies paid for the purpose of funding the purchase price are typically received and held by a closing agent. Paragraph 13 applies to both who are collectively referred to "Agent." The Agent is directed to deposit funds promptly and hold them in escrow subject to Collection. "Collection" is defined in Standard S of the contract and previously discussed in this manual. Except for force majeure events or bank failure, the failure of funds to become collected does not excuse the buyer's obligations under the contract meaning that the buyer assumes the risk associated with collection of funds. Under Standard S of the contract the closing agent may delay the closing until funds have been collected in the closing agent's accounts.

B. CONFLICTING DEMANDS: While a well drafted real estate contract should minimize the probability of disputes between the parties, a failed transaction occasionally results in the buyer demanding a refund of the earnest money deposit while the seller is demanding its forfeiture. The Agent is not in a position to determine the merits of the opposing claims. A decision by the Agent to disburse to one party creates the risk of being sued by the other party. Paragraph 13 provides alternatives for the Agent faced with conflicting demands. Absent an agreement by the parties to continue to hold the deposit, the Agent's best alternative is to place the funds with the clerk of the circuit court having jurisdiction over the dispute. This takes the form of an Interpleader action and the Agent is entitled to recover, from the escrowed funds, reasonable attorney's fees and costs. This provision releases the Agent who properly takes such action from any further liability except for an accounting of funds. If the Agent is a licensed real estate broker, the provision directs compliance with Chapter 475 and FREC rules which pertain to resolution of escrow disputes.

CAUTION: Under Section 475.25, Florida Statutes, a real estate broker holding escrowed funds and faced with conflicting demands may seek a disbursement order issued by the Florida Real Estate Commission ("FREC") which determines who is entitled to the escrowed funds. Following the directions of a disbursement order will protect the broker from an administrative complaint but will not protect the broker from liability to the party adversely affected by the disbursement order. A disbursement order from FREC should not be the preferred alternative unless the parties agree in writing and in advance that they wish to resolve the dispute in that manner and will be bound by the result.

C. MIS-DELIVERY: The provision attempts to limit the liability of the Agent for mis-delivery of any escrowed items providing that the Agent shall not be liable unless mis-delivery is due to the willful breach of the contract or the Agent's gross negligence. In practice, most Agents recognize that the duties owed to the parties require more than avoiding gross negligence and will generally refuse to disburse to one party without the written consent of the other party.

PROFESSIONAL ADVICE; BROKER LIABILITY

14. PROFESSIONAL ADVICE; BROKER LIABILITY: Broker advises Buyer and Seller to verify Property condition, square footage, and all other facts and representations made pursuant to this Contract and to consult appropriate professionals for legal, tax, environmental, and other specialized advice concerning matters affecting the Property and the transaction contemplated by this Contract. Broker represents to Buyer that Broker does not reside on the Property and that all representations (oral, written or otherwise) by Broker are based on Seller representations or public records. **BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND GOVERNMENTAL AGENCIES FOR VERIFICATION OF PROPERTY CONDITION, SQUARE FOOTAGE AND FACTS THAT MATERIALLY AFFECT PROPERTY VALUE AND NOT ON THE REPRESENTATIONS (ORAL, WRITTEN OR OTHERWISE) OF BROKER.** Buyer and Seller (individually, the "Indemnifying Party") each individually indemnifies, holds harmless, and releases Broker and Broker's officers, directors, agents and employees from all liability for loss or damage, including all costs and expenses, and reasonable attorney's fees at all levels, suffered or incurred by Broker and Broker's officers, directors, agents and employees in connection with or arising from claims, demands or causes of action instituted by Buyer or Seller based on: (i) inaccuracy of information provided by the Indemnifying Party or from public records; (ii) Indemnifying Party's misstatement(s) or failure to perform contractual obligations; (iii) Broker's performance, at Indemnifying Party's request, of any task beyond the scope of services regulated by Chapter 475, F.S., as amended, including Broker's referral, recommendation or retention of any vendor for, or on behalf of, Indemnifying Party; (iv) products or services provided by any such vendor for, or on behalf of, Indemnifying Party; and (v) expenses incurred by any such vendor. Buyer and Seller each assumes full responsibility for selecting and compensating their respective vendors and paying their other costs under this Contract whether or not this transaction closes. This Paragraph 14 will not relieve Broker of statutory obligations under Chapter 475, F.S., as amended. For purposes of this Paragraph 14, Broker will be treated as a party to this Contract. This Paragraph 14 shall survive Closing or termination of this Contract.

A. BROKER'S DISCLAIMER: The provision starts by advising the buyer and seller to verify the property condition and other facts and representation and to consult appropriate professionals. It further states that all representations made by the broker to either party are based upon seller representations or public records. A statement (in bold print for emphasis) recites that the buyer agrees to rely solely upon the seller, professional inspectors and governmental agencies regarding property condition, square footage and facts materially affecting property value and not upon the representations of the broker. A complete discussion of the types of brokerage relationships and the respective duties of agents to their principals is beyond the scope of this manual. However, the agent should keep the following in mind:

1. If an agent is assuming a buyer's agent or seller's agent status, a higher duty is imposed by law and the provisions of Chapter 475, Florida Statutes. This disclaimer will not shield the agent from liability for breaching such duties.

2. The disclaimer will not relieve the agent from liability for intentional/negligent mis-representations and/or material non-disclosure of facts required to be disclosed (see Paragraph 10(j) of the contract).

B. INDEMNITY: The indemnity portion of this provision contemplates that a claim is made or a suit if filed by the buyer or the seller and the claim arises out of one of the circumstances described in Subparagraphs (i) — (v). This is a further attempt to protect the broker in the event the disclaimer previously discussed fails to provide such protection. As with disclaimers, however, an indemnity provision will not be enforced if the result is to relieve the broker from its own negligence or misconduct. The provision concludes with a clear statement that notwithstanding the disclaimer and indemnity provisions, the broker will not be relieved of the statutory obligations under Chapter 475, Florida Statutes.

DEFAULT AND DISPUTE RESOLUTION

DEFAULT AND DISPUTE RESOLUTION

15. DEFAULT:

(a) **BUYER DEFAULT:** If Buyer fails, neglects or refuses to perform Buyer's obligations under this Contract, including payment of the Deposit, within the time(s) specified, Seller may elect to recover and retain the Deposit for the account of Seller as agreed upon liquidated damages, consideration for execution of this Contract, and in full settlement of any claims, whereupon Buyer and Seller shall be relieved from all further obligations under this Contract, or Seller, at Seller's option, may, pursuant to Paragraph 16, proceed in equity to enforce Seller's rights under this Contract. The portion of the Deposit, if any, paid to Listing Broker upon default by Buyer, shall be split equally between Listing Broker and Cooperating Broker; provided however, Cooperating Broker's share shall not be greater than the commission amount Listing Broker had agreed to pay to Cooperating Broker.

(b) **SELLER DEFAULT:** If for any reason other than failure of Seller to make Seller's title marketable after reasonable diligent effort, Seller fails, neglects or refuses to perform Seller's obligations under this Contract, Buyer may elect to receive return of Buyer's Deposit without thereby waiving any action for damages resulting from Seller's breach, and, pursuant to Paragraph 16, may seek to recover such damages or seek specific performance.

This Paragraph 15 shall survive Closing or termination of this Contract.

A. FAILURE TO PERFORM: A failure to timely perform by either party is a default under the contract giving the non-defaulting party the right to cancel the transaction and/or pursue available legal remedies. There are no provisions in the contract requiring a notice of default or allowing the defaulting party an opportunity to cure. A default by one party excuses the non-defaulting party from further performance under the contract.

B. BUYER DEFAULT: If the buyer defaults ("default" includes the non-payment of a required deposit) the seller has two alternative remedies which may be pursued subject to the mediation provisions of Paragraph 16:

1. "Elect to recover and retain the Deposit for the account of seller as agreed upon liquidated damages...". The use of the word "recover" anticipates that the buyer's default may be the non-payment of an initial or additional deposit. Notice in paragraph 2(b) of the contract that "Deposit" is defined as deposits made and deposits to be paid. If the buyer has failed to pay one or more deposits, the seller may be forced to file suit against the buyer for recovery of the unpaid deposit; or
2. Sue the buyer for specific performance of the contract.

Seeking a forfeiture of the deposit is usually the most convenient remedy for a seller faced with a buyer's default. The buyer may contest the seller's entitlement to the deposit in which event, subject to the mediation requirements of Paragraph 16, litigation may follow. A seller suing for specific performance necessarily takes the property off the market pending the outcome of the litigation. In addition, the seller runs the risk that even if specific performance is ordered, the buyer may be insolvent and/or otherwise unable to purchase. The more convenient and effective remedy of deposit forfeiture emphasizes the need to obtain a deposit in an amount sufficient to induce the buyer to perform and adequately compensate the seller.

C. BROKER'S PARTICIPATION IN FORFEITED DEPOSIT: Brokerage listing agreements typically include a provision entitling the broker to payment of a percentage of the forfeited deposit as compensation for services. The portion of the deposit to be paid to the listing broker is subject to negotiation between the seller and the listing broker. Unless there is an agreement with a cooperating broker to the contrary, the listing broker may waive all or a portion of this entitlement. However, if the listing broker receives any portion of the deposit, the intent of this provision is to protect a cooperating broker by directing that such portion received by the listing broker be split equally with the cooperating broker (to the extent that it does not exceed the amount the cooperating broker would have received had the transaction closed).

D. SELLER DEFAULT: If the seller fails to perform (for example, wrongfully refuses to close the transaction) the buyer has two alternative remedies which may be pursued subject to the mediation provisions of Paragraph 16:

1. Sue the seller for specific performance requiring the seller to convey the property in exchange for payment of the purchase price; or

2. Obtain a refund of the earnest money deposit(s) and, at buyer's option, sue the seller for damages.

Failure of the seller to cure title defects is expressly deemed not to be a default. However, brokerage listing agreements frequently provide that the seller will be liable of the payment of the commission if the transaction fails to close because seller's title is unmarketable. In addition, a seller's default under the contract would typically be a default under the brokerage listing agreement entitling the broker to recover a commission from the seller.

If the buyer seeks the specific performance remedy for a seller's default, deposits continue to be held by the escrow agent. Specific performance lawsuits are normally accompanied by the filing and recording of a lis pendens which gives notice that the property is involved in litigation. A lis pendens effectively prevents the seller from conveying or encumbering the property pending the outcome of the litigation.

DISPUTE RESOLUTION

16. DISPUTE RESOLUTION: Unresolved controversies, claims and other matters in question between Buyer and Seller arising out of, or relating to, this Contract or its breach, enforcement or interpretation ("Dispute") will be settled as follows:

(a) Buyer and Seller will have 10 days after the date conflicting demands for the Deposit are made to attempt to resolve such Dispute, failing which, Buyer and Seller shall submit such Dispute to mediation under Paragraph 16(b).

(b) Buyer and Seller shall attempt to settle Disputes in an amicable manner through mediation pursuant to Florida Rules for Certified and Court-Appointed Mediators and Chapter 44, F.S., as amended (the "Mediation Rules"). The mediator must be certified or must have experience in the real estate industry. Injunctive relief may be sought without first complying with this Paragraph 16(b). Disputes not settled pursuant to this Paragraph 16 may be resolved by instituting action in the appropriate court having jurisdiction of the matter. This Paragraph 16 shall survive Closing or termination of this Contract.

A. MANDATORY MEDIATION: This provision requires that the buyer and seller attempt to resolve any "Dispute" (defined as unresolved controversies and claims arising out of or relating to the contract or its breach, enforcement or interpretation) as follows:

1. If the dispute involves conflicting demands for the deposit, the parties have a 10 day period to try to resolve their differences failing which mediation is directed.

2. The Dispute is then submitted to mediation as described. If injunctive relief is needed (for example, the seller is threatening to sell the property to another party) mediation is not a precondition to seeking an injunction. Otherwise, mediation is a precondition to initiating litigation.

ATTORNEY'S FEES AND COSTS

452 **17. ATTORNEY'S FEES; COSTS:** The parties will split equally any mediation fee incurred in any mediation permitted
453 by this Contract, and each party will pay their own costs, expenses and fees, including attorney's fees, incurred in
454 conducting the mediation. In any litigation permitted by this Contract, the prevailing party shall be entitled to recover
455 from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the
456 litigation. This Paragraph 17 shall survive Closing or termination of this Contract.

With respect to the mandatory mediation provided for in Paragraph 16 of the contract, this provision directs that the mediation fees will be split equally between buyer and seller and each party pays their own costs, expenses and attorney's fees. If the Dispute is not settled at mediation and litigation is initiated, the prevailing party is entitled to recover reasonable attorney's fees and costs. Comprehensive Rider BB — Binding Arbitration, if included in the contract, offers an alternative to litigation. Notice, however, that if this Rider is used there is no provision for the recovery of attorney's fees and costs from the non-prevailing party.

STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS")

18. STANDARDS:

A. TITLE:

(i) **TITLE EVIDENCE; RESTRICTIONS; EASEMENTS; LIMITATIONS:** Within the time period provided in Paragraph 9(c), the Title Commitment, with legible copies of instruments listed as exceptions attached thereto, shall be issued and delivered to Buyer. The Title Commitment shall set forth those matters to be discharged by Seller at or before Closing and shall provide that, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the Purchase Price, shall be issued to Buyer insuring Buyer's marketable title to the Real Property, subject only to the following matters: (a) comprehensive land use plans, zoning, and other land use restrictions, prohibitions and requirements imposed by governmental authority; (b) restrictions and matters appearing on the Plat or otherwise common to the subdivision; (c) outstanding oil, gas and mineral rights of record without right of entry; (d) unplatted public utility easements of record (located contiguous to real property lines and not more than 10 feet in width as to rear or front lines and 7 1/2 feet in width as to side lines); (e) taxes for year of Closing and subsequent years; and (f) assumed mortgages and purchase money mortgages, if any (if additional items, attach addendum); provided, that, unless waived by Paragraph 12 (a), there exists at Closing no violation of the foregoing and none prevent use of the Property for **RESIDENTIAL PURPOSES**. If there exists at Closing any violation of items identified in (b) – (f) above, then the same shall be deemed a title defect. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law.

(ii) **TITLE EXAMINATION:** Buyer shall have 5 days after receipt of Title Commitment to examine it and notify Seller in writing specifying defect(s), if any, that render title unmarketable. If Seller provides Title Commitment and it is delivered to Buyer less than 5 days prior to Closing Date, Buyer may extend Closing for up to 5 days after date of receipt to examine same in accordance with this STANDARD A. Seller shall have 30 days ("Cure Period") after receipt of Buyer's notice to take reasonable diligent efforts to remove defects. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted title as it then is. If Seller cures defects within Cure Period, Seller will deliver written notice to Buyer (with proof of cure acceptable to Buyer and Buyer's attorney) and the parties will close this Contract on Closing Date (or if Closing Date has passed, within 10 days after Buyer's receipt of Seller's notice). If Seller is unable to cure defects within Cure Period, then Buyer may, within 5 days after expiration of Cure Period, deliver written notice to Seller: (a) extending Cure Period for a specified period not to exceed 120 days within which Seller shall continue to use reasonable diligent effort to remove or cure the defects ("Extended Cure Period"); or (b) electing to accept title with existing defects and close this Contract on Closing Date (or if Closing Date has passed, within the earlier of 10 days after end of Extended Cure Period or Buyer's receipt of Seller's notice), or (c) electing to terminate this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. If after reasonable diligent effort, Seller is unable to timely cure defects, and Buyer does not waive the defects, this Contract shall terminate, and Buyer shall receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

The Standards are common contract provisions that have developed over the years relating to the sale and purchase of Florida residential real property. Standardizing customs and procedures relating to the purchase and sale of real property helps to simplify transactions. Standards will govern the rights and obligations of the parties just as forcefully as other provisions of the contract.

A. STANDARD A - TITLE EVIDENCE, RESTRICTIONS, EASEMENTS AND LIMITATIONS:

1. Title Insurance: Assurance of good title is critical in Florida real estate transaction. Title insurance insures against financial loss from defects in title to real property and from the invalidity or unenforceability of mortgage liens. Title insurance has been around since the 1800's and is the preferred method of "proving" marketable title in Florida. Prior to that time, determining whether title to real estate was marketable required the hiring of an abstractor to search for documents affecting title to the property and an attorney to render an opinion on their meaning under the law. This procedure was cumbersome and time consuming. Recourse against the abstractor or attorney for errors and omissions was limited.

2. Title Insurance Commitment: The process of insuring title begins with the issuance of a title insurance commitment ("Commitment"). The Commitment includes a schedule (Schedule B-I) detailing the requirements (e.g., recording a deed, paying off mortgages, etc.) that must be met in order for a title insurance policy to be issued. The Commitment also contains a schedule (Schedule B-II) of title exceptions. Title exceptions typically include matters appearing on the plat, recorded restrictive covenants and simi-

lar exceptions. Some "standard exceptions" (e.g., parties in possession, survey matters, etc.) are routinely deleted from the title policy upon satisfying underwriting requirements of the title insurance company.

3. Delivery of the Title Insurance Commitment: Standard A should be read together with Paragraph 9(c) which, among other things, identifies the party responsible for paying the title insurance premium and sets a deadline for delivery of the Commitment. Standard A provides that in addition to the Commitment, legible copies of instruments listed as exceptions are required to be delivered to the buyer.

4. Marketable Title: The quality of the title required to be conveyed under the contract is described as "marketable title." When title is marketable, it is "free from doubt" meaning that in the opinion of a Florida licensed attorney there is no reasonable probability that adverse claims will be asserted against the title. Standard A provides that marketable title is to be determined in accordance with applicable title standards adopted by authority of the Florida Bar and in accordance with law.

5. Permitted Exceptions: Standard A identifies six title exceptions which are permitted meaning that, except as otherwise provided, they are not objectionable as title defects. Subparagraph (i)(a) refers to comprehensive land use plans, zoning and other land use restrictions, prohibitions and requirements imposed by governmental authority. These are not title exceptions in the technical sense but they do affect the use of real property.

6. No Violations: After listing the permitted exceptions, the provision includes a statement that as of the closing date, there is no violation of the permitted exceptions and none prevent the use of the property for residential purposes. This is modified somewhat by the next sentence which states that if there is any violation of the items identified in Subparagraphs (b) through (f) then such violations shall be treated as a title defect. Notice that this provision excludes Subparagraph (i) (a) land use restrictions and governmental requirements.

CAUTION: Under this provision, a building code violation is not considered a title defect. Title defects are addressed in Standard A(ii) which establishes a procedure and time schedule for curing title defects. Therefore, a buyer who discovers a building code violation may have the right to cancel the contract based upon the requirement that there be no violations. However, the buyer would not have the right to require the seller to attempt to cure the violation pursuant to the procedures applicable to title defects.

CAUTION: The permitted exceptions listed in Subparagraphs (a) through (f) are exceptions commonly encountered in residential real estate transactions. Recorded plats, platted easements and restrictive covenants usually affect all lots located within the subdivision. Subparagraph (i)(d) is specific as to un-platted public utility easements requiring that they not exceed 10' in width as to rear and front lines and 7.5' in width as to side lines and requiring that they be contiguous to the boundary lines. Un-platted public utility easements sometimes exist in old platted subdivisions. The seller and agent should determine in advance of the contract whether such easements exist and whether they meet the contiguity and width requirements. If they don't include a special provision stating that title shall be subject to such easements.

CAUTION: The contract does not address non-conforming structures. A non-conforming structure is one which, when originally constructed fully complied with zoning and building codes but due to subsequent code amendments, has now become non-conforming. In addition a non-conforming structure can exist where a variance has previously been obtained. For example, if a portion of the residence extends beyond a required zoning set back line and the owner has remedied the encroachment by obtaining a variance from zoning authorities, the structure is considered non-conforming. Non-conforming structures are not violations of zoning regulations so the buyer cannot object under this Standard. However, typical zoning and building codes impose special rules relating to non-conforming structures. For example, if the building is damaged by casualty or otherwise, the owner may be required to reconstruct the building and fully comply with current zoning and building codes. The existence of a previously granted variance or other "grandfathered" non-conformity if known to the seller, is likely a fact requiring disclosure under Paragraph 10(j).

B. TITLE EXAMINATION:

1. Timing: Paragraph 9(c) specifies the deadline for delivery of the Commitment to the buyer. This provision allows the buyer 5 days to examine the Commitment and provide notice to seller specifying any title defects rendering title unmarketable. The default time periods in Paragraph 9(c) depend upon whether there is third party mortgage financing. If the financing contingency box in Paragraph 8(a) is checked the default period is 15 days prior to the closing date. Otherwise the default period is 5 days prior to closing. It is recommended that the title insurance commitment be delivered at least 15 days prior to closing in any event i.e., avoid the 5 day period default. Under this Standard, the buyer has 5 days to examine the title insurance commitment and submit title objections. This means that the buyer could make a title objection at the closing table if the title insurance commitment is delivered on the deadline and the 5 day period applies.

2. What is an Objectionable Title Defect? As discussed, Standard A requires the seller to deliver "marketable" title. Whether a particular title exception renders title unmarketable can be a disputed issue. Experienced real estate lawyers can usually recognize an objectionable title defect when they see one. A title insurance company will typically screen title exceptions and if any have the potential for rendering title unmarketable, the Commitment will require a "cure" in Scheduled B-I. For example, if the probate of an estate is required in order to insure marketable title, the Commitment will include a requirement for probate of the estate in Schedule B-I. Real estate attorneys customarily deliver notice to the title company or the seller's attorney requiring a "mark-up" of the Commitment at closing which deletes certain standard exceptions and other title exceptions found objectionable and require the satisfaction of all Schedule B-I requirements. Any requirements or title exceptions which, in the opinion of the examining attorney render title unmarketable should be specified in the written notice.

C. WAIVER OF TITLE DEFECTS: The failure of the buyer to deliver the written notice specifying defects within the 5 day time period results in a waiver and the buyer may be required to accept defective title. This could produce potentially serious consequences. If the buyer is depending upon third party mortgage financing, the lender may refuse to close the loan because of the title defect while the buyer would be contractually obligated to close on the purchase.

CAUTION: An unfortunate buyer who fails to timely object to title defects may seek to rely upon other provisions in the contract requiring the seller to convey marketable title by warranty deed. If the title defect is in the nature of a lien (e.g., money judgment against the seller, unsatisfied mortgage, tax lien, construction lien, etc.), the requirement for a warranty deed would require the seller to satisfy such encumbrances notwithstanding the buyer's waiver. However, the buyer's waiver will probably apply to other types of defects notwithstanding the general obligation of the seller to convey marketable title. The provisions of Standard A (ii) require written notice. The requirement for written notice of title objections is specific and would likely control over the general provision requiring conveyance of marketable title. Also Standard H (conveyance) provides that title will be conveyed subject to those matters "accepted by buyer". Standard A(ii) states that if the buyer fails to deliver notice of title objections the "buyer shall be deemed to have accepted title as it then is."

D. EFFORTS TO CURE: Following receipt of the buyer's written notice specifying defects, the seller is obligated to "take reasonable diligent efforts to remove defects." The initial time limit for undertaking such efforts is 30 days ("Cure Period"). If the seller successfully cures the defect within the Cure Period, the seller is required to deliver written notice and proof that the defect has been cured. Proof of cure can take the form of a the removal of the requirement or title exception from the Commitment meaning that then title company will insure title without listing the objectionable defect as an exception.

E. UNABLE TO CURE: If the seller is unable to cure defects within the Cure Period the buyer is given three options exercisable by written notice to the seller: (1) extend the Cure Period for a specified period not exceeding 120 days, or (2) accept title with the existing defects and close on the purchase, or (3) terminate the contract and receive a refund of the deposit. This provision is not clear as to what happens if the buyer fails to give notice electing one of these options. However, the last sentence of this provision suggests that unless the buyer waives the defects, the contract will terminate and the deposit will be refunded to the buyer.

F. FILING SUIT TO CURE DEFECTS: This provision is silent on whether the seller's reasonable diligent efforts would include the filing of litigation to remove defects. Whether due diligence requires the seller to pursue litigation probably depends upon the complexity of the litigation and whether the defect could be resolved through litigation within the permitted time limits.

SURVEY

B. SURVEY: If Survey discloses encroachments on the Real Property or that improvements located thereon encroach on setback lines, easements, or lands of others, or violate any restrictions, covenants, or applicable governmental regulations described in STANDARD A (i)(a), (b) or (d) above, Buyer shall deliver written notice of such matters, together with a copy of Survey, to Seller within 5 days after Buyer's receipt of Survey, but no later than Closing. If Buyer timely delivers such notice and Survey to Seller, such matters identified in the notice and Survey shall constitute a title defect, subject to cure obligations of STANDARD A above. If Seller has delivered a prior survey, Seller shall, at Buyer's request, execute an affidavit of "no change" to the Real Property since the preparation of such prior survey, to the extent the affirmations therein are true and correct.

A. IMPORTANCE OF A SURVEY: The most common type of survey obtained in residential real estate transactions is a boundary/improvements survey. Such a survey will plot the boundaries of the property and show the improvements relative to those boundaries. Standard B describes various objectionable survey defects. Survey defects can be as serious as any title defect. Consequently, a survey is an essential part of the buyer's due diligence.

B. SURVEY DEFECTS: Obtaining a survey is the only reliable way of discovering encroachments of improvements across boundary lines, set-backs lines and easements. Set-back lines (or required yards) are prescribed by land use and zoning regulations and occasionally imposed by recorded restrictive covenants and plats. Encroachments and other forms of survey defects are objectionable and are treated in the same manner as title defects are addressed under Standard A(ii). This Standard should be read together with Paragraph 9(d) which provides that the buyer must have the survey completed not later than 5 days prior to closing. Written notice of any survey defects must be given not later than 5 days following buyer's receipt of the survey but not later than the closing date. Note, once again, that a late Title Insurance Deadline runs the risk of a late notice of defects requiring an extension of the closing date to allow a cure.

C. SURVEYS AND TITLE INSURANCE: Title insurance coverage providing protection against the existence of survey defects can be obtained by providing a current survey to the title insurer and/or otherwise meeting title underwriting requirements. Paragraph 9(d) requires the seller to deliver a copy of any prior survey within 5 days following the Effective Date. This Standard also requires the seller, upon request, to execute an affidavit of "no change" to the property since the date of the prior survey provided, in fact, that there have been no changes with respect to improvements on the property. Title insurers will typically accept a prior survey together with an affidavit of no change as a basis for providing coverage against survey defects in the title policy. If the prior or current survey shows any encroachments or other defects, the title insurer will include an exception for these matters making specific reference to the survey. Institutional lenders providing purchase money financing normally require acceptable title insurance coverage against survey defects.

D. CURING SURVEY DEFECTS: As discussed, objectionable survey defects are treated in the same manner as title defects under Standard A(ii) of the contract. The seller has an obligation to make reasonable diligent efforts to cure survey defects. For example, if the seller's fence is encroaching across the property line into a neighbor's property, the seller would be required to relocate the fence within the boundaries. If a portion of the building is violating a zoning set-back line, the seller would be required to obtain a variance from zoning authorities.

E. FLOOD ZONES: A boundary/improvement survey will disclose the flood zone in which the property is located. If requested, the surveyor will furnish the flood elevation certificate referred to in Paragraph 10(d).

INGRESS AND EGRESS

C. INGRESS AND EGRESS: Seller represents that there is ingress and egress to the Real Property and title to the Real Property is insurable in accordance with STANDARD A without exception for lack of legal right of access.

A. TITLE INSURANCE: Provided there is legal access to the property, a title insurance policy will insure against loss or damage caused by a lack of legal access. Part of the title examination process undertaken by a title agent includes a determination that legal access exists.

B. LEGAL ACCESS: Legal access means that the property owner has a legal right to access a public road from and to the property. Generally, if the property is in a platted subdivision or is immediately contiguous to a public road, access is not an issue. In some cases, however, access to a public road may be by way of private easement across adjoining lands. Title insurance does not insure the quality of access so care should be taken to insure that the private easement affords practical access to the property. A legal description of the private easement should be included as part of the description of the property being purchased so that the title insurance insures both the property and the easement.

LEASE INFORMATION

D. LEASE INFORMATION: Seller shall, at least 10 days prior to Closing, furnish to Buyer estoppel letters from tenant(s)/occupant(s) specifying nature and duration of occupancy, rental rates, advanced rent and security deposits paid by tenant(s) or occupant(s) ("Estoppel Letter(s)"). If Seller is unable to obtain such Estoppel Letter(s) the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit, and Buyer may thereafter contact tenant(s) or occupant(s) to confirm such information. If Estoppel Letter(s) or Seller's affidavit, if any, differ materially from Seller's representations and lease(s) provided pursuant to Paragraph 6, or if tenant(s)/occupant(s) fail or refuse to confirm Seller's affidavit, Buyer may deliver written notice to Seller within 5 days after receipt of such information, but no later than 5 days prior to Closing Date, terminating this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. Seller shall, at Closing, deliver and assign all leases to Buyer who shall assume Seller's obligations thereunder.

A. LEASE INFORMATION: This Standard compliments Paragraph 6 of the contract which requires delivery of any leases to the buyer and gives the buyer a right to cancel. Assuming the buyer does not cancel, this Standard requires the seller to deliver to the buyer, not later than 10 days prior to closing, estoppel letters signed by each tenant or occupant in the form prescribed. If an estoppel letter cannot be obtained the seller may furnish the same estoppel letter information in the form of an affidavit and the buyer has the right to confirm the information with the tenant(s)/occupant(s). If the lease information differs materially from seller's representations or the leases previously delivered the buyer may cancel the contract.

CAUTION: Paragraph 6 of the contract provides the buyer an early opportunity to examine written leases and the terms of occupancy relating to any tenants/ occupants without written leases. Written leases should be examined carefully. They could include options to purchase the property, rights of first refusal and other provisions adverse to the buyer's interest. The buyer takes title subject to the rights of tenants/occupants in visible possession of the property.

B. ASSIGNMENT: The seller is required to deliver and assign all leases to the buyer. The buyer is required to assume the seller's obligations thereunder. Assumption of these obligations typically takes the form of an assumption agreement in the assignment document. An assumption will normally protect the seller against any claims of the tenant arising after the closing date. Although not required by Standard D, the estoppel letter from the tenant should expressly state that the lease is free of default by either party and that there are no claims or causes of action assertable against the seller/landlord. A prudent buyer will require similar representations included in the lease assignment.

LIENS

E. LIENS: Seller shall furnish to Buyer at Closing an affidavit attesting (i) to the absence of any financing statement, claims of lien or potential lienors known to Seller and (ii) that there have been no improvements or repairs to the Real Property for 90 days immediately preceding Closing Date. If the Real Property has been improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been paid or will be paid at Closing.

A. SELLER'S AFFIDAVIT: The affidavit described in Standard E is typically prepared by the title/closing agent as part of the closing and title insurance process.

B. CONSTRUCTION LIENS: A construction lien is a statutory lien that can attach to and encumber the title to the property without notice thereof being recorded on the public records. The Florida Construction Lien Law allows a lienor (contractor, subcontractor or materials supplier) to record a lien within 90 days after the completion of the lienor's work on the property. If the property has been improved or repaired within 90 days preceding the closing date, the seller is directed to obtain and deliver releases and waivers of construction liens. The requirements described in this Standard are substantially the same as the title underwriting requirements imposed by a title insurer in order to insure title without exception for construction lens.

TIME

> **F. TIME: Time is of the essence in this Contract.** Calendar days, based on where the Property is located, shall be used in computing time periods. Other than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur on a Saturday, Sunday, national legal public holiday (as defined in 5 U.S.C. Sec. 6103(a)), or a day on which a national legal public holiday is observed because it fell on a Saturday or Sunday, shall extend to the next calendar day which is not a Saturday, Sunday, national legal public holiday, or a day on which a national legal public holiday is observed.

A. CALENDAR DAYS: The contract provides that all time periods are computed in calendar days.

B. EXTENSION OF TIME PERIOD: Except as otherwise provided in the contract, the time periods and deadlines are extended only where the last day of the time period or the deadline falls on a Saturday, Sunday, or national legal public holiday. A national legal public holiday is also a week day on which the holiday is observed because the actual holiday date was a Saturday or Sunday. This extension provision does not apply with respect to the Effective Date and time for acceptance. (See Paragraph 3). If extended, the deadline or time period is extended to 5 p.m. of the next business day.

C. TIME IS OF THE ESSENCE: As previously discussed the contract makes time of the essence. This means that deadlines and time periods expressed in the contract for timely performance by the parties are strict. There are no grace periods. A failure to give a required notice by a required deadline can result in a waiver. A failure to timely perform an act required by the contract to be performed is a default unless the time period or deadline is extended by force majeure or other provisions. While a judge may excuse a default as non¬material, the agent's primary objective is to make sure that the parties adhere to the time periods and deadlines thereby avoiding the courtroom.

D. EVENTS: Notice that the events constituting Force Majeure are specifically listed. There may be other events and occurrences, beyond the control of either party, that creates the need for extension of time periods, deadlines, and the closing date. Even so, if the event is not one of the listed events, time for exercise of rights or performance of obligations will not be extended under this provision.

FORCE MAJEURE

G. FORCE MAJEURE: Buyer or Seller shall not be required to exercise or perform any right or obligation under this Contract or be liable to each other for damages so long as performance or non-performance of the right or obligation, or the availability of services, insurance, or required approvals essential to Closing, is disrupted, delayed, caused or prevented by a Force Majeure event. "Force Majeure" means: hurricanes, floods, extreme weather, earthquakes, fires, or other acts of God, unusual transportation delays, wars, insurrections, civil unrest, or acts of terrorism, governmental actions and mandates, government shut downs, epidemics, or pandemics, which, by exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or overcome. The Force Majeure event will be deemed to have begun on the first day the effect of the Force Majeure prevents performance, non-performance, or the availability of services, insurance or required approvals essential to Closing. All time periods affected by the Force Majeure event, including Closing Date, will be extended a reasonable time up to 7 days after the Force Majeure event no longer prevents performance under this Contract; provided, however, if such Force Majeure event continues to prevent performance under this Contract more than 30 days beyond Closing Date, then either party may terminate this Contract by delivering written notice to the other and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

A. EXTENDING TIME FOR PERFORMANCE: Force Majeure (French for superior force) is a common clause in contracts excusing parties from a delay in exercising a right or performing an obligation if performance or non-performance of the obligation is delayed, caused or prevented by the exercise of the right or the extraordinary events or occurrences beyond the control of the parties. This Standard specifically describes events and occurrences which constitute Force Majeure. These events include the disruption of availability of services, insurance or required approvals essential to closing. Time periods and deadlines in the contract, including the closing date, are extended for a reasonable time of up to 7 days after the Force Majeure event no longer prevents performance. However, if Force Majeure prevents performance for more than 30 days beyond the contract closing date then either party may cancel the contract by giving written notice. This recognizes that Force Majeure, under the contract will not only extend deadlines but may excuse a party from contractual obligations if performance was prevented by the Force Majeure event.

B. EXCUSING PERFORMANCE: Force Majeure is a contractual provision but the concept is closely related to other legally recognized defenses that can be raised in a breach of contract law suit. These defenses include prevention of performance, impossibility of performance and frustration of purpose.

C. DELAY IN EXERCISING A RIGHT: A party can be delayed in the exercise of a right as well as the performance of an obligation. For example, a buyer is a day late in exercising a right of cancellation under Paragraph 12 of the As-IS Contract because of a power failure due to weather. If the event actually prevented the buyer from communicating the cancellation notice, this provision could operate to excuse the delay and allow a late notification.

D. APPLICATION: Whether a Force Majeure event will excuse a delay in exercising a right or performing an obligation depends upon the following determinations. (1) Did the event actually prevent or delay the exercise of the right or performance of the obligation? (2) Was there anything the delaying party could have done with reasonable diligent effort to prevent or overcome the failure to exercise the right or perform the obligation?

CONVEYANCE

H. CONVEYANCE: Seller shall convey marketable title to the Real Property by statutory warranty, trustee's, personal representative's, or guardian's deed, as appropriate to the status of Seller, subject only to matters described in STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be transferred by absolute bill of sale with warranty of title, subject only to such matters as may be provided for in this Contract.

A. TYPES OF DEEDS: The most common method of conveying title to residential real property is by statutory warranty deed in the form prescribed by Section 689.02, Florida Statutes. The statutory form of deed is deemed to include all common law covenants and warranties (warranties of title and against encumbrances). Standard H recognizes that grantors acting in a representative capacity (trustees, personal representatives and guardians) may lack the authority (by law or governing documents) to convey real property with full warranties of title. There are special forms of deed available for execution by trustees, personal representatives and guardians. If conveyance by deed in any other form is intended by the parties, e.g., special warranty deed, quit claim deed, a special provision must be included in the contract.

B. BILL OF SALE: This Standard also requires the seller to deliver an "absolute bill of sale with warranty of title" if requested by the buyer. Paragraph 1 of the contract recognizes that even an unfurnished home includes some components which may be regarded as personal property e.g., draperies and window treatments. A prudent buyer will request a bill of sale particularly if the sale includes significant additional personal property. The bill of sale is required to be in a form that includes seller warranties with respect to title.

CLOSING LOCATION; DOCUMENTS; AND PROCEDURE

I. CLOSING LOCATION; DOCUMENTS; AND PROCEDURE:
(i) **LOCATION:** Closing will be conducted by the attorney or other closing agent ("Closing Agent") designated by the party paying for the owner's policy of title insurance and will take place in the county where the Real Property is located at the office of the Closing Agent, or at such other location agreed to by the parties. If there is no title insurance, Seller will designate Closing Agent. Closing may be conducted by mail, overnight courier, or electronic means.
(ii) **CLOSING DOCUMENTS:** Seller shall, at or prior to Closing, execute and deliver, as applicable, deed, bill of sale, certificate(s) of title or other documents necessary to transfer title to the Property, construction lien affidavit(s), owner's possession and no lien affidavit(s), and assignment(s) of leases. Seller shall provide Buyer with paid receipts for all work done on the Property pursuant to this Contract. Buyer shall furnish and pay for, as applicable, the survey, flood elevation certification, and documents required by Buyer's lender.
(iii) **FinCEN GTO REPORTING OBLIGATION**. If Closing Agent is required to comply with a U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") Geographic Targeting Order ("GTO"), then Buyer shall provide Closing Agent with essential information and documentation related to Buyer and its Beneficial Owners, including photo identification, and related to the transaction contemplated by this Contract which are required to complete mandatory reporting including the Currency Transaction Report; and Buyer consents to Closing Agent's collection and report of said information to IRS.
(iv) **PROCEDURE:** The deed shall be recorded upon Collection of all closing funds. If the Title Commitment provides insurance against adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow closing procedure required by STANDARD J shall be waived, and Closing Agent shall, **subject to Collection of all closing funds**, disburse at Closing the brokerage fees to Broker and the net sale proceeds to Seller.

A. LOCATION OF CLOSING: Standard I(i) directs that the closing occur in the county in which the property is located at the office of the attorney or other closing agent or at such other location agreed to by the parties. The "Closing Agent" is the attorney or title insurance company designated by buyer or seller under Paragraph 9(c) of the contract. This provision permits the closing to be accomplished by mail or electronic means.

B. CLOSING DOCUMENTS: Standard I(ii) identifies the closing documents involved in the transaction and assigns the responsibility for furnishing those documents. Closing documents necessary to meet the requirements of Schedule B-I of the title insurance commitment (deed, seller affidavits, etc.) are typically prepared by the Closing Agent. The seller is required to deliver to the buyer paid receipts for all work done on the property required by the contract. This includes General Repairs, WDO Repairs and any work associated with remediating permit problems under Paragraph 12 of the contract.

C. FinCEN Notice: The Financial Crimes Enforcement Network, a bureau of the U.S. Department of the Treasury was established in 1990 to protect against money laundering and promote national security. This bureau has the authority to issue Geographic Targeting Orders (GTOs) to title insurance companies and agents which require the reporting of certain "Covered Transactions", typically high dollar cash transactions. Reporting is accomplished by filing a Currency Transaction Report with IRS.

D. CLOSING PROCEDURE: As previously discussed, a closing cannot occur until all monies necessary to fund the purchase price have been "Collected" in the Closing Agent's account. This provision should be read together with Standard S which allows the Closing Agent to delay closing until collection has occurred. Provided the closing agent has received collected funds this provision directs the closing agent to disburse brokerage fees to brokers and net sales proceeds to the seller.

ESCROW CLOSING PROCEDURE

567 **J. ESCROW CLOSING PROCEDURE:** If Title Commitment issued pursuant to Paragraph 9(c) does not provide
568 for insurance against adverse matters as permitted under Section 627.7841, F.S., as amended, the following
569 escrow and closing procedures shall apply: (1) all Closing proceeds shall be held in escrow by the Closing Agent
570 for a period of not more than 10 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of
571 Buyer, Buyer shall, within the 10 day period, notify Seller in writing of the defect and Seller shall have 30 days from
572 date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, the Deposit and all
573 Closing funds paid by Buyer shall, within 5 days after written demand by Buyer, be refunded to Buyer and,
574 simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and re-
575 convey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand
576 for refund of the Deposit, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect
577 except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale.

A. INSURING THE "GAP": A title insurance commitment issued pursuant to Paragraph 9(c) will reflect the status of title as of the effective date of the commitment. The time period between the effective date of the commitment and the deed recording date is referred to as the "gap". The title insurance commitment includes an exception from coverage as to adverse matters or defects recorded during this gap period. Section 627.7841, Florida Statutes, eliminates this gap exception from coverage if the title/closing agent actually disburses funds at closing. The title insurance company protects itself against intervening defects (e.g., a judgment recorded against the seller) by bringing the title search current to the closing date and obtaining an affidavit from the seller to the effect that the seller is unaware of any matters pending that could rise to a lien and has not executed or recorded any documents affecting the property during the gap period. If a document has been recorded during the gap period which adversely affects title the title insurance company will not delete the gap exception.

B. INTERVENING TITLE DEFECTS/ESCROWED CLOSING: If the gap exception is not deleted from the title commitment the remainder of Standard J describes an escrowed closing arrangement. The closing agent is directed to close the transaction, record the deed and escrow all closing proceeds. The buyer is allowed an opportunity to make a further objection to title defects and the seller is given a 30 day period following notification to cure the defects. If the seller is unable to cure the defects the deposit and all closing funds, upon written demand by buyer are refunded to buyer. The buyer is directed to return personal property, vacate the real property and re-convey the property to the seller by special warranty deed and bill of sale. Failure of the buyer to make a timely written demand for refund of the deposit constitutes a waiver and the buyer is deemed to have accepted title in its defective condition. Should this occur, the buyer will not be able to make a claim under the title insurance policy but may have recourse against the seller through the warranties contained in the deed.

CAUTION: This escrow closing procedure has serious shortcomings. A lender involved in the transaction would never permit an escrowed closing or the recording of its mortgage if intervening title defects have been discovered and the title insurance company is refusing to insure the gap. Standard J provides that only the purchase money is escrowed. The deed is actually recorded and the buyer takes possession of the property. If the intervening title defect cannot be cured, the transaction is reversed by the buyer re-conveying the property to the seller. This "close now and cure later" arrangement creates the potential for other problems to arise. For example, a judgment is recorded against the buyer after the conveyance but before the re-conveyance. A better approach is to simply delay the closing in the same manner as closing is delayed to cure other title defects under Standard A(ii).

Also note that the escrow procedure described requires recording of the deed. This would require a partial disbursement of purchase money proceeds in order to pay Florida documentary stamp taxes and recording costs. Section 627.7841, Florida Statutes, requires a title company to "insure the gap" if any disbursement of funds is made. A closing/title agent would refuse to record the deed unless recording taxes and fees were paid from a source other than purchase proceeds.

PRORATIONS; CREDITS

K. PRORATIONS; CREDITS: The following recurring items will be made current (if applicable) and prorated as of the day prior to Closing Date, or date of occupancy if occupancy occurs before Closing Date: real estate taxes (including special benefit tax assessments imposed by a CDD pursuant to Chapter 190, F.S., and assessments imposed by special district(s) pursuant to Chapter 189, F.S.), interest, bonds, association fees, insurance, rents and other expenses of Property. Buyer shall have option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by prorations to be made through day prior to Closing. Advance rent and security deposits, if any, will be credited to Buyer. Escrow deposits held by Seller's mortgagee will be paid to Seller. Taxes shall be prorated based on current year's tax. If Closing occurs on a date when current year's millage is not fixed but current year's assessment is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on prior year's tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be agreed upon between the parties, failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. In all cases, due allowance shall be made for the maximum allowable discounts and applicable homestead and other exemptions. A tax proration based on an estimate shall, at either party's request, be readjusted upon receipt of current year's tax bill. This STANDARD K shall survive Closing.

A. PROBATIONS AND ADJUSTMENTS: Standard K directs proration and appropriate charges or credits to the proceeds payable by the buyer and to the seller at closing. These prorations, credits and charges appear on the closing statement prepared by the closing agent and have the effect of increasing or decreasing the amount due from the buyer and to the seller. The Standard describes those types of expenses and revenues which are subject to proration including a catch-all — "other expenses of Property." There is no express provision in the contract requiring the buyer to purchase unused fuel oil or propane contained in tanks serving the property. It could be argued that fuel oil and gas are "other expenses of the property" and subject to adjustment. The better practice is to provide for an adjustment by special provision.

B. COMPUTATION OF ADJUSTMENTS: Prorations are computed taking into account the time period that an unpaid expense or uncollected revenue is accruing and the time period covered by prepaid expense or prepaid collected revenue. For example, if homeowner association assessments are paid quarterly in advance, the buyer will incur a proration charge and the seller receives a corresponding credit for the time period beginning with the day of closing through the end of the quarter. The Standard directs that the proration date is the day prior to closing resulting in the buyer assuming the expense or benefitting from the revenue on the day of closing.

C. INSURANCE: The Standard allows the buyer the option of assuming existing insurance policies if assumption is permitted by the insurer. If an insurance policy is assumed the seller will receive a proration credit and the buyer a corresponding charge from the time period beginning with the day prior to the closing date and ending on the policy expiration date.

D. PRORATING REAL ESTATE TAXES: In Florida, real estate taxes are payable in arrears. The tax bill for the current year arrives in November of each year. If a closing occurs prior to November the actual amount of the tax for the current year may not be known. In such a situation, this Standard directs the calculation of the tax proration by using the current year's assessment, if known and/or using the current year's millage, if known or prorating on the basis of the prior year's taxes. The tax proration takes into account maximum allowable discounts for early payment and homestead and other exemptions. If a proration is based on any method of calculating other than utilizing the actual amount of the current year's taxes, the Standard imposes an obligation on the parties to adjust (re-prorate) the calculation following receipt of the current year's tax bill.

CAUTION: There are circumstances where using an estimate for purposes of prorating taxes could result in a proration adjustment which is significantly less than the result would be if actual current year's taxes were prorated. While this Standard allows a post closing adjustment upon request by either party difficulties may be encountered in contacting the parties and enforcing payment of the adjustment. Homestead tax exemptions and the effect of Florida's Save Our Homes Amendment can cause a significant understatement of assessed market value (see the disclosure contained in Paragraph 10(h). The property may not be qualified for a homestead exemption in the year of sale and calculating a proration based upon the prior year when the property qualified for the exemption could produce an inequitable adjustment. The Standard addresses a second situation where the taxes for the prior year were based upon an assessment of vacant land but improvements were substantially completed during the prior year.

ACCESS TO PROPERTY TO CONDUCT APPRAISALS, INSPECTIONS, AND WALK THROUGH

596 **L. ACCESS TO PROPERTY TO CONDUCT APPRAISALS, INSPECTIONS, AND WALK-THROUGH:** Seller
597 shall, upon reasonable notice, provide utilities service and access to Property for appraisals and inspections,
598 including a walk-through (or follow-up walk-through if necessary) prior to Closing.

A. ACCESS TO PROPERTY PENDING CLOSING: This Standard obligates the seller to provide access to the property pending the closing date for purposes of conducting inspections and appraisals. It further obligates the seller to insure that utility service is available for the purpose of conducting such appraisals and inspections. The Standard specifically provides for a pre-closing walk-through inspection for the purposes described in Paragraph 12(e).

RISK OF LOSS

M. RISK OF LOSS: If, after Effective Date, but before Closing, Property is damaged by fire or other casualty ("Casualty Loss") and cost of restoration (which shall include cost of pruning or removing damaged trees) does not exceed 1.5% of Purchase Price, cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to terms of this Contract. If restoration is not completed as of Closing, a sum equal to 125% of estimated cost to complete restoration (not to exceed 1.5% of Purchase Price) will be escrowed at Closing. If actual cost of restoration exceeds escrowed amount, Seller shall pay such actual costs (but, not in excess of 1.5% of Purchase Price). Any unused portion of escrowed amount shall be returned to Seller. If cost of restoration exceeds 1.5% of Purchase Price, Buyer shall elect to either take Property "as is" together with the 1.5%, or receive a refund of the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. Seller's sole obligation with respect to tree damage by casualty or other natural occurrence shall be cost of pruning or removal.

A. DAMAGE TO THE PROPERTY BY CASUALTY: Standard M addresses the situation that would arise if, prior to closing, the property is damaged as a result of fire or other casualty. "Casualty" is not specifically defined in the contract but would likely include damage caused by flood, windstorm and other causes beyond the seller's control. This Standard would not apply to damage to the property not caused by casualty or damage actually caused by the seller. The seller would have an obligation to repair any such damage under the Maintenance Requirement set forth in Paragraph 11 of the contract.

B. COST OF RESTORATION: This provision directs that an estimate of the cost of restoration be obtained. If the restoration cost is 1.5% (or less) of the purchase price, the parties proceed to a closing with the cost of restoration being the obligation of the seller. If restoration cannot be completed prior to the closing date a sum equal to 125% of the estimated cost to complete restoration is escrowed at closing. After closing, the seller continues to have the obligation to repair/restore the property and is obligated to pay costs in excess of the escrowed amount but not in excess of the 1.5% limitation. Notice that replacement of damaged trees is not required and that only the cost of pruning and removal is included in the restoration cost estimate.

C. COST TO REPAIR EXCEEDS 1.5%: If the cost to repair exceeds 1.5% the buyer has the option of (1) taking the property as-is and receiving a 1.5% credit on the purchase price or (2) canceling the contract and receiving a refund of the deposit. There is no provision for assignment of insurance proceeds although this would likely be a subject of discussion between the parties.

CAUTION: There are some practical difficulties in applying the provisions of this Standard. In the aftermath of a hurricane engaging a contractor in a timely manner, even for the limited purpose of obtaining a restoration cost estimate, may be difficult. The Standard is silent as to the identity of the escrow agent and the terms relating to disbursement of funds. The con¬tract assumes that if the cost or repair and restoration is less than 1.5% of the purchase price the buyer should not have the right to cancel. However, requiring the buyer to close on the purchase of a damaged residence may prove difficult. A mortgage lender might refuse to release loan funds in such a situation. Notice that the buyer assumes the risk and obligation to pay any costs actually incurred in excess of the 1.5 % limit. It is suggested that, if possible, a firm contract for the repairs be obtained prior to closing.

1031 EXCHANGE

609 **N. 1031 EXCHANGE:** If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneously with
610 Closing or deferred) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party shall cooperate
611 in all reasonable respects to effectuate the Exchange, including execution of documents; provided, however,
612 cooperating party shall incur no liability or expense related to the Exchange, and Closing shall not be contingent
613 upon, nor extended or delayed by, such Exchange.

A. LIKE KIND EXCHANGES: The seller may be selling the property as a disposition or the buyer may be purchasing the property as a replacement under the provisions of Section 1031 of the Internal Revenue Code. This section provides certain tax deferrals and other benefits to parties involved in a like-kind exchange transaction. Under current tax laws, personal residences cannot qualify for a like kind exchange transaction. Any buyer or seller considering a like kind exchange should consult with an attorney or other knowledgeable professional.

B. COOPERATION: Most like-kind exchange transactions involve the engagement of a like-kind exchange intermediary. This will typically require that the contract be assigned to intermediary and that a signed consent be obtained from the other party. This Standard imposes an obligation on both buyer and seller to cooperate with each other if a like-kind exchange transaction is involved. However, the cooperating party is not required to incur expense or liability and the closing is not contingent upon nor will the closing be extended or delayed as a result of the like-kind exchange.

CONTRACT NOT RECORDABLE; PERSONS BOUND; DELIVERY NOTICE; COPIES; CONTRACT EXECUTION

> **O. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; DELIVERY; COPIES; CONTRACT EXECUTION:** Neither this Contract nor any notice of it shall be recorded in any public or official records. This Contract shall be binding on, and inure to the benefit of, the parties and their respective heirs or successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or to the attorney or broker (including such broker's real estate licensee) representing any party shall be as effective as if given by or to that party. All notices must be in writing and may only be made by mail, facsimile transmission, personal delivery or email. A facsimile or electronic copy of this Contract and any signatures hereon shall be considered for all purposes as an original. This Contract may be executed by use of electronic signatures, as determined by Florida's Electronic Signature Act and other applicable laws.

A. RECORDING THE CONTRACT: This Standard prohibits the recording of the contract. If the contract was recorded and the closing failed to occur, the recorded contract would create a cloud on the seller's title.

B. BINDING ON HEIRS AND SUCCESSORS: This is a common provision in all forms of contracts. The intervening death or incompetency of a buyer or seller does not release the party from performance. However, there may be an issue of impossibility of performance. For example, the intervening death of a buyer would likely prevent the closing of a mortgage loan. Refer to the discussion concerning assignment of the contract under Paragraph 7.

C. NOTICE: There are many provisions in the contract requiring or permitting written notice given by one party to the other. A delivery of notice to the attorney or broker representing the party receiving the notice is deemed effective. There are a variety of methods of delivery including electronic means.

D. COPIES OF THE CONTRACT: Fax or electronic copies of the contract and any signatures thereon are treated in the same manner as an original. This allows offers and counteroffers to be signed and transmitted electronically thereby speeding up the process of getting to contract. Electronic signatures are sufficient to bind the parties if in compliance with applicable law.

INTEGRATION; MODIFICATION

> **P. INTEGRATION; MODIFICATION:** This Contract contains the full and complete understanding and agreement of Buyer and Seller with respect to the transaction contemplated by this Contract and no prior agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon Buyer or Seller unless in writing and executed by the parties intended to be bound by it.

A. INTEGRATION: The first sentence of this Standard is a common contractual provision sometimes known as an "incorporation" clause. It expresses the legal concept that once a contract is complete prior agreements relating to the subject matter, particularly agreements inconsistent with the terms of the written contract are unenforceable. This provision would not relieve a party from liability for prior misrepresentations, material non-disclosures or other fraudulent conduct.

B. MODIFICATION: Any amendments to the terms of the contract occurring after the contract has been executed are required to be in writing and signed by the parties to be bound by the amendment. Verbal changes to the terms of the contract may not be binding.

WAIVER

Q. WAIVER: Failure of Buyer or Seller to insist on compliance with, or strict performance of, any provision of this Contract, or to take advantage of any right under this Contract, shall not constitute a waiver of other provisions or rights.

Another common provision found in contracts of all types is the "non-waiver" clause. Without this clause, if a party has previously waived timely performance by the non-performing party, the performing party may be prevented from demanding strict and timely performance of subsequent obligations.

RIDERS; ADDENDA; TYPEWRITTEN OR HANDWRITTEN PROVISIONS

R. RIDERS; ADDENDA; TYPEWRITTEN OR HANDWRITTEN PROVISIONS: Riders, addenda, and typewritten or handwritten provisions shall control all printed provisions of this Contract in conflict with them.

This Standard makes it clear that if there are any conflicts or inconsistencies between the printed provisions of the contract and the provisions of any Rider, addendum or typewritten or handwritten provisions, the latter will control.

COLLECTION OR COLLECTED

633 **S. COLLECTION or COLLECTED: "**Collection**"** or **"**Collected**"** means any checks tendered or received, including
634 Deposits, have become actually and finally collected and deposited in the account of Escrow Agent or Closing
635 Agent. Closing and disbursement of funds and delivery of closing documents may be delayed by Closing Agent
636 until such amounts have been Collected in Closing Agent's accounts.

COLLECTED FUNDS: The concept of collected funds has been previously discussed in this manual in terms of the payment of deposit monies to the escrow agent and the payment of closing proceeds to the closing agent. This definition makes it clear that collected funds means that the funds held by the escrow agent or the closing agent are not subject to any form of recall, stop payment or clearance and can be immediately disbursed. As previously noted, the closing agent is given the right to delay the closing until collection has occurred (see discussion under Paragraph 2).

APPLICABLE LAW AND VENUE

638 **U. APPLICABLE LAW AND VENUE:** This Contract shall be construed in accordance with the laws of the State
639 of Florida and venue for resolution of all disputes, whether by mediation, arbitration or litigation, shall lie in the
640 county where the Real Property is located.

Standard U directs that in connection with any mediation, arbitration or litigation concerning the enforcement or interpretation of the contract, Florida law shall apply. The venue (place where mediation, arbitration or litigation must be brought) is the county in which the property is located.

FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA")

V. FIRPTA TAX WITHHOLDING: If a seller of U.S. real property is a "foreign person" as defined by FIRPTA, Section 1445 of the Internal Revenue Code ("Code") requires the buyer of the real property to withhold up to 15% of the amount realized by the seller on the transfer and remit the withheld amount to the Internal Revenue Service (IRS) unless an exemption to the required withholding applies or the seller has obtained a Withholding Certificate from the IRS authorizing a reduced amount of withholding.

(i) No withholding is required under Section 1445 of the Code if the Seller is not a "foreign person". Seller can provide proof of non-foreign status to Buyer by delivery of written certification signed under penalties of perjury, stating that Seller is not a foreign person and containing Seller's name, U.S. taxpayer identification number and home address (or office address, in the case of an entity), as provided for in 26 CFR 1.1445-2(b). Otherwise, Buyer shall withhold the applicable percentage of the amount realized by Seller on the transfer and timely remit said funds to the IRS.

(ii) If Seller is a foreign person and has received a Withholding Certificate from the IRS which provides for reduced or eliminated withholding in this transaction and provides same to Buyer by Closing, then Buyer shall withhold the reduced sum required, if any, and timely remit said funds to the IRS.

(iii) If prior to Closing Seller has submitted a completed application to the IRS for a Withholding Certificate and has provided to Buyer the notice required by 26 CFR 1.1445-1(c) (2)(i)(B) but no Withholding Certificate has been received as of Closing, Buyer shall, at Closing, withhold the applicable percentage of the amount realized by Seller on the transfer and, at Buyer's option, either (a) timely remit the withheld funds to the IRS or (b) place the funds in escrow, at Seller's expense, with an escrow agent selected by Buyer and pursuant to terms negotiated by the parties, to be subsequently disbursed in accordance with the Withholding Certificate issued by the IRS or remitted directly to the IRS if the Seller's application is rejected or upon terms set forth in the escrow agreement.

(iv) In the event the net proceeds due Seller are not sufficient to meet the withholding requirement(s) in this transaction, Seller shall deliver to Buyer, at Closing, the additional Collected funds necessary to satisfy the applicable requirement and thereafter Buyer shall timely remit said funds to the IRS or escrow the funds for disbursement in accordance with the final determination of the IRS, as applicable.

(v) Upon remitting funds to the IRS pursuant to this STANDARD, Buyer shall provide Seller copies of IRS Forms 8288 and 8288-A, as filed.

A. SEEK PROFESSIONAL ADVICE: This Standard contains a fairly detailed description of the legal requirements for tax withholding when the seller falls within the definition of a "foreign person" under FIRPTA. A complete explanation of the requirements of the law is beyond the scope of this manual. The agent should encourage any foreign seller to consult with a qualified real estate or tax attorney.

B. FIRPTA AFFIDAVIT: Closing agents routinely obtain a seller's certification of "non-foreign" status and, if obtained, and if the buyer has no knowledge to the contrary, the buyer may rely on such a certification.

C. WITHHOLDING: If the seller is a "foreign person", has not obtained a "withholding certificate" prior to closing, and if no other exemptions are available, the requirement for the 15% withholding applies. With some allowed adjustments this generally means 15% of the gross purchase price. This law places the responsibility on the buyer to require and provide the withholding. *The buyer can be personally liable* to the IRS for the 15% amount if not withheld. Typically, the closing agent will escrow the withholding and remit the amount to IRS although the buyer has the option to require immediate payment at closing. See discussion of Paragraph 10(i) in this manual.

D. DISCLOSURE: Agents are encouraged to determine whether the seller is a foreign person up front and disclose this, preferably in the contract itself.

ADDENDA AND ADDITIONAL TERMS

ADDENDA AND ADDITIONAL TERMS

668 * **19. ADDENDA:** The following additional terms are included in the attached addenda or riders and incorporated into this
669 Contract (**Check if applicable**):

- ☐ A. Condominium Rider
- ☐ B. Homeowners' Assn.
- ☐ C. Seller Financing
- ☐ D. Mortgage Assumption
- ☐ E. FHA/VA Financing
- ☐ F. Appraisal Contingency
- ☐ G. Short Sale
- ☐ H. Homeowners'/Flood Ins
- ☐ I. Mold Inspection
- ☐ J. Interest-Bearing Acct.
- ☐ K. "As Is"
- ☐ L. Right to Inspect/ Cancel
- ☐ M. Defective Drywall
- ☐ N. Coastal Construction Control Line
- ☐ O. Insulation Disclosure
- ☐ P. Lead Paint Disclosure (Pre-1978)
- ☐ Q. Housing for Older Persons
- ☐ R. Rezoning
- ☐ S. Lease Purchase/ Lease Option
- ☐ T. Pre-Closing Occupancy
- ☐ U. Post-Closing Occupancy
- ☐ V. Sale of Buyer's Property
- ☐ W. Back-up Contract
- ☐ X. Kick-out Clause
- ☐ Y. Seller's Attorney Approval
- ☐ Z. Buyer's Attorney Approval
- ☐ AA. Licensee Property Interest
- ☐ BB. Binding Arbitration
- ☐ CC. Miami-Dade County Special Taxing District Disclosure
- ☐ DD. Seasonal/Vacation Rentals
- ☐ EE. PACE Disclosure
- ☐ Other:_____

670 * **20. ADDITIONAL TERMS:**_____
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A. ADDENDA: Paragraph 19 provides a simple check-the-box method of incorporating various Riders and addenda included in the Comprehensive Rider to the Residential contract for Sale and Purchase. This system of identifying attachments expresses the intent of the parties to add one or more specialized addenda to the agreement. A box inadvertently left unchecked as to particular Rider or addendum which is attached can create an ambiguity as to what was intended. Likewise, if a Rider or addendum is inadvertently detached from the contract and the corresponding box was checked, the ambiguity is clarified. The printed Riders/addenda comprising the Comprehensive Rider additionally provide for initialling and signature further clarifying the intent of the parties to make such Riders/addenda a part of the agreement.

B. ADDITIONAL TERMS: Paragraph 20 provides an opportunity to include any special provisions that are not available through use of Comprehensive Rider selections.

COUNTER-OFFER

688 **COUNTER-OFFER**

689 * ☐ Seller counters Buyer's offer.

690

If the offer received by the seller is not acceptable and the seller changes the price or other terms, this provision identifies the contract as a counter-offer.

SIGNING AND DATING

THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR.

Approval of this form by the Florida Realtors and The Florida Bar does not constitute an opinion that any of the terms and conditions in this Contract should be accepted by the parties in a particular transaction. Terms and conditions should be negotiated based upon the respective interests, objectives and bargaining positions of all interested persons.

AN ASTERISK (*) FOLLOWING A LINE NUMBER IN THE MARGIN INDICATES THE LINE CONTAINS A BLANK TO BE COMPLETED.

* Buyer: _____ Date: _____

* Buyer: _____ Date: _____

* Seller: _____ Date: _____

* Seller: _____ Date: _____

	Buyer's address for purposes of notice	Seller's address for purposes of notice
*	_____	_____
*	_____	_____
*	_____	_____

A. SIGNING: As previously discussed, the Florida Statue of Frauds requires the signature of the buyer and seller to contract. All parties identified on the first page of the contract are required to sign. As provided in Standard 0, electronic signatures made pursuant to Florida's Electronic Signature Act are effective. Also, recall that a signed contract is effective if transmitted electronically.

B. INITIALLING: The bottom of each page of the contract (except for the signature page) provides space for initialing by the parties. This expresses the intent of the parties to include each page and helps prevent fraudulent alteration of the contract. Various Riders and addenda also require initialing.

C. DATING: Signatures at the end of the contract and where indicated on Riders and addenda should be dated. Likewise, when a party initials a change in the course of making a counter proposal, the initials should be dated. Dating helps establish the Effective Date of the contract.

BROKER

BROKER: Listing and Cooperating Brokers, if any, named below (collectively, "Broker"), are the only Brokers entitled to compensation in connection with this Contract. Instruction to Closing Agent: Seller and Buyer direct Closing Agent to disburse at Closing the full amount of the brokerage fees as specified in separate brokerage agreements with the parties and cooperative agreements between the Brokers, except to the extent Broker has retained such fees from the escrowed funds. This Contract shall not modify any MLS or other offer of compensation made by Seller or Listing Broker to Cooperating Brokers.

_____	_____
Cooperating Sales Associate, if any	**Listing Sales Associate**
_____	_____
Cooperating Broker, if any	**Listing Broker**

A. IDENTIFYING THE BROKERS: This provision is intended to identify the listing and cooperating brokers as well as the listing and cooperating sales agents.

B. COMPENSATION: The Brokers are not parties to the Contract. The Contract should not be used for the purpose of renegotiating commissions payable to the listing and cooperating broker. There is a direction to the closing agent to disburse brokerage fees as specified in separate brokerage agreements and cooperative agreements between brokers and any conflicting provisions contained is such brokerage agreements and cooperating agreements will prevail over any conflicting provisions in the contract. Any change in commission compensation should be formalized by an agreement or an amendment signed by the seller, listing broker and cooperating broker, as appropriate.