

## CHAPTER EIGHT: GETTING YOUR DEAL UNDER CONTRACT

### What You'll Learn in This Chapter

1. How to calculate the right offer for each wholesale deal
2. What to say at the “offer presentation”
3. How to put your offer “in writing” using a purchase contract or option to buy

Now that you've determined the after repaired value and the approximate cost of the repairs needed to put your property into good condition for the neighborhood, you have all the information you need to calculate and make an initial offer on your subject property.

We'll start with the various ways—yep, I said ways, plural—of calculating the maximum allowable offer (MAO) for the property. Unlike the research that precedes it and the negotiation that follows, this is a relatively simple step.<sup>1</sup>

### The Logic of the MAO

For any given property in any given condition, there's a mathematical way to figure out what a typical potential buyer or assignee will pay. The Maximum Allowable Offer lets you calculate, based on that number, what the most YOU can offer is, and still make your desired profit when you wholesale it.

So, while there are several MAO formulae that apply in different situations, they all follow the same basic logic, which is:

- What will my buyer/assignee pay?
- What do I want to make?
  - = The most I can offer

It bears repeating that, when you're asking yourself the first question, it's without any particular buyer in mind. The real question is, what will a TYPICAL, experienced investor want to pay for this property, in this location, with these repairs needed?

And the answer to that question varies over time, and is one of the many reasons you need to stay connected with the bigger real estate world by joining (and attending) meetings of your local real estate association, and using that resource to stay on top of the market, because your “hard and fast rules” maximum allowable offer will change as a result. If they don't, you'll experience unnecessary blows to your income, either because you're suddenly asking more than the market will bear for deals, or because you're not asking enough.

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<sup>1</sup> *As such, I won't spend more than 4 or 5 thousand words on it.*

Let me give you some real-life examples:

- In 2006, at the height of the real estate boom, the demand for deals was so large and so insatiable that wholesalers were able to assign contracts on rental properties at 70-75% of the after repaired value, less repair costs, no matter what level of repair the property needed.
- In 2009, when banks were giving away those same properties, it became almost impossible sell ANY rental property, in a rental area, that needed more than about \$25,000 in work. Properties needing only minor work in those areas—like paint, carpet, and perhaps plumbing replacement—could be sold, but at 60% of their ARV-repair costs.
- In 2013, when foreclosure rates and supply had dropped dramatically, retailer/buyers literally started showing up at my office begging for any deals that could be fixed and flipped, even if they had to pay 75% of ARV less repairs instead of their preferred price of 70% less repairs, but rentals in marginal areas were still commanding only 70% of ARV less repairs.
- In 2018, practically any property, including rentals in marginal areas needing \$50,000 in work, could be sold at 70% of ARV less repairs; rentals needing very minor work were easy to sell at 75-80% of ARV minus repairs; retailable properties jumped off the shelf at 75% of ARV minus repairs.

Anything from a series of hurricanes on the Gulf Coast, (which tend to raise materials prices and thus the cost of rehab) to the heating and cooling of markets, to availability of financing can affect, to some extent, what your buyers can pay for a property, and thus what you can offer. But only BIG swings in the market, like what happened between 2006 and 2009, change the whole pattern dramatically.

### Calculating the MAO: The Basic Formula

There is a basic formula that you'll hear year after year, in class after class, in region after region, used to determine the "MAO", or maximum allowable offer. The formula is this:

After Repaired Value  
 X \_\_\_\_\_ .7  
 RESULT (the difference between the ARV and this number represents the BUYER'S profit)  
 -repair costs (don't forget to include "fudge factor")  
 RESULT (This is the total price your buyer will pay, including your fee)  
 -your profit (chosen by you)  
 Maximum allowable offer

**Where are the holding/purchase/sales costs?**

As you may know, most renovators include "holding costs" (the monthly outlay for interest, taxes, utilities and so on that come with owning the property as well as "purchase costs" (loan fees) and "sales costs" (realtor fees, loan fees paid on behalf of the buyer, etc) in THEIR calculation of MAO. Why don't I? Because my various buyers differ enormously in what they pay for these things. Most are cash buyers, and so have no interest or loan fees. Others have private lenders, and pay from 6-12% for their money—a huge spread. Some use agents to sell, and pay 6%; some ARE agents, and only pay 3%, some sell their homes without agents, and pay no commission at all. And landlords, who are going to keep the property, don't calculate in any sales costs at all. In short, my deals don't always work for buyers with high costs, but that's OK—I have plenty who have low costs!

This particular formula is so popular because it reflects what most cash buyers, in most markets, want to pay for properties in most areas. 70% of the after-repaired value of a property, less the repair costs, is THEIR maximum allowable offer; any discount you can negotiate with the seller over this price becomes your profit.

In most markets at most times, the “basic” formula above applies to properties in nearly every region. With some exceptions, don't ya' know.

### **If Only it Were That Simple: The Other MAO Formulae**

Although the formula  $ARV \times .7 - \text{repair costs} - \text{profit}$  will result in the correct MAO in most situations, there are some times (and places) when it's appropriate to deviate from it. For instance:

- **When the property is in a type 2 area in a buyer's market.** At the height of the real estate boom in the middle part of the 1<sup>st</sup> decade of this century, the line between rental areas and “retail-able” areas became oddly blurred.

Before that time, and since, properties in rental areas were purchased almost exclusively by a particular type of buyer (and landlord) and for the purpose of reaching a particular goal (cash flow). During the halcyon days of subprime lending, which not un-coincidentally coincided with the rapid increase in property “values” in nearly every inhabitable neighborhood in the country, two things happened: first, speculators started buying cheap properties with the expectation that, despite decades of history to the contrary, prices in those areas would increase drastically year over year, and apparently forever. Secondly, it became possible, and even common, for retailers to buy properties in those areas, fix them up, and sell them to low-income home buyers using the availability of predatory, subprime mortgages.

From roughly 1998 to 2008, the demand for these properties allowed wholesalers to use the same 70% of ARV – repair costs formula to calculate purchase price, as there were plenty of buyers ready, willing, and able to buy at that price. Once the market crashed and prices in these areas settled down to what they should have been to provide decent cash flow to the landlord/owners, the offer strategy for wholesalers changed. When it's a buyer's market, and there are lots of motivated sellers of low-end rentals and few buyers, we use this formula:

$$\begin{array}{l} \text{ARV} \\ \text{X .6} \\ \text{-repair costs} \\ \text{-your profit} \\ \text{MAO} \end{array}$$

If you can't determine an ARV by the usual comparable method, use the trash flow analysis in the appraisal chapter to determine MAO.

- **When the property has an ARV of less than \$70,000<sup>2</sup>.** As investors who live in areas where houses sell for less than \$70,000 will attest, the profits to be made by paying 70% of the value of such a property are just not enough to bother. For that reason, these buyers often use a minimum per-deal dollar figure—most commonly, \$20,000—to assure that they're making a reasonable profit. Therefore, for properties of this nature, use this formula:

ARV  
 -\$20,000  
 -repair costs  
-your profit  
 MAO

- **When a property is in extraordinarily bad shape.** Although every property you wholesale will need some work, some of them will be “super-junkers” that will basically need to be gutted and started all over again.

Properties that have been the subject of fires, floods, or have been abandoned for years fall into this category, as do those that were gutted by a prior owner and then left unfinished.

The basic problem with this sort of super-junker is that it makes no sense for a buyer to pay a price for them that's equivalent to the price they'd pay for a regular old ugly property. Take these 2 deals, for example:

	Deal #1—regular junker	Deal #2—super junker
ARV	\$200,000	\$200,000
Repair costs	\$40,000	\$80,000
Purchase price	\$100,000	\$60,000
Gross profit	\$60,000	\$60,000

Both follow the “rule” that says that buyers should pay 70% of ARV less repair costs, right? But deal #2:

- Took longer to repair, increasing the holding and financing costs
- Took more skill to repair, limiting the market of potential buyers
- Had a higher chance of cost over runs, since the more repairs a house needs, the more unforeseen problems the rehabber will run into
- Was, overall, a more difficult, longer, and riskier rehab
- And yet, had the same profit built in as deal #1

That's why super junkers have to make a higher profit than regular junkers. On the whole, rehabbers who can, and will, tackle a property needing a higher level of rehab want to make about \$1 for every dollar they spend in rehab.

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<sup>2</sup> Yes, east and west coast readers, there ARE in fact markets in the U.S. where you can buy a fixed-up house in a type 3 neighborhood for less than \$70,000.

Your MAO formula for these properties is, then:

$$\begin{array}{r} \text{ARV} \\ - \text{Repair costs} \times 2 \\ - \underline{\text{Your profit}} \\ \hline \text{MAO} \end{array}$$

- **When the property is in extraordinarily GOOD shape.** If you're in the market for long enough, you'll eventually run across a seller so desperate that he's willing to sell a property that truly needs little to no work at a fraction of the value.

Before we talk about how to deal with these situations, let's make sure that we really understand what "needs no work" means, because it's one of those phrases that, when it comes out of the mouth of a new investor, makes me nervous.

"Needs no work" means completely stabilized, which means not just that the major systems (roof, furnace, electric, plumbing) are OPERATIONAL, but that they can be expected to function for a minimum of another decade. Furthermore, it means that the major cosmetics—the kitchen and bath—aren't just functional, but updated.

"Needs no work" doesn't, as some seem to think, mean "It can be lived in the way it is". It means "If you wanted to sell it for top price right now, nothing would need to be done to it to command that price".

So, as you can imagine, we rarely see properties that literally need NO work. What we sometimes see is properties—usually RENTALS, not retail-type deals—that can be completely stabilized for a relatively small investment of time and money.

When you stumble upon one of these unicorns that can be made rent-ready in a week with \$5,000 in work, or can be made retail-ready in 2 weeks at a cost of under \$15,000, you can get more money for it as a percentage of value. By now you should understand the reason: the buyer's profit comes more quickly and with less effort; therefore, he doesn't need as much of it to be attracted to the deal. If you TRULY have a property in really good condition and in a normal (not a strong buyer's) market, you can offer:

$$\begin{array}{r} \text{ARV} \\ \times .8 \\ - \text{repair costs} \\ - \underline{\text{your profit}} \\ \hline \text{MAO} \end{array}$$

IF that is, you don't want to keep the property for yourself. Many wholesalers make the transition to ALSO being landlords or rehabbers when they find a deal like this, because it's just too good to pass up.

- **When you are arranging financing for a buyer.** Sometimes, if you're educated in the art of creative finance, and alert to the signals, the opportunity will arise to negotiate owner financing on a

property you plan to flip. We cover “wrapping” and assigning such financing in more detail in *The Real Estate Goddess's Guide to Building a Wholesaling Business*<sup>3</sup>, but the important point is this: whenever you make favorable, non-qualifying financing available to a buyer, you increase the value of the property to buyers.

There's no “formula” for this kind of situation, because how much value the financing brings to the transaction depends largely on the terms of that financing. You'll have to have some sense and think your way through how to price deals involving owner financing. For example, let's say you have this deal on the table:

ARV               \$150,000  
 Repair costs:   \$30,000  
 Cash sale price: \$75,000

However, the seller is willing to sell for \$70,000 with no money down and no interest, with payments of \$350/mo for 200 months. You price the property at \$82,500 with \$10,000 down and payments at 8% interest for 200 months. Will you sell that deal, even though you're asking 75% of ARV less repairs? Probably, and here's why:

You just made it possible for a landlord to buy a property with a total upfront investment of \$40,000 that will cash flow, that he doesn't have to qualify for (at least not under normal bank terms), and that he'd have to have \$105,000 in cash to buy under other circumstances. Or, you just made it possible for a rehabber to make a profit on a property that he didn't have to borrow \$105,000 at hard money terms of 5 points and 15% interest to close.

On the other hand, if you have a deal with these terms:

ARV               \$70,000  
 Repairs costs:   \$30,000  
 Cash sale price:  \$15,000

The seller is willing to sell for \$10,000 with no money down and payments of \$100/mo for 100 months. Can you get \$18,000 for this deal if you offer it at \$8,000 down, no interest, and payments of \$100/mo for 100 months?

**Probably not, because in this case, the purchase price is small relative to the rehab costs.** The financing has little value because the buyer will still have to come up with \$38,000 in cash or additional financing. The fact that you'll finance a small part of the overall investment here, even at great terms, doesn't make the deal enough more attractive to justify a higher purchase price.

Assuming, though, that you can arrange financing for at least half of the overall cost of the deal—and the more, the better—you can generally sell for 5%-10% more than the “usual” cash price, and that means you can offer more than the “usual” MAO.

Not only will you expand your pool of potential buyers (since you won't need all cash), but you'll

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<sup>3</sup> Available at [www.REGoddess.com](http://www.REGoddess.com)

enable yourself to find more deals, since you will be able to offer Seller's, whose problem couldn't be solved by your cash MAO, a higher price if they are willing to take that price on the terms you offer.

## Two More Notes on MAO...

I remember the first, oh, 200 times I calculated the maximum allowable offer on a property, and then did it 3 more times to make sure I hadn't made some massive mathematical error, because the number looked so low compared to what properties in after-repaired value in the neighborhood were selling for.

You'll probably be similarly shocked, at least at first. In fact, you might even become tempted to throw away the MAO because you just can't believe the offer has to be THAT low in order for you to sell the property and make money.

Yes, you're free to re-check the numbers that went into your calculation, but don't fall prey to the temptation to offer more than the MAO, or to try to sell the deal for more than your calculation tells you a smart investor will pay. Not only will you waste your time, frustrate your seller, and not find a buyer, but you'll also deal damage to your own reputation as a person with great deals that may be hard to overcome.

Also, let me mention that MAO stands for MAXIMUM allowable offer. It doesn't mean that will be your first offer—you may, because of your feel for the seller's motivation level, decide to open your negotiation with a LOWER number than that. But keep in mind that the anytime you offer MORE than your MAO, the only number that CAN change in the equation is your profit. Offering too much doesn't change the ARV of the property, or the repair costs, and thus, no matter how much you'd like it to be otherwise, doesn't change the amount a buyer is going to pay for your deal.

## How to Write up Your Offer

Once you reach an agreement with the seller about the major terms of your offer, the next step is to put those terms on paper.

You can get the control you need using one of two documents. The FAR more common is the Purchase Contract (also known as Purchase and Sale Agreement or the Contract to Purchase Real Estate). Rarely—and I do mean rarely—you may have reason to use a related document: an Option to Buy.

The difference between a Purchase Agreement and an Option to Purchase is in the level of obligation each imposes upon the BUYER. A purchase agreement says, among other things, **“I, the buyer, WILL PURCHASE your property under these terms and conditions, and assuming that all of the contingencies are fulfilled. If I don't, you have certain recourse against me as defined in the contract.”**

An Option to Buy says, **“I, the buyer, have the RIGHT TO PURCHASE your property under these terms and conditions and for this period of time. If I don't, you can keep the cash I gave you up front.”**

Most real estate entrepreneurs, wholesalers included, are sophisticated enough to limit the recourse that a seller can level at the buyer for defaulting on a Purchase Contract to something we can live with, such as loss of our earnest money deposit. And most buyers of real estate of any kind limit even that “recourse” through the use of contingencies that say things like “I don’t have to buy and you don’t even get to keep my earnest money if...the property fails inspection. If I can’t get the financing I want. If the title isn’t clear. If it isn’t in the same condition at closing as it was when I made the offer.”

In reality, most buyer-friendly purchase agreements you’ll ever see in your life aren’t, functionally, a lot different than options, because they contain contingencies and “liquidated damages” clauses that limit the damages the seller can collect if the deal falls through to any earnest money that was deposited. So, given that this is the case, and that the Option to Buy is more reflective of what we intend, why don’t we use it?

Because, in most parts of the country, options are so rarely used to purchase small residential properties that your sellers won’t understand them, and your agents won’t even consider them. It’s not that options aren’t “good” contracts; it’s that they cause confusion, and confusion means “no.”

I’ve seen the fallout from deals where wholesalers try to “hedge their bets” by presenting the seller with an Option to Buy instead of a purchase agreement. The main problems stem from the fact that the seller—and, sadly, often the wholesaler—doesn’t really understand the option or the language in it. I’ve been involved, sometimes as the buyer, sometimes as the (asked-too-late-in-the-process) coach, with deals where:

- The seller signed the option, then stomped out of the attorney’s office on closing day because he thought he was the Optionee (he’s the optionor) and therefore that the BUYER (the actual optionee) would be paying all the closing costs and back taxes, because it said the optionor would pay them. When he saw the closing statement—which had nearly \$11,000 in back taxes and closing costs coming out of his proceeds, as per the agreement, he threw a fit and refused to close, claiming that he’d been bamboozled.
- The seller signed the option agreement, then days later showed it to her sister-in-law, the agent, who informed the seller that in 25 years in the real estate business, the sister-in-law had never seen a buyer of a single family home use an option, and that it must therefore be illegal, and that the seller should report the buyer to the Division of Real Estate, which she did.

I’ve used option contracts to tie up properties with civilian sellers exactly twice, and in similar circumstances. In both cases, the sellers were in extremely deep, and perhaps unsolvable, trouble. One seller had a property she was willing to “give away”, meaning that if someone would pay off the \$8,000 in back taxes, she’d sign over a deed. Unfortunately, I was pretty convinced that the right price for the property was only about \$6,000, but she was out of state, dealing with an elderly parent (the actual owner of the property) and a handicapped child, and was at her wit’s end. I felt bad for her, and told her (against my better judgment) that if she’d given me a written agreement to sell, that I’d look for a buyer who would pay \$8,000 or more for the property, but that if I didn’t find one, there were no circumstances under which I’d close the deal myself. The appropriate contract for this agreement and situation is an option, and that’s what I used.

In the other case, I had an out of town owner facing the imminent teardown of a property he'd bought sight unseen 2 years earlier (and never done a thing to, by the way). He didn't want to accept my offer of \$12,000, but also didn't want to hold out so long for his price that he ended up with a vacant lot instead of a house<sup>4</sup>. The deal we struck was that I'd have a non-exclusive right to buy the property at any time before the scheduled teardown 21 days later—and that if he found a buyer at a higher price before I did, he could be released from the option at will. In this way, he had a firm, written deal on the table, wasn't tied to it if his magical thinking actually produced a buyer willing to pay the \$45,000 he paid for the property—and I had a written right to buy, which I needed in order to market the property.

Again, the appropriate contract with which to memorialize this odd agreement was an option, not a purchase contract, so that's what I used. There are sample option agreements included in this course, should you ever run across a situation where it's actually the better contract.

Otherwise, don't use them because they're unnecessary and confuse sellers.

## Your Ideal Purchase Contract

Wouldn't the world be a perfect place if there were a perfect purchase agreement that you could use in every single instance?

Unfortunately, there isn't a single such contract—and a big part of what drives which contract you'll use is who's selling.

If, for instance, you're making an offer on a listed property, you'll always, 100% of the time, use some version of what's called "The Board Contract". These contracts are created by the brokerage of the agent writing the offer, and they're long, confusing, and contain a LOT of language that protects the agent, rather than the buyer or seller. Nonetheless, you'll need to use it because, frankly, it's what the agent's brokerage has told him he MUST use.

All "board" contracts, even within the same geographic region, aren't the same—you should always read each one thoroughly before signing—and if you find anything objectionable in it, you're absolutely free to change those clauses either by crossing them out in whole, crossing out parts you don't like, or modifying them with an addendum. That doesn't mean that the seller will accept the changes, but if you don't like the contract the way it is, change it.

If you're making an offer on a typical bank-owned property, you'll do it with a board contract (because the property is probably listed), plus the bank-provided addendum, which is like a whole separate contract that modifies and supersedes all the terms of the board contract, which makes you wonder why you bothered to fill out both. In these cases, any changes you make to the addendum will NOT be accepted by the lender/seller, and the agent will often act as if you've committed a crime by even trying. You haven't, but it won't work, either.

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<sup>4</sup> Wondering why I thought I could sell a house with a teardown order? Because at that time, my city would remove such orders up to the day of demolition if a new buyer appeared with a rehab plan.

HUD has its own purchase agreement and a ton of supporting documents that have to be filled out, and will only accept offers on its own forms.

The various bulk sellers will also have their own version of the purchase agreement, and when making an offer on their properties you use their forms.

But there's a time when not only do you GET to use your own purchase agreement—you're EXPECTED to provide it. And that's when you're making an offer to a real human being, with no agent or institution in the way.

Since you have little say over the form of the other purchase agreements, but all of the say in the world over the form of the one you provide, let's talk about the ideal purchase contract for THAT situation.

I think that you'd agree that, when dealing with civilian sellers, the right purchase agreement would be:

1. Simple, so that the seller can actually read and understand it without a legal professional helping him
2. Reflective of the whole agreement between you and the seller, with no verbal agreement ("you'll clean out the house before you leave, right?") left hanging
3. Protective of you as the buyer, through reasonable contingencies
4. Assignable (unless it SPECIFICALLY SAYS it's non-assignable, it is assignable)

Trust me when I say that sellers "like" these purchase contracts a lot more than they like it when someone shoves a 6-page, 6-point type contract full of words they don't understand in front of them, and asks them to sign it.

## The Language You Need

In any purchase contract that you use for the purpose of wholesaling a property, you must have certain language to allow you to do the things you need to do in order to get the property sold. You must have:

- **An inspection/access contingency** that allows you: a) plenty of time to get your inspections, whether by inspectors or buyers, completed b) access to all parts of the property for as many inspections as are necessary to satisfy you, and c) to get out of the contract if the inspections are not to your satisfaction. In most Board contracts, the inspections must be **IN WRITING**; since your inspections are generally done by your buyers and not in writing, cross this wording out (as well as any wording about the inspectors having to be certified or licensed) and initial before signing.
- **A liquidated damages clause** that says that the seller's damages in the event that you don't perform on the contract are limited to the amount of earnest money you've given them (or their agent).

- **Federally mandated language regarding lead paint**, that says that the buyer understands that houses built before 1978 may contain lead paint, etc.
- **Any state-mandated language**. Some states have specific laws requiring that other clauses be present in purchase contracts; for instance, in New Jersey, any Realtor®-prepared contract must include a very specific attorney review clause. Make sure you know if your state has mandated language, and whether it applies to all purchase contracts, or only those prepared by licensed agents.
- **All the usual language**. You'll want, of course, the usual language about price, closing date, who pays for which costs, etc. Make the "who pays what costs" clause extremely detailed, so as to avoid at-the-closing arguments about whether prorated real estate taxes are or are not part of "all closing costs"
- **Other language as required to reflect your agreement with the seller**. See "handy clauses."

## A Few Words about Earnest Money

"Earnest Money" is a term that's used to describe a deposit made by a buyer in a real estate transaction to show that he's "earnest" about completing the deal.

In transactions involving a real estate agent, earnest money deposits are expected and are relatively "safe," in the sense that the money is held by one of the brokers in a heavily-regulated escrow account. If the contract "goes down" due to one of the contingencies—the inspection contingency, for instance—the earnest money is usually returned to the buyer without further ado.

However, in transactions that do NOT involve an agent—that is, transactions between you and a seller directly—any earnest money you give directly to the seller is very much at risk. Many of the sellers you deal with as a wholesaler are in some sort of financial straits, and this means that any cash they receive is likely to be spent immediately. When this happens—and it will—the only way you can retrieve your earnest money is via a successful lawsuit followed by a successful collection against the seller—all of which will probably cost more than the earnest money you'll recover, anyway. And, by the way, if the seller owes you earnest money back, and then declares bankruptcy, you'll be considered an unsecured creditor, and you'll never see a dime.<sup>5</sup>

That's why I STRONGLY recommend that you DO NOT give significant earnest money deposits directly to sellers. In my experience, they don't expect them anyway, and won't mention them unless you do. Usually, \$10 handed over and receipted AFTER the contract is signed makes the seller perfectly happy. However, you'll run across a seller every so often who wants you to prove that you're "earnest" by giving them a check for hundreds or thousands of dollars. In this case, you can do any of the following:

1. **Give the seller his earnest money in the form of a promissory note**. These notes are like very

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<sup>5</sup> Even if the earnest money was \$5,000. And even if the seller signed the contract and collected the money knowing perfectly well that she did not own the properties in question. Ask me how I know this.

formal I.O.U.s that state that you'll pay a certain amount of money under certain circumstances—like if the property passes inspection and the title turns out to be clear. Promissory notes (there's one included in this chapter and on your data disk) should not be taken lightly, as all the seller has to do to collect on it is to prove that he did what he said he would, and you didn't.

**2. Escrow the earnest money with a 3<sup>rd</sup> party.** An attorney or title agent with an escrow account will do fine. This “escrow” should include a separate document that states under what circumstances the money will be released to the seller (like upon closing) or to you (like upon written notification to the escrow agent that the property did not pass inspection, the title is not marketable, or whatever other contingencies you have in your contract

**3. If the seller refuses these two options, move on.** Either is fairly safe for him, and I'd be suspicious of an owner who insisted on a lot of cash to “seal the deal.”

The long and short of it is this: you should never give a seller more earnest money that you'd feel comfortable walking away from. Because when you give it to a seller, you ARE walking away from it.

## Other Handy Contract Clauses

I am opposed to “loading up” purchase contracts with a lot of “weasel clauses” or unnecessary contingencies. Sellers aren't idiots, and neither are a lot of real estate agents. Tons of silly, useless clauses gumming up a contract just shout, “I HAVE NO INTENTION OF CLOSING THIS DEAL!!!!” Sellers will reject you, agents will scoff, and you'll get many fewer of your offers accepted than you should.

On the other hand, there are circumstances in which you will need to add language<sup>6</sup> to your contract to reflect your agreement with the seller. **Remember, whatever terms you agree to with the seller are terms that your buyer will have to adhere to when the contract is assigned to him; that's why it's so important that you put all of those terms in writing!** Your verbal promise to let the seller stay in the property isn't gonna be worth a hill of beans when you haven't executed it in writing. Here are some examples of situations where this might occur, and the language you might want to use.

- < **Delayed possession date.** When a seller will continue to live in a property beyond the closing date, your buyer needs some protection against the eventuality that the seller won't vacate as promised. Remember, many of your sellers are selling due to financial problems, and may not have the wherewithal to pay a deposit, moving expenses, and the first month's rent on a new place. It's impossible for a new owner to quickly evict such holdover owners unless there is a clear agreement that they will pay rent if they stay beyond the date of possession. Make the rent enough to: a) encourage the seller to move and, b) compensate the buyer if he doesn't. And be specific about what “moved” means.

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<sup>6</sup> I am also very much against people without law degrees attempting to write contracts, or contract clauses, that might later be tested in court and turn out not to mean what the writer thought they'd mean. Don't use any contract or clause, including the samples here, that you haven't had attorney-reviewed, unless you're a lawyer or pretty darn sure of what you're doing.

**Possession:** Seller shall have the right to occupy the property until \_\_\_\_\_. After that date, Seller may continue to occupy the property as a month-to-month tenant for a monthly rent of \_\_\_\_\_ payable to the buyer in advance. Seller shall be considered to be in possession of the property until such time as Seller has turned his key over to the Buyer and has notified Buyer that he has vacated the property. Buyer and Seller specifically agree that this term of the purchase contract will survive the closing.

OR

**Possession:** Seller agrees to vacate the property on or before \_\_\_\_\_ turning all copies of keys over to the Buyer and leaving property in “broom clean” condition. The sum of \_\_\_\_\_, will be held in escrow at closing to ensure Seller’s compliance with these terms. In the event that Seller does not comply with these terms, the sum of \_\_\_\_\_ per day will be assessed and deducted from the escrowed amount and paid to Buyer. If the Seller has not complied within \_\_\_\_\_ days of closing, the balance of the escrowed amount will be forfeited and paid to the Buyer. The Seller will be considered a tenant at sufferance, giving Buyer full rights to evict. In the event that the Seller does not remove all personal property from the premises and leave the property in “broom clean” condition, the Buyer will complete this work at the Seller’s expense, deducting the cost from the escrowed funds.

- < **Clean-up clause.** Removing a lot of junk from a property is an expensive task. Not only will your buyer need to hire someone to do the clean-up, but dumpsters and hauling will be necessary. If you’ve built this into your offer price, you’re covered. If, as is often the case, the seller promises to clean up the property for you, you need to put this agreement in writing. If the clean-up does not occur before the closing, it will probably never happen, and certainly not fast enough for your buyer.

**Personal Property.** Seller agrees to remove all personal property from the premises, excepting any personal property made part of the sale elsewhere in the contract, before the date of closing, and to leave the property in “broom clean” condition. Seller agrees to allow the buyer to inspect the property prior to closing to assure that this requirement has been met. If Seller has not removed said personal property from the premises as of the date of closing, Buyer and Seller agree that the Closing Agent shall hold \_\_\_\_\_ of Seller’s proceeds from the sale in escrow. Seller shall then have \_\_\_\_\_ days after closing to remove personal property from the premises. If Buyer agrees that this requirement has been met, Closing Agent is instructed to release the escrowed funds to Seller. Otherwise, Closing Agent is instructed to release escrowed funds to the Buyer as full liquidated damages for Seller’s non-performance.

- < **Partner Approval Clause.** This clause should be used IN PLACE of an inspection clause, not IN ADDITION TO it.

**Partner Approval.** Buyer’s obligation to close this transaction is contingent upon approval by Buyer’s partner of the condition of the property, as well as all terms and conditions of this contract. Buyer shall have \_\_\_\_\_ days after acceptance to approve or waive this contingency.

- < **“Showings” clauses.** If a property is vacant, it will be easiest for you to show it to prospective buyers if you have a key. Always ask for this right; you'll get it about ½ the time on vacant properties.

**Buyer's Right to Show.** Seller gives Buyer permission to enter the property after the date of acceptance for the purpose of showing it to contractors, partners, inspectors, and potential occupants. Within 48 hours of acceptance, Seller will give Buyer a key for this purpose. Buyer agrees that no changes will be made to the property prior to closing without the Seller's written permission.

- < **Extension Clause.** If there's a chance that it might take awhile for you line up financing to close a property, or the property is unusual in type, size, or price, and it could take longer than usual to assign the contract, you might want to give yourself the option to extend your contract.

**Automatic Extension:** Buyer will be granted one automatic 30-day extension of this contract upon payment to the Seller of a non-refundable cash payment of \_\_\_\_\_, to be deducted from the purchase price upon closing. In the event that Buyer does not purchase the property, Seller shall retain this payment as full liquidated damages.

- < **When the property is a rental property,** your buyer is entitled to any prorated rents, plus security deposits paid by tenants. In order to be fully protected, your buyer will also need copies of any and all leases on the property.

**Tenant Leases and Prorations:** Within Five (5) days of acceptance, Seller will provide Buyer with copies of all leases currently in force on the property, and with a statement outlining the monthly rents currently being paid by all tenants, rent due dates, late fees, and any arrearage owed by tenant. At closing, all rents will be prorated between the Buyer and the Seller. Security and/or damage deposits held by Seller shall be transferred to Buyer at Closing without proration.

- < **Clauses to use when you're an agent.** If you are a licensed real estate agent, you **MUST**, by law, reveal this to a seller. The second clause is a good idea if you think a “double dip” might put the listing agent on your side.

**Agency Disclosure:** Seller understands that Buyer is a licensed agent in the State of \_\_\_\_\_ and is buying the property for the purposes of investment and possible resale. Buyer has received and signed the State of \_\_\_\_\_ Agency Disclosure form.

## Other Documentation You'll Need from the Seller

While you're getting the contract signed, you'll need to get some other forms from the seller to make the deal happen like it should. Always have these forms with you when you go to the contract signing, as your seller will NOT be able to provide them and, for various legal reasons, they'll need to be passed on to the buyer and/or kept in your file. These include:

- **The federally-mandated lead disclosure form for residential sales.** This form is included at the end of the chapter, or can be downloaded at <http://www.epa.gov/lead/pubs/leadbase.htm>. Do not fill out the “purchaser’s acknowledgement” section—have your buyer do so. Keep a copy for yourself and make one for the seller, as well. Note that certain sellers that you’ll deal with—specifically banks selling because of a foreclosure and executors and administrators selling a property from an estate—do not have to give these disclosures.
- **The “Seller Disclosure of Property Condition” form required by your particular state.** These can generally be downloaded from your state’s real estate commission website. Have the seller fill out the disclosure—and writing “as is” on every line is NOT acceptable. Again, do not fill out the acknowledgement for the buyer. Have him do it, then keep a copy for yourself and make one for your buyer. The same sellers who are exempt from giving lead disclosures are generally exempt from giving these, as well.
- **Any other disclosures required by your state or city for residential property sales.** These might include: specific radon or mold disclosures, Megan’s law disclosures, and, if you live in an area that requires “occupancy permits” for the sale of a property, a copy of that occupancy permit.
- **If you are a real estate agent, a copy of the state’s agency disclosure form,** showing that you are an agent, that you represent yourself in the transaction, and that you do NOT represent the seller.

## The Purchase Contract: How to “Fill in the Blanks”

Filling out your first Purchase Contract can be a confusing and intimidating experience. There are so many little lines that require dates or prices or data, and it can be hard to know what information the contract calls for, or how long to leave a certain contingency open. Here's a quick, not-all-inclusive primer for filling out Purchase Contracts. Filled out samples follow. “Old pros” should gently chuckle, remembering the days when making offers was a scary thing, then move on to the next section.

**1. Names of the parties.** When a contract states that it is “by and between \_\_\_ And \_\_\_”, it's looking for a buyer's name and a seller's name. If you are buying via an entity, put its name, NOT yours, on the buyer's line. And be certain that ALL the sellers (usually husband and wife) are named on the seller line and that all sellers sign the contract.

**2. Description of property.** In most parts of the country, a street address plus city, county, and state is sufficient. In a few particularly attorney-bound places, a legal description is necessary, If you are unlucky enough to live in such an area, you can write “see attached” and attach a legal description.

**3. Zoning.** Most contracts read: “real estate is zoned \_\_\_\_.” Fill in the specific usage that you believe the property is zoned for, like Residential Single Family or Office. Do NOT write “as used” or “residential”; it's not uncommon for buyers to discover that their new 3-family is really zoned 1-family, and is a “bootlegged usage.”

**4. Inspection Period.** Most inspection clauses give x days to complete the inspections, y days to notify the seller or agent of the results, and some also give z days during which the contract remains valid while the buyer and seller negotiate any repairs. 10 days is a very reasonable inspection period, and should be enough time to get an answer from your buyers. However, we often ask for 14 days to inspect, 2 days to notify, and 5 days to negotiate. The same holds true for **Pest Inspection Contingencies**.

**5. Closing date.** Never fill out an actual date on these lines. Instead, use “25 days after acceptance”. This way, you'll avoid the problem where you agree in your initial offer to close on June 1<sup>st</sup>, but by the time all the offers and counters are finished, it's already May 25<sup>th</sup>. If possible, aim for a closing date of less than 30 days away; it makes you look like a serious, cash buyer.

**6. Possession/Occupancy Date.** Strangely, these dates are strongly controlled by local tradition; agents will tell you that 30 or 60 days is “expected”. If a house is vacant, always write “at closing.” If not, write “see addendum” and use one of the delayed possession clauses in “Handy Contract Clauses.”

**7. “Exception” Statements.** In a typical purchase contract, there will be several statements that end with “except.” For instance, “the following will be included in the sale (...long list of fixtures...) except \_\_\_\_\_”, or “no city, county, or state orders have been served on the property, except \_\_\_\_\_.” Unless you know of exceptions to these items, simply write “No Exceptions” on the line provided.

**8. Offer expiration.** The first time I ever made an offer, I tried to give the seller a full week to decide whether to accept. Luckily for me, a friendly agent explained that 48 hours is plenty of time. If your goal is to get an acceptance from a seller before you leave, make the expiration immediate. If offering through an agent, leave 36-48 hours; long enough to get the offer presented, not long enough to get it “shopped.”

*A simple purchase contract to use when dealing directly with the seller*

**Contract to Purchase Real Estate**

I/We offer to purchase from \_\_\_\_\_ the real estate located at \_\_\_\_\_ (hereinafter called "Real Estate"). This real estate will include all the land, buildings, outbuildings, and everything currently attached to the property plus any appliances and air conditioners currently on the premises.

Purchase price will be: \$ \_\_\_\_\_, payable as follows: \_\_\_\_\_.

At the closing, the Seller will give the Buyer a General Warranty Deed with release of dower. The closing will be no later than \_\_\_\_\_. The title will be free and clear, and will not have any building or health department orders against it. The title does not have any easements or restrictions except \_\_\_\_\_.

Seller will give Buyer possession of the property on \_\_\_\_\_. At the time of the closing, Seller will pay from Seller's proceeds: all taxes and assessments due to the date of closing; deed preparation, transfer taxes assessed by the city or county; preparation and recording of any documents needed to release any mortgages or other debts owed by the Seller against the property, title search, and title insurance. Seller agrees to pay out of pocket for the title search if the title search discloses problems which prevent Seller from conveying clear title to the Buyer. Buyer will pay for attorney or title company fees to close, and for recording fees for deed and any new mortgages.

If the property is currently rented, the damage deposits will be transferred to the Buyer at closing, and the balance of any rents already paid for that month will be transferred to the Buyer at closing.

Seller certifies that the Real Estate is zoned \_\_\_\_\_, and is not in a historic district, not in a flood plain, and not in an Environmental Quality District. Seller agrees that at the time of closing, the Real Estate will be in the same condition as it is on the date of this offer.

Seller will allow Buyer and/or his inspectors complete access to the property for a whole-house inspection, a wood-destroying pest inspection, and any other inspections the Buyer deems necessary, **all at the Buyers expense**. If the results of these inspections are not satisfactory to the Buyer, the Buyer will not be obligated to close. Seller will provide Buyer with a key to the property for the purpose of completing these inspections, as well as a day and evening phone number for all occupants in order to schedule the inspections.

This accepted offer is the entire agreement between the Buyer and Seller, and no other agreements have been made that are not part of this contract or its addendum, if there is one. Buyer and Seller agree that, upon any default by the Buyer, Seller will keep any earnest money as full liquidated damages.

**Federally mandated lead disclosure clause:** Every Buyer of any interest in residential real property on which a residential dwelling unit was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. If the dwelling unit was built prior to 1978, Buyer has the right to inspect for lead, at Buyer's cost, for a minimum of ten (10) days following contract acceptance. **BUYER WAIVES THE RIGHT TO THIS INSPECTION.**

OTHER TERMS:

This offer shall remain open for acceptance until \_\_\_\_\_.

\_\_\_\_\_  
Buyer Date

I/We as Sellers accept the above offer.

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Seller

### Contract to Purchase Real Estate

I/We offer to purchase from Sammy Seller the real estate located at 123 Easy Street, Cincinnati, Hamilton County, Ohio (hereinafter called "Real Estate"). This real estate will include all the land, buildings, outbuildings, and everything currently attached to the property plus any appliances and air conditioners currently on the premises.

Purchase price will be: \$ 100.00, payable as follows: In cash at closing.

At the closing, the Seller will give the Buyer a General Warranty Deed with release of dower. The closing will be no later than 30 days from date of acceptance. The title will be free and clear, and will not have any building or health department orders against it. The title does not have any easements or restrictions except no exception.

Seller will give Buyer possession of the property on day of closing. At the time of the closing, Seller will pay from Seller's proceeds: all taxes and assessments due to the date of closing; deed preparation, transfer taxes assessed by the city or county; preparation and recording of any documents needed to release any mortgages or other debts owed by the Seller against the property, title search, and title insurance. Seller agrees to pay out of pocket for the title search if the title search discloses problems which prevent Seller from conveying clear title to the Buyer. Buyer will pay for attorney or title company fees to close, and for recording fees for deed and any new mortgages.

If the property is currently rented, the damage deposits will be transferred to the Buyer at closing, and the balance of any rents already paid for that month will be transferred to the Buyer at closing.

Seller certifies that the Real Estate is zoned as used, and is not in a historic district, not in a flood plain, and not in an Environmental Quality District. Seller agrees that at the time of closing, the Real Estate will be in the same condition as it is on the date of this offer.

Seller will allow Buyer and/or his inspectors complete access to the property for a whole-house inspection, a wood-destroying pest inspection, and any other inspections the Buyer deems necessary, **all at the Buyers expense**. If the results of these inspections are not satisfactory to the Buyer, the Buyer will not be obligated to close. Seller will provide Buyer with a key to the property for the purpose of completing these inspections, as well as a day and evening phone number for all occupants in order to schedule the inspections.

This accepted offer is the entire agreement between the Buyer and Seller, and no other agreements have been made that are not part of this contract or its addendum, if there is one. Buyer and Seller agree that, upon any default by the Buyer, Seller will keep any earnest money as full liquidated damages.

**Federally mandated lead disclosure clause:** Every Buyer of any interest in residential real property on which a residential dwelling unit was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. If the dwelling unit was built prior to 1978, Buyer has the right to inspect for lead, at Buyer's cost, for a minimum of ten (10) days following contract acceptance. **BUYER WAIVES THE RIGHT TO THIS INSPECTION.**

**OTHER TERMS:** Seller understands that Buyer is an entity owned, in part, by Vena Jones-Cox, a licensed Broker in the State of Ohio and has received and signed the State of Ohio agency disclosure form.

This offer shall remain open for acceptance until noon on 1/1/01.

\_\_\_\_\_  
Buyer Date

I/We as Sellers accept the above offer.

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Seller

(For use with board of realtor contracts or whenever you need to add contingencies that are not in the regular purchase contract)

### **Addendum to Purchase Contract**

The undersigned Seller and Purchaser, having executed a Contract to Purchase dated and for the property commonly known as \_\_\_\_\_, further agree as follows:

[insert contingency language here]

Other terms:

All other terms and conditions of the purchase contract to remain the same.

\_\_\_\_\_  
Seller                      Date                      Witness

\_\_\_\_\_  
Seller                      Date                      Witness

\_\_\_\_\_  
Buyer                      Date                      Witness

\_\_\_\_\_  
Buyer                      Date                      Witness

*A longer, more complete contract for use when dealing with attorneys and others who need the legalese*  
 This is a legally binding contract. If you do not understand this contract, please seek legal council.

## **AGREEMENT TO PURCHASE**

THIS AGREEMENT entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between, or his/her/their assignee(s), hereinafter referred to as "Buyer", and \_\_\_\_\_, Hereinafter referred to as "Seller".

1) **PROPERTY PURCHASED:** In consideration of the mutual promises herein contained, the Seller agrees to sell, and the Buyer agrees to buy, in accordance with the terms and conditions of this Agreement, the following described Real Property, Situated in the City of \_\_\_\_\_, the County of \_\_\_\_\_ and the State of \_\_\_\_\_, and described as follows:

Together with all the improvements thereon, all privileges, appurtenances, easements, and all fixtures presently situated in said building, including, but not by way of limitation: all heating and air conditioning equipment including window units; all electrical, plumbing and bathroom fixtures; water softeners; shades; venetian blinds; awnings; curtains, draperies, & traverse rods; storm windows & doors; window & door screens; affixed mirrors; wall to wall, stair, and similar attached floor covering and carpets; television aerials, and rotor operating boxes; garage door openers and similar operating devices; ranges, ovens, refrigerators, dishwashers, garbage disposers, trash compactors, humidifiers; washing machines; dryer; all affixed or built-in furniture and fixtures; all landscaping, trees and shrubs; all utility/storage buildings or sheds; all building and yard maintenance equipment and tools; all furniture and equipment used by or rented to the tenants; except \_\_\_\_\_.

In addition to the above the following shall be included in the sale: \_\_\_\_\_

2) **PRICE AND TERMS:** Buyer hereby agrees to pay for said property the sum of Dollars (\$ \_\_\_\_\_) payable as follows:

A. A personal note in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) is attached hereto as "Earnest Money" to apply toward the purchase price. In the event the offer is not accepted or if Seller defaults in the performance of this contract or if Buyer terminates this contract as hereafter provided, the Earnest Money shall be promptly returned to Buyer.

B. Balance to be paid at closing

3) **EVIDENCE OF TITLE** in the form of a title search and owner's policy of title insurance, will be furnished by Seller, and shall be subject to the approval of the Buyer. A preliminary binder shall be provided to Buyer, for his review and approval, 48 hours prior to closing.

4) **SELLER'S CERTIFICATION:** Seller certifies to Buyer that, to the best of Seller's knowledge (a) there is no termite damage to the REAL ESTATE; (b) the fireplaces, chimneys, electrical, plumbing, heating, air conditioning equipment and systems, and other items included herein will be operational on Possession; (c) the REAL ESTATE is zoned \_\_\_\_\_; (d) there are no pending orders or ordinances or resolutions that have been enacted authorizing work or improvements for which the REAL ESTATE may be assessed; and (e) no City, County or State orders have been served upon him requiring work to be done or improvements to be made which have not been performed.

5) INSPECTION: Seller agrees to give Buyer, and/or his agent, access to property prior to closing to inspect the entire premises. Inspection shall include every room, the roof, plumbing, wiring, structure, foundation and all mechanical components. Should any deficiencies be found, the Seller shall have the option of either repairing the deficiency or notifying the Buyer that the Seller cannot meet the terms of this contract and refunding the Earnest Money deposited by the Buyer. Before closing the Seller shall furnish and pay for: (a) an inspection by a licensed exterminator stating premises to be free of infestation or damage by wood destroying insects (infestation and resulting structural damage shall be treated and repaired at Seller's expense)

6) CONVEYANCE AND CLOSING: Within \_\_\_\_\_ days from acceptance, or upon repair of any deficiency in building condition by Seller, as provided above, or within 5 days of receipt of assumption materials from seller's lending institution by closing agent, whichever is later, both parties shall deposit with the authorized escrow holder, selected by the Buyer, all funds and instruments necessary to complete the sale in accordance with the terms hereof. Seller shall be responsible for transfer taxes, deed(s) preparation; and shall convey marketable title to the REAL ESTATE by deed of general warranty in fee simple absolute, with release of dower, on or before \_\_\_\_\_, or at such sooner time as mutually agreeable to the parties hereto, free, clear and unencumbered as of Closing, except restrictions and easements of record which do not adversely affect the use of the REAL ESTATE, except \_\_\_\_\_ and except the following assessments (certified or otherwise):

Seller shall have the right to remove any and all encumbrances or liens at the Closing out of the Purchase Price. Possession shall be given subject to tenants' right on or before \_\_\_\_\_.

7) PRORATIONS: There shall be prorated between Seller and Buyer as of Closing all (a) real estate taxes and installments of assessments as shown on the latest available tax duplicate; (b) interest on encumbrances assumed by Buyer and (c) rents and operating expenses; with Buyer assuming liability for such items following Closing. Security and/or damage deposits, advance rentals or considerations involving future lease credits held by Seller shall be transferred to Buyer at Closing without proration.

8) CONDITION OF IMPROVEMENTS: Seller agrees that on Possession, the REAL ESTATE shall be in the same condition as it is on the date of this Purchase Offer, except for ordinary wear and tear. In case the REAL ESTATE herein referred to is destroyed wholly or partially by fire or other casualty, Buyer shall have the option for 10 days thereafter of proceeding with the terms of this contract, with an agreed adjustment in the sale price, or of terminating this agreement and being repaid all amounts paid hereunder.

9) DEFAULT: It is expressly agreed that upon the event of any default or failure on the part of the Buyer, to comply with the terms and conditions of this contract, that Seller agrees to accept the EARNEST MONEY deposit with payment of the personal note as full liquidated damages. Upon default by the Seller to perform under this agreement, all deposits and notes shall be returned to Buyer on demand, and Buyer shall not thereby waive any right or remedy he may have because of such refusal.

Further, Buyer shall be reimbursed by the Seller for his reasonable expense of building inspection, credit report, and appraisal fees.

10) SOLE CONTRACT: The parties agree that this Agreement to Purchase constitutes their entire agreement and that no oral or implied agreement exists. Any amendments to this Contract shall be made in writing, signed by all parties and copies shall be attached to all copies of the original Purchase Contract. The terms and conditions of this Contract are to apply to and bind and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties. All provisions of this contract shall survive the closing. All parties are advised to seek competent advice, unless they fully understand all terms of the contract. Should there be any term or condition in this contract that is not in accord with the applicable legal statutes, either party may void that portion of the contract by having his lawyer furnish a written opinion stating the reason, and citing the proper law or court case.

11) LEAD WARNING STATEMENT: Every Buyer of any interest in residential real property on which a residential dwelling unit was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. If the dwelling unit was built prior to 1978, Buyer has the right to inspect for lead, at Buyer's cost, for a minimum of ten (10) days following Contract acceptance.

12) EXPIRATION: This offer shall expire unless a copy hereof with Seller's written acceptance is delivered to Buyer or his Agent

on or before \_\_\_\_\_ (AM/PM/NOON/MIDNIGHT) on \_\_\_\_\_.

13) APPROVAL: The undersigned Buyer(s) has read, fully understands and approves the foregoing offer and acknowledges possession of a signed copy.

WITNESS: \_\_\_\_\_ BUYER:

WITNESS: \_\_\_\_\_ BUYER:

DATE: \_\_\_\_\_ TIME: \_\_\_\_\_ BUYER'S ADDRESS:

ACCEPTANCE

The undersigned Seller(s) has read, fully understands and verifies the above information as being correct and accepts the foregoing offer; agreeing to sell the herein described property on the terms and conditions herein specified and acknowledges receipt of a signed copy.

WITNESS: \_\_\_\_\_ SELLER:

WITNESS: \_\_\_\_\_ SELLER:

DATE: \_\_\_\_\_ TIME: \_\_\_\_\_ SELLER'S ADDRESS:

*For use with ANY purchase contract*  
**PROMISSORY NOTE**

\$ \_\_\_\_\_

DATE: \_\_\_\_\_

This note is given as a Deposit for "Earnest Money" as stipulated in the attached Contract to Purchase Real Estate between and \_\_\_\_\_ dated \_\_\_\_\_ covering the property commonly known as

Upon demand the undersigned, hereinafter called the Payer, promises to pay the sum of \_\_\_\_\_ Dollars without interest, to \_\_\_\_\_ or his assigns, hereinafter call the Payee.

This note is due and payable immediately upon the Payee and Payer agreeing that the conditions, contingencies, and inspections given in the said Contract have been met.

In the event that this note is not paid when due and suit is instituted for the collection thereof, the undersigned promises to pay to the holder of this note all reasonable costs and expenses of suit, including all reasonable attorney's fees, to be determined by the court in which such action may be brought.

Witness:

X \_\_\_\_\_

X \_\_\_\_\_

Signed: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

## OPTION TO PURCHASE

This Option to Purchase granted this \_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_ By \_\_\_\_\_ whose address is \_\_\_\_\_ (Hereinafter called Optionor) to \_\_\_\_\_, whose address is \_\_\_\_\_ (Hereinafter called Optionee)

Optionor, in return for payment of \_\_\_\_\_, receipt of which is hereby acknowledged, grants to Optionee the exclusive right and option to purchase the property which has the address of \_\_\_\_\_ for the price of \_\_\_\_\_, which shall be paid upon closing of said property, during the period of time beginning \_\_\_\_\_ and ending \_\_\_\_\_.

The property shall include all land, together with all improvements thereon, all appurtenant rights, privileges, easements, buildings, fixtures, heating, electrical, air conditioning fixtures and facilities, window shades, Venetian blinds, awnings, curtain rods, screens, storm windows and doors, affixed mirrors, wall-to-wall carpeting, stair carpeting, built-in kitchen appliances, bathroom fixtures, radio and television aerials, landscaping and shrubbery, water softeners, garage door openers and operating devices, and all utility or storage buildings or sheds, oven/ranges, refrigerators, washers, dryers and window air-conditioners included on the premises at the time of execution of this Option to Purchase.

Upon exercise of this Option to Purchase by the Optionee, Optionor shall convey marketable title to the property with the above-described inclusions, by good and sufficient General Warranty Deed in fee simple absolute, with release of dower, on or before closing; said title to be free, clear, and unencumbered, except for restrictions and easements of record. Title to be conveyed to the Optionor and/or to his assigns or designees.

The deed shall be delivered and the purchase money shall be paid at the lending institution or other location of the Optionee's choice, no later than FIVE (5) days after notification to the Optionor of the Optionee's exercise of the option.

There shall be prorated between the Optionor and the Optionee, as of the date of closing, all real estate taxes and assessments, with Optionee having responsibility for such items following closing, and any rents or security deposits. Optionor shall be responsible for title search, deed preparation, loan costs, and all other costs associated with closing.

Optionor shall not during the term of this Option convey, transfer, or vest any title or any beneficial interest to any other person, and shall not mortgage, remortgage, lease, or in any way encumber the property without the express written consent of the Optionee.

Optionee will be granted \_\_\_\_\_ automatic 30-day extension(s) of this contract upon payment to the Optionor of a non-refundable cash payment of \_\_\_\_\_, to be deducted from the purchase price upon closing. In the event that Optionee fails to exercise this Option to Buy, this payment shall be retained by Optionor

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also presents a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended before purchase.

Optionee hereby waives the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

IN WITNESS WHEREOF, the parties hereto have set their hands to this Option To Purchase agreement on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

WITNESS:

\_\_\_\_\_

witness

\_\_\_\_\_

Optionor

\_\_\_\_\_

witness

\_\_\_\_\_

Optionor

\_\_\_\_\_

Witness

\_\_\_\_\_

Optionee

This is a more simple, plain-English option agreement used with non-sophisticated residential sellers.

## Option To Purchase

This Option to Purchase granted this \_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_ By the Optionor, (seller name here), whose address is \_\_\_\_\_ (Hereinafter called "You") to the Optionee your name here, whose address is \_\_\_\_\_ (Hereinafter called "Us, We, or Our")

You grant to Us the exclusive right to purchase the property which has the address of \_\_\_\_\_, \_\_\_\_city\_\_\_\_, \_\_\_\_state, zip\_\_\_\_ for the price of \_\_\_\_\_, which shall be paid upon closing of said property, during the period of time beginning \_\_\_\_\_ and ending \_\_\_\_\_.

The property shall include all land, together with all improvements thereon, all appurtenant rights, privileges, easements, buildings, fixtures, heating, electrical, air conditioning fixtures and facilities, window shades, Venetian blinds, awnings, curtain rods, screens, storm windows and doors, affixed mirrors, wall-to-wall carpeting, stair carpeting, built-in kitchen appliances, bathroom fixtures, radio and television aerials, landscaping and shrubbery, water softeners, garage door openers and operating devices, and all utility or storage buildings or sheds, oven/ranges, refrigerators, washers, dryers and window air-conditioners included on the premises at the time of execution of this Option to Purchase.

You agree to give Us complete unrestricted access to the property to show it to potential buyers, inspectors, lenders, contractors and anyone else we feel needs to enter the property

Upon exercise of this Option to Purchase by the Us, You will sign a General Warranty deed that gives Us marketable title to the property in fee simple absolute, with release of dower, at closing. The title will be conveyed either to Us or to the person or entity to whom we assign this option.

The title will be title to be free, clear, and unencumbered, except for restrictions and easements of record.

The deed shall be delivered and the purchase money shall be paid to You at the closing location of Our choice, no later than FIVE (5) days after notification to the You of the Our exercise of the option.

There shall be prorated between the You and Us, as of the date of closing, all real estate taxes and assessments, with Us having responsibility for such items following closing, and any rents or security deposits. You will shall be responsible for paying for title search, deed preparation, loan costs, and all other costs associated with closing.

During the term of this option, You will not sell or agree to sell this property to any other party, and will not mortgage the property.

You understand that:

1. We intend to sell this option for a price higher than the price offered here
2. If for any reason We cannot find a buyer at a price exceeding \$3,000, We will not purchase the property.



This is a more simple, filled-out option agreement used with non-sophisticated residential sellers.

## Option To Purchase

This Option to Purchase granted this 9th Day of June, 2010 By the Optionor, Jean Smith, whose address is 35 South Road, Frederick Maryland 21777 (Hereinafter called "You") to the Optionee Wholesale Properties, LLC, whose address is 3707 Warsaw Avenue, Cincinnati, Ohio 45205 (Hereinafter called "Wholesale Properties")

You grant to Wholesale Properties the exclusive right to purchase the property which has the address of 1813 Easy Street, Cincinnati Ohio 45222 for the price of \$3,000, which shall be paid upon closing of said property, during the period of time beginning June 11<sup>th</sup>, 2010 and ending July 26<sup>th</sup>, 2010.

The property shall include all land, together with all improvements thereon, all appurtenant rights, privileges, easements, buildings, fixtures, heating, electrical, air conditioning fixtures and facilities, window shades, Venetian blinds, awnings, curtain rods, screens, storm windows and doors, affixed mirrors, wall-to-wall carpeting, stair carpeting, built-in kitchen appliances, bathroom fixtures, radio and television aerials, landscaping and shrubbery, water softeners, garage door openers and operating devices, and all utility or storage buildings or sheds, oven/ranges, refrigerators, washers, dryers and window air-conditioners included on the premises at the time of execution of this Option to Purchase.

You agree to give Wholesale Properties complete unrestricted access to the property to show it to potential buyers, inspectors, lenders, contractors and anyone else we feel needs to enter the property

Upon exercise of this Option to Purchase by the Wholesale Properties, You will sign a General Warranty deed that gives Wholesale Properties marketable title to the property in fee simple absolute, with release of dower, at closing. The title will be conveyed either to Wholesale Properties or to the person or entity to whom Wholesale Properties assigns this option.

The title will be title to be free, clear, and unencumbered, except for restrictions and easements of record. WHOLESALE PROPERTIES UNDERSTANDS THAT THE PROPERTY IS SUBJECT TO A TAX LIEN IN THE APPROXIMATE AMOUNT OF \$2,313 AND TO VARIOUS BUILDING ORDERS BY THE CITY OF CINCINNATI.

The deed shall be delivered and the purchase money shall be paid to You at the closing location of the Wholesale Property's choice, no later than FIVE (5) days after notification to the You of the Wholesale Property's exercise of the option.

~~There shall be prorated between the Optionor and the Optionee, as of the date of closing, all real estate taxes and assessments, with Optionee having responsibility for such items following closing, and any rents or security deposits. Optionor shall be responsible for title search, deed preparation, loan costs, and all other costs associated with closing.~~ **WHOLESALE PROPERTIES OR ITS ASSIGNS WILL PAY ALL TAXES AND CLOSING COSTS NOT TO EXCEED \$3000. IF TAXES AND CLOSING COSTS EXCEED \$3,000, YOU WILL NOT BE OBLIGATED TO SELL THIS PROPERTY.**

During the term of this option, You will not sell or agree to sell this property to any other party, and will not mortgage the property.

You understand that:

- 3. Wholesale Properties LLC is a limited liability company owned, in part, by Vena Jones-Cox, who is a licensed real estate broker in the state of Ohio.
- 4. That Vena Jones-Cox is NOT acting as your agent in this transaction, and no commissions or fees will be due from you upon sale of this property.
- 5. That the intent of all owners of Wholesale Properties LLC is to sell this option for a price higher than the price offered here
- 6. That if for any reason Wholesale Properties cannot find a buyer at a price exceeding \$3,000, it will not purchase the property.

You agree that Wholesale Properties may list this property in the Multiple Listing Service of Greater Cincinnati and other real estate listing sites for the purpose of selling this Option to Buy.

IN WITNESS WHEREOF, the parties hereto have set their hands to this Option To Purchase agreement on this \_\_\_ day of \_\_\_\_\_, 20\_\_.

WITNESS:

witness	Optionor
witness	Optionor
witness	Optionee