

## Chapter ten

### Get Paid, Get Closed, Get on With It!

#### What You'll Learn in This Chapter

1. How a contract assignment works, and why it's ideal
2. How to double close a deal—and why to avoid it if possible
3. How to assign “non-assignable” contracts

Congratulations! You've found a great deal; you've found a willing buyer; you're ready to get paid! Now what?

Well, what happens next depends on several factors, including:

1. Whether your purchase agreement is assignable
2. Whether you, for one reason or another, prefer to close the deal and resell it

In reality, there are a number of ways that wholesalers can, and do arrange this important last part of the deal. They include:

- Contract assignments
- Closing and reselling the property using transactional or private funding
- Closing and reselling the deal using the buyer's money (double closing)
- Selling or assigning the entity that holds the contract

There are pros and cons to each of these strategies, and like most active wholesalers, I have strong preferences about which ones are the best, easiest, and most profitable. But let's discuss each, so you can decide for yourself. Or just do whatever I say. Whatever seems best to you.

### The Contract Assignment

Here's something to know about ALL contracts: they're assumed to be assignable, unless the contract itself specifically states otherwise. In other words, a contract doesn't have to SAY it's assignable to be assignable; it just has to NOT say it's not assignable.

When a contract is “assigned”, a party to that contract gives someone else—the assignee—all of the rights, responsibilities, and obligations that the original party to the contract got as a party to the contract.

The other party to the contract doesn't have to agree to the assignment in order for it to be legitimate and enforceable. If the contract is assignable, or rather not non-assignable, the other party to the contract can't stop you from assigning it, and can't refuse to fulfill his end of the agreement.

What he doesn't have to do, though, is accept the assignee as the person that is responsible in case of a default. Only if the other party AGREES to the assignment—in which case, it's called a novation, not an assignment—can the person who “stepped out” by assigning his rights and responsibilities, expect to be held harmless if his assignee doesn't fulfill his responsibilities under the terms of the contract.

All of this, by the way, is why there's a “no subleasing” clause in most rental agreements.

Without such a clause, a tenant can legally assign his rights in the lease, allowing someone that the other party (in this case, the landlord) doesn't know and hasn't approved occupy the property and, of course, pay the rent.

Even so, if the new tenant—the one who was assigned the lease—doesn't pay the rent, or damages the unit, the landlord will hold the OLD tenant—the assignor—legally and financially responsible. How can he do that? Because HE didn't agree to the assignment.

Assigning a purchase contract on a property isn't a lot different.

The rights that can be assigned are the rights that the contract conveys: the right to purchase the subject property at a certain price and terms, the right to void the contract on either side if certain contingencies aren't met, and so on.

So when a buyer and a seller sign a purchase contract, the buyer can freely assign his right to buy the property at the agreed-upon price and terms, without the permission of the seller. As long as there's no non-assignment clause, the seller can't stop this process, and nothing else needs to be done to the purchase agreement in order to make the assignment legal or enforceable.<sup>1</sup>

And, of course, we use contingencies in our purchase and assignment contracts that mitigate the risk that a buyer takes assignment of your contract, doesn't close, and the seller wants damages—specifically, the inspection and liquidated damages clauses we put in the contracts we control (which don't include MLS or REO contracts, which is what makes wholesaling those properties more risky than those that you can control with your own purchase agreement).

Assigning your contract is by far the simplest, easiest, and cheapest way to accomplish your goal of getting paid by a buyer for a deal you put together with the seller.

A contract assignment works like this:

1. Once the assignee (that's the buyer) has inspected and done his due diligence on the property itself, and decides that he likes the overall price<sup>2</sup>, you'll allow him to review the terms and

---

<sup>1</sup> The wholesale lie that will not die: you have to add, or should add, “and/or assigns” after your name on the purchase contract. Doing this will not make a non-assignable contract assignable, and doesn't do anything at all to an assignable contract (other than tell the seller that you're planning on assigning it).

<sup>2</sup> *That's right; I said the buyer only gets to hear the ENTIRE cost to him—that's my assignment fee + what he'll have to pay the seller—until he agrees that that price is acceptable to him. Once he does, THEN I tell him how much of that he'll have to pay up front, to me. This heads off any objections the seller might have to how much I'm making on the deal. If he balks at the size of my fee, I simply say, “How come \$xxx,xxx was a good price before you knew how much of it was mine, and how much was*

condition of the contract, plus any disclosures provided by the buyer, ancillary documents like code violations, the results of the title search, and any leases.

Since the next document that the buyer will sign requires him to pay an assignment fee that's non-refundable if he changes his mind, he should be SURE at this point that he's satisfied that he's happy with the deal.

2. You and the buyer sign a document called a "Purchase Agreement for Assignment," which outlines the terms and conditions of the assignment and receipts the money paid by the buyer. It also states that this money is non-refundable and that the contract will actually be assigned only when the full amount is paid.

People often ask me why I use this agreement in addition to the more common assignment agreement.

The reason is simple: there's information in it that I want to keep between me and my buyer. Specifically, the amount of the assignment fee, and the various terms of the assignment including the fact that the assignment reverts back to me if he defaults are no one's business except mine and the buyer's.

So who else would see this information? Well, if it were part of the assignment, the title company or closing attorney would, since he must see the assignment in order to close the ultimate deal between your buyer and your seller.

Because of widespread bank fraud—some perpetrated by the title companies themselves—in the late '90s and early part of the '00s, title companies are now absolutely paranoid about putting any money they know about in a transaction on the closing statement, including money that has nothing to do with the transaction between the buyer and the seller.

In other words, when the title company knows how much you made, even though it happened outside of closing, and even though the title company didn't handle the funds, it WILL put that money on the closing statement.

You don't want that. Not because you did anything wrong, but because it can confuse and upset the seller. What you want on the closing statement is what belongs there: the transaction between the seller and the buyer, and nothing else.

By receipting the assignment fee on this document, which is between, and is only seen by, you and the buyer, you can NOT put it on the assignment agreement, which keeps the title company from knowing something which, frankly, is none of its business: what you made on your deal.

3. When the buyer pays the entire wholesaling fee, you and he sign another agreement—called an "assignment of contract"—that actually allows him to step into your shoes in the transaction and fulfill the terms and conditions of the contract. This document does NOT contain a dollar amount related to the assignment, and is the ONLY ONE of the 2 assignment docs that the closing agent or attorney will see.

---

*the seller's?"*

4. The buyer signs all of the seller disclosures you got from your seller earlier in the process, and receives a copy (remember, you keep one and provide a copy of the disclosures to your seller, as well).

5. The buyer, with his assignment of contract in hand, appears at the closing in your place, and buys the property directly from the seller.

So why is a contract assignment your first choice? Because:

- It results in only one closing, and therefore only one set of closing costs to be divided up between the buyer and the seller, which can be significant, especially if you live in an area that has “transfer taxes” for each sale of the property.
- You never appear in the chain of title, making it unlikely that any future liability resulting from lead paint, mold, or other contamination of the property will attach to you.
- It’s simple and easy for the closing agent to understand.

### **At A Contract Assignment Closing...**

At the closing, your buyer buys the property directly from your seller.

This means that the one worry you’ll have with this strategy as a new wholesaler is that your SELLER (and/or his agent), who up until the point of the closing has probably only dealt with you, might freak out/get suspicious/refuse to sell when someone OTHER THAN you shows up at the closing.

In the real world, this doesn’t really happen, and even if it did, the seller still, legally, has to sell the property he contracted to sell.

But a nearly guaranteed way to avoid any problem at all is to start talking early on to the seller about my “partner” or my “money guy.” Furthermore, my partner or I always attend these closings and introduce the seller to “the money guy,” who’s going to be taking title to the property in his name.

### PURCHASE AGREEMENT FOR ASSIGNMENT

This contract between \_\_\_\_\_ (“Assignor”) and \_\_\_\_\_ (“Assignee”) is entered into this \_\_\_ day of \_\_\_\_20\_\_\_\_. The Parties agree to be bound as follows:

1. Assignee agrees to pay Assignor the sum of \$ \_\_\_\_\_.00 in non-refundable consideration for Assignor’s performance under this Agreement.
2. Upon receipt of full payment of all amounts due under this Agreement, Assignor will execute an assignment of his contract with \_\_\_\_\_, (“Seller”), to purchase the property located at [property address, city, county, state]\_\_\_\_\_.
3. In the event that Seller shall prove unable, or unwilling, to deliver marketable title, and in no other event, Assignor shall refund all sums paid under this Agreement.
4. Assignor makes no warranties as to the condition, desirability, merchantability, or fitness for a particular purpose of the property that is the subject of the underlying contract. Assignee acknowledges that Assignor is not the owner of the subject property and that Assignee’s sole recourse for any misrepresentation by Seller, or mistake by any inspector or Party to this Agreement or the underlying contract, lies against Seller or any such inspector.
5. Assignee agrees to fully perform, observe, satisfy and discharge all the agreements, promises, conditions, obligations and liabilities of the said Assignor under the underlying contract, and Assignee further agrees to indemnify and save harmless Assignor from and against any liability resulting from or arising under the said contract.
6. In the event that Assignee is unable or unwilling to exercise his rights under the underlying contract, all rights under that contract shall immediately revert to Assignor and Assignor shall retain all sums paid under this Agreement.

Witness their hands this \_\_\_ day of \_\_\_\_\_,\_\_\_\_\_.

\_\_\_\_\_  
Assignor

\_\_\_\_\_  
Assignee

### ASSIGNMENT OF CONTRACT

For valuable consideration, the receipt of which is hereby acknowledged, your name here, (“Assignor”), hereby assigns to Buyer's name here, (“Assignee”), and his/her/its heirs and assigns, the original contract between your name here and Seller's name here to purchase the property described as:

Property Address

and all Assignor's right, title and interest therein.

By its acceptance of this assignment, and in consideration thereof, Assignee agrees to fully perform, observe, satisfy and discharge all the agreement, promises, conditions, obligations and liabilities of the said Assignor under said contract, and Assignee further agrees to indemnify and save harmless Assignor from and against any liability resulting from or arising under the said contract.

Executed in duplicate this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Assignor

\_\_\_\_\_, Ohio, \_\_\_\_\_, \_\_\_\_\_.

Assignee hereby accepts the foregoing assignment and assumes and agrees to perform all the agreements, promises, conditions, obligations, and liabilities thereof and thereunder.

Company

\_\_\_\_\_

By \_\_\_\_\_, Title

## The Double Closing Part I: The Buyer-Funded Closing

Ah, the double closing. Such a handy strategy, and so abused for so many years that it's now fading off into the sunset of real estate investing tactics.

A true double closing—also called a collapsed closing—basically uses the end buyer's money to close the deal twice. It works like this:

Step 1. The buyer wires money the attorney or title company, in the amount of HIS purchase price (your purchase price + your fee).

Step 2. Later, the seller comes to the title company and sits down with you. A normal closing ensues, with the seller being paid his purchase price from the BUYER'S money, which is being held by the title company. The deed passes to you, and the seller goes home with his money.

Step 3. Later still, there's a second closing between you and your buyer, at which he gets the house he already paid for. At this point, you're the owner, and therefore the seller. At the end of this closing, the title agent will issue you a check from the title company's account for the difference between your purchase price and the seller's, which is your profit from the deal.

The main problem is with this form of closing today is that they're illegal in a lot of the country

If we call the seller "A", the wholesaler "B", and the end buyer "C", this is called an A to B, B to C closing. A to B, B to C closings are *perfectly legal*, assuming that there's nothing in the contract between A and B that disallows this.

The problem is, that in many states, closing agents are not allowed to close deals where the A to B closing *is being funded by C, the end buyer*.

Where there are laws against this, they are "good funds" laws, which basically say that if there are 2 closings, they have to be done with 2 separate deposits to the attorney/title company.

There's another kind of double closing that's perfectly fine (again assuming that there's nothing unique about the contracts that would prohibit it)—and that's an A to B, B to C closing where B actually provides the money—either of their own, or from some outside party D, so let's talk about that one.

## Double Closing Part II: Buying and Selling Properties

I want to make sure you take away the right thing from the last discussion, which is NOT that buying and then immediately selling a property is illegal, difficult, or in any way problematic. It's that using the end buyer's money to close the first part of the deal (the seller to you) is problematic.

If, on the other hand, you can just bring the money to the title company to buy the property, you'll get no resistance from them to selling it again 10 minutes later<sup>3</sup>—**as long as the money for you to buy the property isn't the same money the buyer's using to buy the property, they just don't care.**<sup>4</sup>

I know, I know, you don't have the cash lying around to buy the property, even if you're only going to own it for a few minutes.

But SOMEONE does, and is more than willing to loan it to you for a quick-in, quick-out deal. In fact, there are now entire companies set up for the purpose of making 24-hour loans to wholesalers that would make the most predatory "checks cashed" outlets in the U.S. blush.

I have, for years, utilized private lenders by borrowing their money for a very short period of time—often a matter of a few hours—to purchase a property that I plan to wholesale, but can't assign the contract for. Instead of paying an "interest rate" to these lenders, I pay a flat fee for using their money—after all, even 20% annual interest isn't that appealing if they're only going to get it for 1/365<sup>th</sup> of a year.

In general, I pay 2% per month (or portion of month) on any money I borrow—which works out to an annualized rate of interest of 24% or, to put it another way, 2 "points" per month.

This works for me because the vast majority of wholesale deals that I put under contract are in the \$10,000-\$70,000 range—which means that, worst case scenario, I might have to pay as much as \$1,400 from my wholesale fee for the right to borrow the money for a month.

My private lenders are thrilled when I call them with one of these opportunities, because it allows them to use relatively small amounts of money (which is all a lot of them have—when I need a loan on a "keeper" property, it's usually in the \$60,000 -\$120,000 range) and get a gigantic return on it. Many of my private lenders have home equity lines of credit in these smaller amounts, which means that they can borrow the money from their bank, pay a measly prime+1% interest rate for 24 hours, pay it back, and pocket the "interest check" I give them as profit. \$200 for a \$10,000 loan may not sound like a lot, but then it's a pretty nice chunk of "fun money" for almost no work at all.

My lenders are protected in this deal by a mortgage and note that I sign, so they know I'm not just going to run off and spend the cash. In addition, they have their checks made out to the title company closing the deal, as is standard for a mortgagee. If the deal doesn't close, I don't ever see the money.

When a 3<sup>rd</sup> party private lender brings the cash to the table to close a transaction—and especially when there's a formal note and mortgage involved—the title company has no concerns about "double closings" and how they, the title company, might get in trouble as a result. There's one more advantage to this strategy—if I need to close a deal BEFORE I've found a buyer (which often happens with short sales, as the bank's final acceptance of my offer comes with the "must close in 7 days" string attached),

---

<sup>3</sup> Unless, if course, you're buying the property in some way that restricts you from reselling it right away. This is most common in the case of short sales (which often have restrictions that keep you from reselling for up to 6 months), and in FNMA foreclosures, which come with a deed restriction that says that you can't resell for more than 120% of what you paid for 90 days after the purchase. In these 2 cases, you'd use the land trust method to close.

<sup>4</sup> One practical exception: in today's market, most banks selling properties insist on using their own title company. I would NOT schedule the 2<sup>nd</sup> closing, where you'll be selling the bank's property for a significant profit a few minutes later, with the same title company.



my ability to close the deal with a private lender's money gives me some breathing room. I can get the deal closed, and as long as I can find a buyer to purchase the property from me within 2 weeks, pay no more interest than if I had held the property for just a few hours.

Don't know any private lenders yet?

No problem.

There are tons of companies set up to do what's called "transactional funding", which basically means funding an A-to-B closing for a wholesaler, but only when the end buyer's money is already in the title company's account.

In this case, no mortgage or note are typically needed (although some funders still have one signed as a sort of "belt and suspenders" approach), because the transactional funder gives the title company or attorney a set of strict instructions that say that the closer may not distribute the funder's money to your seller until your buyer's money is already safely in the title company's account, and the 2<sup>nd</sup> closing is scheduled, and all the documents are prepared for the second closing.

Transaction funders charge anywhere from 1.75%<sup>5</sup> to 3% of the amount they borrow to make this "loan", depending on the funder and the loan size.

Your credit is irrelevant to transaction funders; however, some do have a SMALL (\$500 or less) transactional or one-time processing fee, for the simple reason that they often get requests for, and do a lot of paperwork and due diligence on, deals that never come to fruition. Don't get involved with a transactional funder who charges large fees up front (more than \$500), or who requires you to spend a lot of money on classes or a subscription service. These are mostly rip-off artists who always find a reason to turn down your loan after charging you lots of money to make it.

And, of course, there's the obvious option to simply buy the property with your own money, then sell it. This avoids the fee you'd pay to borrow money, but is still more expensive to transact than an assignment or trust closing, for reasons we'll discuss next.

### **Why Wholesalers Like Double Closings— and Why They Shouldn't.**

When I ask wholesalers who do lots of double closings why they do it, the most common answer I hear is, "I don't want my buyer to know what I'm making on the deal."

This is sort of silly, because if a buyer is seriously concerned about your profit instead of his, all he has to do to find out what you made is to wait a month and look in the public records. He'll see 2 closings—one to you, and one to him, and if he can subtract the former from the latter, he then knows what you made.

Plus, any buyer who's all that worried about what you make shouldn't be on your buyer's list anyway.

Occasionally, you may do a double closing due to a non-assignable contract (although a trust

---

<sup>5</sup> Try [BestTransactionFunding.com](http://BestTransactionFunding.com)

closing, described later in this chapter, is cheaper and just as effective). Sometimes you may do double closing for the simple reason that you need to close with your seller faster than you can find a buyer. And every once in a great while, there will be some compelling reason to simply keep that particular buyer and that particular seller apart.

But if, in any given situation, there's a way to assign your contract rather than do a double closing, that's probably the route you'll choose to take. Double closings have the DISadvantages of:

- Producing 2 sets of deed prep fees, closing costs, and transfer taxes—at least some of which will probably be paid by you. In my market, having to double-close (even if you're paying cash in the first closing) ends up taking \$500-\$1000 per deal out of my pocket.
- Placing your name in the chain of title, where it can be found by a future tenant looking for people to sue in a lead poisoning case, for instance.

## What About Non-Assignable Contracts?

Most wholesalers prefer to assign a contract over any other method of getting paid. But your ability to do so depends, of course, on whether the contract is assignable in the first place.

Unfortunately for those of us who wholesale real estate around the country, there are certain types of sellers who are very careful to make the purchase contracts used to buy their properties non-assignable: specifically, banks selling REOs (bank-owned properties) and banks negotiating “short sales” on loans that they hold.<sup>6</sup>

We've already talked about one method that *might* work to wholesale these deals anyway—closing, and then reselling them. But we've also talked about the additional cost of that process and the fact that it might not work if there's a deed restriction on resale.

So what's left?

Well, let's remember what it is that a non-assignable contract restricts: assignment of the rights and responsibilities of the CONTRACT. **It doesn't restrict your ability to sell or assign the entity that holds that contract or that, following the closing, owns the property.**

That's why smart wholesalers use the strategy of putting such properties under contract using an entity: so that they can assign the rights in the ENTITY, which isn't restricted by the non-assignability clause in the contract at all.

---

<sup>6</sup> Note: Many banks accepting short sales now go far beyond making the contract non-assignable; they also make the seller, the buyer of record (you, in the case of a wholesale deal), the title agent, and any real estate agents involved sign a document swearing that there is no “contingent transaction” (in other words an immediate resale) being contemplated and that, further, the property WILL NOT be resold for some period of time. Don't try to “get around” anything like this you sign—it's bank fraud to knowingly do so.

## The Common Way: Use an LLC

In many states, it costs less than \$100 and takes less than 2 weeks to set up a Limited Liability Company (LLC), which is the preferred entity for most real estate investors to hold property.

Like shares in a corporation, membership interests in an LLC are fully transferable. In other words, if you own 100% of the membership units in an LLC, you can sell or give away all or part of them, thus transferring the ownership of the LLC partly or fully to someone else.

Now, imagine that you simply applied to the state and had a handful of LLCs set up. Each time you signed an offer to purchase a property that you knew was non-assignable, you could sign the contract “[Your Name] as member of YouCo LLC.”<sup>7</sup>

Now, when one of these purchase contracts is accepted, you go about the process of finding a buyer as usual—but when you succeed, you don't assign him the purchase contract.

Instead, **you sell him the membership units in the LLC that holds the rights in the purchase contract**, he goes to the closing as the new owner of the LLC, and signs all the documents for the LLC to purchase the property, just as the purchase agreement said it would.

Here's why this strategy works: legally, LLCs are completely separate “legal persons” from their owners.

When your LLC owns a property (or, in this case, holds the right to buy a property via a purchase contract), it is NOT the same as “you” owning (or having a contract to purchase) the property. You own the LLC; the LLC owns the property. When you sign the purchase contract as member of your LLC, it isn't YOU agreeing to buy the property; it's you, in your role as manager of the LLC, committing your LLC to buy the property.

So here's how this strategy works:

1. You negotiate a purchase agreement, signed by the seller and by you (but as managing member of your LLC) for the LLC to buy the seller's property for \$X.
2. You find a buyer who wants to pay \$X+\$10,000 (or whatever your profit may be) for the same property.
3. You sell the buyer all of the membership shares of the LLC for \$10,000—this is accomplished through a separate purchase contract for the LLC shares.
4. The LLC buys the property as planned; you're just no longer a member of that LLC.

The benefits to this strategy are clear: there is just one closing and therefore just one set of closing costs. Many investors throughout the country use this strategy regularly with great success.

---

<sup>7</sup> Of course, you'd never want more than 1 active contract out at a time in the name of each entity; if 2 contracts in the name of the same entity happened to get accepted at the same time, you'd have to find a buyer who wanted both properties, since you can't sell the same LLC to 2 different people!

Although this may sound like the perfect solution to the assignability problem, **there are some things to consider before implementing this strategy.**

First, in several states, LLCs must pay a yearly “franchise tax” that is a sort of licensing fee separate from the usual income taxes levied on profits. This additional tax can add several hundred dollars a year to the buyer’s expenses—and may make the idea of taking on an additional LLC just to buy your property unattractive.

Similarly, unless your buyer has gone to great lengths to plan out a “Master LLC system”, his new LLC will have its own federal tax I.D. number, and may require its own tax return. Many experienced investors have their taxes professionally prepared, and the additional LLC will end up adding \$300-\$900 to their tax prep fees. For these reasons, the idea of purchasing a new LLC may not be attractive to some of your more seasoned buyers.

Finally, there’s a bit of messiness in owning and/or transferring multiple LLCs in the form of constant, irritating IRS inquiries about the tax returns. Once an employer identification number (EIN) has been issued to an LLC, the IRS expects returns to be filed on that LLC, even if it’s not doing business. If YOU get the EIN issued (and that’s a step that’s necessary to schedule a closing, since the title company wants to issue tax forms at the closing), you’ll continue to get these notices even if you’ve long since transferred the LLC to your buyer, if your buyer never files a tax return on the entity—perhaps because he immediately transferred the property out of the LLC.

## **The Right Way: Use a Land Trust**

First, a little disambiguation: you might have heard of a land trust as a non-profit group that holds land—for instance, park land or forest land—for the purpose of conservation, or making it available to the public, or some other mission.

While the documentation used to create these “conservation land trusts” is similar to what we use in real estate investing, the purpose of our trusts is very different.

Land trusts are an old, old (like Roman Empire old) way of holding title to a property where a trustee agrees, under the terms of a dense legal document, to hold title to a property on behalf of a beneficiary.

The trust is created by 2 things: the trust agreement (there’s an example in this section) and the creation of a trust deed that transfers ownership of the property in question to the trustee. The trust agreement is a private contract, not blessed by the government or recorded (this will become important in a moment); the trust deed is recorded in the deed records of the county, and names the trustee but not the beneficiary of the property.

There are 3 parties to a trust agreement: the trustee (who is exclusively empowered to act on behalf of the trust; only the trustee can transfer the property or pledge it as security for a mortgage loan) and the beneficiary, who has “power of direction” over the trustee and use of the land, including income, tax breaks, appreciation, and so on. The other party is the Grantor or Settlor: the person who creates the trust and deeds the property to it. In the case of a land trust, that’s usually the same person as the beneficiary, but not always.

Although land trusts are usually used in real estate investing as a privacy tool (when a property is held in a trust, the “true” owner—the beneficiary—is not named in the public record), they are also excellent vehicles for avoiding double closings.<sup>8</sup>

The thing about a land trust that makes it great for our purposes in assigning “non-assignable” contracts is twofold:

First, since both a trust agreement AND the trust deed are necessary to “create” the trust, it’s common practice for a trustee to make an offer on a property without the trust actually existing at that time. In other words, you can make an offer on a property “as trustee” (meaning, simply, that you add the word “trustee” after your name as buyer) when no trust yet exists.

Second, once the trust is formed, the beneficial interest is fully assignable, meaning that the beneficiary can sell or give away his control of the trust using a simple “assignment of beneficial interest” form. Just as the trust itself is a private document, the assignment of the beneficial interest is also private. Until the new beneficiary chooses to disclose his involvement with the property (which often occurs only when he sells, no one other than the prior beneficiary and the trustee knows that he’s in control of the trust.

So what, you ask, does all this have to do with wholesaling properties with non-assignable contracts?

Easy: we’re not going to assign the contract. We’re going to, in one way or another, assign the beneficial interest in the trust.

Here’s how it works:

1. **This is a really crucial step, so pay attention:** when you make an offer on a property where the purchase agreement is non-assignable, or where the purchase agreement is assignable but you suspect that some later document (such as an addendum in the case of a bank-owned property or the acceptance letter in the case of a short sale) might MAKE it non-assignable, you sign your name “as trustee”. I, for instance, would sign “Vena Jones-Cox, Trustee”. If you neglect to do this, you’re dead in the water—trying to change the buyer from your own name or your LLC’s name to the name of a trustee later is, in effect, an assignment, and you won’t be able to do it. Don’t worry that there’s no trust yet; it’s extremely unlikely that anyone will ask for it at this stage, and even if they do, we’ve got an alternative for that.
2. Once your offer is accepted, you do what wholesalers do, and find a buyer who wants to pay your purchase price + \$10,000 (or whatever your profit may be) for the property.
3. When you find this buyer, you create a land trust agreement where YOU are the trustee, and your buyer (or more likely his LLC) is the beneficiary. It is at this point that you get paid; remember, the Land Trust Agreement is beneficiary-directed, and it’s you, the trustee, that the beneficiary directs to do things, like close. You can call this fee an assignment fee, a wholesale fee, or whatever you like—but it’s the same amount of money that you would have gotten for assigning the contract to the buyer; in other words, the difference between the purchase price on the contract and the total that the buyer has agreed to pay.

---

<sup>8</sup> Needless to say, this is not meant to be a complete lesson on the legalities of land trusts. Entire courses have been written on the topic—one of the best is by Dyches Boddiford at [Assets101.com](http://Assets101.com)

4. Prior to the closing, the attorney or title company will need to see a copy of the trust agreement. Without it, the closer has no idea who's supposed to be directing the trustee, whether the trustee even has the power to sign documents, and so on. However, under no circumstances should you allow the closer (as he will sometimes insist on doing) to record the trust agreement. The easiest way to avoid this is to give him a COPY of the notarized document, not the original
  - a. IF you haven't found a buyer by the time the title company or attorney requests a copy of the trust, the solution is simple: turn in a trust with you as trustee and you, or your entity, as beneficiary. When you find the buyer, you can simply use an "Assignment of Beneficial Interest in Land Trust" form to assign the beneficial interest to the new beneficiary/buyer.
5. Also prior to the closing, your buyer/ beneficiary will review the closing documents, wire funds to the title company, and sign a direction of trustee for the title company's files that allows the title company to let you sign all the documents at the closing.
6. At the closing, a deed will be prepared with your name (as trustee)<sup>9</sup> and, possibly, the name of the trust, as owner ("Vena Jones-Cox as trustee of the Miniondog Land Trust" or just "Vena Jones-Cox, trustee). You, as trustee, buy the property using the beneficiary's money (as would be normal); you appear at the closing to sign the documents as trustee.
 

No assignment of the contract has occurred: you, as trustee, signed the purchase contract and you, as trustee, are the buyer.
7. If you wish, you may resign as trustee after the closing to avoid any further involvement with the property—remember, if you don't, you'll need to continue to sign paperwork throughout the lifespan of the deal.

Of all the techniques covered here, this is by far my favorite. Here's why:

- a) It triggers the fewest expenses—there's just one closing, between the seller and the buyer as beneficiary of the trust.
- b) It gives the ultimate buyer the most flexibility. Land trusts don't need Federal Tax ID numbers, they don't file tax returns, and they therefore don't create extra bookkeeping or tax preparation expenses for the buyer. The buyer can name his existing LLC as beneficiary, and the profits from the property will flow straight to the LLC's return. If he doesn't want to keep the property in the trust, he can move it out with a simple deed transfer, and in most states, a transfer out of a trust to the beneficiary of the trust does not trigger transfer tax.
- c) According to the REO agents I know, banks are more likely to accept offers from trustees than from entities.

---

<sup>9</sup> It's important to understand that you, as trustee of a beneficiary-directed land trust are NOT the same as you, personally. You should never use your social security number as the identifying number for the offer (in the case of HUD properties) or for tax reporting; use the beneficiary's tax ID number instead.

- d) Forming a land trust does not require the involvement of the state. Once you have good trust documentation, you can create endless additional trusts without filing or paying a fee.

In fact, the only real downside is that, in a small handful of states, trusts are charged the same “franchise fee” as regular entities. This can be overcome by your buyer simply by taking the property OUT of the trust after closing.

Many wholesalers ask the question, “What if my buyer doesn’t want to close in a trust?” or “What if my buyer doesn’t understand land trusts?”

If the contract is truly non-assignable, you’ll have to try to convince your buyer—or find another buyer. I usually explain this thusly: “Mr. buyer, I understand that this is new to you, but land trusts are very commonly used to hold properties by investors. And in this case, the only way to close is by putting it in a land trust. If you like, you can deed it out after the closing, but unless you and your attorney can get comfortable with the trust, I’m going to have to move on and find another buyer.”

*Note: this sample land trust is for your reference only. You should NOT use it without consulting a knowledgeable attorney in your area. Land trust language varies slightly from state to state, and since it is your BUYER, not YOU that has to live the results of an incorrectly-drafted land trust, you should have one created by someone who understands your state's laws.*

## **AGREEMENT AND DECLARATION OF TRUST**

### **«TRUSTNAME» LAND TRUST**

THIS AGREEMENT AND DECLARATION OF TRUST Is made and entered into this «creationday» day of «Creationmonth», «creationyear», by and between «settlor» as Settlor, (herein referred to as "Settlor",) whose address is «Settloraddress», and «Trustee», whose address is «Trusteeaddress», (referred to herein as the "Trustee", which designation shall include all successor trustees,) for the benefit of «Beneficiary» as Beneficiaries, (referred to herein as the "Beneficiaries", whether one or more, which designation shall include all successors in interest of any Beneficiary),.

IT IS MUTUALLY AGREED AS FOLLOWS:

1. **Trust Property.** The Settlor is about to convey or cause to be conveyed to the Trustee by deed, absolute in form, the property described in the attached Exhibit "A", which said property, herein referred to as "Trust Property", shall be held by the Trustee, in trust, for the following uses and purposes, under the terms of this Agreement.
2. **Consideration.** No consideration was paid by Trustee for such conveyance. The conveyance will be accepted and will be held by Trustee subject to all existing encumbrances, easements, restrictions or other clouds or claims against the title thereto, whether the same are of record or otherwise. The property will be held on the trusts, terms and conditions and for the purposes hereinafter set forth, until the whole of the trust estate is conveyed, free of this trust, as provided herein.
3. **Beneficiaries.** The persons named in the attached Exhibit "B" are the Beneficiaries of this Trust, and as such, shall be entitled to all of the earnings, avails and proceeds of the Trust Property according to their interests set opposite their respective names.
4. **Interests.** The interests of the Beneficiaries shall consist solely of the following rights respecting the Trust Property:
  - a. The right to direct the Trustee to convey or otherwise deal with the title to the Trust Property as set out herein.
  - b. The right to manage and control the Trust Property.
  - c. The right to receive the proceeds and avails from the rental, sale, mortgage, or other disposition of the Trust Property.



The foregoing rights shall be deemed to be personal property and may be assigned and otherwise transferred as such. No Beneficiary shall have any right, title or interest, as realty, in or to any real estate held in trust under his Agreement, or the right to require partition of such real estate, but shall have only the rights set out above, and the death of a Beneficiary shall not terminate this Trust or in any manner affect the powers of the Trustee.

#### 5. **Powers of Trustee.**

- With the consent of the Beneficiary, the Trustee shall have authority to issue notes or bonds and to secure the payment of the same by mortgaging the whole or any part of the Trust Property; to borrow money by creating notes signed by him in his capacity as Trustee; to invest such part of the capital and the profits earned by the capital and the proceeds of the sale of bonds and notes in such real estate, equities in real estate, and mortgages in real estate in the United States of America, as he may deem advisable.
- b. With the consent of the Beneficiary, the Trustee shall have the authority to hold the legal title to all of the Trust Property, and shall have the exclusive management and control of the property as if he were the absolute owner thereof, and the Trustee is hereby given full power to do all things and perform all acts which in his judgment are necessary and proper for the protection of the Trust Property and for the interest of the Beneficiaries in the property of the Trust, subject to the restrictions, terms, and conditions herein set forth.
- c. Without prejudice to the general powers conferred on the Trustee hereunder, it is hereby declared that the Trustee shall have the following powers, with the consent of the Beneficiaries:
  - (1) To purchase any real property for the Trust at such times and on such terms as may seem advisable; to assume mortgages upon such property.
  - (2) To sell at public auction or private sale, to barter, to exchange, or otherwise dispose of, the whole of the Trust Property or any part thereof, subject to such restrictions, for such consideration of whatever kind, and upon such terms and conditions as may seem judicious; to secure payment upon any loan or loans of the Trust, by mortgage with or without power of sale, and to include such provisions, terms, and conditions as may seem desirable.
  - (3) To rent or lease the whole or any part of the Trust Property for long or short terms, but not for terms exceeding the term of the Trust then remaining.
  - (4) To repair, alter, tear down, add to, or erect any building or

buildings upon land belonging to the Trust; to fill, grade, drain, improve, and otherwise develop any land belonging to the Trust; to carry on, operate, or manage any building, apartment house, or hotel belonging to the Trust.

(5) To make, execute, acknowledge, and deliver all deeds, releases, mortgages, leases, contracts, agreements, instruments, and other obligations of whatsoever nature relating to the Trust Property, and generally to have full power to do all things and perform all acts necessary to make the instruments proper and legal.

(6) To collect notes, obligations, dividends, and all other payments that may be due and payable to the Trust; to deposit the proceeds thereof, as well as any other moneys from whatsoever source they may be derived, in any suitable bank or depository, and to draw the same from time to time for the purposes herein provided.

(7) To pay all lawful taxes and assessments and the necessary expenses of the Trust; to employ such officers, brokers, engineers, architects, carpenters, contractors, agents, counsel, and such other persons as may seem expedient, to designate their duties and fix their compensation; to fix a reasonable compensation for their own services to the Trust, as organizers thereof.

(8) To represent the Trust and the Beneficiaries in all suits and legal proceedings relating to the Trust Property in any court of law of equity, or before any other bodies or tribunals; to begin suits and to prosecute them to final judgment or decree; to compromise claims or suits, and to submit the same to arbitration when, in their judgment, such course is necessary or proper.

(9) To arrange, pay for and keep in force, in the name and for the benefit of the Trustee, such insurance as the Trustee may deem advisable, in such amounts, and against such risks as deemed necessary by the Trustee.

6. **Duties of Trustee.** It shall be the duty of the Trustee in addition to the other duties herein imposed upon them:

- a. To keep a careful and complete record of all the beneficial interests in the Trust Property with the name and residence of the person or persons owning such beneficial interest, and such other items as they may deem of importance or as may be required by the Beneficiaries.
- b. To keep careful and accurate books showing the receipts and disbursements of the Trust and also of the Trust Property, and such other items as they may deem of importance or as the Beneficiaries hereunder may require.

- c. To keep books of the Trust open to the inspection of the Beneficiaries at such reasonable times at the main office of the Trust as they may appoint.
- d. To furnish the Beneficiaries at special meetings at which the same shall be requested a careful, accurate, written report of their transactions as Trustees hereunder, of the financial standing of the Trust, and of such other information concerning the affairs of the Trust as they shall request.
- e. To sell the Trust Property and distribute the proceeds arising from such a sale:

(1) If any property shall remain in trust under this Agreement for a term which exceeds that allowed under applicable state law, the Trustee forthwith shall sell same at public sale after a reasonable public advertisement and reasonable notice to the Beneficiaries and, after deducting its reasonable fees and expenses, it shall divide the proceeds of the sale among the Beneficiaries as their interests may then appear, without any direction or consent whatsoever, or

(2) To transfer, set over, convey and deliver to all the then Beneficiaries of this Trust their respective undivided interests in any non-divisible assets, or

(3) To transfer, set over and deliver all of the assets of the Trust to its Beneficiaries, in their respective proportionate shares, at any time when the assets of the Trust consist solely of cash.

7. **Compensation of Trustee.** The Beneficiaries jointly and severally agree that the Trustee shall receive the sum of \$«trusteemonthlyfee» per month for his services as Trustee hereunder.

8. **Liability of Trustee.** The Trustee and his successor as Trustee shall not be required to give a bond, and each Trustee shall be liable only for his own acts and then only as a result of his own gross negligence or bad faith.

9. **Removal of Trustee.** The Beneficiaries shall have their power to remove a Trustee from his office or appoint a successor to succeed him.

10. **Resignation and Successor.**

- a. Any Trustee may resign his office with thirty (30) days written notice to Beneficiaries and Beneficiaries shall proceed to elect a new Trustee to take the place of the Trustee who and sworn to by the Beneficiaries and containing an acceptance of the office, signed and acknowledged by the new Trustee, shall have been procured in a form which is acceptable for recording in the registries of deeds of all the counties in which properties held under this instrument are situated. If the Beneficiaries shall fail to elect a new Trustee within thirty (30) days after the resignation, then the Trustee may petition any appropriate court in this state to accept his resignation and appoint a new Trustee.

- b. Any vacancy in the office of Trustee, whether arising from death or from any other cause not herein provided for, shall be filled within thirty (30) days from the date of the vacancy and the Beneficiaries shall proceed, to elect a new Trustee to fill the vacancy, and immediately thereafter shall cause to be prepared a certificate of the election containing and acceptance of the office, signed, sealed, and acknowledged by the new Trustee, which shall be in a form acceptable for recording in the registries of deeds of all the counties in which properties held under this instrument are situated.
- c. Whenever a new Trustee shall have been elected or appointed to the office of Trustee and shall have assumed the duties of office, he shall succeed to the title of all the properties of the Trust and shall have all the powers and be subject to all the restrictions granted to or imposed upon the Trustee by this agreement, and every Trustee shall have the same powers, rights, and interests regarding the Trust Property, and shall be subject to the same restrictions and duties as the original Trustee, except as the same shall have been modified by amendment, as herein provided for.
- d. Notwithstanding any such resignation, the Trustee shall continue to have a lien on the Trust Property for all costs, expenses and attorney's fees incurred and for said Trustee's reasonable compensation.

11. **Objects and Purposes of Trust.** The objects and purposes of this Trust shall be to hold title to the Trust Property and to protect and conserve it until its sale or other disposition or liquidation. The Trustee shall not undertake any activity not strictly necessary to the attainment of the foregoing objects and purposes, nor shall the Trustee transact business within the meaning of applicable state law, or any other law, nor shall this Agreement be deemed to be, or create or evidence the existence of a corporation, de facto or de jure, or a Massachusetts Trust, or any other type of business trust, or an association in the nature of a corporation, or a co-partnership or joint venture by or between the Trustee and the Beneficiaries, or by or between the Beneficiaries.

12. **Exculpation.** The Trustee shall have no power to bind the Beneficiaries personally and, in every written contract he may enter into, reference shall be made to this declaration; and any person or corporation contracting with the Trustee, as well as any beneficiary, shall look to the funds and the Trust Property for payment under such contract, or for the payment of any debt, mortgage, judgment, or decree, or for any money that may otherwise become due or payable, whether by reason of failure of the Trustee to perform the contract, or for any other reason, and neither the Trustee nor the Beneficiaries shall be liable personally therefor.

13. **Dealings with Trustee** No party dealing with the Trustee in relation to the Trust Property in any manner whatsoever shall have any obligation or privilege: to see that the terms of this Trust Agreement have been complied with; to inquire into the authority of the Trustee, to inquire into the necessity or expediency of any act of the Trustee; or the terms of this Trust Agreement. Every deed, mortgage, lease or other instrument executed by the Trustee in relation to the Trust Property shall be conclusive evidence, in favor of any person claiming any

right, title, or interest under the Trust, that at the time of its delivery the Trust created under this Agreement was in full force and effect; that instrument was executed in accordance with the terms and conditions of this Agreement, and, all its amendments, if any; and is binding upon all Beneficiaries under it; that the Trustee was duly authorized and empowered to execute and deliver every such instrument; if a conveyance has been made to a successor or successors in trust, that the successor or successors have been appointed properly and are vested fully with all the title, estate, rights, powers, duties and obligations of its, his or their predecessor in Trust.

14. **Recording of Agreement.** This Agreement shall not be placed on record in the county in which the Trust Property is situated, or elsewhere, but if it is so recorded, that recording shall not be considered as notice of the rights of any person under this Agreement derogatory to the title or powers of the Trustee.

15. **Name of Trustee.** The name of the Trustee shall not be used by the Beneficiaries connection with any in advertising or other publicity whatsoever without the written consent of the Trustee.

16. **Income Tax Returns.** The Trustee shall be obligated to file any income tax returns with respect to the Trust, as required by law, and the Beneficiaries individually shall report and pay their share of income taxes on the earnings and avails of the Trust Property or growing out of their interest under this Trust.

17. **Assignment.** The interest of a Beneficiary, or any part of that interest, may be transferred only by a written assignment, executed in duplicate and delivered to the Trustee. The Trustee shall note its acceptance on the original and duplicate original of the assignment, retaining the original and delivering the duplicate original to the assignee as and for his or her evidence of ownership of a beneficial interest under this Agreement. No assignment of any interest under this Agreement, other than by operation of law, that is not so executed, delivered and accepted shall be valid without the written approval of all of the other Beneficiaries who possess the power of direction. No person who is vested with the power of direction, but who is not a Beneficiary under this Agreement, shall assign that power without the written consent of all the Beneficiaries.

18. **Individual Liability of Trustee.** The Trustee shall not be required, in dealing with the Trust Property or in otherwise acting under this Agreement, to enter into any individual contract or other individual obligation whatsoever; nor to make itself individually liable to pay or incur the payment of any damages, attorney's fees, fines, and penalties, forfeitures, costs, charges or other sums of money whatsoever. The Trustee shall have no individual liability or obligation whatsoever arising from its ownership, as Trustee, of legal title to the Trust Property, or with respect to any act done or contract entered into or indebtedness incurred by it in dealing with the Trust Property or in otherwise acting under this Agreement, except only as far as the Trust Property and any trust funds in the actual possession of the Trustee shall be applicable to the payment and discharge of that liability or obligation.

19. **Reimbursement and Indemnification of Trustee.** If the Trustee shall pay or incur any liability to pay any money on account of this Trust, or incur any liability to pay any money

on account of being made a party to any litigation as a result of holding title to Trust Property or otherwise in connection with this Trust, whether because of breach of contract, injury to person or property, fines or penalties under any law, or otherwise, the Beneficiaries, jointly and severally agree that on demand they will pay to the Trustee, with interest at the rate of «interestate» per annum, all such payments made or liabilities incurred by the Trustee, together with its expenses, including reasonable attorney's fees, and that they will indemnify and hold the Trustee harmless of and from any and all payments made or liabilities incurred by it for any reason whatsoever as a result of this Agreement; and all amounts so paid by the Trustee, as well as its compensation under this Agreement, shall constitute a lien on the Trust Property. The Trustee shall not be required to convey or otherwise deal with the Trust property as long as any money is due to the Trustee under this Agreement; nor shall the Trustee be required to advance or pay out any money on account of this Trust or to prosecute or defend any legal proceedings involving this Trust or any property or interest under this Agreement unless it shall be furnished with sufficient funds or be indemnified to its satisfaction.

20. **Entire Agreement.** This Agreement contains the entire understanding between the parties and may be amended, revoked, or terminated only by written agreement signed by the Trustee and all of the Beneficiaries. This Agreement may be signed in counterparts, at different times and places.

21. **Governing Law.** This agreement, and all transactions contemplated hereby, shall be governed by, construed and enforced in accordance with the laws of the State of «State». The parties herein waive trial by jury and agree to submit to the personal jurisdiction and venue of a court of subject matter jurisdiction located in the County of «County» and in the State of «State». In the event that litigation results from or arises out of this Agreement performance thereof, the parties agree to reimburse the prevailing party's reasonable attorney's fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing party may be entitled. In such event, no action shall be entertained by said court or any court of competent jurisdiction if filed more than one year subsequent to the date the cause(s) of action actually accrued regardless of whether damages were otherwise as of said time calculable.

22. **Binding Effect.** The terms and conditions of this Agreement shall inure to the benefit of and be binding upon any successor trustee under It, as well as upon the executors, administrators, heirs, assigns and all other successors in interest of the Beneficiaries.

23. **Trustee's Liability to Beneficiaries.** The Trustee shall be liable to the Beneficiaries for the value of their respective beneficial interests only to the extent of the property held in Trust by him hereunder and the Beneficiaries shall enforce such liability only against the Trust Property and not against the Trustee personally.

24. **Annual Statements.** There shall be no annual meeting of the Beneficiaries, but the Trustee shall prepare an annual report of their receipts and disbursements for the fiscal year preceding, which fiscal year shall coincide with the calendar year, and a copy of the report shall be sent by mail to the Beneficiaries not later than February 28 of each year.



NOTARY

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

SETTLOR

«Settlor»

ACKNOWLEDGMENT

STATE OF OHIO )

ss:

COUNTY OF \_\_\_\_\_)

Before me personally appeared \_\_\_\_\_ to me well known and known to me to be the person described in and who executed the foregoing instrument, and acknowledged to and before me that \_\_\_\_\_ executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal in the State and County aforesaid, this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

NOTARY



**Memorandum of Trust**

**Trust Name:** \_\_\_\_\_

**Settlor:** «Settlor»:

«Settloraddress»

**Trustee:** «Trustee»

«Trusteeaddress»

The Trustee Shall have the authority to: \_\_\_\_\_

With the consent of the Beneficiary, the Trustee shall have the authority to hold the legal title to all of the Trust Property, and shall have the exclusive management and control of the property as if he were the absolute owner thereof, and the Trustee is hereby given full power to do all things and perform all acts which in his judgment are necessary and proper for the protection of the Trust Property and for the interest of the Beneficiaries in the property of the Trust, subject to the restrictions, terms, and conditions herein set forth.

To purchase any real property for the Trust at such times and on such terms as may seem advisable; to assume mortgages upon the property.

To sell at public auction or private sale, to barter, to exchange, or to dispose of otherwise, any part, or the whole of the Trust Property which may, from time to time form part of the Trust estate, subject to such restrictions and for such consideration for cash and for credit, and generally upon terms and conditions as may seem judicious, to secure payment upon any loan or loans of the Trust, by mortgage with or without power of sale, and to include such provisions, terms, and conditions as may seem desirable.

To make, execute, acknowledge, and deliver all deeds, releases, mortgages, leases, contracts, agreements, instruments, and other obligations of whatsoever nature relating to the Trust Property, and generally to have full power to do all things and perform all acts necessary to make the instruments proper and legal.

DATED this «creationday» day of «Creationmonth», «creationyear».

**SIGNED:**

**Settlor** \_\_\_\_\_

**Trustee** \_\_\_\_\_.

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )

ss:

COUNTY OF \_\_\_\_\_)

BEFORE ME, a NOTARY PUBLIC in and for said COUNTY and STATE, personally appeared the above-named \_\_\_\_\_ **and** \_\_\_\_\_, known to me to be the persons whose name are subscribed to the within instrument and who acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at \_\_\_\_\_, STATE of \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**NOTARY PUBLIC**

### TRUSTEE'S LETTER OF RESIGNATION

I, \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_ hereby resign as Trustee of the <TrustName> Land Trust, ("Trust"), owning the real property described on Addendum A attached hereto and incorporated herein. I have notified the beneficiaries of the Trust of this resignation and have received the permission of such beneficiaries to resign.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Trustee

#### ACKNOWLEDGMENT

STATE OF \_\_\_\_\_)

ss:

COUNTY OF \_\_\_\_\_)

BEFORE ME, a NOTARY PUBLIC in and for said COUNTY and STATE, personally appeared the above-named \_\_\_\_\_, known to me to be the person whose name is subscribed to the within instrument and who acknowledged to me that \_\_\_\_\_ executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at \_\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_.

NOTARY PUBLIC

## Setting Up the Closing

Unless your buyer objects, set it up with the same title agency that completed your title search. **Make sure that, whoever closes the transaction, you get a copy of the closing statement emailed to you prior to anyone else receiving it.** Take the time to learn how to read a closing statement (your closing agent will be happy to teach you) and then **READ THEM ALL PRIOR TO THE CLOSING.** In this way, you can assure that the statement reflects the **CORRECT** information, names, dates, costs and so on. If your closing agent is like most, there will frequently be a problem on the statement—most often proration mistakes, expenses on the wrong party's side, and, worst of all, **YOUR** name on the deed instead of your buyer's. The time you spend going over these statements with a fine-toothed comb will pay you back in smooth, flawless closings.

## At the Closing

You've reached closing day, when your seller will sell his don't-wanter, your buyer will go home with a great deal, and your profit will be assured. There are two ways to handle the actual closing: the contract assignment, and the double closing. Since these methods have drastically different effects, we'll spend a bit of time on each.

## What to Watch for at the Closing

Since you are the only person at the closing who really understands everything that's happening, it's up to you to keep your eye peeled for things that can go wrong at any closing, like:

- **The closing statement doesn't reflect the terms of the contract.** Don't expect your title agent to read your purchase contract—tell him the important terms and check the results before the property closes. The most common mistake we see on closing statements occurs when the title agent puts the closing costs on the “traditional” side—even though we agreed that the seller would pay for some of the “buyer's” costs or vice versa. Often, we've found that the closing statement has not reflected the purchase of title insurance, even though the contract specifically stated that the seller would buy it for the buyer. You get the picture.
- **The closing statement says something it shouldn't.** Prior to splitting the assignment documents into the assignment and purchase agreement for assignment, our title company always knew how much we'd assigned our contract for. In one memorable occasion, the title company accidentally put the **TOTAL** price, not the **PURCHASE** price, on the top line of the contract. Imagine our seller's surprise when he looked at the closing statement and found that the purchase price was almost \$10,000 more than he remembered. It was, of course, **OUR** sale price to the **BUYER**. Luckily, he accepted the title agent's story that it was just a mistake. Make sure that you check that the right parties are getting the right information
- **Simple mathematical errors.** Get into the habit of double checking the title agent's math on both sides of the closing statement. Errors are hard to clear up if they're discovered weeks later, after all the money has changed hands. And guess who both sides are going to be looking to fix things?

## When Do I Get Paid?

Obviously, that depends:

- In a double closing of any sort, your profit is in the resale. You may require a non-refundable earnest money deposit from your buyer (well, non-refundable unless you can't deliver clear title), but the bulk of your profit will be paid to you by the title company at the second closing, where you sell the property.
- If you assign your contract, you should be paid at the time at which you sell the thing you have for sale—the rights in the contract. In other words, you should NOT be paid “at closing” or “after closing”, because you aren't getting paid to sell a property, you're getting paid to assign your right to buy a property

You've probably already thought of, or even experienced, the challenges of taking a hard line approach to the latter policy.

The basic problem is that, while what you're selling is the right to purchase a property at a certain price and terms, what the buyer wants to BUY is a closed deal with clear title.

As a result, you and your assignees are in conflicting, self-interested positions—you don't want to “give away” the valuable thing you have, on the promise of a later payment, and he doesn't necessarily want to give you \$10,000 on the promise that the seller can and will sell the deal.

There are 2 things you need to know about the statement above:

1. It is NOT true that every buyer will have an objection to giving you your assignment fee. In fact, probably 80% of the new buyers we work with make no objection at all to our requirement that we get all of our assignment fee before they get the assignment. The ones who DO object tend to be buyers who've been “trained” by other investors that assignment fees are paid at closing, or those who've never purchased from a wholesaler at all, and aren't used to the idea of money being due before a closing happens.

2. No buyer SHOULD give you any money before you can prove that the title is clear and the seller CAN sell under the agreed terms—in other words, until the results of a title search have come back.

So, despite what you assume, most buyers won't even object.

Those who do may be objecting for one of the reasons above, or *they may be objecting because they don't have the money, or because they're not really committed to buying the property*, and don't want to tell you so. The problem is, you don't know which is which

There's an easy way to get what you want, get the assignee what he wants, and make both of you feel safe: have the assignee pay the money into escrow with a 3<sup>rd</sup> party (usually a title agent or attorney), with detailed escrow instructions that don't allow the assignee to “change his mind” and get his money back.

It works like this:

1. You select an escrow agent who will agree to hold the assignment fee. It can be your attorney, title company, or broker, or his; it doesn't matter if the escrow agreement is strong enough
2. You and the assignee agree upon and sign a set of instructions to the escrow agent that basically says:
  - a. Whether or not the assignee actually buys the property, the escrow agent is to give you the assignment fee on the date of scheduled closing or actual closing, whichever comes first UNLESS
  - b. The seller cannot or will not sell the property, in which case the money is given back to the assignee

This way, the nervous buyer knows his money is "safe" in the sense that a 3<sup>rd</sup> party holds it in an escrow account and will only release it per the agreement.

A buyer who won't put money up front, even when it's held by a 3<sup>rd</sup> party of his choice, and even when the agreement is clear that if he can't get title, the money comes back to him, probably doesn't have the money, or doesn't intend to close.

### Are There Any Exceptions?

If only 'twere possible to do every deal exactly the same way. Unfortunately, some of our very good buyers will sometimes come to us to buy a deal without all the funds they need to pay the entire assignment fee up front.

You make exceptions to your "pay to get the assignment" rule at your own risk: when you do, you'll get burned from time to time. I've made exceptions for my buyers in 4 cases:

1. **He has some of the assignment fee now, and will have the rest before closing.** In this case, I use the purchase agreement for assignment to document what they've paid, that it's not refundable, and that they don't get the actual assignment until the rest is paid.
2. **He is a proven buyer, and are borrowing all of the purchase price, including the assignment fee, from a private lender, and I've talked to the private lender.** If I've actually spoken to their funding source, and am convinced that the private lender has the money, is committed to the transaction, and won't chicken out, I'll let the assignee make a partial (non-refundable) payment to get the assignment, and take the rest after the closing, when the deal has "funded"
3. **He is a proven buyer, but is buying through his self-directed IRA.** An assignee who plans to buy the property in his IRA can't pay the assignment fee personally; it must come from his IRA. That takes at least a week to fund. If they're PROVEN buyers, I'll assign the contract for the purpose of the buyer getting the direction of investment submitted, and let the IRA fund the assignment fee and purchase price separately
4. **He's a proven buyer, and the closing will happen within 48 hours of the time he agrees to buy.** Yes, I have some buyers who are sooooo trustworthy (as proven through multiple

purchases) that I never even see them until the closing. They go look at the properties by themselves (not if the property is listed with an agent, of course), call me from the porch, tell me he wants it, and wants to close ASAP. In this case, it's often more inconvenient to meet him before the closing to get paid than it is to just assign the contract and get paid at the door.

Sample Escrow Agreement for Holding Assignment Fee

**Escrow Instructions**

Date:

Escrow Agent

Address

Phone

Parties:

Assignor is

Address

Assignee is

Address

Subject Property: Residential Property located at

Legally described as: See attached legal description.

Accepted Documents attached:

- Copy of executed Purchase Contract
- Copy of Assignment of Purchase Contract
- Copy of Purchase Contract for Assignment

Funds Deposited \$ \_\_\_\_\_

Instructions: The above Assignor and Assignee, having agreed upon your selection as their mutual escrow agent, hereby instruct you to take the following actions in protecting their respective interests in the attached documents or other as their interests may appear by performing the following acts:

- A. In the event that Assignee shall complete the purchase of Subject Property, the funds deposited shall be released immediately to the Assignor.
- B. In the event that the Seller of Subject Property shall refuse to complete the sale in accordance with the Purchase Contract, the funds deposited shall be released to Assignee.
- C. In the event that Assignee shall fail to complete the purchase for any reason other than the unwillingness of the Seller to complete the transaction, you shall upon the expiration of the contract notify the Assignee that they have 7 days to show proof that either the Purchase Contract has been extended by agreement, in which case these instructions shall be extended concurrent with the extension of that agreement, or that Assignee was able and willing to complete the purchase but Seller was unwilling. Should Assignee fail, within 7 days, to show such proof the funds deposited shall be released to Assignor. If such proof is proffered you shall notify Assignor that they have 7 days to dispute such proof, and should they fail to do so the deposited funds shall be released to Assignee. If Assignor does dispute the proof offered by Assignee



the deposited funds may in your sole discretion be paid into court pending a resolution of the dispute

- D. In the event that you are requested to perform any act outside of the scope of the above instructions, you are instructed to inform both Assignor and Assignee and allow either party 15 days within which to answer prior to your taking any further action. In the event any objection to such action is received within the time set forth, you are to refrain from any further action until both Assignor and Assignee are in full agreement as evidenced by a letter of agreement signed by both parties.
- E. Both the Assignor and Assignee agree to absolve you from any blame and agree to hold you harmless for any action on your part taken or arising from these instructions.
- F. These Escrow Instructions shall survive the death(s) of the Assignor or the death of the Assignee.

Assignor(s) \_\_\_\_\_

Assignee(s) \_\_\_\_\_

Agent \_\_\_\_\_