



GRI 405

***Mastering Forms
and Contracts***

Student Guide





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Course Introduction

This one-day course will cover the ins and outs of all the standard forms (in their current versions) most often needed and used in residential transactions, as well as the most frequent forms-related pitfalls that REALTORS® encounter in using them. The goal here is mastery of – and comfort with – the paperwork, as well as sufficient knowledge to explain various forms to customers and clients.

GRI 405 Learning Objectives

Upon completion of this course, we want every participant to leave much better equipped to:

1. Learn how to use the latest version of the Purchase and Sale Agreement, all disclosures, and relevant forms including counteroffers, and agency documents and to recognize the importance and benefits of each form. Identify and handle Special Stipulations correctly
2. Understand the paragraphs in each form where most complaints/lawsuits arise
3. Demonstrate the value and navigation of the *inFORM* tool
4. Identify elements of terms that create a contract

Course Content

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Checking What We Already Know

Choose the best answer to the following questions.

1. When should you review and explain the Purchase and Sale Agreement to buyers?
 - a. After the offer is submitted
 - b. Before they make an offer
 - c. When the offer is accepted

2. Which of the following statements is TRUE?
 - a. It's most important to be familiar with the Purchase and Sale Agreement (F9) form because you can address every issue by altering the boilerplate language.
 - b. Most forms are rarely used.
 - c. It's important to be familiar with the function of all forms so you understand how they work together to address different issues.

3. Which of the following is NOT an example of ambiguous language?
 - a. Seller to provide Buyer with \$500 credit
 - b. Seller will provide Buyer with \$500 credit at closing towards Buyer's closing costs
 - c. The portion of closing costs to be paid by Seller
 - d. Buyer to take possession as determined prior to closing

4. Which of the following is the most acceptable method of delivering an offer?
 - a. In person
 - b. By fax
 - c. By email
 - d. All the above equally acceptable, with proper documentation –

5. Which of the following inspections is NOT legally permissible and not permitted under the Inspection Section?
 - a. Performed by a licensed home inspector
 - b. Performed by a licensed contractor
 - c. Performed by Buyer

6. One primary function of the Purchase and Sale Agreement is to
 - a. Reduce risk/liability for REALTORS®/brokers
 - b. Confuse REALTORS® and brokers
 - c. Address every possible situation that might arise during a transaction

7. The Counteroffer states, “all terms and conditions proposed in previous counter offers, if any, are not included in this counteroffer unless restated herein.”
 - d. True
 - e. False

8. Which of the following statements are TRUE?
 - a. The Buyer always gets to select the Title Company
 - b. The Seller always gets to select the Title Company
 - c. In situations where the sale is being funded by a federally insured loan, the Buyer gets to choose the Title Company if the Buyer is paying for the title insurance policy.
 - d. In situations where the seller is paying closing costs for the Buyer including title insurance, the Seller gets to choose the title company.

Part 1: Contract Construction

Talking Points: Contract Construction

1. The biggest lesson you can learn related to filling out contracts is one you learned a long time ago – color inside the lines! Your goal is to fill in the existing picture, NOT draw a new one! You should complete the form in its entirety and do not leave any blanks. INSTRUCTOR NOTE: TN Realtors® Hotline has advised us numerous times over the years not to leave any blank, blank. They have also advised us not to use phrases such as “to be determined”, “TDB”, “negotiable”, “actual costs”, etc. If you have nothing to go into a blank, draw a line through it or place “N/A” in the blank.
2. The preprinted portions of the Purchase and Sale Agreement create obligations for the parties. To correctly explain them to clients and customers, you must understand them yourself! ALL preprinted items should be thoroughly explained to buyers and sellers, especially when the item requires action on their part. INSTRUCTOR NOTE: See the Inform Tool under the Members area at www.net.com.
3. Do NOT strike through ANY portion of preprinted language. You should address any changes in the Special Stipulations section or another appropriate form.
4. Some fixtures are preprinted as included in the sale. If your seller does not wish to include them, you must note this specifically in writing – never assume anything. Please note that items included in the Listing Agreement or MLS information are NOT part of the binding agreement between the parties.
5. Pay special attention to notices required in the preprinted language and be sure to use the appropriate Notice form, if applicable.
6. When asking a Seller to contribute to Buyer Expenses (closing costs) write this in Paragraph 2.D.3., not in Special Stipulations.

7. If you have a same sex couple who are both buying the property, and want survivorship rights, I have used the following language: Steve Jones and Jim Smith, Married to each other, as joint tenants with rights of survivorship.

8. How purchasers take title determine inheritance rights. A Realtor® should always refer their client to an attorney to discuss title vesting options

Skill Practice: Completing the Offer

After reviewing the Purchase and Sale Agreement, students will divide into groups. Using the following set of circumstances, each group will fill out the Purchase and Sale Agreement AND reference any other additional forms if needed. A representative from each group will be asked to present a portion of the offer as they would assist the buyer in filling it out.

After working with Steve and Dottie Anderson for some time showing them property, they have decided to purchase Col. David Nelson's 20 year old home at 428 Main, which is a three bedroom, two bath brick home in Anytown, USA. They are willing to offer \$145,000 for the home, assuming that they successfully close on the sale of their home at 428 E. Main in Your town, USA, upon which they have a contract scheduled to close in two weeks. They would like to purchase the home using the VA entitlement that was earned by Mrs. Anderson while serving in the Navy. They would like to put down as little as possible and prefer to have the current owner pay for all their costs from the lender.

They need a response on this offer by tomorrow, as they like the house at 528 E. Main equally as well and want to make sure that they are able to secure one of these two homes. Although, they are particularly interested in the swing set that Col. Nelson has in his back yard, as well as the gas grill.

The Andersons are unfamiliar with the typical arrangements that agents make for clients for appraisals, inspections, etc. and are leaving those things up to your judgment. However, they very much want to have possession at time of closing and would like to close in thirty days.

The name of your company is ABC Realty. You suggest – and your client agrees – to offer 1% of the offered price as earnest money, with your firm holding it in an escrow account.

Additional Notes for Skill Practice

Part 2: Timelines, Dates, Etc.

Talking Points: The What and When

1. Preprinted deadlines are just as important as those you write in! If it's in the contract, it must be done by the date specified. Failing to meet deadlines may constitute a breach. An agent that allows a deadline to pass unnoticed may have a complaint filed against them with TREC and/or the local board as well as possibly face a lawsuit.

It is imperative to discuss the pre-printed deadlines in the Purchase and Sale Agreement with buyer clients BEFORE submitting an offer. If for any reason, they will be unable to meet a required pre-printed deadline, this should be noted clearly BEFORE an offer is made or a counteroffer is submitted. For seller clients, you must discuss pre-printed deadlines and filled-in dates. If for any reason, they will be unable to meet a required date or deadline, this should be noted clearly in a counteroffer. Failure to meet a contractual deadline may result in a breach of contract, forfeiture of earnest money, unenforceable performance, and, in some cases, liability for civil damages. When a preprinted deadline needs to be changed, you should first check to see if the issue is addressed by another form. If not, the EXACT verbiage should be copied with only the number of days for performance changed. By altering the verbiage within the attorney-approved Purchase and Sale Agreement, you could end up making the party's performance unenforceable.

2. The Purchase and Sale Agreement states: “the term day(s) used throughout this Agreement shall be deemed to be a calendar day(s) ending at 11:59 p.m. local time unless otherwise specified in this Agreement. Local time shall be determined by the location of the Property. **In the event a performance deadline**, other than the Closing Date, Day of Possession, and Offer Expiration, Completion of Repairs date occurs on a Saturday, Sunday, or legal holiday, the performance deadline shall be extended to the next following business day. In calculating any time period under this Agreement, the commencement day shall be the day following the initial date (e.g. the binding agreement date).”

Example: The Buyer must make an application for the loan, pay for the credit report, and immediately notify the Seller or Seller’s representative of having applied for the loan, that the Buyer has paid for the credit report and provide Lender’s name and contact information within three (3) days after the binding agreement date.

If the binding agreement date is Thursday, then Friday is Day 1, Saturday is Day 2, Sunday is Day 3 meaning the performance deadline is Monday. This means the Buyer needs to have made the loan application paid for the credit report and notified the seller of the Lender’s name and contact information before 11:59 p.m. on Monday.

- 3.** If it's in the contract, it must be done by the date specified. Failing to meet deadlines may constitute a breach – “we don't do it like that in my area,” “no one pays attention to that,” and “no one else does it” are all **WRONG** answers, none of which will hold up in court or make your breaching client resent you any less. These can also result in a lawsuit against an agent or a complaint with the local board and/or TREC.

4. The Notification form serves as a notification form for all notices required in the Purchase and Sale Agreement. This form assists licensees in creating a paper trail of their compliance.
5. You must be aware of your client's options in the case of the other party's failure to meet a specific deadline, perform a required action, and/or deliver a required notice.
 - a) Loan Obligations
 - b) Appraisal Issues
 - c) Finance Issues
 - d) Earnest Money Issues
 - e) Closing Issues
 - f) Title Issues
 - g) Inspection Issues
 - h) Risk of Loss
 - i) Survey Issues
 - j) Flood Issues
 - k) Restrictions
 - l) Others...
6. The Purchase and Sale Agreement Timeline Checklist offers to assist licensees in meeting contractual deadlines. Filling this out as soon as an offer is accepted is a great way to stay on top of deadline dates and timelines.

Exercise: What Happens Next

For the following situations, explain what might happen next, including the parties' options.

1. The parties execute the Purchase and Sale Agreement. Fifteen (15) days later, the seller's agent still has not received notification that the buyer has applied for the loan. The Lender's contact information or that the buyer secured evidence of hazard insurance which will be effective at closing, notified Lender of an Intent to Proceed and has available funds to close per the signed Loan Estimate and requested that appraisal be ordered and affirms that the appraisal fee has been paid.
2. The buyer has an inspection completed that reveals some problems with the property. The buyer's agent mentions to the listing agent that a repair proposal is coming. Five days after the expiration of the inspection period, the listing agent still has not received the repair proposal.
3. The Purchase and Sale Agreement states that the buyer has paid or will pay \$5000 earnest money/trust money to the listing agent (Holder) within 2 days after the Binding Agreement Date. At the end of the third day, the listing agent (Holder) has not received the check.

Part 3: Inspections & Repairs

Talking Points: Inspections and Repairs

1. “Inspections” includes ALL inspections and reports related to the property. The termite inspection is included and if the buyer waives the inspections, they have waived the termite inspection. All inspections are performed at the expense of the buyer unless otherwise specified in the Special Stipulations Paragraph 19.
2. The Resolution Period allows the Buyer and Seller to mutually agree upon a certain number of days to resolve repairs and replacements. There can be an unlimited amount of Repair/Replacement Proposals between the Buyer and the Seller. If they do not meet a mutual written resolution in the agreed-upon time frame (or an extension of the timeframe using the Amendment to the Purchase and Sale Agreement) the Purchase and Sale Agreement terminates. The Buyer and Seller agree to negotiate the repairs in “good faith”. Once the Buyer submits a Repair/Replacement Proposal the Seller must respond. Failure to respond could give the Buyer a claim for breach of contract and failure to act in good faith. The Seller does not have to agree to fix anything, but the Seller must respond. Once the Seller submits a Repair/Replacement Proposal the Buyer must respond. Failure to respond could give the Seller a claim for breach of contract and failure to act in good faith.
3. Home Inspectors are licensed and regulated by a regulatory board of the Tennessee Department of Commerce & Insurance. Tennessee Code Annotated §62-6-301(5) defines a home inspector as “any person who is licensed under this part as a home inspector and who engages in the business of performing home inspections and writing home inspection reports.” Licensed General Contractors should not conduct home inspections as they would be acting in the capacity of a “Contractor” when conducting a home inspection as defined by Tennessee state law and may be in violation of Tennessee Code Annotated §62-6-301(5). The contract between the Buyer and the Seller states, “The parties hereto agree that in the event the Buyer shall elect to contract with a third-party inspector to obtain a “Home Inspection” as defined by Tennessee law, said inspection shall be conducted by a licensed

home inspector. Although buyers may inspect the property themselves, this may not carry the same weight in the eyes of the seller as a report from a licensed inspector.

4. When purchasing properties are offered “as is,” buyers are still entitled to make all desired inspections – they can and should do so! Buyers may still attempt to negotiate any needed repairs. Purchasing a property “as is” does not limit a buyer’s options under the Purchase and Sale Agreement, although, in practice, an “as is” seller may be less likely to complete or negotiate needed repairs.
5. Sellers offering a property “as is” are still required to fully disclose any property defects of which they have knowledge via the Tennessee Residential Property Condition Disclosure, unless exempt. (Discussed in Lesson 3) It is especially important that sellers answer honestly when a buyer inquires about a specific issue, i.e., plumbing or wiring. In practice, sellers may offer a property “as is” because they don’t wish to make any repairs or because they are unaware of what problems may exist. *Offering* a property “as is” does not obligate buyers to *accept* the property “as is” until they’ve completed all desired evaluations and inspections.
6. It is important to familiarize yourself with lender practices and requirements in your area related to appraisals and inspections. Know what lenders require to be fulfilled and that they are aware of the Buyer’s loan obligations.
7. In Tennessee, a wood-destroying insect infestation inspection report is a warranty for 90 days of the accuracy of any representations made in the report. After 90 days, a new report must be obtained to reduce the liability for the parties involved. Be advised that Lenders may require a wood-destroying insect infestation inspection report that is no older than 30 days. With a VA Buyer, a wood-destroying insect infestation inspection is a “non-allowable” expense for a Buyer. Therefore, with a veteran buyer, the Seller will pay the cost of the wood-destroying insect infestation inspection report. The Buyer is allowed to choose the wood destroying insect infestation inspector in accordance with the terms of the Purchase and Sale Agreement,

Workshop: Inspections and Repairs

Students will workshop the following situations, using the Purchase and Sale Agreement and other related forms, if applicable.

Scenario 1: You are the listing agent for the Chamberlains. The next-door neighbor of your listing at 123 Riverside Drive calls you and says, “There are about 15 people with their cars at the Chamberlains and I know they are out of town this week. Do you know what is going on?” The Buyer’s agent called a few days ago and made an appointment for the home inspection to take place this morning, but there should not be that many people involved. You have a few minutes on your way to go show a house so you stop by 123 Riverside Drive. The buyer’s agent, buyers, the buyer’s parents, and an uncle who is a builder - along with his two sons are in the house performing the home inspection.

How would you address this situation?

Scenario 2: You live in Chattanooga, and you represent the Ledford’s in the sale of her parent’s home. The Ledford’s have never lived in the house and are exempt from completing the Residential Property Condition Disclosure. The house goes under contract. The buyer’s agent calls to schedule the home inspection and it is scheduled for Wednesday at 10:00am. The inspection is completed and you drive by just to make sure all the doors are locked and lights are off – since the house is vacant. When you enter the house you notice the gas fireplace logs sitting in the middle of the living room. You know they were not there before, so you check the rest of the house and you notice the attic stairs are hanging away from the ceiling when you go upstairs. You take pictures of each of these items and return to your office, calling you broker and asking to see her when you get back to the office. Once at the office you show your broker the pictures and the two of you place a call to the buyer’s agent. The buyer’s agent acts strange on the phone and asks if she can talk to her broker and call you back. When she calls you back you are

shocked to hear that this Tennessee agent allowed a non-licensed Georgia home inspector into the house and the inspector admitted that he removed the gas logs and did not know how to put them back in place and that the attic stairs broke when he went into the attic.

Does the Purchase and Sale Agreement address an issue like this? What are the options for the Seller and the Buyer?

Scenario 3: You are under contract with your buyers, Sam and Linda on the house of their dreams at 7416 Crawford Drive. They have 5 days to get the home inspection completed. You have previously given them a RF711 Vendor List with ten different home inspector names and are just waiting to hear from them about the home inspection. Time is running out so you place a call to them, but have to leave a message. On day 5, the last day for the initial home inspection to be completed, Linda calls and says they know they are down to the wire, but the home inspection was done today and they will email you the items they want to ask the seller to repair or replace. You wait all day and evening but do not receive anything from them until 9:54am on day 6.

Does the Purchase and Sale Agreement address what happens if the inspection time is missed? What are the options of the Buyer? What are the options of the Seller? Is there anything that could have happened to alleviate this issue?

Scenario 4: John and Jane Thomas have completed their initial inspection on the house they are under contract on which is located at 1246 Cooper Lane. Jane emails you (their agent) a list of items they would like to ask the seller to repair. In the email you notice they are asking for the Seller to install six GFCI outlets. The house they are buying was built in 1979 and it was not in the building code at that time to have GFCI outlets near places where water is used. You read the contract to the Thomas' and explained each line to them, but because the home inspector noted the installation related to safety, they would like to ask for them to be installed. Along with the GFCI outlet installation, they would like the bathroom to be painted around the vanity where it looks like water has removed the paint, the gutters cleaned out, a vapor barrier installed in the crawl space, the HVAC serviced and there was a water leak under the downstairs bathroom sink.

What forms do you use to make the repair request and how would you write these items up for the Seller to consider?

Scenario 5: Buyers Patricia and Sam Shepherd have completed their home inspection on 7897 Cove Road and wish to terminate the Agreement with the Seller due to a roof leak.

What is the process to terminate the Agreement? What form is used? Who gets the earnest/trust money?

Scenario 6: Agent Angie represents buyer Bob in purchasing 123 Main Street in Dyersburg, TN. The contract sales price is \$200,000, and the contract is contingent upon Bob's ability to obtain financing, and is subject to purchaser's approval of the home inspection report, however, the box making the contract contingent upon appraisal is not checked. The buyer has asked the seller to pay \$3,000 of his closing costs, and/or prepaid items. Bob is preapproved through Bank of Northwest Tennessee for more than the sales price, and his qualification is not an issue. After the home inspection is completed, Bob, through his agent Angie, negotiates repairs to the property with the seller Diane, and her agent, Linda. All parties agree on the repairs during the resolution period, and the seller agrees to make repairs in the approximate amount of \$2,500.00. All is moving forward towards a closing, until the Bank of Northwest Tennessee completes the appraisal. The appraised value of the home comes back at \$198,000, AND the appraisal is requiring replacement of the heating/AC unit, even though the purchaser did not request any repairs during the repair negotiation period. When the buyer's realtor Angie conveys this information to the seller's REALTOR® Linda, the listing agent is livid. She demands the contact information for the appraiser, so that she can "talk some sense into him/her." In addition, Linda states that the seller would not be replacing the heating and AC unit, since it was never requested in the repair amendment, and also mentions that since the appraisal contingency box was not checked on the contract, the seller expected the buyer to close the deal, as written, and that the buyer would have to make up the difference between the loan amount and the sales price.

What are the obligations of each realtor in the transaction? Has anyone done anything wrong at this point? How do these matters usually get resolved? What are the other potential issues in this scenario???

Additional Notes

Part 4: Disclosures & Disclaimers

Talking Points: Disclosures and Disclaimers

1. In accordance with Tennessee Code Annotated §66-5-201 Sellers are required to fill out the Tennessee Residential Property Condition Disclosure form (RF201) (unless they are exempt) so it can be presented to buyers before they submit an offer. The law states it must be submitted “prior to the acceptance of a real estate purchase contract” Tenn. Code Ann. §66-5-203. The disclosure must include any defects known to the owner (see Tenn. Code Ann. §66-5-202). It is required for the seller to disclose any adverse facts about the property – better to have it all out in the open beforehand and reduce their post closing liability. (See §66-5-208)
2. In practice, if the question is “Should I disclose this?” the answer is almost always “YES.”
3. Buyers should review and sign the Disclosure form before making an offer – otherwise they cannot make an informed decision! In accordance with §66-5-201 and Paragraph 6 of the Purchase and Sale Agreement (RF401) the Seller has a legal obligation to provide the Disclosure prior to the acceptance of a contract.
4. The Tennessee Residential Property Condition Disclosure Disclaimer Statement is used ONLY after a buyer has waived their statutory right to the Tennessee Residential Property Condition Disclosure. This is true regardless of whether the property is being offered “as-is.” Sellers offering a property “as is” are still legally required to complete the Tennessee Residential Property Condition Disclosure form in the event that the Buyers will not accept the Disclaimer form. The Disclaimer form should NOT be used unless the buyers have already agreed to waive their statutory right to the disclosure.
5. The Tennessee Residential Property Condition Exemption Notification form is used by licensees to create a “paper trail” of compliance ONLY when the property and/or transaction is exempt (under Tennessee law) from the required disclosures.

6. Please keep in mind that the SELLER should be completing these forms, not the agent. Under no circumstances should an agent complete a Tennessee Residential Property Condition Disclosure for any Seller. If the Seller has questions about what they should disclose, they should speak with their own attorney. This information is legal advice. To tell a Seller what does not have to be disclosed can bring liability to an agent if the Seller relies upon that advice and is then sued by a Buyer.

7. Sellers are required to disclose any “changed circumstances” that result from any act, occurrence or information received after the initial required disclosure. See Tennessee Code Annotated 66-5-205.

8. Sellers are not required to disclose that the “dwelling” was occupied by anyone with HIV, if the dwelling was the site of a homicide, felony or suicide or an act or occurrence which had no effect on the physical structure, its physical environment, or the improvements.

Workshop: Proper Disclosures

For the following items, identify which form(s) should be used to make the disclosure.

Issue	Form
1. Lead-based paint was found and removed from the basement of the seller's home.	
2. The seller knows the roof has a minor leak.	
3. The buyer has agreed to waive their right to the seller's property disclosure.	
4. The seller added a room to the rear of the house without a permit.	
5. The home has four bedrooms but the seller admits the septic permit only allows for three.	
6. During periods of heavy rain, the backyard tends to have a great deal of standing water.	
7. The home was previously treated for radon.	
8. The seller's home was previously treated twice for termite damage.	
9. A neighbor's fence encroaches two feet onto the left side of the seller's property but they have refused to move it.	
10. During the contract period, the seller discovers a significant amount of water damage in the rear wall of an upstairs closet.	
11. The developer of a vacant lot of land now listed for sale has paid a \$400 impact fee to the city with the installation of utilities.	

<p>12. The seller has never occupied the property.</p>	
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Part 5: Special Stipulations

Talking Points: Special Stipulations

1. The preprinted portions of the Purchase and Sale Agreement (RF401) have been approved by the forms committee and several attorneys. Do NOT try to reinvent the wheel!
2. Handwritten provisions prevail! When you write something in the special stipulations section, it should be consistent with the rest of the Purchase and Sale Agreement (RF401). Whenever possible, use the same verbiage included in the preprinted portion, referencing the specific line number(s), only changing what is absolutely necessary!
3. Before writing something into the special stipulations section, you should FIRST check to make sure the issue is not addressed by another form or found elsewhere in the Purchase and Sale Agreement (RF401).
4. NEVER include phrases such as TBD, actual costs, negotiable, etc. – these phrases are your enemies and should be avoided at all costs! Always be as specific as possible, especially when it comes to dates, amounts and actions required of either party. If you do not, then the contract may not be enforceable.
5. If you're using the special stipulations section to write in a contingency, there is likely another more appropriate form. The Special Stipulations Library (RF707) exists to assist you in addressing special stipulations. The special stipulations section is appropriately used to make simple changes to a preprinted item, such as a required deadline, if the line number is referenced and exact verbiage reprinted, with only the number of days changed.
6. The special stipulations section should NEVER be used to write a new contract. Repeat after me: I am NOT an attorney, I am NOT an attorney, I am NOT an attorney...unless, of course, you are an attorney.

Exercise: Stipulation Identification

Students will identify whether the item might appropriately be addressed in the special stipulations section.

1. The buyer submits an offer. The seller wants to change the deadline for submitting the termite letter.
2. The buyer is obtaining a VA loan.
3. The buyer wants to change the number of days required to submit their loan application.
4. The buyer's offer is contingent on the sale of their existing home.
5. The buyer wants the seller to make sure the house is swept clean and free of debris.
6. The buyer wants the seller to replace the damaged front door.
7. The property includes a large parcel of land, and the buyer wants to make the offer contingent on a survey.
8. The buyer wants to ask the seller to purchase an owner's title policy and pay closing costs. NO – See Purchase and Sale Agreement Paragraph 2.D.3.
Example 1: Cost of title search, mortgagee's policy, and owner's policy shall be paid as follows: by the Seller. Example 2: Not all the above items are applicable to every transaction and may be modified as follows: Seller shall pay buyer expenses not to exceed \$4500.00.

Part 6: A Brief Discussion About Agency

Agency Disclosure/Confirmation Forms

When do you make agency disclosures and which form(s) do you use?

Is there a difference between Agency Disclosure and Confirmation of Agency Status?

When writing an offer, whom do you represent?

What if you are the listing agent and an unrepresented buyer wants to make an offer?

Seller's Agent vs. Facilitator

Commission:

Liability:

Scope of Work

Appendix A: Job Aid –

Major Timelines and Deadlines for Purchase and Sale Agreement

Day(s) are CALENDAR days(s) ending at 11:59 p.m. local time

Local time is determined by the location of the property

The **Binding Agreement Date (BAD)** is the date and time at which both Buyer and Seller have reached an agreement on the terms of the sale of real property. This date and time shall be that point at which the last offeror, or licensee of the offeror, received notice of the offeree's acceptance.

1 day after the BAD, begin counting the days. In calculating any time period under this Agreement, the commencement day shall be the day following the initial date (e.g. the Binding Agreement Date).

In the event of a **performance deadline** other than the Closing Date, Date of Possession, Offer Expiration Date, and Completion of Repairs occurs on a Saturday, Sunday, or legal holiday, the performance deadline shall be extended to the next business day.

Inspection

The Buyer is responsible for obtaining the “**Wood Destroying Insect Infestation Report**” and shall cause it to be delivered to the other party **simultaneously with the delivery of the Buyer Inspection Contingency Removal Notification or equivalent is written notice.**

Buyer's Inspection Resolution Period is an agreed upon number of days after the Binding Agreement Date.

At the time of closing, if title examination, mortgage loan inspection, boundary line survey, or other information discloses material defects the Buyer may:

1. Accept the property with the defects
2. Require seller to **remedy such defects prior to closing** *See Purchase and Sale Agreement and Notification Form*

Financial Obligation

Within 5 days after the Binding Agreement Date (BAD) the buyer shall:

- Make application for the loan
- Pay fees necessary to complete full loan processing and approval, as soon as permissible as established by governmental regulations
- Instruct lender to order credit report and appraisal

See Purchase and Sale Agreement and Notification Form

Trust Money must be deposited by the Buyer on an agreed number of days after BAD. *See Purchase and Sale Agreement and Notification Form*

Appendix B: Job Aid – Inspections and Repairs

Buyers have a right to inspect the property they are buying and are responsible for the costs of these inspections. Home Inspectors are now required to be licensed in the state of Tennessee. However, the buyer still has the right to perform inspections on their own behalf.

State law defines a home inspection as "a visual analysis for the purpose of providing a professional opinion of the condition of a residential building, ancillary building, any reasonably accessible installed components, and the operation of the building systems, including any controls normally operated by the owner of the building, for the following components:

- (i) Heating systems; (ii) Cooling systems; (iii) Electrical systems; (iv) Plumbing systems; (v) Structural components; (vi) Foundations; (vii) Roof covering; (viii) Exterior and Interior components; and (ix) Any other site aspects that affect the residential dwelling." *Tenn. Code Ann. §62-6-302(3a)*

Therefore, if the buyer is receiving an inspection that covers ALL of the above-mentioned components, ***then it must be performed by a licensed home inspector***. However, a buyer is permitted to get an inspection of individual systems without using a licensed home inspector. In this case, the person performing the limited inspection must still meet state requirements for licensure and/or experience (**e.g.** a licensed electrician to inspect the electrical, a licensed plumber to inspect the plumbing, an experienced roofer to inspect the roof, etc.).

Termite Inspection and Termite Report:

Who will pay for the wood inspection report?

The buyer.

Important Points:

- The wood infestation report is an "inspection". Therefore, all inspections are placed under one time frame to avoid conflicts and/or confusion.

- The inspection report defines many different wood destroying insects. Any active infestation will be shown on the report and must be treated at the seller's expense. There is NO treatment cap. IF the seller wants a CAP for the treatment costs OR does not want to pay for treatment, they should address it in a COUNTEROFFER.
- Per Tennessee law, the wood infestation report is good for 90 days. The Lender/Mortgage Co. may have different time/age requirements. Most commonly, people think that these reports are only good for 30 days. Again, consult your Lender - you may find that they'll adjust this time. You could also address the termite inspection time frame separately outside of the INSPECTION paragraph by addressing it in Special Stipulations. This is not recommended but can be done.
- A Wood Infestation Report is not required by law but may be required by Lender / Buyer / Contract.
- The seller is to treat at their expense. *Treatment is not damage.*
- Pay close attention to timeline.

Appendix C: Forms Resource Guide

In 2015, the Forms Committees looked at the various forms that are offered to its members and determined that they could be made a bit more user-friendly. One of the main issues which members have is quickly finding the form to suit their needs. When Tennessee REALTORS® began providing forms to its members a little over fifteen years ago, there were far fewer forms than there are today. Early in the forms' history, a numbering system was developed where similar forms were grouped together in a numerical sequence, preceded with an "F". However, over the years, new forms were introduced, and others were deleted from the form library. As a result, the numerical sequence was no longer indicative of where a form might be found. In addition, commercial forms were located sporadically throughout the numbering system rather than being grouped together.

Both the residential and the commercial forms committees decided to introduce a new numbering sequence to make using the forms a bit easier for its members. There are two different sets of forms – one for residential forms (which will include residential, lots and lands, and farms) and will begin with the letters "RF". The other will be for commercial forms and will begin with the letters "CF".

Within both the residential and commercial forms, the individual forms are organized within one of seven different categories, depending upon the forms' use. The different categories are:

- **100 Series**. This series includes the agency forms and agreements between a real estate firm and its clients/customers such as listing agreements, buyer's representation agreements, terminate of agency agreements, and agreements to show property.
- **200 Series**. This includes disclosures made by the client/customer. Documents in this series include property condition disclosure forms, impact fees/adequate facilities tax disclosures, lead based paint disclosures, etc.
- **300 Series**. This series includes disclosures from the real estate firm to clients and customers. Documents in this series include confirmation of agency status, disclaimer notices, personal interest disclosures, referral for services, etc.
- **400 Series**. This series contains contracts between parties in a real estate transaction. Documents in this series include the purchase and sale agreements, lease agreements, confidentiality agreements, earnest money disbursement and release agreements, etc.
- **500 Series**. This series includes exhibits to contracts.

- **600 Series.** This series contains addenda, amendments, counter offers, notifications, etc. This includes back up agreements, right to continue to market property forms, FHA/VA addenda, counter offers, amendments, repair/replacement forms, final inspection documents, notifications, multiple offer disclosures, etc.
- **700 Series.** This series is comprised of miscellaneous documents. It includes things such as referral agreements, compensation agreements, interpleader documents, information sheets, etc.

Within each series of numbers, forms are assigned a three-digit number and grouped together with similar forms. For example, the standard listing agreements have numbers in the low 100s. The lot/land listing agreements have numbers in the 130s. Buyer's representation agreements are in the 140s. In addition, documents that are the same for both residential and commercial have the same three-digit number. For example, the standard purchase and sale agreement for residential property is form RF 401 and for commercial property, it is CF 401. This should make things much easier for those practitioners who engage in both residential and commercial transactions. The committees believe that this new system make things much easier to locate needed forms and allow enough flexibility so that additional forms can be added without altering the numbering system for years to come.

Below you will find several charts that list both the old and new numbers for the residential and commercial forms. If you have any questions concerning the forms themselves or the new numbering system, please contact the Legal Hotline at (800) 899-5297 or via email at hotline@net.com.

When to Use a Form

Forms	Is Used...
RF302 – Confirmation of Agency Status	To confirm the required agency disclosures have been made – this is NOT the same as an agency agreement!
RF303 – Notification of Change in Status or Agency Relationship	To confirm a change in agency status
RF144 – Non-Exclusive Buyer Representation Agreement (Buyer Agency)	As a non-exclusive agency agreement for buyer agency
RF142 – Exclusive Buyer Representation Agreement (Buyer Agency)	As an exclusive agency agreement for buyer agency
RF654 – Repair/Replacement Proposal	When the sale is contingent on the buyer completing inspections during the inspections period
RF655 – Repair/Replacement Amendment	When the parties are negotiating repairs
RF657 – Closing Date/Possession Amendment	To make a change to the closing date and/or possession date specified in the F9
RF 651 – Counter Offer	To submit a counter offer – this form should ALWAYS be used instead of scratching out portions of the original offer!
RF401 – Purchase and Sale Agreement	As the standard offer to purchase for residential properties
RF 304 – Disclaimer Notice	By licensees to notify parties they are NOT experts on property condition/inspection
RF 209 – Lead-Based Paint Disclosure	To fulfill statutory requirements for lead based paint disclosures

RF201 – Tennessee Residential Property Condition Disclosure	By the seller to disclose all material facts about a property
RF202 – Tennessee Residential Property Condition Disclosure Update	To update the property condition disclosure

RF305 – Personal Interest Disclosure and Consent	To verify disclosure and obtain written consent when the licensee has a present or contemplated personal interest in the property
RF706 – Interpleader	When a broker must interplead an earnest money dispute
RF161 – Agreement to Show Property	To obtain a seller's written consent to market and show their property
RF656 – Notification	To adhere to requirements for notice for certain items within the F9
RF658 – Buyer Authorization to Make Repairs and Improvements prior to Closing Amendment	When the buyer wants to obtain the seller's consent to have access to the property prior to closing for the purpose of completing repairs
RF481 – Earnest Money/Trust Money Disbursement and Mutual Release of Purchase and Sale Agreement	To establish how earnest money will be dispersed
RF707 – Contract Language for Special Stipulations	To provide examples of appropriate language to use in the special stipulations sections for common issues
RF711 – Vendor List	When the licensee recommends vendors such as inspectors, lenders, etc.

RF660 – Buyer's Final Inspection Amendment	To properly document Buyer's final inspection
RF203 – Tennessee Residential Property Condition Exemption Notification	When a property or transaction is exempt from statutory disclosure requirements
RF204 – Tennessee Residential Property Condition Disclaimer Statement	When the buyer waives their right to receive the Property Condition Disclosure form
RF625 – FHA/VA Loan Addendum	When the buyer is obtaining a FHA or VA

RF714 – Water Supply and Waste Disposal Notification	When a property is served by a well, septic or other water or waste system
RF708 – Purchase and Sale Agreement Timeline Checklist	As a worksheet to keep up with timelines and deadlines within the RF401
RF208 – Subsurface Sewage Disposal System Permit Disclosure	To request information from governmental agency charged with keeping septic records
RF205– Additional Required Residential Disclosures	These are disclosures that generally fall outside of the Property Condition Disclosure Act but are required by law.
RF101 – Exclusive Right to Sell Listing Agreement (Designated Agency)	As an exclusive right to sell listing agreement for designated seller agency
RF102 – Exclusive Right to Sell Listing Agreement (Seller Agency)	As an exclusive right to sell listing agreement for traditional seller agency
RF707 Special Stipulations – Exclusive Agency Listing Agreement (Seller Reserves Right to Sell - Seller Agency)	As a listing (employment) agreement for traditional seller agency where the seller retains the right to sell. Use the verbiage in Tennessee REALTORS RF707.
RF707 Special Stipulations – Exclusive Agency Listing Agreement (Seller Reserves Right to Sell – Designated Agency)	As a listing (employment) agreement for designated seller agency where the seller retains the right to sell. Use the verbiage in Tennessee REALTORS RF707.

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- RF101 Exclusive Right to Sell Listing Agreement (Designated Agency)
- RF102 Exclusive Right to Sell Listing Agreement (Seller Agency)
- RF111 Co-Listing Agreement (Between Two Firms)
- RF131 Lot/Land Exclusive Right to Sell Listing Agreement (Designated Agency)
- RF132 Lot/Land Exclusive Right to Sell Listing Agreement (Seller Agency)
- RF141 Exclusive Buyer Representation Agreement (Designated Agency)
- RF142 Exclusive Buyer Representation Agreement (Buyer Agency)
- RF143 Non-Exclusive Buyer Representation Agreement (Designated Agency)
- RF144 Non-Exclusive Buyer Representation Agreement (Buyer Agency)
- RF151 Listing/Buyer Representation Mutual Release Agreement
- RF161 Agreement to Show Property
- RF171 Exclusive Property Management Agreement
- RF172 Exclusive Right to Market for Lease Agreement
- RF201 Tennessee Residential Property Condition Disclosure
- RF202 Tennessee Residential Property Condition Disclosure Update
- RF203 Tennessee Residential Property Condition Exemption
- RF204 Tennessee Residential Property Condition Disclaimer Statement
- RF205 Tennessee Residential Property Condition Disclosure (For Exempt Properties and Residential Property Discla
- RF207 Impact Fees or Adequate Facilities Taxes Disclosure
- RF208 Subsurface Sewage Disposal System Permit Disclosure
- RF209 Lead Based Paint Disclosure for Purchase
- RF210 Lead Based Paint Disclosure for Rental Property
- RF211 Green Features System Checklist
- RF301 Working with a Real Estate Professional
- RF302 Confirmation of Agency Status
- RF303 Notification of Change in Status or Agency Relationship
- RF304 Disclaimer Notice
- RF305 Personal Interest Disclosure and Consent
- RF307 Referral for Service Disclosure
- RF308 Wire Fraud Warning
- RF309 COVID-19 Release
- RF401 Purchase and Sale Agreement
- RF403 New Construction Purchase and Sale Agreement
- RF404 Lot/Land Purchase and Sale Agreement
- RF421 Residential Lease Agreement for Single Family Dwelling
- RF422 Residential Lease Agreement for Single Family Dwelling (Broker Acting as Property Manager)
- RF461 Real Estate Offer Confidentiality Agreement
- RF481 Mutual Release of Purchase and Sale Agreement and Disbursement of Earnest Money/Trust Money
- RF482 Escrow Agreement

- RF483 Option Agreement
- RF501 Condominium Legal Description Exhibit
- RF505 Pre-Construction Specification Exhibit
- RF506 Legal Description Exhibit to Lot/Land Purchase and Sale Agreement
- RF601 Amendment to the Listing Agreement
- RF602 Short Sale Amendment to the Listing Agreement
- RF621 Addendum to the Purchase and Sale Agreement
- RF622 Back-Up Agreement Contingency Addendum
- RF623 Buyer's First Right of Refusal Addendum
- RF624 Seller's Notice to Buyer of Receipt of Acceptable Offer
- RF625 VA / FHA Loan Addendum
- RF626 Temporary Occupancy Agreement for Buyer prior to Closing Amendment/Addendum
- RF627 Temporary Occupancy Agreement for Seller After Closing Amendment/Addendum
- RF628 Assumption Agreement Addendum
- RF629 Resolution of Disputes by Mediation Addendum/Amendment
- RF630 New Construction Allowance Addendum
- RF631 Tenant Information Application for Residential Lease Agreement for Single Family Dwelling
- RF633 Addendum (Generic)
- RF634 Investment Property Addendum
- RF635 Minimum Appraised Value Contingency Addendum
- RF641 Amendment to the Buyer's Representation Agreement
- RF651 Counter Offer
- RF652 Counter Offer to Residential Lease Agreement
- RF653 Amendment to Purchase and Sale Agreement
- RF654 Repair/Replacement Proposal
- RF655 Repair/Replacement Amendment
- RF656 Notification
- RF657 Closing Date / Possession Date Amendment
- RF658 Buyer Authorization to Make Repairs and Improvements prior to Closing Amendment
- RF659 Short Sale Addendum to Purchase and Sale Agreement
- RF660 Buyer's Final Inspection
- RF661 New Construction Change Order Amendment
- RF662 New Construction Walk Through List
- RF663 Multiple Offer Disclosure Notification
- RF664 Amendment to Residential Lease Agreement
- RF665 Amendment
- RF672 Amendment __ to the Exclusive Right to Market for Lease or Exclusive Property Management Agreement
- RF679 COVID-19 Amendment/Addendum
- RF701 Referral Agreement
- RF702 Compensation Agreement between Listing and Selling Broker

- RF706 Interpleader
- RF707 Additional Contract Language
- RF708 Purchase and Sale Agreement Timeline Checklist
- RF709 Request for Condominium Association Information
- RF710 Request for Information form the Tennessee Department of Environment and Conservation Division of Groundwater
- RF711 Vendor List
- RF712 Importance of Inspections and Property Survey
- RF713 Disclosure of Short Sale Information to Buyers and Sellers
- RF714 Water Supply and Waste Disposal Notification
- RF715 Additional Signature Blocks for Residential Agreements
- RF716 Additional Signature Blocks for Purchase and Sale Agreement and Counter Offers
- CF101 Commercial Exclusive Right to Sell Listing Agreement
- CF103 Commercial Exclusive Agency Listing Agreement
- CF104 Commercial Exclusive Open Listing Agreement
- CF121 Commercial Exclusive Leasing Agreement
- CF124 Commercial Open Listing Agreement (For Lease)
- CF141 Commercial Exclusive Buyer / Tenant Representation Agreement
- CF151 Commercial Listing/Agency Mutual Release Agreement
- CF161 Agreement to Show Commercial Property
- CF201 Commercial/Industrial Real Property Disclosure
- CF209 Commercial Lead Based Paint Disclosure (for purchase)
- CF305 Commercial Personal Interest Disclosure
- CF307 Commercial Referral for Service Disclosure
- CF401 Commercial Purchase and Sale Agreement
- CF402 Commercial Letter of Intent To Purchase
- CF404 Commercial Lot/Land Purchase and Sale Agreement
- CF420 Commercial Lease to Purchase
- CF421 Commercial Lease Agreement (Single - Tenant Facilities)
- CF422 Commercial Lease Agreement (Multiple-Tenant)
- CF423 Commercial Letter of Intent (for Lease)
- CF441 Commercial Sublease Agreement
- CF442 Commercial Sublease Consent Agreement
- CF443 Commercial Lease Guaranty
- CF444 Commercial Lease Termination
- CF461 Commercial Mutual Non-disclosure and Confidentiality Agreement
- CF481 Commercial Earnest Money Disbursement and Release of Commercial Purchase and Sale Agreement
- CF482 Commercial Escrow Agreement
- CF483 Commercial Option Agreement
- CF501 Exhibit A to Commercial Purchase and Sale Agreement (Legal Description)
- CF502 Exhibit B to Commercial Purchase and Sale Agreement (Due Diligence Documents)

- CF503 Exhibit C to Commercial Purchase and Sale Agreement (Additions to Seller's Closing Documents)
- CF504 Exhibit D to Commercial Purchase and Sale Agreement (Seller's Warranties and Representations)
- CF507 Exhibit A to Commercial Listing Agreement (Legal Description)
- CF508 Exhibit A to Commercial Lot/Land Purchase and Sale Agreement (Legal Description)
- CF509 Exhibit B to Commercial Lot/Land Purchase and Sale Agreement (Due Diligence Documents)
- CF510 Exhibit C to Commercial Lot/Land Purchase and Sale Agreement (Additions to Seller's Closing Documents)
- CF511 Exhibit D to Commercial Lot/Land Purchase and Sale Agreement (Seller's Warranties and Representations)
- CF512 Exhibit A to Commercial Lease to Purchase Agreement (Legal Description)
- CF513 Exhibit B to Commercial Lease to Purchase Agreement (Due Diligence Documents)
- CF514 Exhibit C to Commercial Lease to Purchase Agreement (Additions to Seller's Closing Documents)
- CF515 Exhibit D to Commercial Lease to Purchase Agreement (Seller's Warranties and Representations)
- CF601 Amendment to Commercial Listing Agreement
- CF603 Amendment to Commercial Lease Listing Agreement
- CF604 Sublease Listing Addendum to the Commercial Open Listing Agreement (For Lease)
- CF621 Addendum to Commercial Purchase and Sale Agreement
- CF623 Commercial Buyer's First Right of Refusal Addendum (Seller's Right to Continue to Market Property)
- CF624 Commercial Seller's Notice to Buyer of Receipt of Acceptable Offer
- CF632 Addendum to Commercial Lease Agreement
- CF650 Counter Offer to Commercial Lease to Purchase Agreement
- CF651 Counter Offer to Commercial Purchase and Sale Agreement
- CF652 Counter Offer to Commercial Lease Agreement
- CF653 Amendment to Commercial Purchase and Sale Agreement
- CF657 Commercial Closing Date / Possession Date Amendment
- CF664 Commercial Lease Agreement Amendment
- CF701 Commercial Referral Agreement
- CF702 Commercial Compensation Agreement between Listing and Selling Broker
- CF703 Commercial Lease Commission Assumption Agreement
- CF704 Notice of Agreement to Pay Leasing Commission on Commercial Property
- CF705 Release of Notice of Agreement to Pay Leasing Commission on Commercial Property
- CF706 Commercial Interpleader
- CF707 Commercial Contract Language for Special Stipulations
- CF711 Commercial Vendor List
- CF715 Additional Signature Blocks for Commercial Agreements
- CF716 Additional Signature Blocks for Commercial Purchase and Sale Agreement and Counter Offers

Appendix D: Supplemental Case Studies

Case Study: An Appliance Dispute

Drake Manufacturing Co., operating out of three major cities, had given Sharon a lot of business since she began in real estate. Over the last several years, whenever they transferred one of their corporate employees to the Shady Valley plant, they always recommended her. Truly appreciative of their business, she tried hard to keep them happy.

Troy Peterson was the vice president of marketing for Drake. He'd worked for them for 12 years and loved his job. When his wife was killed suddenly in a car accident months before, they'd been helpful and understanding, giving him plenty of time off to spend with his two young boys. A few months after his wife's death, Troy asked to be transferred to Shady Valley. He told his boss he felt like the boys needed a change, that the memories were just too painful. He hoped the move would be a fresh start for all of them.

Sharon felt horrible for Troy when he told her about losing his wife so suddenly. She couldn't imagine the courage it took to pick up and try to move on after experiencing that kind of loss. She could see how stressed out he was and admired him for holding it together. After spending considerable time with Troy explaining the various options for working arrangements for a real estate agent and covering her role as his buyer's agent, he signed an Exclusive Buyer Agency Agreement with her.

Connie Farrell was finally getting the house of her dreams. After two years of trying to convince her husband, Doug, that they needed a bigger place, he'd finally given in. Though she liked the home they had, her friends were always buying bigger and better, and she figured it was her turn. After all, with their youngest daughter finally getting a place of her own, she and Doug had earned the right to treat themselves. She called REALTOR® Maria Perez, whom she'd been friends with for three years, to list the house.

The Farrell's' house immediately caught Troy's eye because they were leaving their appliances. The ones he had in Atlanta were really too old to be worth moving, and he'd decided just to trash them. They'd come with the house when

the family had originally purchased it and had definitely seen better days. Plus, it would be one thing he could scratch off what was becoming a very long To Do list.

Sharon sat down with Troy to write the offer. They double-checked the listing agreement, which clearly stated that the washer, dryer, and refrigerator were offered with the property. The house was listed for \$171,500 and Troy's offer was for \$170,000.

The Farrell's' accepted Troy's offer, though they thought they should've gotten full price. They were proud of their home and had hoped it would be listed for more, but Connie was ready to move, and Doug was tired of hearing her complain.

When the day of closing arrived, Troy felt relieved. Two hours before closing, he went to do the final walk-through. When he noted the absence of the appliances, he was told he wouldn't be getting them. Maria told him they weren't listed in the offer to purchase at the reduced price Sharon had sent. Maria said the Farrell's' had insisted that at the reduced price, they couldn't afford to let the appliances stay.

Troy went outside to calm down and call Sharon. He was extremely upset and indicated he might not close on the house. He demanded to know how this could've happened, couldn't he insist on receiving them since they were offered in the MLS?

Did both agents behave ethically and within MLS policy guidelines in this situation?

Does the buyer have a legal claim to these appliances?

Does Sharon, as the buyer's agent, have any responsibility here?

Case Study: Basement Bayou

Cindy Smart was a friend of Mark's wife. The two had met on the fundraising committee for their kids' school a few years before.

Since Cindy's husband had died of cancer a year ago, they'd grown closer. Mark often went over and cut the grass for her and invited her kids to the park.

When Cindy decided to move to a smaller house, she asked Mark to represent her. She was doing fine financially but she was tired of the upkeep necessary to maintain such a large house. She felt she'd be better equipped to deal with something smaller and she knew the kids could use a change.

Mark took Cindy to look at several houses in a popular neighborhood not far from her current home. She saw one, in particular, she thought the kids would really like. 239 Sycamore Street was an 1800-square-foot house only five years old. The exterior was painted a charming green and the freshly painted white shutters made it look picture perfect. Cindy loved the large, airy family room and the spacious kitchen. When she brought the kids to see it, they took to it instantly.

When Mark saw that the seller was also a REALTOR®, he felt encouraged. He hoped they wouldn't be delayed over the simple miscommunications that sometimes occurred before closing. He knew Cindy was ready to move and get the kids settled in the new place.

Mark submitted an offer to Adam Hines, the seller/agent, for \$175,000. At \$2000 below the list price, it was a fair offer. Adam accepted and they set a closing date 30 days away.

When Mark received the Property Condition Disclosure Report, he noticed some notations Adam had made. He called Cindy and they went over it together. Adam had noted that occasionally after very heavy rains there was a small amount of water that collected in the basement. He indicated that, because the sump pump carried the water away, it really wasn't a big issue.

Cindy accepted the report. She appreciated Adam's apparent honesty and felt confident that the house was in good condition. She opted not to have her own inspection done because she felt she could trust Adam's representations. Between

packing up her house and preparing for the move, she was glad she was dealing with a professional she felt she could trust.

Cindy and her kids moved into their new house just days after closing. One week later, they received two days' worth of heavy rainfall. Much to her dismay, she found water in the basement up to her shins. She waited a few days, but the sump pump didn't take the water away. She decided to call Mark.

Mark was able to recommend somebody to do the work but the repairs to fix the flooding problem ended up costing over \$14,000. Cindy was furious and felt she'd been taken advantage of. Mark was disappointed that a professional like Adam would deliberately try to cover up the fact that costly repairs were needed on the house. Cindy filed suit against Adam for the damages.

Once the parties appeared in court, Adam argued that Cindy had not only accepted the report but also declined her own inspection. He said she was clearly buying the property "AS IS" and he wasn't responsible for the cost of the repairs.

Could this situation have been avoided and how? Explain.

Did Cindy buy the property "AS IS"? How is this determined?

Case Studies: Ties the Bind

Mark had known Steve Cooper since high school. They'd gone to the same college and even gotten married only a couple of years apart. Steve and Ellen were often invited to the Ellis' house for dinner. When they decided to buy a bigger house, they called Mark to represent them.

The Coopers began looking early the next week. They really wanted a large backyard for their dogs to have space to run. They found the perfect farmhouse about 15 minutes outside the city limits. It had been restored several years before and they loved the contrast of the modern appliances and the dated architecture. The fields behind the house provided ample space for their dogs. Although it was slightly higher than what they wanted to spend, they decided to make a lower offer and see what happened.

Mark wrote the offer for them and delivered it to the listing agent. She called Mark the next day and said her clients had decided not to take the offer. They were going to wait, she told him, to see if they could get closer to their asking price. Because the Coopers had told Mark they couldn't go that high, he told the agent to let him know if the sellers decided to come down. Once again, the Coopers and Mark began to look at more houses. After two more weeks, they found something else they liked. They didn't like it as much as the farmhouse, but they decided it was the next best thing. They went back to Mark's office to write up an offer.

By the time they began discussing the contract, the Coopers were more excited. Mark was pleased they'd found something they'd be happy with. Because they were busy talking, he forgot to fill in the binding agreement date on the contract. Nonetheless, the contract was signed by both parties and delivered with a check for \$5000 from the Coopers as earnest money.

A few days later, Mark got a call from the agent representing the sellers of the farmhouse the Coopers were originally interested in. She told him the sellers were ready to move and were willing to accept the Coopers' original offer. Mark reluctantly called Steve and Ellen and explained the situation.

Steve and Ellen decided they definitely wanted the farmhouse. They told Mark that even if they lost the earnest money they'd put down on the other offer, they still wanted out of the contract. They did ask Mark to please go through it again and see if there was any way they could get out of it with their earnest money returned.

How could this situation have been prevented?

If you were Mark, what would you say? At what point is the contract binding?