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Foreword

This book provides the nuts and bolts of buying and selling residential property as well as an introduction to some important real estate topics often encountered in practice.

We are especially grateful to our Course Planners, **David J. Scaggs, Esq**., The Granger Firm. Paoli, **Brett M. Woodburn, Esq.,** Woodburn Law, Harrisburg for recruiting an outstanding faculty for the program. Each faculty member has devoted significant time and effort developing the course and preparing written materials. All of them are described in the biographical section that follows.

On behalf of all who will benefit from this program we express our sincere gratitude to all of our volunteers.

Pennsylvania Bar Institute
Anita Jones, Program Manager

September 2022

Biographies

PLANNING TEAM

David J. Scaggs, Esq.

Mr. Scaggs is a shareholder in The Granger Firm in Paoli, Pennsylvania. He is a member of the Pennsylvania and New Jersey Bars and is admitted to practice in the United States District Court for the Eastern and Middle Districts of Pennsylvania, the District of New Jersey and the Court of Appeals for the Third Circuit. Mr. Scaggs is a member of the Pennsylvania and Chester County Bar Associations. In 2011, he was nominated as a Council member to the Pennsylvania Bar Association's Real Property, Probate and Trust Law Section. He is also the chairman of the Westtown Township Zoning Hearing Board in Chester County. Mr. Scaggs has lectured for the Pennsylvania Bar Institute on various real estate matters, including title insurance, residential and commercial closings and seller's disclosure matters. He concentrates his practice in the area of real estate transactions and litigation, representing a large spectrum of clients, including title insurance companies, lenders, real estate brokers and developers in litigation matters. Mr. Scaggs also regularly handles construction defect litigation, commercial and residential purchases and disputes, leasing, zoning issues, homeowner association matters and seller's disclosure matters. Mr. Scaggs received a B.S. in business administration from Temple University and a J.D. from Widener University School of Law.

Brett M. Woodburn, Esq.

Mr. Woodburn is the principal and founding member of Woodburn Law and focuses his practice on real estate law. Additionally, he handles professional licensing law, employment law and policy and general corporate matters. He currently represents several real estate brokerages, brokers and agents across the Commonwealth. Mr. Woodburn practices in the areas of Real Estate Broker Law, Commercial, Hospitality, and Residential Real Estate Transactions, and Title Insurance, Business and Corporate, Alternative Dispute Resolution and Mediation. Mr. Woodburn has represented real estate brokers and agents in various litigation matters, including errors & omissions defense, failure to disclose cases, and licensing defense matters for nearly 20 years. Mr. Woodburn serves as General Counsel to Keystone Human Services and was Associate General Counsel to the Pennsylvania Association of Realtors® for more than 15 years. Prior to joining private practice, Mr. Woodburn was a clerk to the Honorable John M. Cleland, 48th Judicial District, McKean County. Mr. Woodburn is a member of the Dauphin County, Pennsylvania and American Bar Associations and is a past member of the Board of Directors for the Pennsylvania Bar Institute. Within the PA Bar Association, he is a past-chairperson and council member for the Real Property Division of the Real Property, Probate and Trust Section, is past chair of the Plain English Committee and currently services on the Charitable Organizations Committee, Legal Services to Persons with Disabilities Committee, ADR Committee and Veterans Affairs Committee. Mr. Woodburn is licensed to practice in Pennsylvania, the U.S.

District Court for the Middle District of Pennsylvania, U.S. District Court for the Western District of Pennsylvania and the U.S. Court of Appeals, 3rd Circuit. Mr. Woodburn earned his JD from Ohio Northern University, and he earned a Bachelor's Degree from Allegheny College.

FACULTY

Kellie A. McGowan, Esq.

Ms. McGowan is partner in Obermayer's Business & Finance Department where she co-chairs the firms Land Use group. Her practice focuses on real estate transactions, financing, and zoning and land use matters. She represents businesses, financial institutions, and individuals in Pennsylvania and New Jersey in financing transactions, as well as residential, commercial, and industrial real estate matters, including sales, acquisitions, and leasing. Ms. McGowan is admitted to practice in Pennsylvania and New Jersey, as well as the U.S. District Court for the Eastern District of Pennsylvania. She earned her law degree from Temple University's Beasley School of Law and her undergraduate degree in political science and environmental studies, *cum laude*, from Muhlenberg College. Ms. McGowan has previously participated as a faculty member in other PBI courses, including the 17th Annual Real Estate Institute and the 2013 Land Use Institute.

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Chapter One

Title Insurance: The Players

Update by:
Brett M. Woodburn, Esq.
Woodburn Law
Harrisburg

David J. Scaggs, Esq.
The Granger Firm
Paoli

Originally Prepared by
Hon. William "Chip" Mackrides
Delaware County Court of Common Pleas
Media

Title Insurance: The Players

I. Introduction

Title insurance is a part of almost all real estate transactions, whether for purchases or for refinances. While there are some fundamental differences between the two types of transaction, it is important to know who the players are, what their roles will be – both with the acquisition of title insurance and at closing – and what information you are going to expect to receive and convey. Regardless of whether the title transaction is commercial or residential, if a lender is involved with financing, it will likely require that the consumer purchase a lender's title insurance policy.

II. Buyers

The buyers acquire title to the property, borrow the money from the lender, grant the mortgage and purchase the title insurance. If the buyers are represented by a real estate broker/agent, the broker/agent usually has some relationship with a title agency and will normally place the order for title insurance. Otherwise, counsel can place the order for title insurance. The title agency will need certain information from the buyer to start the title process. The buyer needs to provide a signed copy of the Agreement of Sale. The Agreement of Sale has a host of information needed in order to process the transaction: a) buyer and seller; b) property address; c) purchase price; d) deposits; e) settlement date; f) basic financing criteria; g) other contingencies and conditions that need to be met before the sale can close and title insurance can be issued.

Pennsylvania is one of very few states that have their title insurance rates set by the insurance commission. As such, the buyers will know how much title insurance will cost them well before closing. The buyers should be made aware of additional title requirements that will increase the overall cost – title endorsements, closing protection letter, notary and courier fees, wire fees – but you can estimate what those costs will likely be. If the purchase is going to be funded by a mortgage, the lender will require that the Buyer purchase a Lender's Policy of title insurance in an amount equal to the loan amount. In addition to a Lender's Policy, the buyers can purchase their own Owner's Policy of title insurance. Although an Owner's Policy is not required, it is highly recommended and it is prudent to discuss with the Buyers whether they want to purchase an Owner's Policy that will protect them, should there be a covered claim, up to the amount of the policy limits. Counsel should strongly recommend that their Buyer clients purchase title insurance. Where a buyer is required to purchase a Lender's Policy, it usually does not cost that much more to obtain an Owner's Policy as well.

A benefit of the way Pennsylvania structures its title insurance premiums is that you will know the premium for the purchase price and the premium for the amount financed; it is simple math to determine the difference in cost to the buyer. For example:

The title insurance premium for a $100,000 purchase is $1,025 for a purchase of property (less for refinance). Presume the buyers are borrowing 80% of the purchase price, or $80,000. The lender will require title insurance for the money they are lending, which will cost the buyers $900.00. For the buyers to purchase an owners' policy, they will incur an additional cost of

$125.00. Counsel should discuss with buyers whether they want to purchase the additional coverage for themselves. Understanding what protections title insurance offers to a buyer will facilitate this discussion. However, the minor additional cost to obtain an owner's policy should make this an easy decision.

Counsel should also be prepared to discuss the results of the title search with the buyers. A common mistake buyers make is anticipating they are buying property "free and clear." However, most Agreements of Sale will describe the quality of title that the sellers are obligated to convey to the buyers. The vast majority of residential real estate transactions are defined by using the Pennsylvania Association of REALTORS® Standard Agreement for the Sale of Real Estate ("PAR Agreement"). The PAR Agreement defines the quality of title as:

> … good and marketable title that is insurable by a reputable title insurance company at the regular rates, free and clear of all liens, encumbrances, and easements, excepting however the following: existing deed restrictions; historic preservation restrictions or ordinances; building restrictions; ordinances; easements of roads; easements visible upon the ground; easements of record; and privileges or rights of public service companies, if any.

Pennsylvania Association of REALTORS® Standard Agreement for the Sale of Real Estate (2018), ¶17(A), emphasis in the original. Buyer's counsel should review the title commitment and inform the buyer what clouds exist in the title, if any, and how such clouds affect the insurability of the title, if at all. Counsel should also verify that the buyers have received copies of any conditions, covenants and restrictions – whether in the deed or identified by a separate recorded document – so that the buyers can determine whether the restrictions affect the use to which the buyers expect to put the property.

It is important to read the legal descriptions, the exceptions and the reservations. Know what your buyers are expecting to acquire through the purchase and whether the acquisition includes oil, gas, mineral, timber or water rights. Be aware that transactions involving property designated as Clean and Green can have rollback tax implications. Lastly, does the legal description close or match the last recorded plan? There are software programs that can plot the legal descriptions to assist with this, but legal descriptions that have been passed down through the ages can have errors. Don't wait until the last minute to do any of this; if you wait, you may be rescheduling settlement.

III. Sellers

The sellers' role at settlement, and with respect to title insurance, is oftentimes limited to paying off existing mortgages, verifying that real estate taxes are paid, and verifying that sewer rents, homeowners' association dues, and other assessments have been paid and/or satisfied. The title agent will search the public records for information about the seller to see what encumbrances may exist. The title commitment should have information pertaining to current open and/or unsatisfied mortgages.

If the title commitment identifies any unsatisfied mortgages, it must be determined whether the mortgages are closed ended mortgages or lines or credit. If they are lines of credit, you will need to obtain the sellers' authorization to close the line in addition to obtaining payoff information. You will need to know to what date the payoff is good, what the *per diem* (or daily) interest is, whether and when a late fee will be assessed and whether the lender wants payment sent overnight or by wire transfer.

Counsel needs to be aware of other matters that may be discovered through the title search that require the sellers' involvement, such as: deficiency judgments against sellers from lawsuits or similar enforcement actions; delinquent child support payments; bankruptcies and pending lawsuit. If your seller is a non-United States Citizen, then you need to be familiar with the requirements associated with the Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA"), and the potential impact it may have on buyers.

As with resolving title issues for buyers, the closing attorney or title agent needs to provide adequate advanced notice to sellers to allow them to clear any (potential) clouds on the title or to obtain the necessary information that will allow funds to be distributed at settlement that will clear any (potential) clouds on the title. Reviewing the title search and abstract the day before settlement invites havoc.

IV. Real Estate Brokers and Agents

Real estate brokers and agents are anxious to be and remain at the center of a real estate transaction. It is important for counsel to maintain a positive, open line of communications with the real estate agents and brokers because they, as much as anyone, are motivated to get the transaction closed. The buyers' agent will oftentimes be the one who contacts the title agent to begin the process of title work. They should provide a copy of the Agreement of Sale, and they should also advise the title agent of any deadlines that need to be met. For example, the PAR Agreement of Sale deals with various contingencies that may affect the buyers' right to terminate the agreement without penalty. If the buyers have elected to make the purchase of the property contingent upon satisfactory results under the property inspection contingency, you may want to clarify whether the buyers intend the title search to be included in the information they consider. If the buyers intend the title search to be part of what they are inspecting under this contingency, you need to know (a) whether the title agent can turn the search around soon enough to meet the deadlines in the agreement; and (b) whether you as counsel can review the title search with the buyers in time to allow them to make an informed decision.

Real estate brokers and agents may also be the individuals who take the lead for scheduling inspections, obtaining mortgage payoff figures, tax certifications, resale certificates and resale documents for associations, and various documents needed to close the transaction.

Don't forget that a real estate agent is an "agent" for his or her broker, not the buyer or seller. While they have a duty of loyalty to their consumers, they generally do not have the legal power of an agent to bind a buyer or seller.

V. Lenders

The lender is the entity that will really drive the transaction, because you will not be able to close without their cooperation and approval. The lender will require title insurance in an amount not less than the loan amount. The lender will also require certain coverage on the title insurance policy that will be provided through endorsements that the buyers will pay for, but that will only benefit the lenders. PA Endorsements 100, 300 and 900 are the typical endorsements seen in most transactions, and their scope will be addressed elsewhere in these materials. The Lender will require that it be insured as the first lien holder on the property. This requires the "clearing" or "removing" other prior liens that may exists, such mortgages, delinquent tax liens, outstanding amounts owed to homeowners' associations, due (or past due) real estate and school taxes, and similar debts.

The Lender will also prepare the Closing Disclosure ("CD"), which took the place of the HUD-1 Settlement Statement. The CD is required to be provided to the buyer at least three business days prior to closing.

Lenders may create unexpected obstacles. At times, a lender may require a shared maintenance agreement or access agreement to be recorded before approving financing. This can be very difficult as it would require the seller to involve a neighbor who may have no motivation to cooperate. Lenders may require additional endorsements, such as when the property is located in a planned community or association. Lenders will send their closing instructions with the loan package to the title agent prior to closing. Title agents need to read the instructions thoroughly to understand what additional expectations the lender has, such as the obligation of faxing certain documents from the settlement table before being authorized to fund the loan.

When the real estate market was booming, there was a proliferation of internet-based lending companies. It was not uncommon, especially right before the bubble burst, for lenders to fail to fund a transaction. As an attorney, you need to know each of the parties' obligations, especially concerning financing. For example, did the buyer have to use a certain lender, or was the financing contingency satisfied as soon as the loan commitment was issued? Last minute changes, even those that may seem innocuous, can be sufficient to derail a settlement from the lender's perspective. When dealing with lenders, remember the Golden Rule: He who has the gold, makes the rules.

VI. Title Insurance Agencies

Title agencies are the entities that conduct the closing and issue the actual insurance policies on behalf of Title Insurance Companies. They may perform the searches themselves or use independent title searchers. Title agents are agents of the title company. Title agencies follow policy and procedure manuals and/or rate manuals that provide guidance and structure for the title agents who are, essentially, the front-line soldiers in the process. The title agent has the public records searched, collects all the information and funds and makes sure that all the conditions for closing are met so that the title policy can be issued, the funds disbursed, and title passes from the seller to the buyer.

VII. Title Insurance Companies

Title Insurance Companies underwrite the title policies issued by their issuing agents. They can also issue their own policies "in-house". The Title Insurance Company employs underwriters to make decisions on whether a property is insurable. An underwriter will oftentimes have little or no involvement in the day-to-day residential real estate settlements. The underwriters will have provided to their agents and approved attorneys the policy and procedures manual and/or rate manual that will provide the necessary guidelines for the title agent to follow when issuing a policy. It is the title agent who is responsible for identifying liens and other clouds (and potential clouds) that affect the insurability of the property. The title agent is the one principally responsible for clearing the lien or the (potential) cloud on the title before issuing the policy. If the title agent is the front-line soldier, the underwriter is the general. If there is a title problem with a property that is to be insured, the title agent will seek the assistance of the underwriter for how to resolve the issue.

Underwriters are important resources for the title agent and should be used liberally. There are times when an items appears in the chain of title that is so convoluted that it is difficult to unravel the chain enough to ensure title. If the property is currently owned by someone who is living there, and that owner purchased title insurance from a reputable company, the underwriter may be willing to 'piggy-back' a new policy on top of the existing policy. Sometimes you will encounter a mortgage that was paid off years (even decades) ago and there is no way to file a satisfaction piece because the lender is out of business, and you cannot track what company would currently have the authority to satisfy the mortgage. One option is for the sellers or buyers to initiate a quiet title action. Far faster and less expensive, if there is an existing title insurance policy, the underwriter may agree to insure the property if the current title insurer agrees to indemnify the new company against any claims brought on that one issue. However, a buyer should use caution in agreeing to this procedure. Occasionally, you will have a settlement that involves significant dollars, and the title insurance agent does not have the authority to bind the title insurance company without authorization. The title agent will have to turn to the underwriter for that authorization.

When you run into a problem you cannot solve, an ambiguity that makes coverage uncertain, or a policy that exceeds the title agent's authority, the underwriter is the person to call. Many underwriters have years of experience, so they are also good sources of information if you have questions.

VIII. Searcher / Abstractor

The title searcher or abstractor is hired by the title agent to physically search the title. The abstractor will use courthouse records and modern on-line records to backtrack the owners of the real estate that the buyers are interested in buying. Deeds have "BEING" clauses that identify the former owner of the real estate and the book and page (or instrument number) at which the prior deed was recorded. The abstractor can then go back in the chain of title to see who owned the property historically. Industry standard has been to require not less than a 60-year title search. However, if you think about it today, a 60-year search only goes back to 1959! Is that really far enough back in time to see if there are problems with the chain of title? It depends. If the property is located in a subdivision and the subdivision plan was approved and recorded within the 60-year

search, then you may have a better comfort level than if the property is not in a subdivision. For much older properties, consider asking for a 100-year title search.

Title abstractors will also search the mortgage indexes, judgment indexes, miscellaneous record books, and plan books. Abstractors will oftentimes check with the local taxing authorities to see if there are any delinquent taxes on record.

Abstractors are supposed to provide copies of all of the documents that they review pertaining to the property in question. The abstractor is looking for possible clouds and possible cross references to see who may have a claim of ownership. If the real estate is part of an estate, for example, the abstractor should obtain a copy of the will (once it is probated) so that you can ascertain who may have to sign a deed conveying the property to the buyers. Abstractors sometimes provide only a copy of their notes and the chain of title demonstrating what they looked at, and not give the title agent copies of everything. Counsel certainly needs to see full copies of all deeds in the chain of title, as well as all recorded easements, encumbrances, restrictions, agreements and other documents recorded of record so they can be reviewed and explained to the buyer.

You will want a copy of the recorded plan showing the subject property, as well as any notes on the plan. Many times, there will be certain restrictions or covenants listed in the notes that are not found elsewhere on the record. It is critical to look at these documents as soon as you receive the package. Verify that you received copies of all of the documents you need to review, and verify that the documents are legible.

If the buyers are anticipating obtaining oil, gas and mineral rights, then you will want to request the search to date to at least 1850, if not earlier. Oil, gas and mineral rights may have been severed by conveyance and/or by lease. The original conveyance may extend back to the original "Black Gold Rush" that started in the 1850's. Discuss the matter with the title agent; they may recommend taking the search back to the original warrant. Such advice should be well received. Discuss with the title agent and the abstractor the time in which they need to complete the search, particularly when subsurface rights are involved, and what the cost will be. Surface rights searches, with copies, have ranged from $150 to $500, depending on a number of factors. Subsurface rights, however, can be will over $1,000 to $1,500. This is a discussion to have with the buyers ***before*** you request the search!

IX. Conclusion

There are a number of people involved with the search process, each with different responsibilities. Of all of the important steps in a real estate transaction, probably the single most important step is to read the title commitment and attachments carefully. You want to know, as soon in the process as possible, if there are problems and if there are potential problems. Once you identify the problems or potential problems, you will be able to identify who is responsible for clearing or resolving the matter, and you will be able to work to the resolution sooner rather than later.

Chapter Two

Seller's Disclosure and Buyer's Due Diligence

Update by:
David J. Scaggs, Esq.
The Granger Firm
Paoli

Originally Written by
Brett M. Woodburn, Esq.
Woodburn Law
Harrisburg

Chapter Two
Section 1

Pre-Agreement of Sale: Counseling Your Client

PRE-AGREEMENT OF SALE:
COUNSELING YOUR CLIENT

I. Pennsylvania Real Estate Licensing and Registration Act. 63 P.S. § 455.201 et seq. ("Licensing Act")

A. Generally

1. This Act regulates and requires licensure for the provision of "Real Estate Services," which term is defined to mean: "An act or acts requiring a real estate license." 63 P.S. § 455.201.

2. Compliance with the Licensing Act is administered by the Pennsylvania State Real Estate Commission.

3. It is unlawful to engage in or conduct, or to advertise or hold oneself out as engaging in or conducting the business of a broker or salesperson without first being licensed or registered under the Licensing Act, unless exempted. 63 P.S. § 455.301.

(a) See 63 P.S. 455.304 for specific exclusions.

4. The Licensing Act classifies various agency relationships:

"Buyer Agent" - Any licensee who has entered into an agency relationship with a consumer buyer of real estate.

"Dual Agent" - A licensee who acts as an agent for the buyer and seller, or lessee and landlord, in the same transaction.

"Seller Agent" - Any licensee who has entered into an agency relationship with a seller of real estate.

"Transaction Licensee" - A licensed broker or salesperson who provides communication or document preparation services or performs acts described under the definition of "broker" or "salesperson" for which a licensee is required, without being an agent or advocate of the consumer.

5. The Licensing Act assigns specific duties to each agency relationship.

- The duties of a licensee generally are contained in 63 P.S. § 606a.

- The duties of a Seller's Agent are contained in 63 P.S. § 606b.
- The duties of a Buyer's Agent are contained in 63 P.S. § 606c.
- The duties of a Dual Agent are contained in 63 P.S. § 606d.
- The duties of a Designated Agent are contained in 63 P.S. § 606e.
- The duties of a Transaction Licensee are contained in 63 P.S. § 606f.

6. A "consumer" is a person who is the recipient of any real estate service.

7. A "listing broker" is a broker engaged as a Seller's agent, dual agent, or transaction licensee to market the property of a seller/landlord for sale or lease pursuant to a written agreement with the seller/landlord.

8. The Licensing Act and Pennsylvania Code require that specific information be provided to a consumer at the initial interview. 63 P.S. § 455.608. *See also* 49 Pa. Code § 35.336. *See Appendix I for a copy of the Consumer Notice.*

B. Listing Agreements

1. Any agreement between a broker and principal, or between a broker and consumer whereby a consumer is or may be committed to pay a fee, commission, or other valuable consideration, must be in writing and shall be signed by the consumer and must identify the services to be provided and the fee to be paid. 63 P.S. § 455.606.1 and § 455.608a.; 49 Pa. Code § 35.281.

2. Listing agreements take many forms, including:

Exclusive agency of broker – broker is exclusive agent but does not get paid of the seller finds the buyer or tenant.

Exclusive Right to Sell or Right to Lease – broker gets paid regardless of who finds the buyer or tenant.

3. Exclusive Listing Agreements are governed chiefly by 49 Pa. Code §35.332, which list certain required and prohibited terms:

(a) An exclusive listing agreement may comprise one of the following:
(1) The exclusive agency of the broker.
(2) The exclusive right-to-sell or exclusive right-to-lease.

(b) An exclusive listing agreement shall contain, in addition to the requirements in §35.331 (relating to written agreements generally), the following:
(1) The sale or lease price.
(2) The commission, fees or other compensation expected on the sale or lease price.

(3) The duration of the agreement.
(4) In the case of an exclusive right-to-sell agreement, a statement in bold face type that the broker earns a commission on the sale of the property during the listing period by whomever made, including the owner.
(5) In the case of an exclusive right-to-lease agreement, a statement in bold print that the broker earns a commission on the lease of the property during the listing period by whomever made, including the lessor.

(c) An exclusive listing agreement may not contain:
(1) A listing period exceeding 1 year.
(2) An automatic renewal clause.
(3) A cancellation notice to terminate the agreement at the end of the listing period set forth in the agreement.
(4) Authority of the broker to execute a signed agreement of sale or lease for the owner or lessor.
(5) An option by the broker to purchase the listed property.
(6) Authority of the broker to confess judgment against the owner or lessor for the Commission in the event of a sale or lease.

See Appendix II for the Pennsylvania Association of Realtors standard Exclusive Right to Sell Listing Contract.

C. Agreements of Sale

1. The Licensing Act sets forth certain mandatory provisions for sales contracts. 63 P.S. § 455.608b:

- A statement identifying the capacity in which the broker is engaged in the transaction and whether the broker, or any licensee affiliated with the broker, has provided services relating to the subject transaction to any other party to the transaction.

- A statement describing the purpose of the Real Estate Recovery Fund established under section 801 and the telephone number of the commission at which the parties to the transaction can receive further information about the fund.

- A statement of the zoning classification of the property, except in cases where the property or each parcel of the property, if subdividable, is zoned solely or primarily to permit single-family dwellings. Failure to comply with this requirement shall render the sales agreement or sales contract voidable at the option of the buyer, and if voided, any deposits tendered by the buyer shall be returned to the buyer without a requirement for court action.

- A statement that access to a public road may require issuance of a highway occupancy permit from the Department of Transportation.

2. 49 Pa. Code § 35.333 likewise sets forth certain required provisions for sales contracts:

- The date of the agreement.
- The names of the buyer and seller.
- A description of the property and the interest to be conveyed.
- The sale price.
- The dates for payment and conveyance.
- The zoning classification of the property, except if the property (or each parcel thereof, if subdividable) is zoned solely or primarily to permit single-family dwellings, together with a statement that the failure of the agreement of sale to contain the zoning classification of the property shall render the agreement voidable at the option of the buyer and, if voided, deposits tendered by the buyer shall be returned to the buyer without a requirement of court action.
- A statement identifying the capacity in which the broker, or a licensee employed by the broker is involved in the transaction and whether services have been provided to another party in the transaction.
- A provision that payments of money received by the broker on account of the sale—regardless of the form of payment and the person designated as payee (if payment is made by an instrument)—shall be held by the broker in an escrow account pending consummation of the sale or a prior termination thereof.
- The following statement:

  "A Real Estate Recovery Fund exists to reimburse any person who has obtained a final civil judgment against a Pennsylvania real estate licensee owing to fraud, misrepresentation, or deceit in a real estate transaction and. who has been unable to collect the judgment after exhausting all legal and equitable remedies. For complete details about the Fund, call (717) 783-3658."
- A statement that access to a public road may require issuance of a highway occupancy permit from the Department of Transportation.
- In the case of an agreement of sale for the purchase of a time share or campground membership, a statement regarding the purchaser's right of cancellation that is set forth conspicuously in bold face type of at least 10-point size immediately above the signature line for the purchaser and that is in substantially the following form:

"You, the purchaser, may cancel this purchase at any time prior to midnight of the fifth day following the date of this transaction. If you desire to cancel, you are required to notify the seller, in writing, at (insert address). Such notice shall be given by certified return receipt mail or by any other bona fide means of delivery which provides you with a receipt. Such notice shall be effective upon being postmarked by the United States Postal Service or upon deposit of the notice with any bona fide means of delivery which provides you with a receipt."

- An agreement of sale that is conditioned upon the ability of the buyer to obtain a mortgage shall contain:

  The type of mortgage.

  The mortgage principal.

  The maximum interest rate of the mortgage.

  The minimum term of the mortgage.

  The deadline for the buyer to obtain the mortgage.

  The nature and extent of assistance that the broker will render to the buyer in obtaining the mortgage.

- The following terms shall be printed in bold face if made part of an agreement of sale:

  (1) A provision relieving the seller from responsibility for defects involving the sale property, or a provision requiring the buyer to execute a release to that effect at the time of settlement, or a provision of similar import.

  (2) A provision reserving to the builder-seller the right to change, or depart from, the building specifications for the sale property.

- An agreement of sale for a cemetery lot or plot or a mausoleum space or opening shall contain the requirements in subsection (a)(l)— (5) and (9).

3. 49 Pa. Code § 35.334 requires the brokers in a transaction to provide to each party with a written estimate of reasonably foreseeable costs before an agreement of sale is signed.

4. The Pennsylvania Association of Realtors ("PAR") publishes numerous standard forms (agreements, addenda, disclosures, etc.) for various residential and commercial transactions, widely used particularly for residential sales. These can be ordered online from PAR: http://www.parealtor.org/standard-forms/

5. They are also available in electronic form through vendors, by annual subscription:

dot loop 513-842-8414
Instanet Solutions 1-800-668-8768
zipLogix 1-800-383-9805

6. Note that these are copyrighted forms.

7. Although many of these forms are widely used in Pennsylvania, they can and are frequently modified by counsel to address the circumstances of the particular transaction.

II. Parties Involved in a Pennsylvania Residential Real Estate Purchase and Sale

- Buyer and Seller
- Inspection professionals, including licensed home inspectors, pest inspectors, contractors, engineers, architects, environmental consultants and inspectors, surveyors, roofers, HVAC, and other professionals
- Attorney for Buyer and Attorney for Seller
- Licensees under the Real Estate Licensing and Registration Act, which may include Buyer's Broker and Designated Agent, Seller's Broker and Designated Agent, a Licensee acting as Dual Agent, and Transaction Licensee
- Title company personnel including Title Searcher, Conveyancer, and Title Agency and Title Underwriter
- Mortgage Lender and related personnel including Mortgage Broker, Loan Officer, and Lender's Attorney
- Homeowner's Insurance Agent
- Utility Companies

III. Costs

A. The regulations issued under the Licensing Act require that "brokers involved in the transaction shall provide each party with a written estimate of reasonably foreseeable expenses associated with the sale that the party may be expected to pay. . . ." 49 Pa. Code § 35.334. The Code provides an example of the information to provided. PAR also has a form that is commonly used. The information must include, but is not limited to:

- The broker's commission
- The mortgage payments and financing costs
- Taxes and assessments

- Settlement expenses

B. Additionally, counsel should be prepared to discuss the expected transaction costs with their purchaser and seller clients.

C. Seller transaction costs include:

Pa. Realty Transfer Tax (1% of the consideration) (generally split 50/50 with buyer)

Local Realty Transfer Tax (generally 1% of the consideration but may vary locally. For example, Philadelphia is 3.278%[1] and Pittsburgh is 4%[2]) (generally split 50/50 with buyer)

Mortgage Pay-off and Satisfaction Costs (At closing, this may or may not be net of escrows for taxes and insurance, which may be refunded at a later date.) (Prepayment penalty may apply.)

Unpaid Annual Real Estate Taxes

Close-out utility charges (particularly sewer & water, as lienable charges)

Unpaid homeowner or condominium association assessments (if applicable)

Broker's Commission

Conveyancing or preparation of papers charge

Staging Fees

Repair costs

Federal Income Tax on gain (if applicable after exclusion)

Pa. Income Tax on gain (if applicable after exclusion)

Local Income Tax on gain (e.g., in Philadelphia)

Moving Expenses

Notary fees

Attorney's Fees

D. Buyer transaction costs (in addition to the purchase price) include:

Pa. Realty Transfer Tax (1% of the consideration) (generally split 50/50 with seller)

Local Realty Transfer Tax (generally 1% of the consideration but may vary locally. For example, Philadelphia is 3.1%, and Pittsburgh is 3.5%) (generally split 50/50 with seller)

Mortgage points and other origination fees (appraisal, credit report, etc.),

[1] As of July 1, 2018.
[2] As of January 2, 2020.

plus interest for month of closing

Home inspection fee

Radon inspection fee (if separate)

Termite/insect inspection fee

Utility deposits (if required)

Title insurance search and policy premium

Survey (if any)

Reimbursement to seller for prepaid homeowner or condominium association assessments (if applicable)

Condominium assessment deposit (if applicable)

Conveyancing or preparation of papers charge

Recording fees (for deed)

Insurance premium

Payment to seller for prepaid real estate taxes (and water/sewer fees, if applicable)

Escrow for taxes and insurance to mortgagee, if applicable

Moving Expenses

Notary fees

Attorney's Fees

IV. Seller's Disclosures

A. The Pa. Real Estate Seller Disclosure Law, 68 Pa.C.S.A. § 7301 ("Disclosure Law"), et seq. requires that any "seller who intends to transfer any interest in real property shall disclose to the buyer any material defects with the property known to the seller by completing all applicable items in a property disclosure statement which satisfies the requirements of section 7304 [68 Pa.C.S.A. § 7304] (relating to disclosure form). A signed and dated copy of the property disclosure statement shall be delivered to the buyer in accordance with section 7305 [68 Pa.C.S.A. § 7305] (relating to delivery of disclosure form) prior to the signing of an agreement of transfer by the seller and buyer with respect to the property."

B. The PA Code contains an example of the minimum requirements of the Seller's Property Disclosure Statement. *See* 63 Pa. Code 35.335a. The Pennsylvania Association of Realtors publishes their own widely used Seller Disclosure Form for the satisfaction of the requirements of the Disclosure Law (PAR Form SPD). *See Appendix III*. This form contains disclosure questions and information extending *beyond* the requirements of the Disclosure Law.

Query: Is the failure to disclose a condition asked about on the PAR form but not contained in the PA Code a violation of the Seller Disclosure Law?

1. Other disclosures may be required to be made by the seller or broker in connection with the sale, e.g., concerning lead paint under the Residential Lead-Based Paint Hazard Reduction Act, 42 U.S.C. § 4852(d).

2. Local law should be checked to determine if other disclosures are required under local codes:

(a) Underground storage tanks

(b) Smoke detectors/alarms

(c) Sump pumps

3. Local codes also may require pre-settlement inspections by the municipality, and the issuance of a new certificate of occupancy or similar documentation. Scheduling inspections by the municipality may take time, so make sure to inquire early.

D. What to disclose?

It can be difficult to determine what has to be disclosed. The Seller's Disclosure Law requires that material defects must be disclosed. A "material defect" is defined in the Residential Real Estate Transfer Law – 68 Pa. C.S.A. §7102 as:

> A problem with a residential real property or any portion of it that would have a significant adverse impact on the value of the property or that involves an unreasonable risk to people on the property. The fact that a structural element, system, or subsystem is near, at or beyond the end of the normal useful life of such a structural element, system or subsystem is not by itself a material defect.

However, pursuant to §7309, a seller is not liable for failing to disclose a material defect if the seller reasonably believes that the material defect had been corrected. What is reasonable? The cost of finding out what is reasonable can be substantial if a buyer sues the seller because the buyer discovered a defect in the home that was not disclosed because the seller thought it was repaired. This cost may far exceed a reduction in the sale price that might occur if the seller had just disclosed the condition and the repairs performed, letting the buyers perform their own inspection of the condition.

Chapter Two
Section 1

Appendices



CONSUMER NOTICE

CN

THIS IS NOT A CONTRACT

In an effort to enable consumers of real estate services to make informed decisions about the business relationships they may have with real estate brokers and salespersons (licensees), the Real Estate Licensing and Registration Act (RELRA) requires that consumers be provided with this Notice at the initial interview.

• Licensees may enter into the following agency relationships with consumers:

Seller Agent

As a seller agent the licensee and the licensee's company works exclusively for the seller/landlord and must act in the seller's/landlord's best interest, including making a continuous and good faith effort to find a buyer/tenant except while the property is subject to an existing agreement. All confidential information relayed by the seller/landlord must be kept confidential except that a licensee must reveal known material defects about the property. A subagent has the same duties and obligations as the seller agent.

Buyer Agent

As a buyer agent, the licensee and the licensee's company work exclusively for the buyer/tenant even if paid by the seller/landlord. The buyer agent must act in the buyer/tenant's best interest, including making a continuous and good faith effort to find a property for the buyer/tenant, except while the buyer is subject to an existing contract, and must keep all confidential information, other than known material defects about the property, confidential.

Dual Agent

As a dual agent, the licensee works for *both* the seller/landlord and the buyer/tenant. A dual agent may not take any action that is adverse or detrimental to either party but must disclose known material defects about the property. A licensee must have the written consent of both parties before acting as a dual agent.

Designated Agent

As a designated agent, the broker of the selected real estate company designates certain licensees within the company to act exclusively as the seller/landlord agent and other licensees within the company to act exclusively as the buyer/tenant agent in the transaction. Because the broker supervises all of the licensees, the broker automatically serves as a dual agent. Each of the designated licensees are required to act in the applicable capacity explained previously. Additionally, the broker has the duty to take reasonable steps to assure that confidential information is not disclosed within the company.

• In addition, a licensee may serve as a Transaction Licensee.

A transaction licensee provides real estate services without having any agency relationship with a consumer. Although a transaction licensee has no duty of loyalty or confidentiality, a transaction licensee is prohibited from disclosing that:

- The seller will accept a price less than the asking/listing price,
- The buyer will pay a price greater than the price submitted in the written offer, and
- The seller or buyer will agree to financing terms other than those offered.

Like licensees in agency relationships, transaction licensees must disclose known material defects about the property.

- Regardless of the business relationship selected, all licensees owe consumers the duty to:
  - Exercise reasonable professional skill and care which meets the practice standards required by the RELRA.
  - Deal honestly and in good faith.
  - Present, as soon as practicable, all written offers, counteroffers, notices and communications to and from the parties. This duty may be waived *by* the seller *where* the seller's property is under contract and the waiver is in writing.
  - Comply with the Real Estate Seller Disclosure Law.
  - Account for escrow and deposit funds.
  - Disclose, as soon as practicable, all conflicts of interest and financial interests.
  - Provide assistance with document preparation and advise the consumer regarding compliance with laws pertaining to real estate transactions.
  - Advise the consumer to seek expert advice on matters about the transaction that are beyond the licensee's expertise.
  - Keep the consumer informed about the transaction and the tasks to be completed.
  - Disclose financial interest in a service, such as financial, title transfer and preparation services, insurance, construction, repair or inspection, at the time service is recommended or the first time the licensee learns that the service will be used.
- The following contractual terms are *negotiable* between the licensee and the consumer and must be addressed in an agreement/disclosure statement:
  - The duration of the licensee's employment, listing agreement or contract.
  - The licensee's fees or commission.
  - The scope of the licensee's activities or practices.
  - The broker's cooperation with and sharing of fees with other brokers.
- All sales agreements must contain the property's zoning classification except where the property is zoned solely or primarily to permit single family dwellings.
- The Real Estate Recovery Fund exists to reimburse any person who has obtained a final civil judgment against a Pennsylvania real estate licensee owing to fraud, misrepresentation, or deceit in a real estate transaction and who has been unable to collect the judgment after exhausting all legal and equitable remedies. For complete details about the Fund, call (717) 783-3658.

Before you disclose any financial information to a licensee, be advised that unless you select a business relationship by signing a written agreement, the licensee is NOT representing you. A business relationship is NOT presumed.

ACKNOWLEDGMENT

I acknowledge that I have received this disclosure.

Date: _____ _____ _____

(Consumer's Printed Name) **(Consumer's Signature)**

Date: _____ _____ _____

(Consumer's Printed Name) **(Consumer's Signature)**

I certify that I have provided this document to the above consumer during the initial interview.

Date: _____

_____ _____ _____

(Licensee's Printed Name) **(Licensee's Signature)** **(License #)**

Adopted by the State Real Estate Commission at 49 Pa. Code §35.336.

LISTING CONTRACT (SELLER AGENCY CONTRACT)
EXCLUSIVE RIGHT TO SELL REAL ESTATE

XLS

This form recommended and approved for, but not restricted to use by, the members of the Pennsylvania Association of Realtors® (PAR)

Broker (Company) _____ | Licensee(s) (Name) _____
_____ | _____
Company Address _____ | Direct Phone(s) _____
_____ | Cell Phone(s) _____
Company Phone _____ | Fax _____
Company Fax _____ | Email _____

SELLER _____
_____
SELLER'S MAILING ADDRESS _____
_____
PHONE _____ **FAX** _____
E-MAIL _____

Seller understands that this Listing Contract is between Broker and Seller.
Does Seller have a listing contract for this Property with another broker? ☐ Yes ☐ No
If yes, explain: _____

1. PROPERTY **LISTED PRICE $** _____
Address _____ ZIP _____
Municipality (city, borough, township) _____
County _____ School District _____
Zoning _____
Present Use _____
Identification (For example, Tax ID #; Parcel #; Lot, Block; Deed Book, Page, Recording Date) _____
_____

2. STARTING & ENDING DATES OF LISTING CONTRACT (ALSO CALLED "TERM")
(A) No Association of REALTORS® has set or recommended the term of this contract. Broker/Licensee and Seller have discussed and agreed upon the term of this Contract.
(B) **Starting Date:** This Contract starts when signed by Broker and Seller, unless otherwise stated here: _____
(C) **Ending Date:** This Contract ends at 11:59 PM on _____ . By law, the term of a listing contract may not exceed one year. If the Ending Date written in this Contract creates a term that is longer than one year, the Ending Date is automatically 364 days from the Starting Date of this Contract.

3. DUAL AGENCY
Seller agrees that Broker and Broker's Licensees may also represent the buyer(s) of the Property. A Broker is a Dual Agent when a Broker represents both a buyer and Seller in the same transaction. A Licensee is a Dual Agent when a Licensee represents a buyer and Seller in the same transaction. All of Broker's licensees are also Dual Agents UNLESS there are separate Designated Agents for a buyer and Seller. If the same Licensee is designated for a buyer and Seller, the Licensee is a Dual Agent. Seller understands that Broker is a Dual Agent when a buyer who is represented by Broker is viewing properties listed by Broker.

4. DESIGNATED AGENCY
Designated Agency is applicable, unless checked below. Broker designates the Licensee(s) above to exclusively represent the interests of Seller. If Licensee is also the buyer's agent, then Licensee is a DUAL AGENT.
☐ **Designated Agency is not applicable.**

5. BROKER'S FEE
(A) No Association of REALTORS® has set or recommended the Broker's Fee. Broker and Seller have negotiated the fee that Seller will pay Broker.
(B) Broker's Fee is _____ % of the sale price OR $_____ , whichever is greater, AND $_____, paid to Broker by Seller as follows:
1. $ _____ of Broker's Fee is earned and due **(non-refundable)** at signing of this Listing Contract, payable to Broker.

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rev. 2/22; rel. 7/22

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2. **Seller will pay** the balance of **Broker's Fee if:**
   a. **Property, or any ownership interest in it, is sold or exchanged during the term of this Contract by Broker, Broker's Licensee(s), Seller, or by any other person or broker, at the listed price or any price acceptable to Seller,** OR
   b. A ready, willing, and able buyer is found, during the term of this contract, by Broker or by anyone, including Seller. A willing buyer is one who will pay the listed price or more for the Property, or one who has submitted an offer accepted by Seller, OR
   c. Negotiations that are pending at the Ending Date of this Contract result in a sale, OR
   d. A Seller signs an agreement of sale then refuses to sell the Property, or if a Seller is unable to Sell the Property because of failing to do all the things required of the Seller in the agreement of sale (Seller default), OR
   e. The Property or any part of it is taken by any government for public use (Eminent Domain), in which case Seller will pay from any money paid by the government, OR
   f. A sale occurs after the Ending Date of this Contract IF:
      (1) The sale occurs within _____ days of the Ending Date, AND
      (2) The buyer was shown or negotiated to buy the Property during the term of this contract, AND
      (3) The Property is not listed under an "exclusive right to sell contract" with another broker at the time of the sale.

(C) If a sale occurs, balance of Broker's Fee will be paid upon delivery of the deed or other evidence of transfer of title or interest. If the Property is transferred by an installment contract, balance of Broker's Fee will be paid upon the execution of the installment contract.

6. BROKER'S FEE IF SETTLEMENT DOES NOT OCCUR

If an agreement of sale is signed and settlement does not occur, and deposit monies are released to Seller, Seller will pay Broker _____ of/from deposit monies.

7. COOPERATION WITH OTHER BROKERS

Licensee(s) has explained Broker's company policies about cooperating with other brokers. Broker and Seller agree that Broker will pay **from Broker's Fee** a fee to another broker who procures the buyer, is a member of a Multiple Listing Service (MLS), and who:

(A) ☐ **Represents Seller (SUBAGENT).** Broker will pay _____ of/from the sale price.

(B) ☐ **Represents the buyer (BUYER'S AGENT).** Broker will pay _____ of/from the sale price. **A buyer's Agent, even if compensated by Broker for Seller, will represent the interests of the buyer.**

(C) ☐ **Does not represent either Seller or a buyer (TRANSACTION LICENSEE).** Broker will pay _____ of/from the sale price.

8. DUTIES OF BROKER AND SELLER

(A) Broker is acting as a Seller Agent, as described in the Consumer Notice, to market the Property and to negotiate with potential buyers. Broker will use reasonable efforts to find a buyer for the Property.

(B) Seller will cooperate with Broker and assist in the sale of the Property as asked by Broker.

(C) All showings, negotiations and discussions about the sale of the Property, written or oral, will be communicated by Broker on Seller's behalf. All written or oral inquiries that Seller receives or learns about regarding the Property, regardless of the source, will be referred to Broker.

(D) If the Property, or any part of it, is rented, Seller will give any leases to Broker before signing this Contract. If any leases are oral, Seller will provide a written summary of the terms, including amount of rent, ending date, and Tenant's responsibilities.

(E) Seller will not enter into, renew, or modify any leases, or enter into any option to sell, during the term of this Contract without Broker's written consent.

9. BROKER'S SERVICE TO BUYER

Broker may provide services to a buyer for which Broker may accept a fee. Such services may include, but are not limited to: document preparation; ordering certifications required for closing; financial services; title transfer and preparation services; ordering insurance, construction, repair, or inspection services.

10. BROKER NOT RESPONSIBLE FOR DAMAGES

Seller agrees that Broker and Broker's Licensee(s) are not responsible for any damage to the Property or any loss or theft of personal goods from the Property unless such damage, loss or theft is solely and directly caused by Broker or Broker's Licensee(s).

11. DEPOSIT MONEY

(A) Broker, if named in an agreement of sale, will keep all deposit monies paid by or for the buyer in an escrow account until the sale is completed, the agreement of sale is terminated, or the terms of a prior written agreement between the buyer and Seller have been met. This escrow account will be held as required by real estate licensing laws and regulations. Buyer and Seller may name a non-licensee as the escrow holder, in which case the escrow holder will be bound by the terms of the escrow agreement, if any, not by the Real Estate Licensing and Registration Act. Seller agrees that the person keeping the deposit monies may wait to deposit any uncashed check that is received as deposit money until Seller has accepted an offer.

(B) Regardless of the apparent entitlement to deposit monies, Pennsylvania law does not allow a Broker holding deposit monies to determine who is entitled to the deposit monies when settlement does not occur. Broker can only release the deposit monies:
   1. If an agreement of sale is terminated prior to settlement and there is no dispute over entitlement to the deposit monies. A written agreement signed by both parties is evidence that there is no dispute regarding deposit monies.

SAMPLE

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2. If, after Broker has received deposit monies, Broker receives a written agreement that is signed by Buyer and Seller, directing Broker how to distribute some or all of the deposit monies.
3. According to the terms of a final order of court.
4. According to the terms of a prior written agreement between Buyer and Seller that directs the Broker how to distribute the deposit monies if there is a dispute between the parties that is not resolved.

(C) Seller agrees that if Seller names Broker or Broker's licensee(s) in litigation regarding deposit monies, the attorneys' fees and costs of the Broker(s) and licensee(s) will be paid by Seller.

12. OTHER PROPERTIES

Seller agrees that Broker may list other properties for sale and that Broker may show and sell other properties to prospective buyers.

13. ADDITIONAL OFFERS

Unless prohibited by Seller, if Broker is asked by a buyer or another licensee(s) about the existence of other offers on the Property, Broker will reveal the existence of other offers and whether they were obtained by the Licensee(s) identified in this Contract, by another Licensee(s) working with Broker, or by a licensee(s) working for a different Broker. ONCE SELLER ENTERS INTO AN AGREEMENT OF SALE, BROKER IS NOT REQUIRED TO PRESENT OTHER OFFERS.

14. SELLER WILL REVEAL DEFECTS & ENVIRONMENTAL HAZARDS

(A) Seller (including Sellers exempt from the Real Estate Seller Disclosure Law) will disclose all known material defects and/or environmental hazards on a separate disclosure statement. A material defect is a problem or condition that:
1. is a possible danger to those living on the Property, or
2. has a significant, adverse effect on the value of the Property.

The fact that a structural element, system or subsystem is near, at or beyond the end of the normal useful life of such a structural element, system or subsystem is not by itself a material defect.

(B) Seller will update the Seller's Property Disclosure Statement as necessary throughout the term of this Listing Contract.

(C) If Seller fails to disclose known material defects and/or environmental hazards:
1. Seller will not hold Broker or Licensee(s) responsible in any way;
2. Seller will protect Broker and Licensee(s) from any claims, lawsuits, and actions that result;
3. Seller will pay all of Broker's and Licensee's costs that result. This includes attorneys' fees and court-ordered payments or settlements (money Broker or Licensee pays to end a lawsuit or claim).

15. IF PROPERTY WAS BUILT BEFORE 1978

The Residential Lead-Based Paint Hazard Reduction Act says that any seller of property built before 1978 must give the buyer an EPA pamphlet titled *Protect Your Family From Lead in Your Home*. The seller also must tell the buyer and the broker what the seller knows about lead-based paint and lead-based paint hazards that are in or on the property being sold. Seller must tell the buyer how the seller knows that lead-based paint and lead-based paint hazards are on the property, where the lead-based paint and lead-based paint hazards are, the condition of the painted surfaces, and any other information seller knows about lead-based paint and lead-based paint hazards on the property. Any seller of a pre-1978 structure must also give the buyer any records and reports that the seller has or can get about lead-based paint or lead-based paint hazards in or around the property being sold, the common areas, or other dwellings in multi-family housing. According to the Act, a seller must give a buyer 10 days (unless seller and the buyer agree to a different period of time) from the time an agreement of sale is signed to have a "risk assessment" or inspection for possible lead-based paint hazards done on the property. Buyers may choose not to have the risk assessment or inspection for lead paint hazards done. If the buyer chooses not to have the assessment or inspection, the buyer must inform the seller in writing of the choice. The Act does not require the seller to inspect for lead paint hazards or to correct lead paint hazards on the property. The Act does not apply to housing built in 1978 or later.

16. HOME WARRANTIES

At or before settlement, Seller may purchase a home warranty for the Property from a third-party vendor. Seller understands that a home warranty for the Property does not alter any disclosure requirements of Seller, may not cover or warrant any pre-existing defects of the Property, and will not alter, waive or extend any provisions of the Agreement regarding inspections or certifications that Buyer may elect or waive as part of the Agreement. Seller understands that Broker who recommends a home warranty may have a business relationship with the home warranty company that provides a financial benefit to Broker.

17. RECORDINGS ON THE PROPERTY

(A) Seller understands that potential buyers viewing the Property may engage in photography, videography or videotelephony on the Property. Seller should remove any items of a personal nature Seller does not wish to have photographed or recorded, such as family photos, important or confidential paperwork (including any information relating to the listing or communications with Broker or Licensee) and all other personally identifiable information such as birthdates, social security numbers, telephone numbers, etc. Seller is responsible for providing this same notification to any occupants of the Property.

(B) Any person who intentionally intercepts oral communications by electronic or other means without the consent of all parties is guilty of a felony under Pennsylvania law. Seller understands that recording or transmitting audio may result in violation of state or federal wiretapping laws. **Seller hereby releases all BROKERS, their LICENSEES, EMPLOYEES and any OFFICER or PARTNER of any one of them, and any PERSON, FIRM or CORPORATION who may be liable by or through them, from any claims, lawsuits and actions which may arise from any audio or video recordings occurring in or around the Property.**

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18. RECOVERY FUND

Pennsylvania has a Real Estate Recovery Fund (the Fund) to repay any person who has received a final court ruling (civil judgment) against a Pennsylvania real estate licensee because of fraud, misrepresentation, or deceit in a real estate transaction. The Fund repays persons who have not been able to collect the judgment after trying all lawful ways to do so. For complete details about the Fund, call (717) 783-3658.

19. NOTICE TO PERSONS OFFERING TO SELL OR RENT HOUSING IN PENNSYLVANIA

Federal and state laws make it illegal for a seller, a broker, or anyone to use RACE, COLOR, RELIGION or RELIGIOUS CREED, SEX, DISABILITY (physical or mental), FAMILIAL STATUS (children under 18 years of age), AGE (40 or older), NATIONAL ORIGIN, USE OR HANDLING/TRAINING OF SUPPORT OR GUIDE ANIMALS, or the FACT OF RELATIONSHIP OR ASSOCIATION TO AN INDIVIDUAL KNOWN TO HAVE A DISABILITY as reasons for refusing to sell, show, or rent properties, loan money, or set deposit amounts, or as reasons for any decision relating to the sale of property.

20. TRANSFER OF THIS CONTRACT

(A) Seller agrees that Broker may transfer this Contract to another broker when:
1. Broker stops doing business, OR
2. Broker forms a new real estate business, OR
3. Broker joins his business with another.

(B) Broker will notify Seller immediately in writing if Broker transfers this Contract to another broker. Seller will follow all requirements of this Contract with the new broker.

21. NO OTHER CONTRACTS

Seller will not enter into another listing contract for the property(s) identified in Paragraph 1 with another broker that begins before the Ending Date of this Contract.

22. CONFLICT OF INTEREST

It is a conflict of interest when Broker or Licensee has a financial or personal interest in the property and/or cannot put Seller's interests before any other. If Broker, or any of Broker's licensees, has a conflict of interest, Broker will notify Seller in a timely manner.

23. ENTIRE CONTRACT

This Contract is the entire agreement between Broker and Seller. Any verbal or written agreements that were made before are not a part of this Contract.

24. CHANGES TO THIS CONTRACT

All changes to this Contract must be in writing and signed by Broker and Seller.

25. MARKETING OF PROPERTY

(A) Multiple Listing Services (MLS)
1. An MLS is a subscription service used by real estate licensees to market properties to other subscribers. If marketed in an MLS, Broker will make an offer of cooperating compensation to another participant who procures a buyer for the Property (See Paragraph 7). MLS marketing is governed by specific rules and policies, which may differ depending on the MLS used.
2. Sellers have the right to decide whether their Property will be marketed in an MLS, but should understand that opting out of MLS marketing may restrict Broker's ability to market the Property in other ways.
   - ☐ Broker **will not** use an MLS to advertise the Property. Seller understands and agrees that the listing may be reported to an MLS, but will not be marketed for sale via an MLS. Further, Seller understands and agrees that any and all public marketing of the Property through the use of other means such as yard signs, social media, and public-facing websites may be prohibited. Seller may be required to sign an additional waiver or release to comply with MLS rules and policies.
   - ☐ Broker will use an MLS to advertise the Property to other real estate brokers and salespersons. Listing broker shall communicate to the MLS all of Seller's elections made below. Seller agrees that Broker and Licensee, and the MLS are not responsible for mistakes in an MLS or advertising of the Property.

(B) Virtual Office Website (VOW) and Internet Data Exchange (IDX)
1. Some brokers may use a VOW or IDX, which are governed by specific rules and policies. Sellers have the right to control some elements of how their property is displayed on a VOW and/or IDX website.
2. Seller elects to have the following features disabled or discontinued for VOW and IDX websites (check all that apply):
   - ☐ Comments or reviews about Seller's listings, or a hyperlink to such comments or reviews, in immediate conjunction with Seller's listing
   - ☐ Automated estimates of the market value of Seller's listing, or a hyperlink to such estimates, in immediate conjunction with the Seller's listing.

(C) Other
1. Where permitted, Broker, at Broker's option, may use: for sale sign, lock box, key in office, open houses and advertising in all media, including print and electronic, photographs and videos, unless otherwise stated here: _____
   _____
2. ☐ Seller does not want the listed Property to be displayed on the Internet.
   ☐ Seller does not want the address of the listed Property to be displayed on the Internet.
3. Seller understands and acknowledges that, if the listed Property is not displayed on the Internet, consumers who conduct searches for listings on the Internet will not see information about the listed Property in response to their search.

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(D) Seller understands and acknowledges that, if an open house is scheduled, the property address may be published on the Internet in connection to the open house.

(E) Other _____

26. PUBLICATION OF SALE PRICE

Seller is aware that the Multiple Listing Service (MLS), newspapers, Web Sites, and other media may publish the final sale price of the Property.

27. COPYRIGHT

In consideration of Broker's efforts to market Seller's Property as stated in this Contract, Seller grants Broker a non-exclusive, world-wide license (the "License") to use any potentially copyrightable materials (the "Materials") which are related to the Property and provided by Seller to Broker or Broker's representative(s). The Materials may include, but are not limited to: photographs, images, video recordings, virtual tours, drawings, written descriptions, remarks, and pricing information related to Seller's Property. This License permits Broker to submit the Materials to one or more multiple listing services, to include the Materials in compilations of property listings, and to otherwise distribute, publicly display, reproduce, publish and produce derivative works from the Materials for any purpose that does not conflict with the express terms of this Contract. The License may not be revoked by Seller and shall survive the ending of this Contract. Seller also grants Broker the right to sublicense to others any of these rights granted to Broker by Seller. Seller represents and warrants to Broker that the License granted to Broker for the Materials does not violate or infringe upon the rights, including any copyrights, of any person or entity. Seller understands that the terms of the License do not grant Seller any legal right to any works that Broker may produce using the Materials.

28. FIXTURES AND PERSONAL PROPERTY

(A) It is possible for certain items of personal property to be so integrated into the Property that they become fixtures and will be regarded as part of the Property and therefore included in a sale. **Seller is encouraged to be specific when negotiating what items will be included or excluded in a sale.**

(B) INCLUDED in this sale are all existing items permanently installed in the Property, free of liens, and other items including plumbing; heating; radiator covers; hardwired security systems; thermostats; lighting fixtures (including chandeliers and ceiling fans); pool and spa equipment (including covers and cleaning equipment); electric animal fencing systems (excluding collars); garage door openers and transmitters; unpotted shrubbery, plantings and trees; any remaining heating and cooking fuels stored on the Property at the time of settlement; smoke detectors and carbon monoxide detectors; sump pumps; storage sheds; fences; mailboxes; wall to wall carpeting; existing window screens, storm windows and screen/storm doors; window covering hardware, shades and blinds; awnings; built-in air conditioners; built-in appliances, the range/oven, unless otherwise stated; and, if owned, solar panels, windmills, water treatment systems, propane tanks and satellite dishes. Also included: _____

_____

(C) The following items are not owned by Seller and may be subject to a lease or other financing agreement (e.g., solar panels, windmills, water treatment systems, propane tanks, and satellite dishes): _____

_____

(D) EXCLUDED fixtures and items: _____

_____

29. TAXES & SPECIAL ASSESSMENTS

(A) At settlement, Seller will pay one-half of the total Real Estate Transfer Taxes, unless otherwise stated here: _____

_____

(B) Yearly Property Taxes $ _____ Property Assessed Value $ _____

(C) Is the property preferentially assessed (including a tax abatement)? ☐ Yes ☐ No
If applicable, how many years remain? _____

(D) COA/HOA Name _____ COA/HOA Phone _____
COA/HOA special assessments $ _____ Buyer's required capital contribution $ _____
Please explain: _____

(E) COA/HOA Fees $ _____ ☐ Quarterly ☐ Monthly ☐ Yearly

(F) Municipality Assessments $ _____

30. FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT OF 1980 (FIRPTA)

The disposition of a U.S. real property interest by a foreign person (the transferor) is subject to the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) income tax withholding. FIRPTA authorized the United States to tax foreign persons on dispositions of U.S. real property interests. This includes but is not limited to a sale or exchange, liquidation, redemption, gift, transfers, etc. Persons purchasing U.S. real property interests (transferee) from foreign persons, certain purchasers' agents, and settlement officers are required to withhold up to 15 percent of the amount realized (special rules for foreign corporations). Withholding is intended to ensure U.S. taxation of gains realized on disposition of such interests. The transferee/buyer, as the withholding agent, may request that you complete a FIRPTA Affidavit regarding your status as a foreign person as defined by the Act. Seller agrees to comply, if applicable.

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31. TITLE & POSSESSION

(A) Seller will give possession of Property to a buyer at settlement, or on _____

(B) At settlement, Seller will give full rights of ownership (fee simple) to a buyer except as follows:

☐ Oil ☐ Gas ☐ Mineral ☐ Other

If checked, please explain: _____

_____

(C) Seller has:

☐ First mortgage with _____ Amount of balance $ _____

Address _____

Phone _____ Acct. # _____

☐ Second mortgage with _____ Amount of balance $ _____

Address _____

Phone _____ Acct. # _____

☐ Home Equity line of credit with _____ Amount of balance $ _____

Address _____

Phone _____ Acct. # _____

☐ Seller authorizes Broker to receive mortgage payoff and/or equity loan payoff information from lender(s).

(D) Seller has:

☐ Judgments $ _____ ☐ Past Due Municipal Assessment $ _____

☐ Past Due Property Taxes $ _____ ☐ Past Due COA/HOA Fees $ _____

☐ Federal Tax Liens $ _____ ☐ Past Due COA/HOA Assessments $ _____

☐ State Tax Liens $ _____

☐ Other: _____ $ _____

(E) If Seller, at any time on or since January 1, 1998, has been obligated to pay support under an order on record in any Pennsylvania county, list the county and the Domestic Relations Number or Docket Number: _____

32. BUYER FINANCING

Seller will accept the following arrangements for buyer to pay for the Property:

☐ Cash ☐ Conventional mortgage ☐ FHA mortgage ☐ VA mortgage

☐ Seller's Assist to buyer (if any) $ _____, or _____ %

33. SPECIAL INSTRUCTIONS

The Office of the Attorney General has not pre-approved any special conditions or additional terms added by any parties. Any special conditions or additional terms in this Contract must comply with the Pennsylvania Plain Language Consumer Contract Act.

34. SPECIAL CLAUSES

(A) The following are part of this Listing Contract if checked:

☐ Property Description Addendum to Listing Contract (PAR Form XLS-A)

☐ Single Agency Addendum (PAR Form SA)

☐ Consumer Services Fee Addendum (PAR Form CSF)

☐ Vacant Land Addendum to Listing Contract (PAR Form VLA)

☐ Short Sale Addendum (PAR Form SSL)

☐ _____

☐ _____

(B) Additional Terms:

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342 _____ **Seller has read the Consumer Notice as adopted by the State Real Estate Commission at 49 Pa. Code §35.336.**

343 _____ **Seller has received the Seller's Property Disclosure form and agrees to complete and return to Listing Broker in a**
344 **timely manner, if required.**

345 _____ **Seller has received the Lead-Based Hazards Disclosure form and agrees to complete and return to Listing Broker in**
346 **a timely manner, if required.**

347 **Seller has read the entire Contract before signing. Seller must sign this Contract.**

348 **Seller gives permission for Broker to send information about this transaction to the fax number(s) and/or e-mail address(es) listed.**

349 **Return of this Agreement, and any addenda and amendments, including return by electronic transmission, bearing the signatures**
350 **of all parties, constitutes acceptance by the parties.**

351 **This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original and which counterparts**
352 **together shall constitute one and the same Agreement of the Parties.**

353 **NOTICE BEFORE SIGNING: IF SELLER HAS LEGAL QUESTIONS, SELLER IS ADVISED TO CONSULT A PENN-**
354 **SYLVANIA REAL ESTATE ATTORNEY.**

355 **SELLER** _____ **DATE** _____

356 **SELLER** _____ **DATE** _____

357 **SELLER** _____ **DATE** _____

358 **BROKER (Company Name)** _____

359 **ACCEPTED ON BEHALF OF BROKER BY** _____ **DATE** _____

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BUYER (TENANT) AGENCY CONTRACT

BAC

This form recommended and approved for, but not restricted to use by, the members of the Pennsylvania Association of Realtors® (PAR).

Note: The terms "buyer," "seller," "agreement of sale," and "purchase" also will be construed to mean "tenant," "landlord," "lease," and "rent," respectively, throughout this agreement.

Broker (Company) _____ | Licensee(s) (Name) _____

_____ | State License # _____

Company License # _____ | Direct Phone(s) _____

Company Address _____ | Cell Phone(s) _____

_____ | Licensee Fax _____

Company Phone _____ | Email _____

BUYER _____

_____

BUYER'S MAILING ADDRESS _____

_____

PHONE _____ **FAX** _____

E-MAIL _____

Buyer understands that this Buyer Agency Contract is between Broker and Buyer.

Does Buyer have a Buyer Agency Contract with another Broker? ☐Yes ☐No

If yes, explain: _____

1. STARTING & ENDING DATES OF BUYER AGENCY CONTRACT (ALSO CALLED "TERM")

(A) No Association of REALTORS® has set or recommended the term of this Contract. Broker/Licensee and Buyer have discussed and agreed upon the length or term of this Contract. Broker may be paid a fee that is a percentage of the purchase price. Even though Broker's Fee, or a portion of it, may be paid by seller or listing broker, Broker will continue to represent the interests of Buyer.

(B) **This Contract applies to any property that Buyer chooses to purchase during the term of this Contract. Buyer will not enter into a Buyer Agency Contract with another broker/licensee that begins before the Ending Date of this Contract.**
Starting Date: This Contract starts when signed by Buyer and Broker, unless otherwise stated here: _____
Ending Date: This Contract ends at 11:59 PM on _____, or before if Buyer and Broker agree. The Ending Date of this Contract may not be extended without the written consent of Buyer.

(C) If Buyer is negotiating or has entered into an Agreement of Sale, this Contract ends upon settlement.

2. BROKER'S FEE

(A) No Association of REALTORS® has set or recommended Broker's fee. Broker and Buyer have negotiated the fee Broker will receive for exercising professional knowledge and skills in locating and assisting Buyer in the acquisition of real property which is available and suitable for Buyer.

(B) Broker's Fee, paid by Buyer to Broker, is as follows:

1. In a purchase transaction:
   a. with a seller represented by a real estate broker the fee is _____% of the purchase price OR $_____, whichever is greater, AND $_____.
   b. with a seller who is **not** represented by a real estate broker the fee is_____% of the purchase price OR _____, whichever is greater, AND $_____.
2. Broker's Fee in event of a lease transaction is: _____
3. It is Broker's policy to accept compensation offered by the listing broker. If the amount received from the listing broker is less than the amount in Paragraph 2(B)(1), in a purchase transaction, or 2(B)(2), in a lease transaction, Buyer will pay Broker the difference, unless seller agrees to pay the difference as a term in the agreement of sale.
4. $_____ of Broker's Fee is earned and due (non-refundable) at signing of this Buyer Agency Contract.
5. Other _____

(C) **The balance of Broker's Fee is earned if Buyer enters into an agreement of sale during the term of this Contract, whether brought about by Broker, Broker's Licensee(s) or by any other person, including Buyer. If Buyer defaults on the terms of an agreement of sale, Broker's Fee will be paid by Buyer to Broker at that time. Buyer is advised that contacting a listing broker or seller directly may compromise Broker's ability to earn compensation from a listing broker and could result in Buyer's obligation to pay a fee to Broker.**

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rev. 11/19; rel. 1/20

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(D) If Buyer enters into an agreement of sale for a property after the Ending Date of this Contract, Buyer will pay Broker's Fee if:
1. The agreement of sale is a result of Broker's actions during the term of this Contract, OR
2. The property was seen during the term of this Contract, AND
3. Buyer is not under an exclusive buyer agency contract with another broker at the time Buyer enters into an agreement of sale.

3. DUAL AGENCY

Buyer agrees that Broker and Broker's Licensee(s) stated above may also represent the seller(s) of the property Buyer might buy. A Broker is a Dual Agent when a Broker represents both Buyer and a seller in the same transaction. A Licensee is a Dual Agent when a Licensee represents Buyer and a seller in the same transaction. All of Broker's licensees are also Dual Agents UNLESS there are separate Designated Agents for Buyer and a seller. If the same Licensee is designated for Buyer and a seller, the Licensee is a Dual Agent. Buyer understands that Broker is a Dual Agent when Buyer is viewing properties listed by Broker.

4. DESIGNATED AGENCY

Designated Agency is applicable, unless checked below. Broker designates the Licensee(s) stated above to exclusively represent the interests of Buyer. If Licensee is also the Seller's Agent, then Licensee is a DUAL AGENT.

☐ **Designated Agency is not applicable.**

5. BROKER'S SERVICES TO OTHERS

(A) Broker may not take action that is inconsistent with Buyer's interests. However, Broker may provide services to a seller for which Broker may accept a fee. Such services may include, but are not limited to, listing property for sale; representing the Seller as Seller Agent; deed/document preparation; ordering certifications required for closing; financial services; title transfer and preparation services; ordering insurance, construction, repair, or inspection services. Providing such services is not in itself a breach of Broker's fiduciary duty to Buyer.

(B) Broker/Licensee may show the same properties to other buyers and may represent those buyers in attempts to purchase the same property that Buyer wishes to purchase. Broker does not breach a duty to Buyer by showing a property Buyer is interested in to other prospective buyers.

(C) It is a conflict of interest when Broker or Licensee has a financial or personal interest in the property and/or cannot put Buyer's interests before any other. If Broker, or any of Broker's licensees, has a conflict of interest, Broker will notify Buyer in a timely manner.

6. ENTIRE CONTRACT

This Contract is the entire agreement between Broker and Buyer. Any verbal or written agreements that were made before are not a part of this Contract. All changes to this Contract must be in writing and signed by Broker and Buyer.

7. TRANSFER OF THIS CONTRACT

(A) Buyer agrees that Broker may transfer this Contract to another broker when Broker stops doing business, Broker forms a new real estate business, OR Broker joins his business with another.

(B) Broker will notify Buyer immediately in writing if Broker transfers this Contract to another broker. Buyer will follow all requirements of this Contract with the new broker.

8. CONFIDENTIALITY

Unless permitted by Buyer or required by law, Broker will not knowingly reveal or use any confidential information of Buyer. Buyer understands that sellers or sellers' representatives might not treat the existence, terms or conditions of any offer as confidential unless there is a confidentiality agreement between Buyer and the seller. This Paragraph will survive the termination or expiration of this Contract.

9. EXPERTISE OF REAL ESTATE AGENTS

Pennsylvania real estate agents are required to be licensed by the Commonwealth of Pennsylvania and are obligated to disclose adverse factors about a property that are reasonably apparent to someone with expertise in the marketing of real property.

(A) If Buyer wants information regarding specific conditions or components of a property which are outside Broker's or Licensee's area of expertise, Buyer is encouraged to seek the advice of an appropriate professional.

(B) If Buyer wants financial, legal, or any other advice, Buyer is encouraged to seek the services of an accountant, lawyer, or other appropriate professional.

10. DEPOSIT MONEY

(A) Broker will keep (or will give to the listing broker, who will keep) all deposit monies that Broker/Licensee receives in an escrow account as required by the real estate licensing laws and regulations until the sale is completed or an agreement of sale is ter-

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minated, or the terms of a prior written agreement between the Buyer and a seller have been met. Buyer and Seller may name a non-licensee as the escrow holder, in which case the escrow holder will be bound by the terms of the escrow agreement, not by the Real Estate Licensing and Registration Act. Buyer agrees that the person keeping the deposit monies may wait to deposit any uncashed check that is provided as deposit money until Seller has accepted an offer.

(B) Regardless of the apparent entitlement to deposit monies, Pennsylvania law does not allow a Broker holding deposit monies to determine who is entitled to the deposit monies when settlement does not occur. Broker can only release the deposit monies:

1. If an agreement of sale is terminated prior to settlement and there is no dispute over entitlement to the deposit monies. A written agreement signed by both parties is evidence that there is no dispute regarding deposit monies.
2. If, after Broker has received deposit monies, Broker receives a written agreement that is signed by Buyer and Seller, directing Broker how to distribute some or all of the deposit monies.
3. According to the terms of a final order of court.
4. According to the terms of a prior written agreement between Buyer and Seller that directs the Broker how to distribute the deposit monies if there is a dispute between the parties that is not resolved.

(C) Buyer agrees that if Buyer names Broker or Broker's licensee(s) in litigation regarding deposit monies, the attorneys' fees and costs of the Broker(s) and licensee(s) will be paid by Buyer.

11. CIVIL RIGHTS ACTS

Federal and state laws make it illegal for a seller, broker, or anyone to use RACE, COLOR, RELIGION or RELIGIOUS CREED, SEX, DISABILITY (physical or mental), FAMILIAL STATUS (children under 18 years of age), AGE (40 or older), NATIONAL ORIGIN, USE OR HANDLING/TRAINING OF SUPPORT OR GUIDE ANIMALS, or the FACT OF RELATIONSHIP OR ASSOCIATION TO AN INDIVIDUAL KNOWN TO HAVE A DISABILITY as reasons for refusing to sell, show, or rent properties, loan money, or set deposit amounts, or as reasons for any decision relating to the sale or rental of property.

12. NOTICE REGARDING CONVICTED SEX OFFENDERS (MEGAN'S LAW)

The Pennsylvania General Assembly has passed legislation (often referred to as "Megan's Law," 42 Pa.C.S. §9791 et seq.) providing for community notification of certain convicted sex offenders. Buyers are encouraged to contact the municipal police department or the Pennsylvania State Police for information relating to the presence of sex offenders near a particular property, or to check the information on the Pennsylvania State Police Web site at www.pameganslaw.state.pa.us.

13. BUYER INSPECTIONS

(A) Unless Buyer and a seller agree otherwise, real estate is sold **IN ITS PRESENT CONDITION**. It is Buyer's responsibility to determine whether the condition of the property is satisfactory. **Buyer is advised to carry out an inspection**, at Buyer's expense, by qualified professionals to determine the condition of the structure or its components. Areas of concern may include, but are not limited to: electrical; plumbing; heating, ventilating and air conditioning; appliances and fixtures; water infiltration; basement; roof; property boundaries; asbestos, mold and indoor air quality, carbon monoxide, radon, and environmental hazards or substances; wood-destroying insect infestation; on-site water service and/or sewage system; property insurance; deeds, restrictions and zoning; and lead-based paint. Buyer should discuss inspections and any special needs with Licensee.

(B) Buyer is advised that information regarding properties considered for purchase by Buyer has been provided by a seller or a seller's broker. Such information may include, but is not limited to, the information on the Seller's Property Disclosure Statement, including environmental conditions, MLS information, including information regarding restrictions, taxes, assessments, association fees, zoning restrictions, dimensions, boundaries (if identified), and marketing information. Unless otherwise noted, Broker has not verified the accuracy of this information, and Buyer is advised to investigate its accuracy.

14. RECORDINGS ON THE PROPERTY

(A) Any person who intentionally intercepts oral communications by electronic or other means without the consent of all parties is guilty of a felony under Pennsylvania law. Buyers should not make recordings on the property that capture the oral statements of other persons without having the full consent of all persons who are parties to the communication.

(B) Buyer should be aware that a seller's property may contain smart home technologies or devices, which may record or allow for remote monitoring of the seller's property, including broadcasting or recording video and audio. Buyer should be aware that any discussions, including discussions of negotiation strategies, held on the property may not be confidential.

(C) **Buyer hereby releases all Brokers, their LICENSEES, employees and any OFFICER or PARTNER of any one of them, and any PERSON, FIRM, or CORPORATION who may be liable through them, from any claims, lawsuits and actions which may arise from any audio or video recordings occurring in or around any property considered for purchase by Buyer.**

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15. RECOVERY FUND

Pennsylvania has a Real Estate Recovery Fund (the Fund) to repay any person who has received a final court ruling (civil judgment) against a Pennsylvania real estate licensee because of fraud, misrepresentation, or deceit in a real estate transaction. The Fund repays persons who have not been able to collect the judgment after trying all lawful ways to do so. For complete details about the Fund, call (717) 783-3658.

16. SPECIAL CLAUSES

(A) The following are part of this Buyer Agency Contract if checked:

☐ Single Agency Addendum (PAR Form SA)

☐ _____

(B) Additional Terms:

Buyer has read and received the Consumer Notice as adopted by the State Real Estate Commission at 49 Pa. Code §35.336.

Buyer has read the entire Contract before signing. Buyer must sign this Contract.

If Buyer is obtaining mortgage financing, Buyer shall promptly deliver to Broker a copy of all Loan Estimate(s) and Closing Disclosure(s) upon receipt. Buyer gives permission for Broker to send information about this transaction to Buyer's fax number(s) and/or e-mail address(es) listed.

Return of this Contract, and any addenda and amendments, including return by electronic transmission, bearing the signatures of all parties, constitutes acceptance by the parties.

This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original and which counterparts together shall constitute one and the same Agreement of the Parties.

NOTICE BEFORE SIGNING: IF BUYER HAS LEGAL QUESTIONS, BUYER IS ADVISED TO CONSULT A PENNSYLVANIA REAL ESTATE ATTORNEY.

BUYER _____ **DATE** _____

BUYER _____ **DATE** _____

BUYER _____ **DATE** _____

BROKER (COMPANY) _____

ACCEPTED ON BEHALF OF BROKER BY _____ **DATE** _____

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Chapter Two
Section 2

Real Estate Seller Disclosure Law

Real Estate Seller Disclosure Law

A. Sellers' Obligation to Disclose

1. Statutory Obligations – 68 Pa. C.S.A. §7301 et seq.

a. Transferring any interest in residential real estate.

b. Exceptions – 68 Pa. C.S.A. §7302

- Transfers by a fiduciary in the course of the administration of an estate, guardianship, conservatorship, or trust.
- Transfers of new construction not previously occupied when the buyer receives at least a one year written warranty, the dwelling was inspected for compliance with applicable building codes, and a certificate of occupancy or code compliance has been issued for the dwelling

Query: Do statutory exemptions protect seller from common law obligations?

Query: What if an exempt seller fills out the form anyway?

c. 16 Specific items to be disclosed - §7304

d. Seller *shall* disclose *material defects* with the *property* and *known* to the seller - §7303

(1) "Material Defect" defined in Residential Real Estate Transfer Law – 68 Pa. C.S.A. §7102:

Material defect. A problem with a residential real property or any portion of it that would have a significant adverse impact on the value of the property or that involves an unreasonable risk to people on the property. The fact that a structural element, system, or subsystem is near, at or beyond the end of the normal useful life of such a structural element, system or subsystem is not by itself a material defect.

(2) Not have to investigate - §7308

(3) Shall not make false/misleading statements - §7308

(4) Shall not fail to disclose material defect - §7308

(5) Intentional and negligence standards - §7311(a)
"any person who willfully or negligently violates or fails to perform any duty"

d. Damages - §7311

(1) Actual damages

(a) Loss in value v. cost to repair

(b) *Phelps v. Caperoon*, 2018 PA Super 171, 190 A.3d 1230 (2018) defined "actual damages" … "may be determined by the repair costs, capped by the market value of the property".

(2) Remedies provided by other applicable law are not precluded

(a) Punitive damages

(b) UTPCPL

2. Common Law Obligations

a. Disclose what you know or reasonably should know

b. *Bortz v. Noon*, 729 A.2d 555, 560-561 (Pa. 1999); *Gibbs v. Ernst*, 647 A.2d 882, 889 (Pa. 1994).

(1) Intentional misrepresentation

(2) Negligent misrepresentation

(3) Innocent misrepresentation

(4) Intentional non-disclosure

c Failure to disclose serious and latent defects known to the seller - *Quashnock v. Frost*, 445 A.2d 121 (Pa. Super. 1982)
Latent Condition - not readily observable

d. Justifiable Reliance – critical factor for plaintiffs
Parol Evidence Rule. See *LeDonne v. Kessler*, 389 A.2d 1123 (Pa. Super. 1978) - balancing test.

B. Sellers' Defenses

1. Lack of Knowledge

a. Sellers Disclosure Law, 68 Pa.C.S.A. §7309(a)(1)

b. Negligent Misrepresentation – seller ought to have known of its falsity. *Bortz*, 729 A.2d at 561.

c. Fraudulent Misrepresentation – seller knew or recklessly disregarded falsity. *Bortz*, 729 A.2d at 560.

d. Innocent Misrepresentation

e. How do you prove a negative?

2. Misinformation from a Reliable Source

a. Sellers Disclosure Law, 68 Pa. C.S.A. §7309(a)(3): home inspector, contractor, engineer, surveyor, architect, appraiser, etc.). However, reliance on the advice of counsel does not provide a defense. *Phelps v. Caperoon*, 2018 PA Super 171, 190 A.3d 1230, 1238 (2018)

b. Sellers Disclosure Law, 68 Pa. C.S.A. §7309(b): delivery of information by a public agency required to be disclosed to a buyer by the Seller Disclosure Law satisfies a seller's obligation to disclose.

c. Sellers Disclosure Law, 68 Pa. C.S.A. §7309(c): delivery of reports by a home inspector, contractor, engineer, surveyor, architect, appraiser, etc.

d. Information provided by governmental agency

3. Corrected Condition

a. Sellers Disclosure Law, 68 Pa. C.S.A. §7309(a)(2) – no liability if seller reasonably believed the material defect had been corrected.

b. Common law does not contain safe harbor for reasonable belief that condition was corrected

c. Who decides what is reasonable?

4. Condition Not "Material"

a. Sellers Disclosure Law, 68 Pa. C.S.A. §7303 – only need to disclose "material defects".

b. "Material Defect" defined in Residential Real Estate Transfer Law – 68 Pa. C.S.A. §7102.

c. Impact of local government on mandatory disclosures – 68 Pa. C.S.A. §7315(a) – municipalities generally cannot require any particular disclosure to a buyer of residential property.

d. Are common law standards any different?

5. Condition Not "With" the Property

a. Sellers Disclosure Law – 68 Pa. C.S.A. §7303 – the material defect has to be "with the property".

b. *Colaizzi v. Beck*, 895 A.2d 36 (Pa. Super. 2006) (disclosure of nearby group home for mentally challenged adults not a condition or material fact that must be disclosed under the Seller Disclosure Law

(1) No authority to require sellers' knowledge to extend beyond boundaries of property

c. *Miliken v. Jacono*, 628 Pa. 62 (Pa. 2014). The Pennsylvania Supreme Court held a murder/suicide that occurred in a home is not a material defect that required disclosure and that a psychological stigma does not constitute a material defect regardless of its potential impact on the value of the property. Justice Todd wrote a concurring opinion explaining that when the legislature used the term "material defect", it was referring to physical or structural problems with a property that pose an unreasonable risk to people on the property.

6. No Duty to Disclose

a. The Sellers Disclosure Law only applies to 1 to 4 family residential property.

(1) Exceptions: Part III does not apply to transfers by court order, from mortgagor to mortgage, from one co-owner to another, between spouses, parents, and children, from corporation to shareholders, for property to be converted by the buyer into a use other than residential or to be demolished, and unimproved property.

b. Material defects occurring after signing of Agreement of Sale
68 Pa. C.S.A. 7314(2)

7. Justifiable Reliance

a. Sellers Disclosure Law – It is unclear whether justifiable reliance is necessary. 68 Pa. C.S.A. §7311(a) holds a seller liable to a buyer for actual damages suffered "as a result of" a violation of the law. The statutory language "as a result of" in the UTPCPL has been interpreted to mean that the claimant must show justifiable reliance. *Krishnan v. Cutler Grp., Inc.*, 2017 PA Super 312 (Oct. 2, 2017).

b. Common law

(1) Negligent misrepresentation – justifiable reliance necessary element

(2) Fraudulent misrepresentation – justifiable reliance necessary element

c. What is the nature of the representation?

(1) Written representation – integration clause

(2) Oral representation – parol evidence rule

(3) Blumenstock v. Gibson, 811 A.2d 1029 (Pa. Super. 2003)

(4) Youndt v. First National Bank of Port Allegany, 868 A.2d 539,

546 (Pa. Super. 2005)

(5) But see LeDonne v. Kessler, 256 Pa. Super. 280, 389 A.2d 1123 (1978) for the "LeDonne Balancing Test" to see whether the parol evidence rule can be applied. The test requires "a balancing of the extent of the parties' knowledge of objectionable conditions derived from a reasonable inspection against the extent of the coverage of the contract's integration clause." *Blumenstock v. Gibson*, 2002 PA Super 339, ¶ 19, 811 A.2d 1029, 1037

8. Contributory Negligence

a. Common law defense

(1) *Gorski v. Smith*, 812 A.2d 683 (Pa. Super. 2003) – no contributory negligence for relying on erroneous legal advice.

(2) *Rizzo v. Michener*, 584 A.2d 973 (Pa. Super. 1990) – lack of care in examining home when buyers know that termite inspector could not access rear crawl space could constitute contributory negligence.

b. Does this defense have any role in a claim for breach of the Sellers Disclosure Law?

9. Agreement of Sale

a. Property Inspection Contingency

(1) Contractual requirement to have a "home inspector" as defined by the Home Inspection Law – 68 Pa.C.S.A. §7501 et seq.

b. Release Clause

(1) Limitations for violations of seller's disclosure requirements

c. Representations Clause

(1) Integration Clause – Parol Evidence Rule

d. Common law concerns

(1) *Vaughn v. Drab*, 73 Pa. D&C 4th 550 (C.P. Alleg. May 25, 2005) – parole evidence rule does not bar statutory claims under RESDL.

10. Statute of Repose v. Statute of Limitations

a. Sellers Disclosure Law – 68 Pa.C.S. 7311((b):

(b) Statute of limitations. --An action for damages as a result of a violation of this chapter must be commenced within two years after the date of final settlement.

C. Real Estate Professionals' Defenses

1. Lack of Knowledge

   a. Sellers Disclosure Act – lack of knowledge equates to no liability – 68 Pa. C.S.A. §7310

   b. Sellers Disclosure Act – provide form, explain duty to complete –68 Pa. C.S.A. §7310

      (1) 63 Pa. C.S.A. §455.604(a) (15.1)

      (2) 63 Pa.C.S.A. §455.606a(a)(4)

   c. RELRA – no duty to investigate – 63 Pa. C.S.A. §455.606a(i)

   d. RELRA – protection if seller does not disclose – 63 Pa. C.S.A. §455.606a(h)

   e. Actual knowledge can still form basis for liability for fraudulent misrepresentation

   f. If condition exists of which licensee should have known, may have negligent misrepresentation

2. Listing Agreement

   a. Paragraph 15(A) – seller agrees to disclose to agent all material defects and environmental hazards.

      (1) Agreement is separate and distinct from duty to compete Sellers Disclosure Statement

      (2) Agreement encompasses more than does duty under Sellers Disclosure Law

   b. Paragraph 15(B) – agreement to indemnify sellers' agent for failures to disclose

3. Sellers Disclosure Statement

   a. Obligation to disclose material defects is sellers' obligation

   b. Sellers Disclosure Statement is not substitute for inspections or warranties

c. Statements in Sellers Disclosure Statement are statements of Sellers, and not agents.

d. "SELLER ALONE IS RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION CONTAINED IN THIS STATEMENT."

e. Sellers Disclosure Statement is not warranty

(1) Buyer to satisfy himself as to condition of property

(2) Buyer has right to request inspections to perform due diligence before buying property

f. Real estate licensees entitled to rely on statements of sellers – *Krout v. Woods*, 2 Pa. D&C 4th 349 (C.P. York, March 16, 1989)

g. Standard of care does not require agents to investigate statements of sellers – *Bortz,* 729 A.2d at 563

4. (Property) Inspection Reports

a. Property Inspection Contingency – Agreement of Sale, Paragraph 12

b. Strength of a home inspection as a defense – 68 Pa. C.S.A. §7502(a)

c. If a trained inspector could not discover the condition, how can a real estate licensee be saddled with that responsibility?

5. Expert Testimony

a. Is an expert required?

(1) *Powell v. Risser*, 375 Pa. 60, 65, 99 A.2d 454, 456 (Pa. 1953) – Generally, expert testimony is required to establish negligent practice in any profession.

Chapter Two
Section 2

Appendices

The Pennsylvania CODE PREVIOUS • NEXT • CHAPTER TOC • TITLE TOC • BROWSE • SEARCH • HOME

§ 35.335a. Seller property disclosure statement.

The seller's property disclosure statement must, at a minimum, contain the following disclosures:

Seller's Property Disclosure Statement

Property address:

Seller:

A seller must disclose to a buyer all known material defects about property being sold that are not readily observable. This disclosure statement is designed to assist the seller in complying with disclosure requirements and to assist the buyer in evaluating the property being considered.

This statement discloses the seller's knowledge of the condition of the property as of the date signed by the seller and is not a substitute for any inspections or warranties that the buyer may wish to obtain. This statement is not a warranty of any kind by the seller or a warranty or representation by any listing real estate broker, any selling real estate broker or their agents. The buyer is encouraged to address concerns about the condition of the property that may not be included in this statement. This statement does not relieve the seller of the obligation to disclose a material defect that may not be addressed on this form.

A material defect is a problem with the property or any portion of it that would have a significant adverse impact on the value of the residential real property or that involves an unreasonable risk to people on the land. The fact that a structural element, system or subsystem is near, at or beyond the end of its normal useful life is not by itself a material defect.

(1) *Seller's expertise.* The seller does not possess expertise in contracting, engineering, architecture or other areas related to the construction and condition of the property and its improvements, except as follows:

---

(2) *Occupancy.* Do you, the seller, currently occupy this property?

___

yes

___

no

If "no," when did you last occupy the property?

---

(3) *Roof.*

(i) Date roof was installed:

___

. Documented?

yes

no

unknown

(ii) Has the roof been replaced or repaired during your ownership?

yes

no

If ‘‘yes,’’ were the existing shingles removed?

yes

no

unknown

(iii) Has the roof ever leaked during your ownership?

yes

no

(iv) Do you know of any problems with the roof, gutters or downspouts?

yes

no

Explain any ‘‘yes’’ answers that you give in this section:

(4) *Basements and crawl spaces (Complete only if applicable).*

(i) Does the property have a sump pump?

yes

no

unknown

(ii) Are you aware of any water leakage, accumulation or dampness within the basement or crawl space?

_____

yes

_____

no

If "yes," describe in detail:

_____

_____

(iii) Do you know of any repairs or other attempts to control any water or dampness problem in the basement or crawl space?

_____

yes

_____

no

If "yes," describe the location, extent, date and name of the person who did the repair or control effort:

_____

_____

(5) *Termites/wood destroying insects, dry rot, pests.*

(i) Are you aware of any termites/wood destroying insects, dry rot or pests affecting the property?

_____

yes

_____

no

(ii) Are you aware of any damage to the property caused by termites/wood destroying insects, dry rot or pests?

_____

yes

_____

no

(iii) Is your property currently under contract by a licensed pest control company?

_____

yes

_____

no

(iv) Are you aware of any termite/pest control reports or treatments for the property in the last five years?

_____

yes

no

Explain any ‘‘yes’’ answers that you give in this section:

(6) *Structural items.*

(i) Are you aware of any past or present water leakage in the house or other structures?

yes

no

(ii) Are you aware of any past or present movement, shifting, deterioration or other problems with walls, foundations or other structural components?

yes

no

(iii) Are you aware of any past or present problems with driveways, walkways, patios or retaining walls on the property?

yes

no

Explain any ‘‘yes’’ answers that you give in this section:

When explaining efforts to control or repair, please describe the location and extent of the problem and the date and person by whom the work was done, if known:

(7) *Additions/remodeling.* Have you made any additions, structural changes or other alterations to the property?

yes

no

If "yes," please describe:

(8) *Water and sewage.*

(i) What is the source of your drinking water?

public

community system

well on property

other

If "other," please explain:

(ii) If your drinking water source is not public:

When was your water last tested?

What was the result of the test?

Is the pumping system in working order?

yes

no

If "no," please explain:

(iii) Do you have a softener, filter or other purification system?

yes

no

If "yes," is the system:

leased

owned

(iv) What is the type of sewage system?

public sewer

private sewer

septic tank

cesspool

other

If "other," please explain:

(v) Is there a sewage pump?

yes

no

If "yes," is it in working order?

yes

no

(vi) If applicable, when was the septic system or cesspool last serviced?

(vii) Is either the water or sewage system shared?

yes

no

If "yes," please explain:

(viii) Are you aware of any leaks, backups or other problems relating to any of the plumbing, water and sewage-related items?

yes

no

If "yes," please explain:

---

(9) *Plumbing system.*

(i) Type of plumbing:

copper

galvanized

lead

PVC

unknown

other

If "other," please explain:

(ii) Are you aware of any problems with any of your plumbing fixtures (including, but not limited to: kitchen, laundry or bathroom fixtures, wet bars, hot water heater, etc.)?

yes

no

If "yes," please explain:

---

(10) *Heating and air conditioning.*

(i) Type of air conditioning:

central electric

central gas

wall

none

(ii) List any areas of the house that are not air conditioned:

(iii) Type of heating:

electric

fuel oil

natural gas

other

If "other," please explain:

(iv) List any areas of the house that are not heated:

(v) Type of water heating:

electric

gas

solar

other

If "other," please explain:

(vi) Are you aware of any underground fuel tanks on the property?

yes

no

If "yes," please describe:

Are you aware of any problems with any item in this section?

yes

no

If "yes," please explain:

(11) *Electrical system.* Are you aware of any problems or repairs needed in the electrical system?

yes

no

If "yes," please explain:

(12) *Equipment and appliances.*

The following items included in the sale are in need of repair or replacement:

(13) *Land (soils, drainage, boundaries and sinkholes).*

(i) Are you aware of any fill or expansive soil on the property?

yes

no

(ii) Are you aware of any sliding, settling, earth movement, upheaval, subsidence or earth stability problems that have occurred on or that affect the property?

yes

no

NOTE TO BUYER: Some properties may be subject to mine subsidence damage. Maps of the counties and mines where mine subsidence damage may occur and mine subsidence insurance are available through the Department of Environmental Protection, Mine Subsidence Insurance Fund.

(iii) Are you aware of any existing or proposed mining, strip mining or any other excavations that might affect this property?

yes

no

(iv) To your knowledge, is this property or part of it located in a flood zone or wetlands area?

yes

no

(v) Do you know of any past or present drainage or flooding problems affecting the property?

yes

no

(vi) Do you know of any encroachments, boundary line disputes or easements?

—
yes
—
no

NOTE TO BUYER: Most properties have easements running across them for utility services and other reasons. In many cases, the easements do not restrict the ordinary use of the property, and the seller may not be readily aware of them. Buyers may wish to determine the existence of easements and restrictions by examining the property and ordering an abstract of title or searching the records in the Office of the Recorder of Deeds for the county before entering into an agreement of sale.

(vii) Are you aware of any shared or common areas (for example, driveways, bridges, docks, walls, etc.) or maintenance agreements?

—
yes
—
no

(viii) Are you aware of any sinkholes that have developed on the property?

—
yes
—
no

Explain any ‘‘yes’’ answers that you give in this section:

_____

_____

(14) *Hazardous substances.*

(i) Are you aware of any underground tanks or hazardous substances present on the property (structure or soil), including, but not limited to, asbestos, polychlorinated byphenyls (PCBs), radon, lead paint, urea-formaldehyde foam insulation (UFFI), etc?

—
yes
—
no

(ii) To your knowledge, has the property been tested for any hazardous substances?

—
yes
—
no

(iii) Do you know of any other environmental concerns that might impact upon the property?

—
yes
—
no

Explain any "yes" answers that you give in this section:

_____

_____

_____

(15) *Condominiums and other homeowners associations (complete only if applicable).*

Type:

___
condominium*

___
cooperative

___
homeowners association

___
other

If "other," please explain:

_____

NOTICE REGARDING CONDOMINIUMS AND COOPERATIVES:

According to section 3407 of the Uniform Condominium Act (68 Pa.C.S. § 3407) (relating to resales of units) and 68 Pa.C.S. § 4409 (relating to resales of cooperative interests), a buyer of a resale unit in a condominium or cooperative must receive a certificate of resale issued by the association in the condominium or cooperative. The buyer will have the option of canceling the agreement with return of all deposit moneys until the certificate has been provided to the buyer and for 5 days thereafter or until conveyance, whichever occurs first.

(16) *Storm water facilities.*

(i) Do you know the location and condition of any basin, pond, ditch, drain, swale, culvert, pipe or other manmade feature of land that temporarily or permanently conveys or manages storm water for the property?

___
yes

___
no

___
unknown

(ii) If the answer to (i) is yes, is the owner of this property responsible for the ongoing maintenance of the storm water facility?

yes

no

unknown

Explain any ‘‘yes’’ answers that you give in this section:

(17) *Miscellaneous.*

(i) Are you aware of any existing or threatened legal action affecting the property?

yes

no

(ii) Do you know of any violations of Federal, State or local laws or regulations relating to this property?

yes

no

(iii) Are you aware of any public improvement, condominium or homeowner association assessments against the property that remain unpaid or of any violations of zoning, housing, building safety or fire ordinances that remain uncorrected?

yes

no

(iv) Are you aware of any judgment, encumbrance, lien (for example, comaker or equity loan) or other debt against this property that cannot be satisfied by the proceeds of this sale?

yes

no

(v) Are you aware of any reason, including a defect in title, that would prevent you from giving a warranty deed or conveying title to the property?

yes

no

(vi) Are you aware of any material defects to the property, dwelling or fixtures which are not disclosed elsewhere on this form?

yes

no

A material defect is a problem with the property or any portion of it that would have a significant adverse impact on the value of the residential real property or that involves an unreasonable risk to people on the land.

Explain any ‘‘yes’’ answers that you give in this section:

The undersigned seller represents that the information set forth in this disclosure statement is accurate and complete to the best of the seller’s knowledge. The seller hereby authorizes any agent for the seller to provide this information to prospective buyers of the property and to other real estate agents. The seller alone is responsible for the accuracy of the information contained in this statement. The seller shall cause the buyer to be notified in writing of any information supplied on this form that is rendered inaccurate by a change in the condition of the property following the completion of this form.

SELLER DATE

SELLER DATE

SELLER DATE

EXECUTOR, ADMINISTRATOR, TRUSTEE

The undersigned has never occupied the property and lacks the personal knowledge necessary to complete this disclosure statement.

DATE

RECEIPT AND ACKNOWLEDGMENT BY BUYER

The undersigned buyer acknowledges receipt of this disclosure statement. The buyer acknowledges that this statement is not a warranty and that, unless stated otherwise in the sales contract, the buyer is purchasing this property in its present condition. It is the buyer's responsibility to satisfy himself or herself as to the condition of the property. The buyer may request that the property be inspected, at the buyer's expense and by qualified professionals, to determine the condition of the structure or its components.

BUYER DATE

BUYER DATE

BUYER DATE

Authority

The provisions of this § 35.335a issued under sections 404 and 604(a)(15.1) of the Real Estate Licensing and Registration Act (63 P.S. § § 455.404 and 455.604(a)(15.1)); and amended under section 404 of the Real Estate Licensing and Registration Act (63 P.S. § 455.404).

Source

The provisions of this § 35.335a adopted December 3, 2010, effective December 4, 2010, 40 Pa.B. 6937; amended December 9, 2016, effective December 10, 2016, 46 Pa.B. 7638. Immediately preceding text appears at serial pages (354073) to (354079).

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SELLER'S PROPERTY DISCLOSURE STATEMENT

SPD

This form recommended and approved for, but not restricted to use by, the members of the Pennsylvania Association of Realtors® (PAR).

PROPERTY_____

SELLER_____

INFORMATION REGARDING THE REAL ESTATE SELLER DISCLOSURE LAW

The Real Estate Seller Disclosure Law (68 P.S. §7301, et seq.) requires that before an agreement of sale is signed, the seller in a residential real estate transfer must disclose all known **material defects** about the property being sold that are not readily observable. A **material defect** is a problem with a residential real property or any portion of it that would have a significant adverse impact on the value of the property or that involves an unreasonable risk to people on the property. The fact that a structural element, system or subsystem is at or beyond the end of its normal useful life is not by itself a material defect.

This property disclosure statement ("Statement") includes disclosures beyond the basic requirements of the Law and is designed to assist Seller in complying with disclosure requirements and to assist Buyer in evaluating the property being considered. Sellers who wish to see or use the basic disclosure form can find the form on the website of the Pennsylvania State Real Estate Commission. Neither this Statement nor the basic disclosure form limits Seller's obligation to disclose a material defect.

This Statement discloses Seller's knowledge of the condition of the Property as of the date signed by Seller and **is not a substitute for any inspections or warranties** that Buyer may wish to obtain. **This Statement is not a warranty of any kind by Seller or a warranty or representation by any listing real estate broker, any selling real estate broker, or their licensees.** Buyer is encouraged to address concerns about the condition of the Property that may not be included in this Statement.

The Law provides exceptions (listed below) where a property disclosure statement does not have to be completed. All other sellers are obligated to complete a property disclosure statement, even if they do not occupy or have never occupied the Property.

1. Transfers by a fiduciary during the administration of a decedent estate, guardianship, conservatorship or trust.
2. Transfers as a result of a court order.
3. Transfers to a mortgage lender that results from a buyer's default and subsequent foreclosure sales that result from default.
4. Transfers from a co-owner to one or more other co-owners.
5. Transfers made to a spouse or direct descendant.
6. Transfers between spouses as a result of divorce, legal separation or property settlement.
7. Transfers by a corporation, partnership or other association to its shareholders, partners or other equity owners as part of a plan of liquidation.
8. Transfers of a property to be demolished or converted to non-residential use.
9. Transfers of unimproved real property.
10. Transfers of new construction that has never been occupied and:
    a. The buyer has received a one-year warranty covering the construction;
    b. The building has been inspected for compliance with the applicable building code or, if none, a nationally recognized model building code; and
    c. A certificate of occupancy or a certificate of code compliance has been issued for the dwelling.

COMMON LAW DUTY TO DISCLOSE

Although the provisions of the Real Estate Seller Disclosure Law exclude some transfers from the requirement of completing a disclosure statement, the Law does not excuse the seller's common law duty to disclose any known material defect(s) of the Property in order to avoid fraud, misrepresentation or deceit in the transaction. **This duty continues until the date of settlement.**

EXECUTOR, ADMINISTRATOR, TRUSTEE SIGNATURE BLOCK

According to the provisions of the Real Estate Seller Disclosure Law, the undersigned executor, administrator or trustee is not required to fill out a Seller's Property Disclosure Statement. **The executor, administrator or trustee, must, however, disclose any known material defect(s) of the Property.**

_____ **DATE**_____

Pennsylvania Association of Realtors®

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rev. 3/21, rel. 7/21

SAMPLE

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Check yes, no, unknown (unk) or not applicable (N/A) for each question. Be sure to check N/A when a question does not apply to the Property. Check unknown when the question does apply to the Property but you are not sure of the answer. All questions must be answered.

1. SELLER'S EXPERTISE

	Yes	No	Unk	N/A
A				
B				
C				

(A) Does Seller possess expertise in contracting, engineering, architecture, environmental assessment or other areas related to the construction and conditions of the Property and its improvements?

(B) Is Seller the landlord for the Property?

(C) Is Seller a real estate licensee?

Explain any "yes" answers in Section 1: _____

2. OWNERSHIP/OCCUPANCY

	Yes	No	Unk	N/A
A1				
A2				
A3				
A4				
B1				
B2				
B3				
B4				
C				

(A) **Occupancy**

1. When was the Property most recently occupied? _____
2. By how many people? _____
3. Was Seller the most recent occupant?
4. If "no," when did Seller most recently occupy the Property? _____

(B) **Role of Individual Completing This Disclosure.** Is the individual completing this form:

1. The owner
2. The executor or administrator
3. The trustee
4. An individual holding power of attorney

(C) When was the Property acquired? _____

(D) List any animals that have lived in the residence(s) or other structures during your ownership: _____

Explain Section 2 (if needed): _____

3. CONDOMINIUMS/PLANNED COMMUNITIES/HOMEOWNERS ASSOCIATIONS

	Yes	No	Unk	N/A
B1				
B2				
B3				
B4				
C				
D				
E1				
E2				
E3				
E4				
F				

(A) Disclosures for condominiums and cooperatives are limited to Seller's particular unit(s). Disclosures regarding common areas or facilities are not required by the Real Estate Seller Disclosure Law.

(B) **Type.** Is the Property part of a(n):

1. Condominium
2. Homeowners association or planned community
3. Cooperative
4. Other type of association or community

(C) If "yes," how much are the fees? $ _____ paid (☐ Monthly) (☐ Quarterly) (☐ Yearly)

(D) If "yes," are there any community services or systems that the association or community is responsible for supporting or maintaining? Explain: _____

(E) If "yes," provide the following information:

1. Community Name _____
2. Contact _____
3. Mailing Address _____
4. Telephone Number _____

(F) How much is the capital contribution/initiation fee(s)? $ _____

Notice to Buyer: *A buyer of a resale unit in a condominium, cooperative, or planned community must receive a copy of the declaration (other than the plats and plans), the by-laws, the rules or regulations, and a certificate of resale issued by the association, condominium, cooperative, or planned community. Buyers may be responsible for capital contributions, initiation fees or similar one-time fees in addition to regular maintenance fees. The buyer will have the option of canceling the agreement with the return of all deposit monies until the certificate has been provided to the* ***buyer*** *and for five days thereafter or until conveyance, whichever occurs first.*

4. ROOFS AND ATTIC

	Yes	No	Unk	N/A
A1				
A2				
B1				
B2				
C1				
C2				
C3				

(A) **Installation**

1. When was or were the roof or roofs installed? _____
2. Do you have documentation (invoice, work order, warranty, etc.)?

(B) **Repair**

1. Was the roof or roofs or any portion of it or them replaced or repaired during your ownership?
2. If it or they were replaced or repaired, were any existing roofing materials removed?

(C) **Issues**

1. Has the roof or roofs ever leaked during your ownership?
2. Have there been any other leaks or moisture problems in the attic?
3. Are you aware of any past or present problems with the roof(s), attic, gutters, flashing or downspouts?

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Explain any "yes" answers in Section 4. Include the location and extent of any problem(s) and any repair or remediation efforts, the name of the person or company who did the repairs and the date they were done: _____

_____

5. BASEMENTS AND CRAWL SPACES

	Yes	No	Unk	N/A
(A) **Sump Pump**				
1. Does the Property have a sump pit? If "yes," how many? _____				
2. Does the Property have a sump pump? If "yes," how many? _____				
3. If it has a sump pump, has it ever run?				
4. If it has a sump pump, is the sump pump in working order?				
(B) **Water Infiltration**				
1. Are you aware of any past or present water leakage, accumulation, or dampness within the basement or crawl space?				
2. Do you know of any repairs or other attempts to control any water or dampness problem in the basement or crawl space?				
3. Are the downspouts or gutters connected to a public sewer system?				

Explain any "yes" answers in Section 5. Include the location and extent of any problem(s) and any repair or remediation efforts, the name of the person or company who did the repairs and the date they were done: _____

_____

_____

6. TERMITES/WOOD-DESTROYING INSECTS, DRYROT, PESTS

	Yes	No	Unk	N/A
(A) **Status**				
1. Are you aware of past or present dryrot, termites/wood-destroying insects or other pests on the Property?				
2. Are you aware of any damage caused by dryrot, termites/wood-destroying insects or other pests?				
(B) **Treatment**				
1. Is the Property currently under contract by a licensed pest control company?				
2. Are you aware of any termite/pest control reports or treatments for the Property?				

Explain any "yes" answers in Section 6. Include the name of any service/treatment provider, if applicable: _____

_____

_____

7. STRUCTURAL ITEMS

	Yes	No	Unk	N/A
(A) Are you aware of any past or present movement, shifting, deterioration, or other problems with walls, foundations or other structural components?				
(B) Are you aware of any past or present problems with driveways, walkways, patios or retaining walls on the Property?				
(C) Are you aware of any past or present water infiltration in the house or other structures, other than the roof(s), basement or crawl space(s)?				
(D) **Stucco and Exterior Synthetic Finishing Systems**				
1. Is any part of the Property constructed with stucco or an Exterior Insulating Finishing System (EIFS) such as Dryvit or synthetic stucco, synthetic brick or synthetic stone?				
2. If "yes," indicate type(s) and location(s) _____				
3. If "yes," provide date(s) installed _____				
(E) Are you aware of any fire, storm/weather-related, water, hail or ice damage to the Property?				
(F) Are you aware of any defects (including stains) in flooring or floor coverings?				

Explain any "yes" answers in Section 7. Include the location and extent of any problem(s) and any repair or remediation efforts, the name of the person or company who did the repairs and the date the work was done: _____

_____

8. ADDITIONS/ALTERATIONS

	Yes	No	Unk	N/A
(A) Have any additions, structural changes or other alterations (including remodeling) been made to the Property during your ownership? Itemize and date all additions/alterations below.				

Addition, structural change or alteration (continued on following page)	Approximate date of work	Were permits obtained? (Yes/No/Unk/NA)	Final inspections/ approvals obtained? (Yes/No/Unk/NA)

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Addition, structural change or alteration	Approximate date of work	Were permits obtained? (Yes/No/Unk/NA)	Final inspections/ approvals obtained? (Yes/No/Unk/NA)

☐ **A sheet describing other additions and alterations is attached.**

	Yes	No	Unk	N/A
B				

(B) Are you aware of any private or public architectural review control of the Property other than zoning codes? If "yes," explain: _____

Note to Buyer: *The PA Construction Code Act, 35 P.S. §7210 et seq. (effective 2004), and local codes establish standards for building and altering properties. Buyers should check with the municipality to determine if permits and/or approvals were necessary for disclosed work and if so, whether they were obtained. Where required permits were not obtained, the municipality might require the current owner to upgrade or remove changes made by the prior owners. Buyers can have the Property inspected by an expert in codes compliance to determine if issues exist. Expanded title insurance policies may be available for Buyers to cover the risk of work done to the Property by previous owners without a permit or approval.*

Note to Buyer: *According to the PA Stormwater Management Act, each municipality must enact a Storm Water Management Plan for drainage control and flood reduction. The municipality where the Property is located may impose restrictions on impervious or semi-pervious surfaces added to the Property. Buyers should contact the local office charged with overseeing the Stormwater Management Plan to determine if the prior addition of impervious or semi-pervious areas, such as walkways, decks, and swimming pools, might affect your ability to make future changes.*

9. WATER SUPPLY

	Yes	No	Unk	N/A
A1				
A2				
A3				
A4				
A5				
A6				
A7				
B1				
B2				
B3				
B4				
B5				
B6				
C1				
C2				
D1				
D2				
D3				
D4				
D5				

(A) **Source.** Is the source of your drinking water (check all that apply):
1. Public
2. A well on the Property
3. Community water
4. A holding tank
5. A cistern
6. A spring
7. Other _____
8. If no water service, explain: _____

(B) **General**
1. When was the water supply last tested? _____
   Test results: _____
2. Is the water system shared?
3. If "yes," is there a written agreement?
4. **Do you have a softener, filter or other conditioning system?**
5. **Is the softener, filter or other treatment system leased? From whom?** _____
6. **If your drinking water source is not public, is the pumping system in working order? If "no," explain:** _____

(C) **Bypass Valve** (for properties with multiple sources of water)
1. Does your water source have a bypass valve?
2. If "yes," is the bypass valve working?

(D) **Well**
1. Has your well ever run dry?
2. Depth of well _____
3. Gallons per minute: _____, measured on (date)_____
4. Is there a well that is used for something other than the primary source of drinking water? If "yes," explain _____
5. If there is an unused well, is it capped?

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	Yes	No	Unk	N/A
(E) Issues				
1. Are you aware of any leaks or other problems, past or present, relating to the water supply, pumping system and related items? E1				
2. Have you ever had a problem with your water supply? E2				

Explain any problem(s) with your water supply. Include the location and extent of any problem(s) and any repair or remediation efforts, the name of the person or company who did the repairs and the date the work was done: _____

_____

10. SEWAGE SYSTEM

	Yes	No	Unk	N/A
(A) General				
1. Is the Property served by a sewage system (public, private or community)? A1				
2. If "no," is it due to unavailability or permit limitations? A2				
3. When was the sewage system installed (or date of connection, if public)? _____ A3				
4. Name of current service provider, if any: _____ A4				
(B) Type Is your Property served by:				
1. Public B1				
2. Community (non-public) B2				
3. An individual on-lot sewage disposal system B3				
4. Other, explain: _____ B4				
(C) Individual On-lot Sewage Disposal System. (check all that apply):				
1. Is your sewage system within 100 feet of a well? C1				
2. Is your sewage system subject to a ten-acre permit exemption? C2				
3. Does your sewage system include a holding tank? C3				
4. Does your sewage system include a septic tank? C4				
5. Does your sewage system include a drainfield? C5				
6. Does your sewage system include a sandmound? C6				
7. Does your sewage system include a cesspool? C7				
8. Is your sewage system shared? C8				
9. Is your sewage system any other type? Explain: _____ C9				
10. Is your sewage system supported by a backup or alternate system? C10				
(D) Tanks and Service				
1. Are there any metal/steel septic tanks on the Property? D1				
2. Are there any cement/concrete septic tanks on the Property? D2				
3. Are there any fiberglass septic tanks on the Property? D3				
4. Are there any other types of septic tanks on the Property? Explain _____ D4				
5. Where are the septic tanks located? _____ D5				
6. When were the tanks last pumped and by whom? _____ _____ D6				
(E) Abandoned Individual On-lot Sewage Disposal Systems and Septic				
1. Are you aware of any abandoned septic systems or cesspools on the Property? E1				
2. If "yes," have these systems, tanks or cesspools been closed in accordance with the municipality's ordinance? E2				
(F) Sewage Pumps				
1. Are there any sewage pumps located on the Property? F1				
2. If "yes," where are they located? _____ F2				
3. What type(s) of pump(s)? _____ F3				
4. Are pump(s) in working order? F4				
5. Who is responsible for maintenance of sewage pumps? _____ _____ F5				
(G) Issues				
1. How often is the on-lot sewage disposal system serviced? _____ G1				
2. When was the on-lot sewage disposal system last serviced and by whom? _____ _____ G2				
3. Is any waste water piping not connected to the septic/sewer system? G3				
4. Are you aware of any past or present leaks, backups, or other problems relating to the sewage system and related items? G4				

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Explain any "yes" answers in Section 10. Include the location and extent of any problem(s) and any repair or remediation efforts, the name of the person or company who did the repairs and the date the work was done: _____

_____

11. PLUMBING SYSTEM

		Yes	No	Unk	N/A
(A)	**Material(s).** Are the plumbing materials (check all that apply):				
A1	1. Copper				
A2	2. Galvanized				
A3	3. Lead				
A4	4. PVC				
A5	5. Polybutylene pipe (PB)				
A6	6. Cross-linked polyethyline (PEX)				
A7	7. Other _____				
B	(B) Are you aware of any past or present problems with any of your plumbing fixtures (e.g., including but not limited to: kitchen, laundry, or bathroom fixtures; wet bars; exterior faucets; etc.)? If "yes," explain: _____				

_____

12. DOMESTIC WATER HEATING

		Yes	No	Unk	N/A
(A)	**Type(s).** Is your water heating (check all that apply):				
A1	1. Electric				
A2	2. Natural gas				
A3	3. Fuel oil				
A4	4. Propane				
	If "yes," is the tank owned by Seller?				
A5	5. Solar				
	If "yes," is the system owned by Seller?				
A6	6. Geothermal				
A7	7. Other _____				
	(B) **System(s)**				
B1	1. How many water heaters are there? _____ Tanks _____ Tankless _____				
B2	2. When were they installed? _____				
B3	3. Is your water heater a summer/winter hook-up (integral system, hot water from the boiler, etc.)?				
C	(C) Are you aware of any problems with any water heater or related equipment? If "yes," explain: _____				

_____

13. HEATING SYSTEM

		Yes	No	Unk	N/A
(A)	**Fuel Type(s).** Is your heating source (check all that apply):				
A1	1. Electric				
A2	2. Natural gas				
A3	3. Fuel oil				
A4	4. Propane				
	If "yes," is the tank owned by Seller?				
A5	5. Geothermal				
A6	6. Coal				
A7	7. Wood				
A8	8. Solar shingles or panels				
	If "yes," is the system owned by Seller?				
A9	9. Other: _____				
	(B) **System Type(s)** (check all that apply):				
B1	1. Forced hot air				
B2	2. Hot water				
B3	3. Heat pump				
B4	4. Electric baseboard				
B5	5. Steam				
B6	6. Radiant flooring				
B7	7. Radiant ceiling				

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	Yes	No	Unk	N/A
8. Pellet stove(s)				
How many and location? _____				
9. Wood stove(s)				
How many and location? _____				
10. Coal stove(s)				
How many and location? _____				
11. Wall-mounted split system(s)				
How many and location? _____				
12. Other: _____				
13. If multiple systems, provide locations _____				
_____				
(C) **Status**				
1. Are there any areas of the house that are not heated?				
If "yes," explain: _____				
2. How many heating zones are in the Property? _____				
3. When was each heating system(s) or zone installed? _____				
4. When was the heating system(s) last serviced? _____				
5. Is there an additional and/or backup heating system? If "yes," explain: _____				
_____				
6. Is any part of the heating system subject to a lease, financing or other agreement?				
If "yes," explain: _____				
(D) **Fireplaces and Chimneys**				
1. Are there any fireplaces? How many? _____				
2. Are all fireplaces working?				
3. Fireplace types (wood, gas, electric, etc.): _____				
4. Was the fireplace(s) installed by a professional contractor or manufacturer's representative?				
5. Are there any chimneys (from a fireplace, water heater or any other heating system)?				
6. How many chimneys? _____				
7. When were they last cleaned? _____				
8. Are the chimneys working? If "no," explain: _____				
(E) **Fuel Tanks**				
1. Are you aware of any heating fuel tank(s) on the Property?				
2. Location(s), including underground tank(s): _____				
3. If you do not own the tank(s), explain: _____				
(F) **Are you aware of any problems or repairs needed regarding any item in Section 13? If "yes," explain:** _____				
14. AIR CONDITIONING SYSTEM				
(A) **Type(s)**. Is the air conditioning (check all that apply):				
1. Central air				
a. How many air conditioning zones are in the Property? _____				
b. When was each system or zone installed? _____				
c. When was each system last serviced? _____				
2. Wall units				
How many and the location? _____				
3. Window units				
How many? _____				
4. Wall-mounted split units				
How many and the location? _____				
5. Other _____				
6. None				
(B) Are there any areas of the house that are not air conditioned?				
If "yes," explain: _____				
(C) **Are you aware of any problems with any item in Section 14? If "yes," explain:** _____				
_____				

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15. ELECTRICAL SYSTEM

		Yes	No	Unk	N/A
(A)	**Type(s)**				
1.	Does the electrical system have fuses?				
2.	Does the electrical system have circuit breakers?				
3.	Is the electrical system solar powered?				
a.	If "yes," is it entirely or partially solar powered? _____				
b.	If "yes," is any part of the system subject to a lease, financing or other agreement? If "yes," explain: _____				
(B)	What is the system amperage? _____				
(C)	Are you aware of any knob and tube wiring in the Property?				
(D)	Are you aware of any problems or repairs needed in the electrical system? If "yes," explain: _____				

16. OTHER EQUIPMENT AND APPLIANCES

(A) **THIS SECTION IS INTENDED TO IDENTIFY PROBLEMS OR REPAIRS** and must be completed for each item that will, or may, be included with the Property. The terms of the Agreement of Sale negotiated between Buyer and Seller will determine which items, if any, are included in the purchase of the Property. **THE FACT THAT AN ITEM IS LISTED DOES NOT MEAN IT IS INCLUDED IN THE AGREEMENT OF SALE.**

(B) Are you aware of any problems or repairs needed to any of the following:

Item	Yes	No	N/A	Item	Yes	No	N/A
A/C window units				Pool/spa heater			
Attic fan(s)				Range/oven			
Awnings				Refrigerator(s)			
Carbon monoxide detectors				Satellite dish			
Ceiling fans				Security alarm system			
Deck(s)				Smoke detectors			
Dishwasher				Sprinkler automatic timer			
Dryer				Stand-alone freezer			
Electric animal fence				Storage shed			
Electric garage door opener				Trash compactor			
Garage transmitters				Washer			
Garbage disposal				Whirlpool/tub			
In-ground lawn sprinklers				Other:			
Intercom				1.			
Interior fire sprinklers				2.			
Keyless entry				3.			
Microwave oven				4.			
Pool/spa accessories				5.			
Pool/spa cover				6.			

(C) Explain any "yes" answers in Section 16: _____

17. POOLS, SPAS AND HOT TUBS

		Yes	No	Unk	N/A
(A)	Is there a swimming pool on the Property? If "yes,":				
1.	Above-ground or in-ground? _____				
2.	Saltwater or chlorine? _____				
3.	If heated, what is the heat source? _____				
4.	Vinyl-lined, fiberglass or concrete-lined? _____				
5.	What is the depth of the swimming pool? _____				
6.	Are you aware of any problems with the swimming pool?				
7.	Are you aware of any problems with any of the swimming pool equipment (cover, filter, ladder, lighting, pump, etc.)?				
(B)	Is there a spa or hot tub on the Property?				
1.	Are you aware of any problems with the spa or hot tub?				
2.	Are you aware of any problems with any of the spa or hot tub equipment (steps, lighting, jets, cover, etc.)?				

(C) Explain any problems in Section 17: _____

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18. WINDOWS

	Yes	No	Unk	N/A
A				
B				

(A) Have any windows or skylights been replaced during your ownership of the Property?

(B) Are you aware of any problems with the windows or skylights?

Explain any "yes" answers in Section 18. Include the location and extent of any problem(s) and any repair, replacement or remediation efforts, the name of the person or company who did the repairs and the date the work was done: _____

19. LAND/SOILS

(A) **Property**

	Yes	No	Unk	N/A
A1				
A2				
A3				
A4				
A5				

1. Are you aware of any fill or expansive soil on the Property?
2. Are you aware of any sliding, settling, earth movement, upheaval, subsidence, sinkholes or earth stability problems that have occurred on or affect the Property?
3. Are you aware of sewage sludge (other than commercially available fertilizer products) being spread on the Property?
4. Have you received written notice of sewage sludge being spread on an adjacent property?
5. Are you aware of any existing, past or proposed mining, strip-mining, or any other excavations on the Property?

Note to Buyer: *The Property may be subject to mine subsidence damage. Maps of the counties and mines where mine subsidence damage may occur and further information on mine subsidence insurance are available through* Department of Environmental Protection Mine Subsidence Insurance Fund, (800) 922-1678 or ra-epmsi@pa.gov.

(B) **Preferential Assessment and Development Rights**

Is the Property, or a portion of it, preferentially assessed for tax purposes, or subject to limited development rights under the:

	Yes	No	Unk	N/A
B1				
B2				
B3				
B4				

1. Farmland and Forest Land Assessment Act - 72 P.S.§5490.1, et seq. (Clean and Green Program)
2. Open Space Act - 16 P.S. §11941, et seq.
3. Agricultural Area Security Law - 3 P.S. §901, et seq. (Development Rights)
4. Any other law/program: _____

Note to Buyer: *Pennsylvania has enacted the Right to Farm Act (3 P.S. § 951-957) in an effort to limit the circumstances under which agricultural operations may be subject to nuisance suits or ordinances. Buyers are encouraged to investigate whether any agricultural operations covered by the Act operate in the vicinity of the Property.*

(C) **Property Rights**

Are you aware of the transfer, sale and/or lease of any of the following property rights (by you or a previous owner of the Property):

	Yes	No	Unk	N/A
C1				
C2				
C3				
C4				
C5				

1. Timber
2. Coal
3. Oil
4. Natural gas
5. Mineral or other rights (such as farming rights, hunting rights, quarrying rights) Explain: _____

Note to Buyer: *Before entering into an agreement of sale, Buyer can investigate the status of these rights by, among other means, engaging legal counsel, obtaining a title examination of unlimited years and searching the official records in the county Office of the Recorder of Deeds, and elsewhere. Buyer is also advised to investigate the terms of any existing leases, as Buyer may be subject to terms of those leases.*

Explain any "yes" answers in Section 19: _____

20. FLOODING, DRAINAGE AND BOUNDARIES

(A) **Flooding/Drainage**

	Yes	No	Unk	N/A
A1				
A2				
A3				
A4				
A5				
A6				
A7				

1. Is any part of this Property located in a wetlands area?
2. Is the Property, or any part of it, designated a Special Flood Hazard Area (SFHA)?
3. Do you maintain flood insurance on this Property?
4. Are you aware of any past or present drainage or flooding problems affecting the Property?
5. Are you aware of any drainage or flooding mitigation on the Property?
6. Are you aware of the presence on the Property of any man-made feature that temporarily or permanently conveys or manages storm water, including any basin, pond, ditch, drain, swale, culvert, pipe or other feature?
7. If "yes," are you responsible for maintaining or repairing that feature which conveys or manages storm water for the Property?

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Explain any "yes" answers in Section 20(A). Include dates, the location and extent of flooding and the condition of any man-made storm water management features: _____

(B) **Boundaries**

		Yes	No	Unk	N/A
1.	Are you aware of encroachments, boundary line disputes, or easements affecting the Property?				
2.	Is the Property accessed directly (without crossing any other property) by or from a public road?				
3.	Can the Property be accessed from a private road or lane?				
a.	If "yes," is there a written right of way, easement or maintenance agreement?				
b.	If "yes," has the right of way, easement or maintenance agreement been recorded?				
4.	Are you aware of any shared or common areas (driveways, bridges, docks, walls, etc.) or maintenance agreements?				

Note to Buyer: Most properties have easements running across them for utility services and other reasons. In many cases, the easements do not restrict the ordinary use of the property, and Seller may not be readily aware of them. Buyers may wish to determine the existence of easements and restrictions by examining the property and ordering an Abstract of Title or searching the records in the Office of the Recorder of Deeds for the county before entering into an agreement of sale.

Explain any "yes" answers in Section 20(B): _____

21. HAZARDOUS SUBSTANCES AND ENVIRONMENTAL ISSUES

(A) **Mold and Indoor Air Quality (other than radon)**

		Yes	No	Unk	N/A
1.	Are you aware of any tests for mold, fungi, or indoor air quality in the Property?				
2.	Other than general household cleaning, have you taken any efforts to control or remediate mold or mold-like substances in the Property?				

Note to Buyer: Individuals may be affected differently, or not at all, by mold contamination. If mold contamination or indoor air quality is a concern, buyers are encouraged to engage the services of a qualified professional to do testing. Information on this issue is available from the United States Environmental Protection Agency and may be obtained by contacting IAQ INFO, P.O. Box 37133, Washington, D.C. 20013-7133, 1-800-438-4318.

(B) **Radon**

		Yes	No	Unk	N/A
1.	Are you aware of any tests for radon gas that have been performed in any buildings on the Property?				
2.	If "yes," provide test date and results _____				
3.	Are you aware of any radon removal system on the Property?				

(C) **Lead Paint**

If the Property was constructed, or if construction began, before 1978, you must disclose any knowledge of, and records and reports about, lead-based paint on the Property on a separate disclosure form.

		Yes	No	Unk	N/A
1.	Are you aware of any lead-based paint or lead-based paint hazards on the Property?				
2.	Are you aware of any reports or records regarding lead-based paint or lead-based paint hazards on the Property?				

(D) **Tanks**

		Yes	No	Unk	N/A
1.	Are you aware of any existing underground tanks?				
2.	Are you aware of any underground tanks that have been removed or filled?				

(E) **Dumping.** Has any portion of the Property been used for waste or refuse disposal or storage? If "yes," location: _____

(F) **Other**

		Yes	No	Unk	N/A
1.	Are you aware of any past or present hazardous substances on the Property (structure or soil) such as, but not limited to, asbestos or polychlorinated biphenyls (PCBs)?				
2.	Are you aware of any other hazardous substances or environmental concerns that may affect the Property?				
3.	If "yes," have you received written notice regarding such concerns?				
4.	Are you aware of testing on the Property for any other hazardous substances or environmental concerns?				

Explain any "yes" answers in Section 21. Include test results and the location of the hazardous substance(s) or environmental issue(s):

22. MISCELLANEOUS

(A) **Deeds, Restrictions and Title**

		Yes	No	Unk	N/A
1.	Are there any deed restrictions or restrictive covenants that apply to the Property?				
2.	Are you aware of any historic preservation restriction or ordinance or archeological designation associated with the Property?				

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Check yes, no, unknown (unk) or not applicable (N/A) for each question. Be sure to check N/A when a question does not apply to the Property. Check unknown when the question does apply to the Property but you are not sure of the answer. All questions must be answered.

	Yes	No	Unk	N/A
A3				
B1				
B2				
C1				
C2				

3. Are you aware of any reason, including a defect in title or contractual obligation such as an option or right of first refusal, that would prevent you from giving a warranty deed or conveying title to the Property?

(B) **Financial**

1. Are you aware of any public improvement, condominium or homeowner association assessments against the Property that remain unpaid or of any violations of zoning, housing, building, safety or fire ordinances or other use restriction ordinances that remain uncorrected?
2. Are you aware of any mortgages, judgments, encumbrances, liens, overdue payments on a support obligation, or other debts against this Property or Seller that cannot be satisfied by the proceeds of this sale?
3. Are you aware of any insurance claims filed relating to the Property during your ownership?

(C) **Legal**

1. Are you aware of any violations of federal, state, or local laws or regulations relating to this Property?
2. Are you aware of any existing or threatened legal action affecting the Property?

(D) **Additional Material Defects**

1. Are you aware of any material defects to the Property, dwelling, or fixtures which are not disclosed elsewhere on this form?

Note to Buyer: A material defect is a problem with a residential real property or any portion of it that would have a significant adverse impact on the value of the property or that involves an unreasonable risk to people on the property. The fact that a structural element, system or subsystem is at or beyond the end of the normal useful life of such a structural element, system or subsystem is not by itself a material defect.

2. **After completing this form, if Seller becomes aware of additional information about the Property, including through inspection reports from a buyer, the Seller must update the Seller's Property Disclosure Statement and/or attach the inspection report(s).** These inspection reports are for informational purposes only.

Explain any "yes" answers in Section 22: _____

_____

23. ATTACHMENTS

(A) **The following are part of this Disclosure if checked:**

☐ Seller's Property Disclosure Statement Addendum (PAR Form SDA)

☐ _____

☐ _____

☐ _____

The undersigned Seller represents that the information set forth in this disclosure statement is accurate and complete to the best of Seller's knowledge. Seller hereby authorizes the Listing Broker to provide this information to prospective buyers of the property and to other real estate licensees. SELLER ALONE IS RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION CONTAINED IN THIS STATEMENT. If any information supplied on this form becomes inaccurate following completion of this form, Seller shall notify Buyer in writing.

SELLER _____ **DATE** _____

SELLER _____ **DATE** _____

SELLER _____ **DATE** _____

SELLER _____ **DATE** _____

SELLER _____ **DATE** _____

SELLER _____ **DATE** _____

RECEIPT AND ACKNOWLEDGEMENT BY BUYER

The undersigned Buyer acknowledges receipt of this Statement. Buyer acknowledges that this Statement is not a warranty and that, unless stated otherwise in the sales contract, Buyer is purchasing this property in its present condition. It is Buyer's responsibility to satisfy himself or herself as to the condition of the property. Buyer may request that the property be inspected, at Buyer's expense and by qualified professionals, to determine the condition of the structure or its components.

BUYER _____ **DATE** _____

BUYER _____ **DATE** _____

BUYER _____ **DATE** _____

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Chapter Three

Buying and Selling Residential Real Estate, The Transaction – PAR Forms

Submitted by
Brett M. Woodburn, Esq.
Woodburn Law
Harrisburg

STANDARD AGREEMENT FOR THE SALE OF REAL ESTATE

ASR

This form recommended and approved for, but not restricted to use by, the members of the Pennsylvania Association of Realtors® (PAR).

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PARTIES

BUYER(S): _____

BUYER'S MAILING ADDRESS: _____

SELLER(S): _____

SELLER'S MAILING ADDRESS: _____

PROPERTY

ADDRESS (including postal city) _____
_____ ZIP _____,
in the municipality of _____, County of _____,
in the School District of _____, in the Commonwealth of Pennsylvania.
Tax ID #(s): _____ and/or
Identification (e.g., Parcel #; Lot, Block; Deed Book, Page, Recording Date): _____
_____

BUYER'S RELATIONSHIP WITH PA LICENSED BROKER

☐ **No Business Relationship (Buyer is not represented by a broker)**

Broker (Company) _____
_____
Company License # _____
Company Address _____
_____
Company Phone _____
Company Fax _____
Broker is (check only one):
☐ Buyer Agent (Broker represents Buyer only)
☐ Dual Agent (See Dual and/or Designated Agent box below)

Licensee(s) (Name) _____
_____
State License # _____
Direct Phone(s) _____
Cell Phone(s) _____
Email _____
Licensee(s) is (check only one):
☐ Buyer Agent (all company licensees represent Buyer)
☐ Buyer Agent with Designated Agency (only Licensee(s) named above represent Buyer)
☐ Dual Agent (See Dual and/or Designated Agent box below)

☐ Transaction Licensee (Broker and Licensee(s) provide real estate services but do not represent Buyer)

SELLER'S RELATIONSHIP WITH PA LICENSED BROKER

☐ **No Business Relationship (Seller is not represented by a broker)**

Broker (Company) _____
_____
Company License # _____
Company Address _____
_____
Company Phone _____
Company Fax _____
Broker is (check only one):
☐ Seller Agent (Broker represents Seller only)
☐ Dual Agent (See Dual and/or Designated Agent box below)

Licensee(s) (Name) _____
_____
State License # _____
Direct Phone(s) _____
Cell Phone(s) _____
Email _____
Licensee(s) is (check only one):
☐ Seller Agent (all company licensees represent Seller)
☐ Seller Agent with Designated Agency (only Licensee(s) named above represent Seller)
☐ Dual Agent (See Dual and/or Designated Agent box below)

☐ Transaction Licensee (Broker and Licensee(s) provide real estate services but do not represent Seller)

DUAL AND/OR DESIGNATED AGENCY

A Broker is a Dual Agent when a Broker represents both Buyer and Seller in the same transaction. A Licensee is a Dual Agent when a Licensee represents Buyer and Seller in the same transaction. All of Broker's licensees are also Dual Agents UNLESS there are separate Designated Agents for Buyer and Seller. If the same Licensee is designated for Buyer and Seller, the Licensee is a Dual Agent.

By signing this Agreement, Buyer and Seller each acknowledge having been previously informed of, and consented to, dual agency, if applicable.

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rev. 8/22; rel. 8/22

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1. By this Agreement, dated _____,
Seller hereby agrees to sell and convey to Buyer, who agrees to purchase, the identified Property.

2. PURCHASE PRICE AND DEPOSITS (4-14)

(A) Purchase Price $ _____
(_____
_____U.S. Dollars), to be paid by Buyer as follows:

1. Initial Deposit, within _____ days (5 if not specified) of Execution Date, if not included with this Agreement: $ _____
2. Additional Deposit within _____ days of the Execution Date: $ _____
3. _____ $ _____

Remaining balance will be paid at settlement.

(B) **All funds paid by Buyer, including deposits, will be paid by check, cashier's check or wired funds. All funds paid by Buyer within 30 days of settlement, including funds paid at settlement, will be by cashier's check or wired funds, but not by personal check.**

(C) Deposits, regardless of the form of payment, will be paid in U.S. Dollars to Broker for Seller (unless otherwise stated here: _____
_____).
who will retain deposits in an escrow account in conformity with all applicable laws and regulations until consummation or termination of this Agreement. Only real estate brokers are required to hold deposits in accordance with the rules and regulations of the State Real Estate Commission. Checks tendered as deposit monies may be held uncashed pending the execution of this Agreement.

3. SELLER ASSIST (If Applicable) (1-10)

Seller will pay $ _____ or _____ % of Purchase Price (0 if not specified) toward Buyer's costs, as permitted by the mortgage lender, if any. Seller is only obligated to pay up to the amount or percentage which is approved by mortgage lender.

4. SETTLEMENT AND POSSESSION (4-14)

(A) Settlement Date is _____, or before if Buyer and Seller agree.

(B) Settlement will occur in the county where the Property is located or in an adjacent county, during normal business hours, unless Buyer and Seller agree otherwise.

(C) At time of settlement, the following will be pro-rated on a daily basis between Buyer and Seller, reimbursing where applicable: current taxes; rents; interest on mortgage assumptions; condominium fees and homeowner association fees; water and/or sewer fees, together with any other lienable municipal service fees. All charges will be prorated for the period(s) covered. Seller will pay up to and including the date of settlement and Buyer will pay for all days following settlement, unless otherwise stated here:
_____

(D) For purposes of prorating real estate taxes, the "periods covered" are as follows:

1. Municipal tax bills for all counties and municipalities in Pennsylvania are for the period from January 1 to December 31.
2. School tax bills for the Philadelphia, Pittsburgh and Scranton School Districts are for the period from January 1 to December 31. School tax bills for all other school districts are for the period from July 1 to June 30.

(E) Conveyance from Seller will be by fee simple deed of special warranty unless otherwise stated here: _____
_____

(F) Payment of transfer taxes will be divided equally between Buyer and Seller unless otherwise stated here: _____
_____

(G) Possession is to be delivered by deed, existing keys and physical possession to a vacant Property free of debris, with all structures broom-clean, at day and time of settlement, unless Seller, before signing this Agreement, has identified in writing that the Property is subject to a lease.

(H) If Seller has identified in writing that the Property is subject to a lease, possession is to be delivered by deed, existing keys and assignment of existing leases for the Property, together with security deposits and interest, if any, at day and time of settlement. Seller will not enter into any new leases, nor extend existing leases, for the Property without the written consent of Buyer. Buyer will acknowledge existing lease(s) by initialing the lease(s) at the execution of this Agreement, unless otherwise stated in this Agreement.

☐ **Tenant-Occupied Property Addendum (PAR Form TOP) is attached and made part of this Agreement.**

5. DATES/TIME IS OF THE ESSENCE (1-10)

(A) Written acceptance of all parties will be on or before: _____

(B) The Settlement Date and all other dates and times identified for the performance of any obligations of this Agreement are of the essence and are binding.

(C) The Execution Date of this Agreement is the date when Buyer and Seller have indicated full acceptance of this Agreement by signing and/or initialing it. For purposes of this Agreement, the number of days will be counted from the Execution Date, excluding the day this Agreement was executed and including the last day of the time period. **All changes to this Agreement should be initialed and dated.**

(D) The Settlement Date is not extended by any other provision of this Agreement and may only be extended by mutual written agreement of the parties.

(E) Certain terms and time periods are pre-printed in this Agreement as a convenience to the Buyer and Seller. All pre-printed terms and time periods are negotiable and may be changed by striking out the pre-printed text and inserting different terms acceptable to all parties, except where restricted by law.

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6. ZONING (4-14)

Failure of this Agreement to contain the zoning classification (except in cases where the property {and each parcel thereof, if subdividable} is zoned solely or primarily to permit single-family dwellings) will render this Agreement voidable at Buyer's option, and, if voided, any deposits tendered by the Buyer will be returned to the Buyer without any requirement for court action.

Zoning Classification, as set forth in the local zoning ordinance: _____

7. FIXTURES AND PERSONAL PROPERTY (1-20)

(A) It is possible for certain items of personal property to be so integrated into the Property that they become fixtures and will be regarded as part of the Property and therefore included in a sale. Buyer and Seller are encouraged to be specific when negotiating what items will be included or excluded in this sale.

(B) INCLUDED in this sale, unless otherwise stated, are all existing items permanently installed in or on the Property, free of liens, and other items including plumbing; heating; gas fireplace logs; radiator covers; hardwired security systems; thermostats; lighting fixtures (including chandeliers and ceiling fans); pools, spas and hot tubs (including covers and cleaning equipment); electric animal fencing systems (excluding collars); garage door openers and transmitters; mounting brackets and hardware for television and sound equipment; unpotted shrubbery, plantings and trees; smoke detectors and carbon monoxide detectors; sump pumps; storage sheds; fences; mailboxes; wall to wall carpeting; existing window screens, storm windows and screen/storm doors; window covering hardware (including rods and brackets), shades and blinds; awnings; central vacuum system (with attachments); built-in air conditioners; built-in appliances; the range/oven; dishwashers; trash compactors; any remaining heating and cooking fuels stored on the Property at the time of settlement; and, if owned, solar panels, windmills, water treatment systems, propane tanks and satellite dishes. Unless stated otherwise, the following items are included in the sale, at no additional cost: _____

_____

_____

(C) The following items are not owned by Seller and may be subject to a lease or other financing agreement. Contact the provider/vendor for more information (e.g., solar panels, windmills, water treatment systems, propane tanks and satellite dishes): _____

_____

(D) EXCLUDED fixtures and items: _____

_____

8. BUYER FINANCING (8-22)

(A) Buyer may elect to make this Agreement contingent upon obtaining mortgage financing. Regardless of **any** contingency elected in this Agreement, if Buyer chooses to obtain mortgage financing, the following apply:

1. **Buyer will be in default of this Agreement if Buyer furnishes false information** to anyone concerning Buyer's financial and/or employment status, fails to cooperate in good faith with processing the mortgage loan application (including payment for and ordering of appraisal without delay), fails to lock in interest rate(s) as stated below, or otherwise causes the lender to reject, or refuse to approve or issue, a mortgage loan.
2. Within _____ days (7 if not specified) from the Execution Date of this Agreement, Buyer will make a completed mortgage application (including payment for and ordering of credit reports without delay) for the mortgage terms and to the mortgage lender(s) identified in Paragraph 8(F), if any, otherwise to a responsible mortgage lender(s) of Buyer's choice. Broker for Buyer, if any, otherwise Broker for Seller, is authorized to communicate with the mortgage lender(s) to assist in the mortgage loan process. Broker for Seller, if any, is permitted to contact the morgage lender(s) at any time to determine the status of the mortgage loan application.
3. Seller will provide access to insurers' representatives and, as may be required by mortgage lender(s), to surveyors, municipal officials, appraisers, and inspectors.
4. If the mortgage lender(s) gives Buyer the right to lock in interest rate(s) at or below the maximum levels desired, Buyer will do so at least __15__ DAYS before Settlement Date.

(B) The Loan-To-Value ratio (LTV) is used by lenders as one tool to help assess their potential risk of a mortgage loan. A particular LTV may be necessary to qualify for certain loans, or buyers might be required to pay additional fees if the LTV exceeds a specific level. The appraised value of the Property may be used by lenders to determine the maximum amount of a mortgage loan. The appraised value is determined by an independent appraiser, subject to the mortgage lender's underwriter review, and may be higher or lower than the Purchase Price and/or market price of the property.

FHA/VA, IF APPLICABLE

(C) It is expressly agreed that notwithstanding any other provisions of this contract, Buyer will not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless Buyer has been given, in accordance with HUD/FHA or VA requirements, a written statement by the Federal Housing Commissioner, Veterans Administration, or a Direct Endorsement Lender setting forth the appraised value of the Property of not less than $_____ (the Purchase Price as stated in this Agreement). Buyer will have the privilege and option of proceeding with consummation of the contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value nor the condition of the Property. Buyer should satisfy himself/herself that the price and condition of the Property are acceptable.

Warning: Section 1010 of Title 18, U.S.C., Department of Housing and Urban Development and Federal Housing Administration Transactions, provides, "Whoever for the purpose of influencing in any way the action of such Department, makes, passes, utters or publishes any statement, knowing the same to be false shall be fined under this title or imprisoned not more than two years, or both."

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(D) **U.S. Department of Housing and Urban Development (HUD) NOTICE TO PURCHASERS: Buyer's Acknowledgement**

☐ Buyer has received the HUD Notice "For Your Protection: Get a Home Inspection." Buyer understands the importance of getting an independent home inspection and has thought about this before signing this Agreement. Buyer understands that FHA will not perform a home inspection nor guarantee the price or condition of the Property.

☐ Buyer will apply for Section 203(k) financing, and this contract is contingent upon mortgage approval (See Paragraph 8(F)) and Buyer's acceptance of additional required repairs as required by the lender.

(E) **Certification** We the undersigned, Seller(s) and Buyer(s) party to this transaction each certify that the terms of this contract for purchase are true to the best of our knowledge and belief, and that any other agreement entered into by any of these parties in connection with this transaction is attached to this Agreement.

(F) **Mortgage Contingency**

☐ WAIVED. This sale is NOT contingent on mortgage financing, although Buyer may obtain mortgage financing and/or the parties may include an appraisal contingency. Buyer and Seller understand that the waiver of this contingency does not restrict Buyer's right to obtain mortgage financing for the Property.

☐ ELECTED. This sale is contingent upon Buyer obtaining mortgage financing according to the terms outlined below. Upon receiving documentation demonstrating lender's approval, whether conditional or outright, of Buyer's mortgage application(s) according to the following terms, Buyer will promptly deliver a copy of the documentation to Seller, but in any case no later than _____ (Commitment Date).

First Mortgage on the Property	**Second Mortgage on the Property**
Loan Amount $ _____	Loan Amount $ _____
Minimum Term _____ years	Minimum Term _____ years
Type of mortgage _____	Type of mortgage _____
For conventional loans, the Loan-To-Value (LTV) ratio is not to exceed _____%	For conventional loans, the Loan-To-Value (LTV) ratio is not to exceed _____%
Mortgage lender _____	Mortgage lender _____
Interest rate _____%; however, **Buyer agrees to accept the interest rate as may be committed by the mortgage lender,** not to exceed a maximum interest rate of _____%.	Interest rate _____%; however, **Buyer agrees to accept the interest rate as may be committed by the mortgage lender,** not to exceed a maximum interest rate of _____%.
Discount points, loan origination, loan placement and other fees charged by the lender as a percentage of the mortgage loan (excluding any mortgage insurance premiums or VA funding fee) not to exceed _____% (0% if not specified) of the mortgage loan.	Discount points, loan origination, loan placement and other fees charged by the lender as a percentage of the mortgage loan (excluding any mortgage insurance premiums or VA funding fee) not to exceed _____% (0% if not specified) of the mortgage loan.

1. The interest rate(s) and fee(s) provisions in Paragraph 8(F) are satisfied if the mortgage lender(s) gives Buyer the right to guarantee the interest rate(s) and fee(s) at or below the maximum levels stated. Buyer gives Seller the right, at Seller's sole option and as permitted by law and the mortgage lender(s), to contribute financially, without promise of reimbursement, to Buyer and/or the mortgage lender(s) to make the above mortgage term(s) available to Buyer.
2. Seller may terminate this Agreement after the Commitment Date by written notice to Buyer if:
   a. Seller does not receive a copy of the documentation demonstrating lender's conditional or outright approval of Buyer's mortgage application(s) by the Commitment Date;
   b. The documentation demonstrating lender's conditional or outright approval of Buyer's mortgage application(s) does not satisfy the loan terms outlined in Paragraph 8(F), OR
   c. The documentation demonstrating lender's conditional or outright approval of Buyer's mortgage application(s) contains any condition not specified in this Agreement (e.g., Buyer must settle on another property, an appraisal must be received by the lender, or the approval is not valid through the Settlement Date) that is not satisfied and/or removed in writing by the mortgage lender(s) within __7__ DAYS after the Commitment Date, or any extension thereof, other than those conditions that are customarily satisfied at or near settlement (e.g., obtaining insurance, confirming employment).
3. Seller's right to terminate continues until Buyer delivers documentation demonstrating lender's conditional or outright approval of Buyer's mortgage application(s) to Seller. Until Seller terminates this Agreement pursuant to this Paragraph, Buyer must continue to make a good faith effort to obtain mortgage financing. Termination of this Agreement by Buyer due to the mortgage lender's denial of Buyer's mortgage application(s) may demonstrate bad faith by Buyer and result in the forfeiture of deposit monies to Seller.
4. If this Agreement is terminated pursuant to Paragraphs 8(F)(2), or the mortgage loan(s) is not obtained for settlement, all deposit monies will be returned to Buyer according to the terms of Paragraph 26 and this Agreement will be VOID. Buyer will be responsible for any costs incurred by Buyer for any inspections or certifications obtained according to the terms of this Agreement, and any costs incurred by Buyer for: (1) Title search, title insurance and/or mechanics' lien insurance, or any fee for cancellation; (2) Flood insurance, fire insurance, hazard insurance, mine subsidence insurance, or any fee for cancellation; (3) Appraisal fees and charges paid in advance to mortgage lender(s).
5. If the mortgage lender(s), or a property and casualty insurer providing insurance required by a mortgage lender(s), requires repairs to the Property, Buyer will, upon receiving the requirements, deliver a copy of the requirements to Seller. Within __5__ DAYS of receiving the copy of the requirements, Seller will notify Buyer whether Seller will make the required repairs at Seller's expense.
   a. If Seller makes the required repairs to the satisfaction of the mortgage lender and/or insurer, Buyer accepts the Property and agrees to the RELEASE in Paragraph 28 of this Agreement.

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b. If Seller will not make the required repairs, **or if Seller fails to respond within the stated time,** Buyer will, within __5__ DAYS, notify Seller of Buyer's choice to:

1) Make the repairs/improvements at Buyer's expense, with permission and access to the Property given by Seller, which will not be unreasonably withheld (Seller may require that Buyer sign a pre-settlement possession agreement such as the Pre-Settlement Possession Addendum [PAR Form PRE], which shall not, in and of itself, be considered unreasonable), OR

2) Terminate this Agreement by written notice to Seller, with all deposit monies returned to Buyer according to the terms of Paragraph 26 of this Agreement.

If Buyer fails to respond within the time stated above or fails to terminate this Agreement by written notice to Seller within that time, **Buyer will accept the Property,** make the required repairs/improvements at Buyer's expense and agree to the RELEASE in Paragraph 28 of this Agreement.

9. CHANGE IN BUYER'S FINANCIAL STATUS (9-18)

If a change in Buyer's financial status affects Buyer's ability to purchase, Buyer will promptly notify Seller and lender(s) to whom the Buyer submitted a mortgage application, if any, in writing. A change in financial status includes, but is not limited to, loss or a change in employment; failure or loss of sale of Buyer's home; Buyer having incurred a new financial obligation; entry of a judgment against Buyer. **Buyer understands that applying for and/or incurring an additional financial obligation may affect Buyer's ability to purchase.**

10. SELLER REPRESENTATIONS (1-20)

(A) **Status of Water**

Seller represents that the Property is served by:

☐ Public Water ☐ Community Water ☐ On-site Water ☐ None ☐ _____

(B) **Status of Sewer**

1. Seller represents that the Property is served by:

☐ Public Sewer ☐ Community Sewage Disposal System ☐ Ten-Acre Permit Exemption (see Sewage Notice 2)
☐ Individual On-lot Sewage Disposal System (see Sewage Notice 1) ☐ Holding Tank (see Sewage Notice 3)
☐ Individual On-lot Sewage Disposal System in Proximity to Well (see Sewage Notice 1; see Sewage Notice 4, if applicable)
☐ None (see Sewage Notice 1) ☐ None Available/Permit Limitations in Effect (see Sewage Notice 5)
☐ _____

2. **Notices Pursuant to the Pennsylvania Sewage Facilities Act**

Notice 1: There is no currently existing community sewage system available for the subject property. Section 7 of the Pennsylvania Sewage Facilities Act provides that no person shall install, construct, request bid proposals for construction, alter, repair or occupy any building or structure for which an individual sewage system is to be installed, without first obtaining a permit. Buyer is advised by this notice that, before signing this Agreement, Buyer should contact the local agency charged with administering the Act to determine the procedure and requirements for obtaining a permit for an individual sewage system. The local agency charged with administering the Act will be the municipality where the Property is located or that municipality working cooperatively with others.

Notice 2: This Property is serviced by an individual sewage system installed under the ten-acre permit exemption provisions of Section 7 of the Pennsylvania Sewage Facilities Act. (Section 7 provides that a permit may not be required before installing, constructing, awarding a contract for construction, altering, repairing or connecting to an individual sewage system where a ten-acre parcel or lot is subdivided from a parent tract after January 10, 1987). Buyer is advised that soils and site testing were not conducted and that, should the system malfunction, the owner of the Property or properties serviced by the system at the time of a malfunction may be held liable for any contamination, pollution, public health hazard or nuisance which occurs as a result.

Notice 3: This Property is serviced by a holding tank (permanent or temporary) to which sewage is conveyed by a water carrying system and which is designed and constructed to facilitate ultimate disposal of the sewage at another site. Pursuant to the Pennsylvania Sewage Facilities Act, Seller must provide a history of the annual cost of maintaining the tank from the date of its installation or December 14, 1995, whichever is later.

Notice 4: An individual sewage system has been installed at an isolation distance from a well that is less than the distance specified by regulation. The regulations at 25 Pa. Code §73.13 pertaining to minimum horizontal isolation distances provide guidance. Subsection (b) of §73.13 states that the minimum horizontal isolation distance between an individual water supply or water supply system suction line and treatment tanks shall be 50 feet. Subsection (c) of §73.13 states that the horizontal isolation distance between the individual water supply or water supply system suction line and the perimeter of the absorption area shall be 100 feet.

Notice 5: This lot is within an area in which permit limitations are in effect and is subject to those limitations. Sewage facilities are not available for this lot and construction of a structure to be served by sewage facilities may not begin until the municipality completes a major planning requirement pursuant to the Pennsylvania Sewage Facilities Act and regulations promulgated thereunder.

(C) **Historic Preservation**

Seller is not aware of historic preservation restrictions regarding the Property unless otherwise stated here: _____

_____

(D) **Land Use Restrictions**

1. ☐ Property, or a portion of it, is subject to land use restrictions and may be preferentially assessed for tax purposes under the following Act(s) (see Notices Regarding Land Use Restrictions below):

☐ Agricultural Area Security Law (Right-to-Farm Act; Act 43 of 1981; 3 P.S. § 901 et seq.)
☐ Farmland and Forest Land Assessment Act (Clean and Green Program; Act 319 of 1974; 72 P.S. § 5490.1 et seq.)

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☐ Open Space Act (Act 442 of 1967; 32 P.S. § 5001 et seq.)
☐ Conservation Reserve Program (16 U.S.C. § 3831 et seq.)
☐ Other _____

2. **Notices Regarding Land Use Restrictions**
   a. **Pennsylvania Right-To-Farm Act**: The property you are buying may be located in an area where agricultural operations take place. Pennsylvania protects agricultural resources for the production of food and agricultural products. The law limits circumstances where normal agricultural operations may be subject to nuisance lawsuits or restrictive ordinances.
   b. **Clean and Green Program**: Properties enrolled in the Clean and Green Program receive preferential property tax assessment. Buyer and Seller have been advised of the need to contact the County Tax Assessment Office before the execution of this Agreement to determine the property tax implications that will or may result from the sale of the Property, or that may result in the future as a result of any change in use of the Property or the land from which it is being separated.
   c. **Open Space Act**: This Act enables counties to enter into covenants with owners of land designated as farm, forest, water supply, or open space land on an adopted municipal, county or regional plan for the purpose of preserving the land as open space. A covenant between the owner and county is binding upon any Buyer of the Property during the period of time that the covenant is in effect (5 or 10 years). Covenants automatically renew at the end of the covenant period unless specific termination notice procedures are followed. Buyer has been advised of the need to determine the restrictions that will apply from the sale of the Property to Buyer and the property tax implications that will or may result from a change in use of the Property, or any portion of it. Buyer is further advised to determine the term of any covenant now in effect.
   d. **Conservation Reserve (Enhancement) Program**: Properties enrolled in the Conservation Reserve Program or CREP are environmentally-sensitive areas, the owners of which receive compensation in exchange for an agreement to maintain the land in its natural state. Contracts last from 10 to 15 years and carry penalties to Seller if terminated early by Buyer. Buyer has been advised of the need to determine the restrictions on development of the Property and the term of any contract now in effect. Seller is advised to determine the financial implications that will or may result from the sale of the Property.

(E) **Real Estate Seller Disclosure Law**
Generally, the Real Estate Seller Disclosure Law requires that before an agreement of sale is signed, the seller in a residential real estate transfer must make certain disclosures regarding the property to potential buyers in a form defined by the law. A residential real estate transfer is defined as a sale, exchange, installment sales contract, lease with an option to buy, grant or other transfer of an interest in real property where **NOT LESS THAN ONE AND NOT MORE THAN FOUR RESIDENTIAL DWELLING UNITS** are involved. Disclosures for condominiums and cooperatives are limited to the seller's particular unit(s). Disclosures regarding common areas or facilities are not required, as those elements are already addressed in the laws that govern the resale of condominium and cooperative interests.

(F) **Public and/or Private Assessments**
1. Seller represents that, as of the date Seller signed this Agreement, no public improvement, condominium or homeowner association assessments have been made against the Property which remain unpaid, and that no notice by any government or public authority (excluding assessed value) has been served upon Seller or anyone on Seller's behalf, including notices relating to violations of zoning, housing, building, safety or fire ordinances that remain uncorrected, and that Seller knows of no condition that would constitute a violation of any such ordinances that remain uncorrected, unless otherwise specified here: _____
2. Seller knows of no other potential notices (including violations) and/or assessments except as follows: _____

(G) **Highway Occupancy Permit**
Access to a public road may require issuance of a highway occupancy permit from the Department of Transportation.

(H) **Internet of Things (IoT) Devices**
1. The presence of smart and green home devices that are capable of connecting to the Internet, directly or indirectly, and the data stored on those various devices make up a digital ecosystem in the Property sometimes referred to as the "Internet of Things (IoT)." Buyer and Seller acknowledge that IoT devices may transmit data to third parties outside of the control of their owner.
2. On or before settlement, Seller will make a reasonable effort to clear all data stored on all IoT devices located on the Property and included in the sale. Seller further acknowledges that all personal devices owned by Seller (including but not limited to cellular telephones, personal computers and tablets) having connectivity to any IoT device(s) located on the Property will be disconnected and cleared of relevant data prior to settlement. Further, no attempts will be made after settlement by Seller or anyone on Seller's behalf to access any IoT devices remaining on the Property.
3. Following settlement, Buyer will make a reasonable effort to clear all stored data from any IoT device(s) remaining on the Property and to restrict access to said devices by Seller, Seller's agents or any third party to whom Seller may have previously provided access. This includes, but is not limited to, restoring IoT devices to original settings, changing passwords or codes, updating network settings and submitting change of ownership and contact information to device manufacturers and service providers.
4. This paragraph will survive settlement.

11. WAIVER OF CONTINGENCIES (9-05)
If this Agreement is contingent on Buyer's right to inspect and/or repair the Property, or to verify insurability, environmental conditions, boundaries, certifications, zoning classification or use, or any other information regarding the Property, **Buyer's failure to exercise any of Buyer's options within the times set forth in this Agreement is a WAIVER of that contingency and Buyer accepts the Property and agrees to the RELEASE in Paragraph 28 of this Agreement**.

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12. BUYER'S DUE DILIGENCE/INSPECTIONS (10-18)

(A) **Rights and Responsibilities**

1. Seller will provide access to insurers' representatives and, as may be required by this Agreement or by mortgage lender(s), to surveyors, municipal officials, appraisers and inspectors; in addition, unless otherwise agreed, only Parties and their real estate licensee(s) may attend any inspections.
2. Buyer may make two pre-settlement walk-through inspections of the Property for the limited purpose of determining that the condition of the Property is as required by this Agreement and any addenda. Buyer's right to these inspections is not waived by any other provision of this Agreement.
3. **Seller will have heating and all utilities (including fuel(s)) on for all inspections/appraisals.**
4. All inspectors, including home inspectors, are authorized by Buyer to provide a copy of any inspection Report to Broker for Buyer.
5. Seller has the right, upon request, to receive a free copy of any inspection Report from the party for whom it was prepared. Unless otherwise stated, Seller does not have the right to receive a copy of any lender's appraisal report.

(B) Buyer waives or elects at Buyer's expense to have the following inspections, certifications, and investigations (referred to as "Inspection" or "Inspections") performed by professional contractors, home inspectors, engineers, architects and other properly licensed or otherwise qualified professionals. All inspections shall be non-invasive, unless otherwise agreed in writing. If the same inspector is inspecting more than one system, the inspector must comply with the Home Inspection Law. (See Paragraph 12(D) for Notices Regarding Property and Environmental Inspections)

(C) For elected Inspection(s), Buyer will, within the Contingency Period stated in Paragraph 13(A), complete Inspections, obtain any Inspection Reports or results (referred to as "Report" or "Reports"), and accept the Property, terminate this Agreement, or submit a written corrective proposal to Seller, according to the terms of Paragraph 13(B).

Home/Property Inspections and Environmental Hazards (mold, etc.)

Elected _____ Buyer may conduct an inspection of the Property's structural components; roof; exterior windows and exterior doors; exterior building material, fascia, gutters and downspouts; swimming pools, hot tubs and spas; appliances; electrical systems; interior and exterior plumbing; public sewer systems; heating and cooling systems; water penetration; electromagnetic fields; wetlands and flood plain delineation; structure square footage; mold and other environmental hazards (e.g., fungi, indoor air quality, asbestos, underground storage tanks, etc.); and any other items Buyer may select. If Buyer elects to have a home inspection of the Property, as defined in the Home Inspection Law, the home inspection must be performed by a full member in good standing of a national home inspection association, or a person supervised by a full member of a national home inspection association, in accordance with the ethical standards and code of conduct or practice of that association, or by a properly licensed or registered engineer or architect. (See Notices Regarding Property & Environmental Inspections) **Waived** _____

Wood Infestation

Elected _____ Buyer may obtain a written "Wood-Destroying Insect Infestation Inspection Report" from an inspector certified as a wood-destroying pests pesticide applicator and will deliver it and all supporting documents and drawings provided by the inspector to Seller. The Report is to be made satisfactory to and in compliance with applicable laws, mortgage lender requirements, and/or Federal Insuring and Guaranteeing Agency requirements. The Inspection is to be limited to all readily-visible and accessible areas of all structures on the Property, except fences. If the Inspection reveals active infestation(s), Buyer, at Buyer's expense, may obtain a Proposal from a wood-destroying pests pesticide applicator to treat the Property. If the Inspection reveals damage from active or previous infestation(s), Buyer may obtain a written Report from a professional contractor, home inspector or structural engineer that is limited to structural damage to the Property caused by wood-destroying organisms and a Proposal to repair the Property. **Waived** _____

Deeds, Restrictions and Zoning

Elected _____ Buyer may investigate easements, deed and use restrictions (including any historic preservation restrictions or ordinances) that apply to the Property and review local zoning ordinances. Buyer may verify that the present use of the Property (such as in-law quarters, apartments, home office, day care, commercial or recreational vehicle parking) is permitted and may elect to make the Agreement contingent upon an anticipated use. Present use: _____ **Waived** _____

Water Service

Elected _____ Buyer may obtain an Inspection of the quality and quantity of the water system from a properly licensed or otherwise qualified water/well testing company. If and as required by the inspection company, Seller, at Seller's expense, will locate and provide access to the on-site (or individual) water system. Seller will restore the Property to its previous condition, at Seller's expense, prior to settlement. **Waived** _____

Radon

Elected _____ Buyer may obtain a radon test of the Property from a certified inspector. The U.S. Environmental Protection Agency (EPA) advises corrective action if the average annual exposure to radon is equal to or higher than 0.02 working levels or 4 picoCuries/liter (4pCi/L). Radon is a natural, radioactive gas that is produced in the ground by the normal decay of uranium and radium. Studies indicate that extended exposure to high levels of radon gas can increase the risk of lung cancer. Radon can find its way into any air-space and can permeate a structure. If a house has a radon problem, it usually can be cured by increased ventilation and/or by preventing radon entry. Any person who tests, mitigates or safeguards a building for radon in Pennsylvania must be certified by the Department of Environmental Protection. Information about radon and about certified testing or mitigation firms is available through Department of Environmental Protection, Bureau of Radiation Protection, 13th Floor, Rachel Carson State Office Building, P.O. Box 8469, Harrisburg, PA 17105-8469, (800) 23RADON or (717) 783-3594. www.epa.gov **Waived** _____

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On-lot Sewage (If Applicable)

Elected _____ **Waived** _____ Buyer may obtain an Inspection of the individual on-lot sewage disposal system, which may include a hydraulic load test, from a qualified, professional inspector. If and as required by the inspection company, Seller, at Seller's expense, will locate, provide access to, empty the individual on-lot sewage disposal system and provide all water needed, unless otherwise agreed. Seller will restore the Property to its previous condition, at Seller's expense, prior to settlement. See Paragraph 13(C) for more information regarding the Individual On-lot Sewage Inspection Contingency.

Property and Flood Insurance

Elected _____ **Waived** _____ Buyer may determine the insurability of the Property by making application for property and casualty insurance for the Property to a responsible insurer. Broker for Buyer, if any, otherwise Broker for Seller, may communicate with the insurer to assist in the insurance process. If the Property is located in a specially-designated flood zone, Buyer may be required to carry flood insurance at Buyer's expense, which may need to be ordered 14 days or more prior to Settlement Date. Revised flood maps and changes to Federal law may substantially increase future flood insurance premiums or require insurance for formerly exempt properties. Buyer should consult with one or more flood insurance agents regarding the need for flood insurance and possible premium increases.

Property Boundaries

Elected _____ **Waived** _____ Buyer may engage the services of a surveyor, title abstractor, or other qualified professional to assess the legal description, certainty and location of boundaries and/or quantum of land. Most sellers have not had the Property surveyed as it is not a requirement of property transfer in Pennsylvania. Any fences, hedges, walls and other natural or constructed barriers may or may not represent the true boundary lines of the Property. Any numerical representations of size of property are approximations only and may be inaccurate.

Lead-Based Paint Hazards (For Properties built prior to 1978 only)

Elected _____ **Waived** _____ Before Buyer is obligated to purchase a residential dwelling built prior to 1978, Buyer has the option to conduct a risk assessment and/or inspection of the Property for the presence of lead-based paint and/or lead-based paint hazards. **Regardless of whether this inspection is elected or waived, the Residential Lead-Based Paint Hazard Reduction Act requires a seller of property built prior to 1978 to provide the Buyer with an EPA-approved lead hazards information pamphlet titled "Protect Your Family from Lead in Your Home," along with a separate form, attached to this Agreement, disclosing Seller's knowledge of lead-based paint hazards and any lead-based paint records regarding the Property.**

Other

Elected _____ **Waived** _____ _____

The Inspections elected above do not apply to the following existing conditions and/or items:

_____

_____

(D) **Notices Regarding Property & Environmental Inspections**

1. **Exterior Building Materials:** Poor or improper installation of exterior building materials may result in moisture penetrating the surface of a structure where it may cause mold and damage to the building's frame.
2. **Asbestos:** Asbestos is linked with several adverse health effects, including various forms of cancer.
3. **Environmental Hazards:** The U.S. Environmental Protection Agency has a list of hazardous substances, the use and disposal of which are restricted by law. Generally, if hazardous substances are found on a property, it is the property owner's responsibility to dispose of them properly.
4. **Wetlands:** Wetlands are protected by the federal and state governments. Buyer may wish to hire an environmental engineer to investigate whether the Property is located in a wetlands area to determine if permits for plans to build, improve or develop the property would be affected or denied because of its location in a wetlands area.
5. **Mold, Fungi and Indoor Air Quality:** Indoor mold contamination and the inhalation of bioaerosols (bacteria, mold spores, pollen and viruses) have been associated with allergic responses.
6. **Additional Information:** Inquiries or requests for more information about asbestos and other hazardous substances can be directed to the U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460, (202) 272-0167, and/or the Department of Health, Commonwealth of Pennsylvania, Division of Environmental Health, Harrisburg, PA 17120. Information about indoor air quality issues is available through the Pennsylvania Department of Health and may be obtained by contacting Health & Welfare Building, 8th Floor West, 625 Forster St., Harrisburg, PA 17120, or by calling 1-877-724-3258.

13. INSPECTION CONTINGENCY (10-18)

(A) The Contingency Period is _____ days (10 if not specified) from the Execution Date of this Agreement for each Inspection elected in Paragraph 12(C).

(B) **Within the stated Contingency Period** and as the result of any Inspection elected in Paragraph 12(C), except as stated in Paragraph 13(C):

1. If the results of the inspections elected in Paragraph 12(C) are satisfactory to Buyer, Buyer WILL **present all Report(s) in their entirety to Seller, accept the Property with the information stated in the Report(s) and agree to the RELEASE in Paragraph 28 of this Agreement,** OR
2. If the results of any inspection elected in Paragraph 12(C) are unsatisfactory to Buyer, Buyer WILL **present all Report(s) in their entirety to Seller and terminate this Agreement** by written notice to Seller, with all deposit monies returned to Buyer according to the terms of Paragraph 26 of this Agreement, OR

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3. If the results of any inspection elected in Paragraph 12(C) are unsatisfactory to Buyer, Buyer WILL **present all Report(s) in their entirety to Seller with a Written Corrective Proposal ("Proposal") listing corrections and/or credits desired by Buyer.**

The Proposal may, but is not required to, include the name(s) of a properly licensed or qualified professional(s) to perform the corrections requested in the Proposal, provisions for payment, including retests, and a projected date for completion of the corrections. Buyer agrees that Seller will not be held liable for corrections that do not comply with mortgage lender or governmental requirements if performed in a workmanlike manner according to the terms of Buyer's Proposal.

a. Following the end of the Contingency Period, Buyer and Seller will have _____ days (5 if not specified) for a Negotiation Period. During the Negotiation Period:
   (1) Seller will acknowledge in writing Seller's agreement to satisfy all the terms of Buyer's Proposal OR
   (2) Buyer and Seller will negotiate another mutually acceptable written agreement, providing for any repairs or improvements to the Property and/or any credit to Buyer at settlement, as acceptable to the mortgage lender, if any.

   If Seller agrees to satisfy all the terms of Buyer's Proposal, or Buyer and Seller enter into another mutually acceptable written agreement, Buyer accepts the Property and agrees to the RELEASE in Paragraph 28 of this Agreement and the Negotiation Period ends.

b. If no mutually acceptable written agreement is reached, or if Seller fails to respond during the Negotiation Period, within _____ days (2 if not specified) **following the end of the Negotiation Period**, Buyer will:
   (1) Accept the Property with the information stated in the Report(s) and agree to the RELEASE in Paragraph 28 of this Agreement, OR
   (2) Terminate this Agreement by written notice to Seller, with all deposit monies returned to Buyer according to the terms of Paragraph 26 of this Agreement.

If Buyer and Seller do not reach a mutually acceptable written agreement, and Buyer does not terminate this Agreement by written notice to Seller within the time allotted in Paragraph 13(B)(3)(b), Buyer will accept the Property and agree to the RELEASE in Paragraph 28 of this Agreement. Ongoing negotiations do not automatically extend the Negotiation Period.

(C) If a Report reveals the need to expand or replace the existing individual on-lot sewage disposal system, Seller may, within _____ days (25 if not specified) of receiving the Report, submit a Proposal to Buyer. The Proposal will include, but not be limited to, the name of the company to perform the expansion or replacement; provisions for payment, including retests; and a projected completion date for corrective measures. Within 5 DAYS of receiving Seller's Proposal, or **if no Proposal is provided within the stated time**, Buyer will notify Seller in writing of Buyer's choice to:

1. Agree to the terms of the Proposal, accept the Property and agree to the RELEASE in Paragraph 28 of this Agreement, OR
2. Terminate this Agreement by written notice to Seller, with all deposit monies returned to Buyer according to the terms of Paragraph 26 of this Agreement, OR
3. Accept the Property and the existing system and agree to the RELEASE in Paragraph 28 of this Agreement. If required by any mortgage lender and/or any governmental authority, Buyer will correct the defects before settlement or within the time required by the mortgage lender and/or governmental authority, at Buyer's sole expense, with permission and access to the Property given by Seller, which may not be unreasonably withheld. If Seller denies Buyer permission and/or access to correct the defects, Buyer may, within 5 DAYS of Seller's denial, terminate this Agreement by written notice to Seller, with all deposit monies returned to Buyer according to the terms of Paragraph 26 of this Agreement.

If Buyer fails to respond within the time stated in Paragraph 13(C) **or fails to terminate** this Agreement by written notice to Seller within that time, **Buyer will accept the Property** and agree to the RELEASE in Paragraph 28 of this Agreement.

14. TITLES, SURVEYS AND COSTS (6-20)

(A) Within _____ days (7 if not specified) from the Execution Date of this Agreement, Buyer will order from a reputable title company for delivery to Seller a comprehensive title report on the Property. Upon receipt, Buyer will deliver a free copy of the title report to Seller.

(B) Buyer is encouraged to obtain an owner's title insurance policy to protect Buyer. An owner's title insurance policy is different from a lender's title insurance policy, which will not protect Buyer from claims and attacks on the title. Owner's title insurance policies come in standard and enhanced versions; **Buyer should consult with a title insurance agent about Buyer's options**. Buyer agrees to release and discharge any and all claims and losses against Broker for Buyer should Buyer neglect to obtain an owner's title insurance policy.

(C) Buyer will pay for the following: (1) Title search, title insurance and/or mechanics' lien insurance, or any fee for cancellation; (2) Flood insurance, fire insurance, hazard insurance, mine subsidence insurance, or any fee for cancellation; (3) Appraisal fees and charges paid in advance to mortgage lender; (4) Buyer's customary settlement costs and accruals.

(D) Any survey or surveys required by the title insurance company or the abstracting company for preparing an adequate legal description of the Property (or the correction thereof) will be obtained and paid for by Seller. Any survey or surveys desired by Buyer or required by the mortgage lender will be obtained and paid for by Buyer.

(E) The Property will be conveyed with good and marketable title that is insurable by a reputable title insurance company at the regular rates, free and clear of all liens, encumbrances, and easements, **excepting however** the following: existing deed restrictions; historic preservation restrictions or ordinances; building restrictions; ordinances; easements of roads; easements visible upon the ground; easements of record; and privileges or rights of public service companies, if any.

(F) If a change in Seller's financial status affects Seller's ability to convey title to the Property on or before the Settlement Date, or any extension thereof, Seller shall promptly notify Buyer in writing. A change in financial status includes, but is not limited to, Seller filing bankruptcy; filing of a foreclosure lawsuit against the Property; entry of a monetary judgment against Seller; notice of public tax sale affecting the Property; and Seller learning that the sale price of the Property is no longer sufficient to satisfy all liens and encumbrances against the Property.

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(G) If Seller is unable to give good and marketable title that is insurable by a reputable title insurance company at the regular rates, as specified in Paragraph 14(E), Buyer may terminate this Agreement by written notice to Seller, with all deposit monies returned to Buyer according to the terms of Paragraph 26 of this Agreement, or take such title as Seller can convey. If the title condition precludes Seller from conveying title, Buyer's sole remedy shall be to terminate this Agreement. Upon termination, all deposit monies shall be returned to Buyer according to the terms of Paragraph 26 of this Agreement and Seller will reimburse Buyer for any costs incurred by Buyer for any inspections or certifications obtained according to the terms of this Agreement, and for those items specified in Paragraph 14(C) items (1), (2), (3) and in Paragraph 14(D).

(H) Oil, gas, mineral, or other rights of this Property may have been previously conveyed or leased, and Sellers make no representation about the status of those rights unless indicated elsewhere in this Agreement.

☐ **Oil, Gas and Mineral Rights Addendum (PAR Form OGM) is attached to and made part of this Agreement.**

(I) **COAL NOTICE (Where Applicable)**

THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHTS OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL SUCH COAL AND IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. (This notice is set forth in the manner provided in Section 1 of the Act of July 17, 1957, P.L. 984.) "Buyer acknowledges that he may not be obtaining the right of protection against subsidence resulting from coal mining operations, and that the property described herein may be protected from damage due to mine subsidence by a private contract with the owners of the economic interests in the coal. This acknowledgement is made for the purpose of complying with the provisions of Section 14 of the Bituminous Mine Subsidence and the Land Conservation Act of April 27, 1966." Buyer agrees to sign the deed from Seller which deed will contain the aforesaid provision.

(J) The Property is not a "recreational cabin" as defined in the Pennsylvania Construction Code Act unless otherwise stated here: _____

(K) 1. This property is not subject to a Private Transfer Fee Obligation unless otherwise stated here: _____

☐ **Private Transfer Fee Addendum (PAR Form PTF) is attached to and made part of this Agreement.**

2. **Notices Regarding Private Transfer Fees:** In Pennsylvania, Private Transfer Fees are defined and regulated in the Private Transfer Fee Obligation Act (Act 1 of 2011; 68 Pa.C.S. §§ 8101, et. seq.), which defines a Private Transfer Fee as "a fee that is payable upon the transfer of an interest in real property, or payable for the right to make or accept the transfer, if the obligation to pay the fee or charge runs with title to the property or otherwise binds subsequent owners of property, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the property, the purchase price or other consideration given for the transfer." A Private Transfer Fee must be properly recorded to be binding, and sellers must disclose the existence of the fees to prospective buyers. Where a Private Transfer Fee is not properly recorded or disclosed, the Act gives certain rights and protections to buyers.

15. NOTICES, ASSESSMENTS AND MUNICIPAL REQUIREMENTS (9-18)

(A) In the event any notices of public and/or private assessments as described in Paragraph 10(F) (excluding assessed value) are received after Seller has signed this Agreement and before settlement, Seller will within __5__ DAYS of receiving the notices and/or assessments provide a copy of the notices and/or assessments to Buyer and will notify Buyer in writing that Seller will:

1. Fully comply with the notices and/or assessments, at Seller's expense, before settlement. If Seller fully complies with the notices and/or assessments, Buyer accepts the Property and agrees to the RELEASE in Paragraph 28 of this Agreement, OR
2. Not comply with the notices and/or assessments. If Seller chooses not to comply with the notices and/or assessments, or **fails within the stated time to notify Buyer whether Seller will comply,** Buyer will notify Seller in writing within __5__ DAYS that Buyer will:
   a. Comply with the notices and/or assessments at Buyer's expense, accept the Property, and agree to the RELEASE in Paragraph 28 of this Agreement, OR
   b. Terminate this Agreement by written notice to Seller, with all deposit monies returned to Buyer according to the terms of Paragraph 26 of this Agreement.

If Buyer fails to respond within the time stated in Paragraph 15(A)(2) **or fails to terminate** this Agreement by written notice to Seller within that time, **Buyer will accept the Property** and agree to the RELEASE in Paragraph 28 of this Agreement.

(B) If required by law, within __30__ DAYS from the Execution Date of this Agreement, but in no case later than __15__ DAYS prior to Settlement Date, Seller will order at Seller's expense a certification from the appropriate municipal department(s) disclosing notice of any uncorrected violations of zoning, housing, building, safety or fire ordinances and/or a certificate permitting occupancy of the Property. If Buyer receives a notice of any required repairs/improvements, Buyer will promptly deliver a copy of the notice to Seller.

1. Within __5__ DAYS of receiving notice from the municipality that repairs/improvements are required, Seller will deliver a copy of the notice to Buyer and notify Buyer in writing that Seller will:
   a. Make the required repairs/improvements to the satisfaction of the municipality. If Seller makes the required repairs/improvements, Buyer accepts the Property and agrees to the RELEASE in Paragraph 28 of this Agreement, OR
   b. Not make the required repairs/improvements. If Seller chooses not to make the required repairs/improvements, Buyer will notify Seller in writing within __5__ DAYS that Buyer will:
      (1) Accept a temporary access certificate or temporary use and occupancy certificate, agree to the RELEASE in Paragraph 28 of this Agreement and make the repairs at Buyer's expense after settlement, OR
      (2) Terminate this Agreement by written notice to Seller, with all deposit monies returned to Buyer according to the terms of Paragraph 26 of this Agreement.

If Buyer fails to respond within the time stated in Paragraph 15(B)(1)(b) **or fails to terminate** this Agreement by written notice to Seller within that time, **Buyer will accept the Property** and agree to the RELEASE in Paragraph 28 of this

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Agreement, and **Buyer accepts the responsibility to perform the repairs/improvements** according to the terms of the notice provided by the municipality.

2. If repairs/improvements are required and Seller fails to provide a copy of the notice to Buyer as required in this Paragraph, Seller will perform all repairs/improvements as required by the notice at Seller's expense. **Paragraph 15(B)(2) will survive settlement.**

16. CONDOMINIUM/PLANNED COMMUNITY (HOMEOWNER ASSOCIATIONS) NOTICE (9-16)

(A) Property is NOT a Condominium or part of a Planned Community unless checked below.

☐ CONDOMINIUM. The Property is a unit of a condominium that is primarily run by a unit owners' association. Section 3407 of the Uniform Condominium Act of Pennsylvania requires Seller to furnish Buyer with a Certificate of Resale and copies of the condominium declaration (other than plats and plans), the bylaws and the rules and regulations of the association.

☐ PLANNED COMMUNITY (HOMEOWNER ASSOCIATION). The Property is part of a planned community as defined by the Uniform Planned Community Act. Section 5407(a) of the Act requires Seller to furnish Buyer with a copy of the declaration (other than plats and plans), the bylaws, the rules and regulations of the association, and a Certificate containing the provisions set forth in Section 5407(a) of the Act.

(B) **THE FOLLOWING APPLIES TO INITIAL SALES OF PROPERTIES THAT ARE PART OF A CONDOMINIUM OR A PLANNED COMMUNITY:**

If this is the first sale of the property after creation of the conduminium or planned community (therefore a sale by the Declarant), Seller shall furnish Buyer with a Public Offering Statement no later than the date Buyer executes this Agreement. Buyer may void this Agreement within 15 days (if a condominium) or within 7 days (if part of a planned community) after receipt of the Public Offering Statement or any amendment to the Statement that materially and adversely affects Buyer. Upon Buyer declaring this Agreement void, all deposit monies will be returned to Buyer according to the terms of Paragraph 26 of this Agreement.

(C) **THE FOLLOWING APPLIES TO RESALES OF PROPERTIES THAT ARE PART OF A CONDOMINIUM OR A PLANNED COMMUNITY:**

1. Within __15__ DAYS from the Execution Date of this Agreement, Seller, at Seller's expense, will request from the association a Certificate of Resale and any other documents necessary to enable Seller to comply with the relevant Act. The Act provides that the association is required to provide these documents within 10 days of Seller's request.
2. Seller will promptly deliver to Buyer all documents received from the association. Under the Act, Seller is not liable to Buyer for the failure of the association to provide the Certificate in a timely manner or for any incorrect information provided by the association in the Certificate.
3. The Act provides that Buyer may declare this Agreement VOID at any time before Buyer receives the association documents and for 5 days after receipt, OR until settlement, whichever occurs first. Buyer's notice to Seller must be in writing; upon Buyer declaring this Agreement void, all deposit monies will be returned to Buyer according to the terms of Paragraph 26 of this Agreement.
4. If the association has the right to buy the Property (right of first refusal), and the association exercises that right, Seller will reimburse Buyer for any costs incurred by Buyer for any inspections or certifications obtained according to the terms of the Agreement, and any costs incurred by Buyer for: (1) Title search, title insurance and/or mechanics' lien insurance, or any fee for cancellation; (2) Flood insurance, fire insurance, hazard insurance, mine subsidence insurance, or any fee for cancellation; (3) Appraisal fees and charges paid in advance to mortgage lender.

17. REAL ESTATE TAXES AND ASSESSED VALUE (4-14)

In Pennsylvania, taxing authorities (school districts and municipalities) and property owners may appeal the assessed value of a property at the time of sale, or at any time thereafter. A successful appeal by a taxing authority may result in a higher assessed value for the property and an increase in property taxes. Also, periodic county-wide property reassessments may change the assessed value of the property and result in a change in property tax.

18. MAINTENANCE AND RISK OF LOSS (1-14)

(A) Seller will maintain the Property (including, but not limited to, structures, grounds, fixtures, appliances, and personal property) specifically listed in this Agreement in its present condition, normal wear and tear excepted.

(B) If any part of the Property included in the sale fails before settlement, Seller will:

1. Repair or replace that part of the Property before settlement, OR
2. Provide prompt written notice to Buyer of Seller's decision to:
   a. Credit Buyer at settlement for the fair market value of the failed part of the Property, as acceptable to the mortgage lender, if any, OR
   b. Not repair or replace the failed part of the Property, and not credit Buyer at settlement for the fair market value of the failed part of the Property.
3. If Seller does not repair or replace the failed part of the Property or agree to credit Buyer for its fair market value, **or if Seller fails to notify Buyer of Seller's choice**, Buyer will notify Seller in writing within __5__ DAYS or before Settlement Date, whichever is earlier, that Buyer will:
   a. Accept the Property and agree to the RELEASE in Paragraph 28 of this Agreement, OR
   b. Terminate this Agreement by written notice to Seller, with all deposit monies returned to Buyer according to the terms of Paragraph 26 of this Agreement.

   If Buyer fails to respond within the time stated in Paragraph 18(B)(3) **or fails to terminate** this Agreement by written notice to Seller within that time, **Buyer will accept the Property** and agree to the RELEASE in Paragraph 28 of this Agreement.

(C) Seller bears the risk of loss from fire or other casualties until settlement. If any property included in this sale is destroyed and not replaced prior to settlement, Buyer will:

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1. Accept the Property in its then current condition together with the proceeds of any insurance recovery obtainable by Seller, OR
2. Terminate this Agreement by written notice to Seller, with all deposit monies returned to Buyer according to the terms of Paragraph 26 of this Agreement.

19. HOME WARRANTIES (1-10)

At or before settlement, either party may purchase a home warranty for the Property from a third-party vendor. Buyer and Seller understand that a home warranty for the Property does not alter any disclosure requirements of Seller, will not cover or warrant any pre-existing defects of the Property, and will not alter, waive or extend any provisions of this Agreement regarding inspections or certifications that Buyer has elected or waived as part of this Agreement. Buyer and Seller understand that a broker who recommends a home warranty may have a business relationship with the home warranty company that provides a financial benefit to the broker.

20. RECORDING (9-05)

This Agreement will not be recorded in the Office of the Recorder of Deeds or in any other office or place of public record. If Buyer causes or permits this Agreement to be recorded, Seller may elect to treat such act as a default of this Agreement.

21. ASSIGNMENT (1-10)

This Agreement is binding upon the parties, their heirs, personal representatives, guardians and successors, and to the extent assignable, on the assigns of the parties hereto. Buyer will not transfer or assign this Agreement without the written consent of Seller unless otherwise stated in this Agreement. Assignment of this Agreement may result in additional transfer taxes.

22. GOVERNING LAW, VENUE AND PERSONAL JURISDICTION (9-05)

(A) The validity and construction of this Agreement, and the rights and duties of the parties, will be governed in accordance with the laws of the Commonwealth of Pennsylvania.

(B) The parties agree that any dispute, controversy or claim arising under or in connection with this Agreement or its performance by either party submitted to a court shall be filed exclusively by and in the state or federal courts sitting in the Commonwealth of Pennsylvania.

23. FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT OF 1980 (FIRPTA) (1-17)

The disposition of a U.S. real property interest by a foreign person (the transferor) is subject to the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) income tax withholding. FIRPTA authorized the United States to tax foreign persons on dispositions of U.S. real property interests. This includes but is not limited to a sale or exchange, liquidation, redemption, gift, transfers, etc. Persons purchasing U.S. real property interests (transferee) from foreign persons, certain purchasers' agents, and settlement officers are required to withhold up to 15 percent of the amount realized (special rules for foreign corporations). Withholding is intended to ensure U.S. taxation of gains realized on disposition of such interests. The transferee/Buyer is the withholding agent. If you are the transferee/Buyer you must find out if the transferor is a foreign person as defined by the Act. If the transferor is a foreign person and you fail to withhold, you may be held liable for the tax.

24. NOTICE REGARDING CONVICTED SEX OFFENDERS (MEGAN'S LAW) (4-14)

The Pennsylvania General Assembly has passed legislation (often referred to as "Megan's Law," 42 Pa.C.S. § 9791 et seq.) providing for community notification of the presence of certain convicted sex offenders. **Buyers are encouraged to contact the municipal police department or the Pennsylvania State Police** for information relating to the presence of sex offenders near a particular property, or to check the information on the Pennsylvania State Police Web site at www.pameganslaw.state.pa.us.

25. REPRESENTATIONS (1-10)

(A) All representations, claims, advertising, promotional activities, brochures or plans of any kind made by Seller, Brokers, their licensees, employees, officers or partners are not a part of this Agreement unless expressly incorporated or stated in this Agreement. This Agreement contains the whole agreement between Seller and Buyer, and there are no other terms, obligations, covenants, representations, statements or conditions, oral or otherwise, of any kind whatsoever concerning this sale. This Agreement will not be altered, amended, changed or modified except in writing executed by the parties.

(B) Unless otherwise stated in this Agreement, **Buyer has inspected the Property** (including fixtures and any personal property specifically listed herein) **before signing this Agreement or has waived the right to do so, and agrees to purchase the Property IN ITS PRESENT CONDITION,** subject to inspection contingencies elected in this Agreement. Buyer acknowledges that Brokers, their licensees, employees, officers or partners have not made an independent examination or determination of the structural soundness of the Property, the age or condition of the components, environmental conditions, the permitted uses, nor of conditions existing in the locale where the Property is situated; nor have they made a mechanical inspection of any of the systems contained therein.

(C) Any repairs required by this Agreement will be completed in a workmanlike manner.

(D) Broker(s) have provided or may provide services to assist unrepresented parties in complying with this Agreement.

26. DEFAULT, TERMINATION AND RETURN OF DEPOSITS (1-18)

(A) Where Buyer terminates this Agreement pursuant to any right granted by this Agreement, Buyer will be entitled to a return of all deposit monies paid on account of Purchase Price pursuant to the terms of Paragraph 26(B), and this Agreement will be VOID. Termination of this Agreement may occur for other reasons giving rise to claims by Buyer and/or Seller for the deposit monies.

(B) Regardless of the apparent entitlement to deposit monies, Pennsylvania law does not allow a Broker holding deposit monies to determine who is entitled to the deposit monies when settlement does not occur. Broker can only release the deposit monies:

1. If this Agreement is terminated prior to settlement and there is no dispute over entitlement to the deposit monies. A written agreement signed by both parties is evidence that there is no dispute regarding deposit monies.
2. If, after Broker has received deposit monies, Broker receives a written agreement that is signed by Buyer and Seller, directing Broker how to distribute some or all of the deposit monies.
3. According to the terms of a final order of court.
4. According to the terms of a prior written agreement between Buyer and Seller that directs the Broker how to distribute the deposit monies if there is a dispute between the parties that is not resolved. (See Paragraph 26(C))

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(C) Buyer and Seller agree that if there is a dispute over the entitlement to deposit monies that is unresolved _____ days (180 if not specified) after the Settlement Date stated in Paragraph 4(A) (or any written extensions thereof) or following termination of the Agreement, whichever is earlier, then the Broker holding the deposit monies will, within 30 days of receipt of Buyer's written request, distribute the deposit monies to Buyer unless the Broker is in receipt of verifiable written notice that the dispute is the subject of litigation or mediation. If Broker has received verifiable written notice of litigation or mediation prior to the receipt of Buyer's request for distribution, Broker will continue to hold the deposit monies until receipt of a written distribution agreement between Buyer and Seller or a final court order. Buyer and Seller are advised to initiate litigation or mediation for any portion of the deposit monies prior to any distribution made by Broker pursuant to this paragraph. Buyer and Seller agree that the distribution of deposit monies based upon the passage of time does not legally determine entitlement to deposit monies, and that the parties maintain their legal rights to pursue litigation even after a distribution is made.

(D) Buyer and Seller agree that a Broker who holds or distributes deposit monies pursuant to the terms of Paragraph 26 or Pennsylvania law will not be liable. Buyer and Seller agree that if any Broker or affiliated licensee is named in litigation regarding deposit monies, the attorneys' fees and costs of the Broker(s) and licensee(s) will be paid by the party naming them in litigation.

(E) Seller has the option of retaining all sums paid by Buyer, including the deposit monies, should Buyer:

1. Fail to make any additional payments as specified in Paragraph 2, OR
2. Furnish false or incomplete information to Seller, Broker(s), or any other party identified in this Agreement concerning Buyer's legal or financial status, OR
3. Violate or fail to fulfill and perform any other terms or conditions of this Agreement.

(F) **Unless otherwise checked in Paragraph 26(G),** Seller may elect to retain those sums paid by Buyer, including deposit monies:

1. On account of purchase price, OR
2. As monies to be applied to Seller's damages, OR
3. As liquidated damages for such default.

(G) ☐ **SELLER IS LIMITED TO RETAINING THOSE SUMS PAID BY BUYER, INCLUDING DEPOSIT MONIES, AS LIQUIDATED DAMAGES.**

(H) If Seller retains all sums paid by Buyer, including deposit monies, as liquidated damages pursuant to Paragraph 26(F) or (G), Buyer and Seller are released from further liability or obligation and this Agreement is VOID.

(I) Brokers and licensees are not responsible for unpaid deposits.

27. MEDIATION (7-20)

Buyer and Seller will submit all disputes or claims that arise from this Agreement, including disputes and claims over deposit monies, to mediation. Mediation will be conducted in accordance with the Rules and Procedures of the Home Sellers/Home Buyers Dispute Resolution System, unless it is not available, in which case Buyer and Seller will mediate according to the terms of the mediation system offered or endorsed by the local Association of Realtors®. Mediation fees, contained in the mediator's fee schedule, will be divided equally among the parties and will be paid before the mediation conference. Legal proceedings may be initiated prior to the completion of the mediation process to stop any statute of limitations from expiring and for the purpose of indexing a lis pendens by Buyer to prevent the transfer of title to a third party when Buyer is seeking to purchase the Property. The parties agree that all proceedings shall be stayed until the completion of mediation and that a court of competent jurisdiction may award attorneys' fees to the prevailing party should the court find that a party has unreasonably breached this provision or acted in bad faith. Any agreement reached through mediation and signed by the parties will be binding. Any agreement to mediate disputes or claims arising from this Agreement will survive settlement.

28. RELEASE (9-05)

Buyer releases, quit claims and forever discharges SELLER, ALL BROKERS, their LICENSEES, EMPLOYEES and any OFFICER or PARTNER of any one of them and any other PERSON, FIRM or CORPORATION who may be liable by or through them, from any and all claims, losses or demands, including, but not limited to, personal injury and property damage and all of the consequences thereof, whether known or not, which may arise from the presence of termites or other wood-boring insects, radon, lead-based paint hazards, mold, fungi or indoor air quality, environmental hazards, any defects in the individual on-lot sewage disposal system or deficiencies in the on-site water service system, or any defects or conditions on the Property. Should Seller be in default under the terms of this Agreement or in violation of any Seller disclosure law or regulation, this release does not deprive Buyer of any right to pursue any remedies that may be available under law or equity. This release will survive settlement.

29. REAL ESTATE RECOVERY FUND (4-18)

A Real Estate Recovery Fund exists to reimburse any persons who have obtained a final civil judgment against a Pennsylvania real estate licensee (or a licensee's affiliates) owing to fraud, misrepresentation, or deceit in a real estate transaction and who have been unable to collect the judgment after exhausting all legal and equitable remedies. For complete details about the Fund, call (717) 783-3658.

30. COMMUNICATIONS WITH BUYER AND/OR SELLER (1-10)

(A) If Buyer is obtaining mortgage financing, Buyer shall promptly deliver to Broker for Buyer, if any, a copy of all Loan Estimate(s) and Closing Disclosure(s) upon receipt.

(B) Wherever this Agreement contains a provision that requires or allows communication/delivery to a Buyer, that provision shall be satisfied by communication/delivery to the Broker for Buyer, if any, **except for documents required to be delivered pursuant to Paragraph 16.** If there is no Broker for Buyer, those provisions may be satisfied only by communication/delivery being made directly to the Buyer, unless otherwise agreed to by the parties. Wherever this Agreement contains a provision that requires or allows communication/delivery to a Seller, that provision shall be satisfied by communication/delivery to the Broker for Seller, if any. If there is no Broker for Seller, those provisions may be satisfied only by communication/delivery being made directly to the Seller, unless otherwise agreed to by the parties.

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31. HEADINGS (4-14)

The section and paragraph headings in this Agreement are for convenience only and are not intended to indicate all of the matter in the sections which follow them. They shall have no effect whatsoever in determining the rights, obligations or intent of the parties.

32. SPECIAL CLAUSES (1-10)

(A) **The following are attached to and made part of this Agreement if checked:**

- ☐ Sale & Settlement of Other Property Contingency Addendum (PAR Form SSP)
- ☐ Sale & Settlement of Other Property Contingency with Right to Continue Marketing Addendum (PAR Form SSPCM)
- ☐ Sale & Settlement of Other Property Contingency with Timed Kickout Addendum (PAR Form SSPTKO)
- ☐ Settlement of Other Property Contingency Addendum (PAR Form SOP)
- ☐ Appraisal Contingency Addendum (PAR Form ACA)
- ☐ Short Sale Addendum (PAR Form SHS)
- ☐ _____
- ☐ _____
- ☐ _____

(B) **Additional Terms:**

Buyer and Seller acknowledge receipt of a copy of this Agreement at the time of signing.

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and which counterparts together shall constitute one and the same Agreement of the Parties.

NOTICE TO PARTIES: WHEN SIGNED, THIS AGREEMENT IS A BINDING CONTRACT. Parties to this transaction are advised to consult a Pennsylvania real estate attorney before signing if they desire legal advice.

Return of this Agreement, and any addenda and amendments, including **return by electronic transmission**, bearing the signatures of all parties, constitutes acceptance by the parties.

_____ Buyer has received the Consumer Notice as adopted by the State Real Estate Commission at 49 Pa. Code §35.336.

_____ Buyer has received a statement of Buyer's estimated closing costs before signing this Agreement.

_____ Buyer has received the Deposit Money Notice (for cooperative sales when Broker for Seller is holding deposit money) before signing this Agreement.

_____ Buyer has received the Lead-Based Paint Hazards Disclosure, which is attached to this Agreement of Sale. Buyer has received the pamphlet Protect Your Family from Lead in Your Home (for properties built prior to 1978).

BUYER _____ **DATE** _____

BUYER _____ **DATE** _____

BUYER _____ **DATE** _____

Seller has received the Consumer Notice as adopted by the State Real Estate Commission at 49 Pa. Code § 35.336.
Seller has received a statement of Seller's estimated closing costs before signing this Agreement.

SELLER _____ **DATE** _____

SELLER _____ **DATE** _____

SELLER _____ **DATE** _____

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APPRAISAL CONTINGENCY ADDENDUM TO AGREEMENT OF SALE

ACA

Not to be used with FHA or VA financing

This form recommended and approved for, but not restricted to use by, the members of the Pennsylvania Association of Realtors® (PAR).

PROPERTY _____

SELLER _____

BUYER _____

1. The appraisal value of the Property must be **equal to or higher than** the Purchase Price **OR** $ _____ (minimum appraisal value, Purchase Price if not specified), whichever is less. Contingency Period: _____ days (30 if not specified) from the Execution Date of the Agreement. Within the Contingency Period, Buyer may obtain an appraisal of the Property from a Pennsylvania certified appraiser. If Buyer is obtaining financing, the appraisal shall be performed by a Pennsylvania certified appraiser selected by the lender to whom Buyer has made application for financing. If Buyer is not obtaining financing, the appraisal shall be performed by a Pennsylvania certified appraiser selected by Buyer.

2. By initialing below, Buyer elects **ONE** of the following options:

Buyer Initials _____

(A) **Option 1:**

1. If the minimum appraisal value is met, or if the appraisal is not completed within the Contingency Period, Buyer accepts the Property and agrees to the terms of the RELEASE paragraph of the Agreement of Sale.
2. If the minimum appraisal value is not met, Buyer will deliver a copy of the appraisal report to Seller, and Buyer will, within the Contingency Period:
   a. Terminate the Agreement of Sale by written notice to Seller, with all deposit monies returned to Buyer according to the terms of the Agreement of Sale, OR
   b. Enter into a mutually acceptable written agreement with Seller.
3. If Buyer does not terminate the Agreement of Sale or enter into a mutually acceptable written agreement with Seller within the Contingency Period, Buyer waives this contingency.

OR

Buyer Initials _____

(B) **Option 2:**

1. If the minimum appraisal value is met, or if the appraisal is not completed within the Contingency Period, Buyer accepts the Property and agrees to the terms of the RELEASE paragraph of the Agreement of Sale. Buyer further agrees to complete settlement **AT THE PURCHASE PRICE** by any of the following or a combination thereof, at Buyer's sole discretion:
   a. provide additional funds at settlement,
   b. adjust the loan amount stated in the mortgage or financing contingency paragraph of the Agreement of Sale, OR
   c. adjust the loan-to-value (LTV) ratio in the Agreement of Sale.
2. Buyer's election of any option above shall prevail over like terms of the mortgage or financing contingency paragraph of the Agreement of Sale; all other terms remain unchanged. Any fees that result from a change in loan terms will be the sole responsibility of Buyer.
3. If the minimum appraisal value is not met, this Addendum is null and void. All terms of the mortgage or financing contingency paragraph of the Agreement of Sale remain unchanged and in full force and effect.

All other terms and conditions of the Agreement of Sale remain unchanged and in full force and effect.

BUYER _____ **DATE** _____

BUYER _____ **DATE** _____

BUYER _____ **DATE** _____

SELLER _____ **DATE** _____

SELLER _____ **DATE** _____

SELLER _____ **DATE** _____

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PRICE ESCALATION ADDENDUM TO AGREEMENT OF SALE

PEA

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PROPERTY_____

SELLER_____

BUYER_____

1. This Addendum is presented to Seller as part of Buyer's offer to purchase Seller's Property. Should Seller accept Buyer's offer, Buyer and Seller will have entered into a binding agreement under the terms of the Agreement and/or other addenda, with the exception of any terms addressed in this Addendum.
2. If, prior to Seller's acceptance of Buyer's offer to purchase, Seller receives from another prospective purchaser a bona fide offer to purchase the Property ("Competing Offer"), with terms acceptable to Seller and a Net Purchase Price (the Purchase Price less any identified Seller assist and Seller financial concessions) equal to or higher than the Net Purchase Price offered by Buyer, Buyer agrees that the Purchase Price of Buyer's offer is increased so that the Net Purchase Price is $_____ higher than the Net Purchase Price in the Competing Offer(s), up to a maximum Purchase Price of $_____. **If one or more Competing Offers include similar price escalation terms, this automatic increase will be applied to the maximum escalated sales price of the highest competing escalation term, not to exceed the maximum Purchase Price stated above.**
3. If the Purchase Price is increased based on the terms of Paragraph 2 above, the terms of the Mortgage Contingency Paragraph in the Agreement of Sale are changed as follows (check all that apply):
   - ☐ The Mortgage Contingency is waived. This sale is NOT contingent on mortgage financing, although Buyer may still obtain mortgage financing.
   - ☐ The Loan Amount stated in the Mortgage Contingency is increased by the amount necessary to keep the Loan-to-Value Ratio (a percentage derived by dividing the total value of loans for the property by the Purchase Price) the same as that set forth in the Mortgage Contingency Paragraph of the Agreement of Sale, with the remainder paid in cash at settlement.
   - ☐ The first $_____ of the difference between the original Purchase Price and the new Purchase Price will be paid in cash at settlement; the remaining difference will be added to the loan amount.
   - ☐ Within _____ days of the Execution Date of the Agreement, Buyer will deliver to Seller a written pre-approval letter from the lender identified in the Mortgage Contingency Paragraph (or, if none is stated, from a reputable lender) for an amount equal to or greater than the increased loan amount. If Buyer fails to provide written pre-approval within the stated time period, Seller may terminate the Agreement in writing.
4. ☐ An Appraisal Contingency Addendum is attached.
5. Seller will provide a copy of the Competing Offer to Buyer no later than the time Seller returns a copy of the executed Agreement to Buyer. Seller may remove the name of the other prospective purchaser, but may not remove any financial terms, including the Purchase Price or any Seller assist or other Seller financial concessions.
6. Seller will fill in the new Purchase Price, as calculated based on the terms of Paragraph 2, between Buyer's and Seller's signatures below. Buyer understands and acknowledges that no further signature or initials are required on this form to have an executed Addendum. At the request of Seller, Buyer's lender, or any of the real estate licensees involved in the transaction, Buyer agrees to sign or initial, and date the Agreement of Sale to reflect any increase in the Purchase Price and/or any other changes in terms made in accordance with this Addendum. Buyer's refusal to sign or intial any changes made in accordance with this addendum will result in Buyer being in default under the terms of the Agreement of Sale. Changing the Purchase Price or other terms in the already executed Agreement of Sale to reflect any changes made by this Addendum does not change the Execution Date of the Agreement of Sale.

All other terms and conditions of the Agreement of Sale remain unchanged and in full force and effect.

BUYER_____ **DATE** _____

BUYER_____ **DATE** _____

BUYER_____ **DATE** _____

(A) The Purchase Price of the Agreement of Sale is increased from $_____ to $_____ pursuant to the terms set forth in Paragraph 2 above. A copy of the Competing Offer is attached.

(B) The Mortgage Contingency paragraph of the Agreement of Sale is modified to reflect the changes made in paragraph 3 above.

(C) Seller has accepted Buyer's offer and has executed the Agreement.

SELLER_____ **DATE** _____

SELLER_____ **DATE** _____

SELLER_____ **DATE** _____

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BUYER'S REPLY TO INSPECTIONS/REPORTS OR WRITTEN CORRECTIVE PROPOSAL BRI

(Not to be used as an addendum to the Agreement of Sale)

This form recommended and approved for, but not restricted to use by, the members of the Pennsylvania Association of Realtors® (PAR)

PROPERTY _____

SELLER _____

BUYER _____

Note: This form is to be used for negotiation purposes according to Paragraph 13(B) of the Agreement of Sale. This form is not an Addendum and should not be signed by Seller or attached to the Agreement of Sale.

In reply to the following inspections/reports **only:**

☐ **Home/Property Inspections and Environmental Hazards (mold, etc):** _____	☐ **Deeds, Restrictions and Zoning**	☐ **Property Boundaries**
	☐ **Water Service**	☐ **Lead-Based Paint Hazards**
_____	☐ **Radon**	☐ **Other:** _____
_____	☐ **On-lot Sewage**	☐ **Other:** _____
☐ **Wood Infestation**	☐ **Property and Flood Insurance**	☐ **Other:** _____

1. ☐ **Accept:** Buyer accepts the Property in the condition reflected in the above Report(s)/Results.

2. ☐ **Written Corrective Proposal:** In response to the attached Report(s), Buyer requests the following:

(A) **Corrections/Repairs** to the Property, to be completed by Seller, at Seller's expense, no later than _____ days before Settlement Date (prior to settlement, if not specified), in a workmanlike manner, with all required permits, according to the attached contractor's proposal(s), if any: _____

(B) **Seller Assist:** Buyer requests that the Seller Assist be changed to $ _____, or _____% of the Purchase Price, maximum, toward Buyer's costs as permitted by the mortgage lender(s), if any. Seller is only obligated to pay up to the amount or percentage which is approved by mortgage lender.

(C) **Purchase Price:** Buyer requests that the Purchase price be changed from $ _____ to $ _____.

Buyer and Seller understand that the Written Corrective Proposal above does not modify the terms and conditions set forth in the Agreement of Sale. Any agreed upon corrections, repairs and credits must be included in an executed addendum, such as the Change in Terms Addendum (PAR Form CTA).

BUYER _____ **DATE** _____

BUYER _____ **DATE** _____

BUYER _____ **DATE** _____

NOT TO BE SIGNED BY SELLER **NOT TO BE SIGNED BY SELLER** **NOT TO BE SIGNED BY SELLER**

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CHANGE IN TERMS ADDENDUM TO AGREEMENT OF SALE

CTA

This form recommended and approved for, but not restricted to use by, the members of the Pennsylvania Association of Realtors® (PAR)

PROPERTY _____

SELLER _____

BUYER _____

The following terms of the Agreement of Sale are changed as stated below:

1. REPAIRS

Seller, at Seller's expense, will complete the following repairs no later than _____ days prior to Settlement Date (prior to settlement, if not specified), in a workmanlike manner, with all required permits, according to the attached contractor's proposal(s), if any, the terms of which, including the persons and specifications contained therein, shall become part of this Agreement:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

2. SELLER ASSIST

Seller Assist is changed to $_____, or _____% of the Purchase price, maximum, toward Buyer's costs as permitted by the mortgage lender, if any. Seller is only obligated to pay up to the amount or percentage which is approved by mortgage lender.

3. PURCHASE PRICE

Purchase Price is changed from $_____ to $ _____.

4. ACCEPTANCE & SETTLEMENT

(A) Written acceptance of all parties will be on or before: _____

(B) Settlement Date is changed from _____ to _____

5. MORTGAGE TERMS

(A) **Mortgage Type** is changed from _____ to _____

(B) **Mortgage amount**

1. First mortgage amount is changed from $_____ to $ _____
2. Second mortgage amount is changed from $_____ to $ _____

(C) **Mortgage Lender**

1. First mortgage lender is changed to _____
2. Second mortgage lender is changed to _____
3. Buyer will submit a completed, written mortgage application to the identified lender(s), if any, according to the terms of the Mortgage Contingency paragraph of the Agreement of Sale on or before: _____

(D) **Loan-To-Value (LTV) ratio** (For conventional loans)

First mortgage LTV ratio not to exceed _____% Second mortgage LTV ratio not to exceed _____%

(E) **Date for Buyer to deliver documentation** of lender's approval of Buyer's mortgage, whether conditional or outright, is changed from _____ to _____

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rev. 3/20; rel. 3/20

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6. TIME PERIODS

(A) The time period in paragraph _____, line _____ of Agreement of Sale is changed to _____

The time period in paragraph _____, line _____ of Agreement of Sale is changed to _____

The time period in paragraph _____, line _____ of Agreement of Sale is changed to _____

The time period in paragraph _____, line _____ of Agreement of Sale is changed to _____

The time period in paragraph _____, line _____ of Agreement of Sale is changed to _____

(B) The time period in paragraph _____, line _____ of the _____ Addendum is changed to _____

The time period in paragraph _____, line _____ of the _____ Addendum is changed to _____

The time period in paragraph _____, line _____ of the _____ Addendum is changed to _____

The time period in paragraph _____, line _____ of the _____ Addendum is changed to _____

The time period in paragraph _____, line _____ of the _____ Addendum is changed to _____

7. OTHER

_____

_____

_____

_____

_____

_____

_____

_____

All other terms and conditions of the Agreement, including all other time periods, remain unchanged and in full force and effect.

BUYER _____ **DATE** _____

BUYER _____ **DATE** _____

BUYER _____ **DATE** _____

SELLER _____ **DATE** _____

SELLER _____ **DATE** _____

SELLER _____ **DATE** _____

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Chapter Four

Home Inspection Law

Chapter Four
Section 1

Home Inspection Law (68 Pa.C.S. § 7501, et seq.)

David J. Scaggs, Esq.
The Granger Firm
Paoli

Home Inspection Law (68 Pa.C.S. § 7501, et seq.)

A. Application

In general, the Home Inspection Law applies to any "residential real estate transfer," which is defined as a transfer of any interest in real property located in Pennsylvania that consists of not less than one nor more than four residential dwelling units. *See* 68 Pa.C.S. § 7103(a).

It does not apply to transfers by court order, from one co-owner to another, between spouses, parents and children, from corporation to shareholders and unimproved property. *Id.*

B. Who may conduct a home inspection?

Generally, any home inspector may conduct a home inspection. However, where the inspection is pursuant to a contingency in the Agreement of Sale, the Law requires that the inspection be performed by: (a) a full member in good standing of a national home inspection association; (b) a licensed or registered engineer; (c) a licensed or registered architect; or (d) an inspector who is not yet a full member of national home inspection association, but is supervised by a full member who will sign off on the inspection report. Section 7506.

Query: How do I know if a home inspection is an "engineer, architect or member of a national home inspection association"?

> Simply ask for it in writing. Under the Law, a Buyer is entitled to rely in good faith, *without independent investigation*, on a written representation by a home inspector regarding the inspector's qualification. Section 7510.

C. What information must be in a home inspection report?

A home inspection report must be in writing. Section 7508. Moreover, a report shall include: (1) a description of the scope of the inspection, including an identification of the structural elements, systems and subsystems covered by the report; (2) A description of any material defects noted during the inspection, along with any recommendation that certain experts be retained to determine the extent of the defects and any corrective action that should be taken; and (3) four conspicuous statements (set forth in § 7508(a)(3)).

Note: "Material Defect" is defined in Residential Real Estate Transfer Law – 68 Pa. C.S.A. §7102:

> Material defect. A problem with a residential real property or any portion of it that would have a significant adverse impact on the value of the property or that involves an unreasonable risk to people on the property. The fact that a structural element, system or subsystem is near, at or beyond the end of the normal useful life of such a structural element, system or subsystem is not by itself a material defect.

D. Penalties and Causes of Actions

Section 7511 of the Law provides for *criminal* penalties for persons who violate Section 7508 (regarding inspection reports), Section 7509 (regarding liability insurance) and Section 7510 (regarding false representations of qualifications). Moreover, Section 7505 specifically states that the performance of a home inspection is subject to the UTPCPL (*See supra*).

1. Conduct prohibited – if any of the following acts occur, it will be deemed a violation of the UTPCPL:

> (1) Performing or offering to perform for an additional fee any repairs to a structure with respect to which the home inspector has prepared a home inspection report within the preceding 12 months, except that this paragraph shall not apply to remediation for radon or wood destroying insects.
>
> (2) Inspecting for a fee any property in which the home inspector has any financial interest or any interest in the transfer of the property, including without limitation receipt of a commission as an agent, unless the financial interest or interest in the transfer of the property is disclosed in writing to the buyer before the home inspection is performed and the buyer signs an acknowledgment of receipt of the disclosure.
>
> (3) Offering or delivering any commission, referral fee or kickback to the seller of the inspected property or to an agent for either or both of the seller and the buyer for the referral of any business to the home inspector, the employer of the home inspector or such other business or person.
>
> (4) Accepting an engagement to perform a home inspection in which the employment itself or the fee payable for the inspection is contingent upon the conclusions in the report, pre-established or prescribed findings or the closing of the transaction. Section 7505.

E. Statute of Limitations

Any action to recover damages arising from a home inspection report must be filed within one (1) year after the date the report is delivered. Section 7512. Further, attempts to circumvent this limitation by bringing causes of action with longer limitations periods have been rejected by the court. In *Levy v. Johnson*, 145 A.3d 776 (Pa. Super. Ct. 2016), the homeowner argued that her claims against her home inspector were not based on the home inspection law, but rather were for breach of contract and violations of the UTPCPL. The Superior Court found that the Home Inspection Law "is comprehensive regulation demonstrating legislature's intent to preempt application of other laws to home inspections" and as such, the specific limitations period in the Home Inspection Law applies over that of the breach of contract or the UTPCPL and since her claim was brought more than one year after delivery of the report, her claims were time barred.

Practice tip: Since Section 7512 bars a claim after one year from the report being delivered, regardless of when the plaintiff's injury occurs, courts may well find that it is a *statute of repose*. *See Vargo v. Koppers Co.*, 715 A.2d 423, 426 (Pa. 1998) (a statute of repose bars a plaintiff's suit before the cause of action even arises, as opposed to a statute of limitations that limits the time in which a plaintiff may bring a suit after the cause of action arises). If so, a claim for damages arising from a home inspection report *must* be filed within one (1) year regardless of when the injury is discovered (i.e., the discovery rule does not apply).

F. Can certain provisions of the Home Inspection Law be waived?

Under Section 7507, a contract with a home inspector may not contain:

(1) a limitation on the liability of the home inspector for gross negligence or willful misconduct; or

(2) a waiver or modification of any provision of the Law.

Note: The scope of the inspection and the services to be performed however may be defined by contract between home inspector and client. Additionally, nothing in the Law precludes the home inspector from adding provisions in their contract (which are not inconsistent with the law) such as *arbitration agreements* that require arbitration and limit the recovery to three times the cost of the inspection if the home inspector was *negligent*.

Practice tip: It is often the case that the home inspector is not named in a construction defect case because of the arbitration agreement and/or the statute of limitations has run. As plaintiff's counsel, it is possible to make the home inspector your friend by soliciting testimony that the defect was not readily observable. Why? Because if the defect was not readily observable, the parol evidence rule does not apply and the plaintiff may introduce evidence from before signing the Agreement of Sale (i.e., integration clause) which would otherwise be barred pursuant to the parol evidence rule.

G. Requirement of Liability Insurance

Under the Law, a home inspector is *required* to carry insurance against errors and omissions in the performance of a home inspection, as well as general liability, with coverages of not less than $100,000 per occurrence and $500,000 in the aggregate and with deductibles of no more than $2,500. Section 7509.

H. Other provisions under the Home Inspection Law

1) Confidentiality - a home inspector shall not deliver the home inspection report to anyone other than the client without the client's consent. The one exception being the Seller, whom has the right, upon request, to receive a copy of a home inspection report from the client. Section 7508.

2) Estimates - a home inspector shall not express either orally or in writing an estimate of the cost to repair any defect found during a home inspection unless: (1) the report identifies the source of the estimate; (2) the estimate is stated as a range of costs; and (3) the report

states that the parties should consider obtaining an estimate from a contractor who performs the type of repair involved. Section 7508.

Chapter Four
Section 2

Home Improvement Consumer Protection Act (HICPA") ((73 P.S. §517.1)

David J. Scaggs, Esq.
The Granger Firm
Paoli

Home Improvement Consumer Protection Act ("HICPA") (73 P.S. §517.1)

A. Scope and application

HICPA went into effect on July 1, 2009. It applies to a "Contractors" that performs a "Home Improvement". A "Contractor" is any person who owns or operates a home improvement business or undertakes, offers to undertake or agrees to perform any home improvement. The term includes subcontractors.

A "Home Improvement" includes repair, replacement, remodeling, demolition, renovation, installation, alteration, conversion, modernization, improvement, and rehabilitation. It also includes the construction, replacement, installation or improvement of driveways, swimming pools, pool houses, porches, garages, roofs, siding, insulation, solar energy systems, security systems, flooring, patios, fences, gazebos, sheds, cabanas, some landscaping, painting, doors and windows and waterproofing. It does not include the construction of a new home, the sale of goods or materials by a seller that does not perform the above work, work by an owner on the owner's private residence without compensation, the conversion of existing commercial structures into residential or noncommercial structures, and a few other exceptions. Additions to existing dwellings have been found to be "home improvements". *Gelacek v. Lunz*, No. 2011 - 0745 - CIVIL, 2012 Pa. Dist. & Cnty. Dec. LEXIS 6, at *1 (C.P. Armstrong Jan. 18, 2012)

HICPA prohibits contractors from holding themselves out as contractors without first registering with the Pennsylvania Bureau of Consumer Protection in the Office of Attorney General. Registration can be done online at https://hic.attorneygeneral.gov/ and costs approximately $50.00. Searches to see if a contractor is registered can be performed at https://hicsearch.attorneygeneral.gov. Upon registration, the contractor will receive a registration number that must be used in all of the contractor's advertisements and contracts, estimates, and proposals with owners in the Commonwealth.

HICPA requires that home improvement contracts contain certain information in order to be valid or enforceable against an owner. A "Home Improvement Contract" is defined as an agreement between a contractor (or a subcontractor or salesperson) and an owner for the performance of a home improvement. The Act provides that no home improvement contract shall be valid or enforceable against an owner unless it:

(1) Is in writing and legible and contains the home improvement contractor registration number of the performing contractor.
(2) Is signed by all of the following:
    (i) The owner, his agent or other contracted party.
    (ii) The contractor or a salesperson on behalf of a contractor.
(3) Contains the entire agreement between the owner and the contractor, including attached copies of all required notices.
(4) Contains the date of the transaction.

(5) Contains the name, address and telephone number of the contractor. For the purposes of this paragraph, a post office box number alone shall not be considered an address.
(6) Contains the approximate starting date and completion date.
(7) Includes a description of the work to be performed, the materials to be used and a set of specifications that cannot be changed without a written change order signed by the owner and the contractor.
(8) Includes the total sales price due under the contract or includes a time and materials provision wherein the contractor and owner agree in writing to the performance of the home improvement by the contractor and payment for the home improvement by the owner, based on time and materials. If the contract includes a time and materials provision:

(i) The contractor shall provide an initial cost estimate in writing to the owner before any performance of the home improvement commences.
(ii) The contract shall state:

(A) The dollar value of the initial cost estimate for the services to be performed under the time and materials provision.
(B) That the cost of the services to be performed under the time and materials provision may not exceed 10% above the dollar value indicated in the initial cost estimate.
(C) The total potential cost of the services to be performed under the time and materials provision, including the initial cost estimate and the 10% referenced in clause (B), expressed in actual dollars.
(D) A statement that the cost of the services to be performed under the time and materials provision shall not be increased over the initial cost estimate plus a 10% increase without a written change order signed by the owner and contractor.

(9) Includes the amount of any down payment plus any amount advanced for the purchase of special-order materials. The amount of the down payment and the cost of the special-order materials must be listed separately.
(10) Includes the names, addresses and telephone numbers of all subcontractors on the project known at the date of signing the contract. For the purposes of this paragraph, a post office box number alone shall not be considered an address.
(11) Except as provided in section 12.1 agrees to maintain liability insurance covering personal injury in an amount not less than $50,000 and insurance covering property damage caused by the work of a home improvement contractor in an amount not less than $50,000 and identifies the current amount of insurance coverage maintained at the time of signing the contract.
(12) Includes the toll-free telephone number under section 3(b).2
(13) Includes a notice of the right of rescission under subsection (b).

See: 73 P.S. 517.7(a). As stated, if any of this information is not included in the contract, the contract is not enforceable against the owner. However, if a contractor is barred from enforcing the contract because the contract did not contain all of the above information, the contractor may still pursue a claim in quantum meruit. *See:* *Shafer Elec. & Const. v. Mantia*, 2013 PA Super 111, 67 A.3d 8 (2013), aff'd on other grounds, 626 Pa. 258, 96 A.3d 989 (2014). Notably, §517.7(g) of HICPA states:

> Contractor's recovery right. --Nothing in this section shall preclude a contractor who has complied with subsection (a) from the recovery of payment for work performed based on the reasonable value of services which were requested by the owner if a court determines that it would be inequitable to deny such recovery.

This language would seem to require that a contractor first satisfy subsection (a) before being able to bring a claim for quantum meruit. However, the ***Shafer*** court found that the legislature could not have intended so, since quantum meruit (a quasi-contract theory) could only be available if in fact no contract existed. Instead, the court found that the purpose of subsection (g) was to provide for an equitable remedy in situations where there was no valid and enforceable written contract.

In addition to including provisions referenced above, contractors are required to provide the owner a completed copy of the contract at the time of signing and consumers have a three day right of rescission of a home improvement contract. Further, the contract must meet certain requirements if it includes an arbitration provision, and other provisions are deemed voidable, such as hold harmless clauses, waiver of building code requirements, confessions of judgment, waiver of a right to jury trial, waiver of contract defenses, attorneys' fees provisions for the contractor, and waivers of any provisions of the Act.

B. Criminal Penalties for Home Improvement Fraud

HICPA also defines an offense of Home Improvement Fraud, as follows:

A person commits the offense of home improvement fraud if, with intent to defraud or injure anyone or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, the actor:

> (1) makes a false or misleading statement to induce, encourage or solicit a person to enter into any written or oral agreement for home improvement services or provision of home improvement materials or to justify an increase in the previously agreed upon price;
> (2) receives any advance payment for performing home improvement services or providing home improvement materials and fails to perform or provide such services or materials when specified in the contract taking into account any force majeure or unforeseen labor strike that would extend the time frame or unless extended by agreement with the owner and fails to return the payment received for such services or materials which were not provided by that date;
> (3) while soliciting a person to enter into an agreement for home improvement services or materials, misrepresents or conceals the contractor's or salesperson's real name, the name of the contractor's business, the contractor's business address or any other identifying information;
> (4) damages a person's property with the intent to induce, encourage or solicit that person to enter into a written or oral agreement for performing home improvement services or providing home improvement materials;
> (5) misrepresents himself or another as an employee or agent of the Federal, Commonwealth or municipal government, any other governmental unit or any public utility with the intent to cause a person to enter into any agreement for performing home improvement services or providing home improvement materials;

(6) misrepresents an item as a special-order material or to misrepresent the cost of the special order material;
(7) alters a home improvement agreement, mortgage, promissory note or other document incident to performing or selling a home improvement without the consent of the consumer; or
(8) directly or indirectly publishes a false or deceptive advertisement in violation of State law governing advertising about home improvement.

See: 73 P.S. 517.8. Violations constitute a felony of the third degree for amounts exceeding $2,000 or a misdemeanor of the first degree for amounts up to $2,000 or if the amount cannot me satisfactorily ascertained. The grading of an offense is one grade higher for offenses against victims 60 years or older for subsections 1-3. Second offenses constitute a felony of the second degree regardless of the amount of money involved. Prosecutions can be brought by district attorneys and/or the Attorney General.

C. Prohibited Acts

There are twelve specific actions proscribed by HICPA. The Section 517.9 of the Act states that no person shall:

(1) Fail to register as required by this act.
(2) Fail to refund the amount paid for a home improvement within ten days of either the acceptance and execution of a return receipt for certified mail containing a written request for a refund or the refusal to accept the certified mail sent to the contractor's last known address if all of the following apply:
(i) No substantial portion of the contracted work has been performed at the time of the request.
(ii) More than 45 days have elapsed since the starting date specified in the written contract.
(3) Accept a municipal certificate of occupancy or other proof that performance of a home improvement contract is complete or satisfactorily concluded with knowledge that the document or proof is false, and the performance is incomplete.
(4) Utter, offer or use a completion certificate or other proof that a home improvement contract is complete or satisfactorily concluded when the person knows or has reason to know that the document or proof is false and is made to accomplish any of the following:
(i) Make or accept an assignment or negotiation of the right to receive payment under a home improvement contract.
(ii) Get or grant credit or a loan on security of the right to receive payment under a home improvement contract.
(5) Abandon or fail to perform, without justification, any home improvement contract or project engaged in or undertaken by a contractor. For the purposes of this paragraph, the term "justification" shall include nonpayment by the owner as required under the contract or any other violation of the contract by the owner.
(6) Deviate from or disregard plans or specifications, in any material respect, without a written change order dated and signed by both the contractor and owner, which contains the accompanying price changes for each deviation.

(7) Prepare, arrange, accept or participate in the financing of a home improvement contract with knowledge that the home improvement contract states a greater monetary obligation than the actual price of the home improvement.
(8) Advertise or offer, by any means, to perform a home improvement if the person does not intend to do any of the following:
(i) Accept a home improvement contract.
(ii) Perform the home improvement.
(iii) Charge for the home improvement at the price advertised or offered.
(9) Demand or receive any payment for a home improvement before the home improvement contract is signed.
(10) (i) Except as provided under subparagraph (ii), for a home improvement contract in which the total price is more than $5,000, receive a deposit in excess of:
(A) one-third of the home improvement contract price; or
(B) one-third of the home improvement contract price plus the cost of special-order materials that will be ordered, as designated in the written contract.
(ii) The provisions of subparagraph (i) shall not apply to a home improvement retailer, regardless of net worth, who does all of the following:
(A) Posts an irrevocable letter of credit payable to the bureau for the use and benefit of every person protected by the provisions of this subparagraph in a form approved by the bureau, in the amount of $100,000 per store location but not to exceed $2,000,000 for a home improvement retailer that has multiple stores.
(B) Ensures that its contractors are registered under this act and have proof of liability insurance as defined in section 4(a)(1)(ix).1
(iii) In the event of a dispute with a home improvement retailer or a contractor authorized to do work on behalf of the home improvement retailer, an owner may file with the bureau a complaint against the home improvement retailer and request a draw upon the home improvement retailer's letter of credit. The following shall apply:
(A) Upon receipt of a complaint, the bureau shall notify the home improvement retailer and investigate the complaint.
(B) Upon a determination by the bureau that the home improvement retailer is in default of the contract, the bureau may, after providing notice to the home improvement retailer, draw upon the irrevocable letter of credit to satisfy a consumer's complaint as part of its mediation process or a civil action brought under the act of December 17, 1968 (P.L.1224, No.387),2 known as the Unfair Trade Practices and Consumer Protection Law.
(C) A home improvement retailer with two draws on an irrevocable letter of credit within a two-year period issued for the purposes of this subparagraph shall be prohibited from posting an irrevocable letter of credit for purposes of this subparagraph for a period of five years beginning from the date of the second draw and shall be required to comply with subparagraph (i).
(11) While acting as a salesperson, fail to account for or remit to the contractor whom the salesperson represents a payment received in connection with a home improvement.

(12) Subsequent to entering into an agreement for home improvement services or materials, changes the name of the contractor's business, liability insurance information, the contractor's business address or any other identifying information in a fraudulent or deceptive manner likely to cause confusion or misunderstanding without advising the owner in writing within ten days following any such change.

D. Remedies

While HICPA does not in and of itself provide for a private right of action, a violation of any provisions of HICPA constitutes a violation of the Unfair Trade Practices and Consumer Protection Clause ("UTPCPL"), 73 P.S. 201-1 *et seq.* The UTPCPL does provide for a private right of action and thereunder a court can award treble damages and attorney's fees.

At least one court has found that a contractor's failure to include in the contract the information set forth in §517.7(a), is not a *violation* of HICPA and cannot constitute a violation of the UTPCPL. See: Everett v. Milanese Remodeling, Inc., 64 Ches.Co.Rep. 251, 267 (2016), *aff'd,* Everett v. Milanese, No. 2670 EDA 2016, 2017 WL 2645010 (Pa.Super., 2017). In Everett, the plaintiffs contended that the defendant violated HICPA by failing to disclose in their contract the use of subcontractors as called for by §517.7(a)(10) of HICPA, which the plaintiffs in turn contended was a violation of the UTPCPL. Id. at 251. However, rejecting the plaintiffs' claim, the Court stated:

> This provision, however, addresses those situations where conduct by a contractor will invalidate a contract. Specifically, Section 517.7(a) speaks about enforceable and valid home improvement contracts and provides that in order for a contract to be enforceable and valid against an owner it must comply with the thirteen clauses of subsection (a). A contractor's failure to adhere to Section 517.7(a) simply renders the home improvement contract void and unenforceable against the owner. *Schafer Electric & Constr. v. Mantra*, 626 Pa. 258, 96 A.3d 989 (2014). Plaintiffs have failed to establish a HICPA violation in this case and necessarily their UTPCPL claim based upon any alleged material omissions.

Id. at 252. Recall that §517.7(a) states: "Requirements. --No home improvement contract shall be valid or enforceable against an owner unless it: ..." and then proceeds to list the elements to be included in a home improvement contract. However, the Act does not state that it is an actual *violation* of HICPA to not include any of the stated elements in a contract. Instead, HICPA only states that if a home improvement contract does not contain the information listed in section 517.7(a), then the contract is not "valid or enforceable against an owner". In other words, there is no "violation" of HICPA for not including said information in a contract.

Chapter Four
Section 3

FIRPTA: What Is It and Why Should You Care?

Brett M. Woodburn, Esq.
Woodburn Law
Harrisburg

FIRPTA: What Is It and Why Should You Care?

The Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA") is found in the Internal Revenue Code and authorizes the United States to tax foreign individuals who are selling United States real estate. Specifically, FIRPTA provides "Except as otherwise provided in this section, in the case of any disposition of a United States real property interest … by a foreign person, the transferee shall be required to deduct and withhold a tax equal to 15 percent of the amount realized in the disposition." 26 U.S.C. §1445(a). In other words, buyers are responsible for ensuring that the IRS collects at least fifteen (15%) percent of the final sale price of real estate (less any amount received due to pro rating real estate taxes) when the seller is not a United States tax resident.

Being a United States tax resident is separate and distinct from one's immigration status. United States citizens are considered to be United States tax residents as well. Similarly, permanent resident aliens (i.e., green card holders) are also considered to be United States tax citizens. The third way an individual can be considered a United States tax citizen is if they satisfy the "substantial presence" test. Satisfying this test is somewhat complex; to summarize, the individual must have been in the United States for 31 days during the current year, and 183 days during a three-year period including the current year and two immediate years prior. For more detailed information on the "substantial presence" test, visit: https://www.irs.gov/individuals/international-taxpayers/substantial-presence-test.

How and when does FIRPTA apply?

The general rule is FIRPTA applies in all transactions in which the seller is a foreign person (meaning not a United States tax resident). There are several exemptions to the general rule, some of which apply to individuals and others that apply to business entities. Looking at the exemptions benefitting individuals, if the seller provides a non-foreign affidavit, which is a statement under oath in which the seller provides the taxpayer identification number and attests that the seller is not a foreign person, then there is no obligation for the buyer to withhold money. The obligation to withhold money is absolved if the buyer receives a qualifying statement from the Secretary of the United States Department of Treasury that satisfies certain criteria. The buyer's obligation to withhold 15% from the amount realized does not apply if the buyer is purchasing the property as a primary residence and the purchase price is less than $300,000.00.

Understand that FIRPTA is an issue for title agents, and for both attorneys and real estate agents who represent buyers and sellers. As noted above, the buyer (or transferee) is charged with the responsibility of withholding 15% of the amount realized in the sale. However, if the buyer failed to withhold the requisite percentage because the sellers' agent (including attorneys), the buyers' agent (including attorneys) or the settlement company (including attorneys) knowingly failed to notify the buyer that the seller was a foreign investor, then the obligation to withhold the 15% of the amount realized in the sale may fall to the sellers' agent or attorney, buyers' agent or attorney, and/or the title agent to withhold the required amount. Fortunately for the various agents and attorneys involved, liability is limited to (i) the amount of compensation that the agent earned in the transaction; and (ii) the total amount of the transferor's/seller's tax liability. For listing

brokers, the amount of compensation earned is established by the listing contract. The amount of compensation is the gross fee identified in the listing contract, i.e., listing percentages before a cooperating fee is paid plus any flat fee charged by the broker. Having to pay that taxes due under FIRPTA would not absolve the listing broker of paying a cooperating fee to a buyer's broker. The buyers' broker's liability when there is a failure to withhold a FIRPTA percentage in the amount of the cooperating fee received, any flat fee paid by the buyer, and any other source of income derived as part of the transaction. Title agents may be responsible for the gross fee collected after the title insurance company is paid its premium.

How and to what extent might attorneys be subjected to the withholding obligations and risks in a transaction in which FIRPTA applies? Attorneys are included in the definition of transferor's/ transferee's agent and/or qualified substitute depending upon what role the attorney plays. A transferor's agent is defined as: "any person who represents the transferor (A) in any negotiation with the transferee or transferee's agent related to the transaction, or (B) in settling the transaction." 26 U.S.C. §1445(d)(3). A transferee's agent is similarly defined as, "any person who represents the transferee (A) in any negotiation with the transferor or any transferor's agent related to the transaction; or (B) in settling the transaction." 26 U.S.C. §1445(d)(4). A qualified substitute is defined as: "(A) the person (including any attorney or title company) responsible for closing the transaction, other than the transferor's agent, and (B) the transferee's agent." 26 U.S.C. §1445(f)(6).

Attorneys, like other third parties who may be deemed responsible for withholding (or failing to withhold) the requisite amount of potential tax liability have limited liability, which is capped at the "transferor's maximum tax liability." 26 U.S.C. §1445(c)(1)(A). However, the "transferor's maximum tax liability is not necessarily capped at fifteen (15%) of the amount realized by the sale of the real estate. Instead, the transferor's maximum tax liability is defined as "the sum of (A) the maximum amount which the Secretary determines could be imposed as a tax under section 871(b)(1) or 882(a)(1) by reason of the disposition, plus (B) the amount the Secretary determines to be the transferor's unsatisfied withholding liability with respect to such interest." 26 U.S.C. §1445(f)(4).

It is important to understand how and when this liability can be imposed on the agents and attorneys involved in the transaction. If the seller furnishes an affidavit of non-foreign status and any of the agents involved in the transaction knows that the affidavit is false, and that agent or agents fail to notify the buyer that the information is false, then agent liability is triggered. Before breathing a sigh of relief, examine the obligations under FIRPTA:

1. Buyer must deduct and withhold 15% of the amount realized on the sale when the seller is a foreign person.

2. Withholding is not required if the Buyer is purchasing the property as the Buyer's primary residence ***and*** the purchase price is less than $300,000.00.

3. Withholding is not required if the seller provides a non-foreign affidavit.

FIRPTA does not require a buyer to obtain a certification from a seller that the seller is not a foreign person. However, if a buyer relies on other means to determine that the seller was not a foreign person, but the seller was, in fact, a foreign person, then the buyer is still subject to liability for failing to withhold the required 15% of the amount realized by the sale of the property. It deserves to be repeated that all agents' liability under FIRPTA is limited to the "amount of compensation the agent or substitute derives from the transaction." 26 U.S.C. §1445(d)(2)(B). While the concept "transaction" is not defined in the statute or the regulations, contextually it is clear that the "transaction" is the conveying of title of the real estate from seller to buyer. Is forming the entity part of the transaction for which the fee received would be at risk? Arguably not. However, if an entity is formed specifically to allow a buyer to take advantage of Section 1031, then perhaps the IRS could try to reach those fees. Fees earned negotiating the terms of the transaction between seller and buyer are undoubtedly within the scope of FIRPTA, but are fees earned as part of the process of negotiating loan terms with the lender beyond the reach of the IRS?

Oftentimes, the title company will discovery that a seller is (or may be) subject to the withholding requirements set forth in FIRPTA at or shortly before settlement when it asks the seller to complete a Substitute 1099 form and the seller refuses (or can't) because the seller does not have a tax identification number. Understand that the title company will likely suspend the closing until it can determine the effect of withholding 15% of the amount realized. Sellers' agents (including attorneys) are well-advised to be aware of the obligations imposed by FIRPTA and address FIRPTA at the beginning of the transaction.

Closings

Chapter Five
Section 1

Buyers Perspective

Updated by
Bradly S. Dornish, Esq.
Dornish Law Offices, P.C.
Pittsburgh

David J. Scaggs, Esq.
The Granger Firm
Paoli

Originally Written by
Kenneth J. Yarsky, III, Esq.
Sherrard, German & Kelly, P.C.
Pittsburgh

Buyer's Perspective

I. Coordination and Timing Issues

A. Setting time and place for Closing

The date or closing will usually be set out in the Agreement of Sale and the time and place is customarily directed by the Buyer, taking into consideration the wishes of Buyer's lender and Buyer's counsel. The PAR Agreement of Sale (typically used in residential sales transactions) provides for time being of the essence. As such, unless the Seller and Buyer otherwise agree, closing must occur by the date set forth in the Agreement of Sale. Closing can take place anywhere the parties agree. Typically, the closing will take place in office of the Buyer's title insurance company, attorney's office or the office of one of the brokers. In extraordinary times, such as the COVID-19 crises during 2020, closings took place in homes and parking lots.

B. Other Factors influencing timing of Closing

a. Property Condition.

Most Agreements of Sale provide for an inspection by a qualified Home Inspector. The timing of the inspections and reports is usually a short window such as 15 days from the date of the Agreement. Inspections should be performed early in case a subsequent inspection or estimate is required to be obtained. Assuming the parties have elected to provide the option which affords the Seller to address deficiencies contained in an inspection report, the Seller may have an obligation to complete repairs prior to closing. Sometimes this can be easier said than done.

Although the parties may prefer to deal with repairs post-closing through credits, the Buyer may be constrained by Buyer's lender requiring repairs to be made as a condition of closing with no escrows. If so, the time to complete the repairs and verify the completion thereof will dictate the closing schedule. To the extent the date set in the Agreement of Sale will not be met due to such delays, it is imperative to extend the date by written addendum to the Agreement to avoid a claim of default for failure to meet the closing deadline established in the Agreement of Sale. Of course, this can be accomplished when the repairs and extent thereof have been established and agreed to between Seller and Buyer. Consideration, however, must be given to the impact on the lender. Will the lender require the property re-appraised or inspected following repairs? If so, the timing for same can create further delays.

Most Agreements further provide for a pre-closing inspection, or "walk through." This inspection should be conducted immediately prior to closing. This inspection is generally to ascertain that the property is in the condition provided for in the Agreement, that which the Seller is obligated to deliver at settlement. Usually, such inspections are non-events. However, conditions may be apparent, either newly arising conditions, removal by seller of fixtures, conditions not previously disclosed or discoverable or failure of agreed upon repairs to be completed. At this point a negotiation may occur resulting in credits to the Buyer or escrows

pending further investigation or repair. In some cases, because of the nature of the damages or the particular loan or transaction, delays can occur. It may be necessary to agree upon a new date and credits and/or adjustments to compensate for the delay. Have movers been arranged? Does the Seller have to close on another purchase? Does the Buyer have to close on a sale or vacate a rental? Does the loan commitment expire? How long is the current interest rate locked?

b. Buyer's Financing.

Another factor which is critical in determining the timing of the closing relates to lender considerations. Most purchases require financing. Until the lender provides approval, loan documentation to be executed, and closing instructions, the transaction will not be ready to close. Appraisals and property inspections take time. Additionally, most lenders will not fund the transaction until the title commitment has been received and accepted by the lender, and the settlement statement has been approved by all parties with requisite signatures. As such, it is imperative that the place of closing be equipped to transmit signed documents via fax or e-mail and that the timing be such that the lender's office is open so as to permit answers to issues that arise and funding release to conclude settlement. Sometimes, lenders pre-wire loan funds to the settlement company, but require a funding "authorization number" before the settlement company can release the funds.

c. Possession.

The Agreement of Sale should clearly provide when possession is to be delivered. The standard Agreement of Sale provides for delivery of possession on the date of closing and delivery of deed, both of which, of course, can be modified by agreement between the Seller and Buyer. If the property being sold is newly constructed and is being conveyed by a builder/developer, possession could be delayed because the property is not ready for occupancy. The Seller may be on the buying end of another transaction that has been delayed. Does closing get postponed or does it proceed? If it proceeds, care needs be given to deal with post-closing possession by way of a lease or rental agreement. Terms should be clear and definitive and deal with not only economic issues, but issues related to liability, repairs, maintenance, upkeep and the like. If closing is delayed, what is a reasonable measure of the costs associated with delaying the closing? Are there fees to pay for loan commitment and rate extensions? What will it cost for the Buyer to provide alternate accommodations? Will the Buyer incur additional moving and/or storage expenses?

d. Title issues.

Closing schedules can be impacted by title issues. Unfortunately, title examinations do not always begin until a lender has been chosen and preliminarily approved the loan transaction. Sometimes the title work is the last piece to be dealt with and if requested through the Buyer's lender, may be reasonably close to the closing date. Delays may be even longer when the Buyer is using a mortgage broker, as the ultimate lender is unknown at the time of loan application, and therefore the criteria for title services are unknown until that lender has been chosen. Buyer's counsel, not the realtor, should order title, and it should be done as soon as possible to deal with any title issues that may arise. Consider having a separate contingency for

review of the title commitment or try to get the commitment during the home inspection contingency. Should marketability issues arise, what steps need be taken and how quickly can they be resolved? Some may be as simple as indemnifications from prior title insurers. Some, however, may not be so easily resolved. A new lender may not permit indemnification to insure over an issue. The Buyer may have a lack of comfort going forward pending resolution. An escrow may be appropriate; however money alone cannot always resolve the issues. Also, indemnification only benefits the buyer's title insurer. What ramifications does an indemnity have for the buyer? Solving some title problems can be simple while others can be very complex. Is the Buyer willing to wait? What is the likelihood of a successful outcome? Will title litigation be short or protracted? Can the prior interested parties be found? Have they died or gone out of existence, in the case of a party other than a natural person? To the extent the parties agree to proceed with curing the title defect, the resolution should be carefully documented, with costs allocated, responsibilities and timing clearly defined, with an exit strategy for the Buyer should the proposed cure be unsuccessful or untimely.

e. Seller/Grantor

Issues can arise that are specific to the Grantor or type of Grantor. An individual Grantor could be in bankruptcy. There could be issues involving divorce, prenuptial and Equitable distribution orders or agreements. Trusts and Estates carry with them their own issues that could involve the need for Court Orders or extra signatories. Corporations and Limited Liability Companies have formalities that must be followed and could require Corporate Clearance Certificates in cases where the real estate represents substantially all of the assets of the entity. These things can take extraordinary amounts of time and can potentially delay a settlement for months! Knowing the parties and the documents needed can expedite the process.

f. Judgments and Liens

The Property could be subject to outstanding judgments, liens or perhaps an old mortgage that was never properly satisfied. An Action to Quiet Title could be necessary. The defendant on such an action could be hard or impossible to find for service to be accomplished. This could involve months or even years. Mechanics Liens, *lis pendens* and Adverse Possession claims can present difficult issues for resolution.

g. Special Issues for Foreclosure or REO Properties

More than ten percent of all residential closing since 2010 have been from Sellers who are under water on their mortgage and "selling short" of what would be required to pay their mortgage lien in full, or from lenders who have completed foreclosure of a defaulted mortgage and are selling as REO, meaning Real Estate Owned by the bank. These circumstances require careful review of the title report and the Seller's mortgage loan payoff. These issues will be discussed in more detail elsewhere in this program.

II. Reviewing a Closing Disclosure and Documentation

A. The Closing Disclosure has replaced the HUD-1 Settlement Statement for residential transactions. An example has been included elsewhere in these materials. A separate Closing Disclosure is prepared for both the Buyer and the Seller. Some lenders are also requiring the parties sign an ALTA Settlement Statement, which is more akin to the former HUD-1 and contains both sides of the transaction. The Buyer's Closing Disclosure only contains the Buyer/Borrower side of the transaction. It should clearly reflect the actual transaction, including the following:

a. Allocation of price to real estate and personal property. Personal property allocation must be supportable.

b. Proration of taxes and lienable charges such as water and sewage (note most school taxes are on a July 1 fiscal year).

c. Proration of Homeowner Association/Condominium Association charges, if any.

d. Itemization of credits or Seller Assistance.

e. Itemization of loan payoffs and new loans and/or assumptions of existing indebtedness.

f. Itemization of lien payoffs, releases and/or satisfactions.

g. Itemization of settlement costs, including:
   i. Commissions
   ii. Lender fees
   iii. Tax /insurance escrows for the new lender
   iv. Attorney's fees
   v. Title Insurance premiums, including endorsements
   vi. Recording fees and transfer taxes
   vii. Charges for local certifications (municipal claim letters, tax certifications, zoning certificates, occupancy permit fees and inspection fees)
   viii. Surveys, Home Inspections, Home Warranties, Pest Inspections, Septic and water inspections and reports

h. Itemization of all other items to be paid, credited, reimbursed or addressed at closing.

III. Local Quirks that can Derail Closing

A. Although the closing of a residential real estate transaction should be relatively routine, regional quirks do exist that can create unanticipated delays. The most problematic issues relate to requirements adopted by various municipal bodies and authorities for securing exhibits necessary to close the transaction. It is important to recognize that each municipality has adopted rules to deal with transfer of real estate. Time constraints have been routinely adopted which anyone closing transactions should be aware of. Additionally, various inspection procedures have been adopted to address property and/or system deficiencies to provide for corrective action plans. Some municipalities have adopted building inspection procedures which require occupancy permits to be issued upon a resale. Presumably, the intent is to provide a vehicle to enforce code compliance. Some may require confirmation of zoning compliance.

Most municipalities in Allegheny County have also adopted dye test regulations. Due to the overburdening of municipal sewage disposal systems, a concerted effort has been made to require separation of storm water from sanitary sewer systems. The most effective way to achieve that is to require proof of the separation upon sale. Ordinances have been adopted that require pre-closing testing and remediation with the condition that lien and tax certifications will not be released until the testing and remediation has been addressed. Not only does it slow the process, it also requires that independent access to the property be arranged, whether through a realtor or property owner. In addition, certain municipalities have adopted ordinances that require wage taxes and other taxes be paid before lien and tax certifications will be issued. Although such requirements have been challenged successfully, it has not stopped all from maintaining the practice. Various municipalities in Pennsylvania have adopted the practice of outsourcing collections for current taxes, delinquent taxes, water charges and sewage charges. The difficulty with the entire process is that rather than having to consult only one source for clearance, multiple inquires with varying time restraints may be required to get all required municipal clearances. One source may provide current local tax data, while another source provides delinquent tax data, and yet others provide current and delinquent water/sewage clearances. Additionally, each taxing body, township/borough/city, county and school district may outsource to different entities. The end result is that in order to properly prepare for closing, the closing attorney needs to contact various entities to comply with requirements necessary to close the simple residential transaction. Not only does this take time, but also money as each entity charges a fee to provide the service. A comprehensive database of requirements is an absolute must. Quick turnaround is no longer the norm. Further, each certification letter received must be carefully reviewed to determine if additional certifications are needed.

IV. Coordination on Funding

A. The primary source of funding for the transaction is usually from the Buyer's lending source. What will be the trigger mechanism to release the funding and how will it be released? The first part of the process requires following the closing instruction letter received from the lender. The typical closing instruction letter requires the terms thereof be accepted and returned before the closing process can be instituted. Additionally, the letter will provide detailed instructions as to what will be required before the loan can be funded. It is imperative that

the instructions be carefully reviewed well in advance and followed to the letter. Absent written approval, a variance will cause the funding to be delayed or denied. The ability to secure variances is limited and time consuming.

B. Assuming funding has been approved by the lender, it is imperative that the title agent or closing attorney confirm receipt of good funds. The preferred method of funding is by wire. Title underwriter bulletins should be reviewed for watch lists of lenders. With recent turmoil in the lending community, it is critical to confirm in advance of closing that lender funds are good funds. As to the funds required by the Buyer, the manner of funding should be communicated to the Buyer well in advance of closing. The preferred funding source is via wire transfer. Not only does wire transfer assure receipt of the funds, but also that the funds are immediately available for disbursement at closing. If transfer is to be made by wire, wire instructions should be provided to the Buyer well in advance of closing. Formerly, the usual funding method was either by cashier's check or certified check. With legislative changes dealing with funds availability making funds almost instantly available, it is imperative that funds transmitted to the closing attorney are good and available at the time of closing and not subject to collection. It may be that the title agent or closing attorney knows that a check will be honored. More in question, however, is <u>when</u> the funds represented by the check will be available to honor drafts upon same. Prudent practice demands that disbursements be made only when funds are good and available. If funds are not immediately available to sellers, sellers may not be willing to relinquish possession to Buyers.

C. <u>Be careful of wire fraud</u>. If transmitting funds by wire, make sure to verbally confirm the wiring instructions with the sender/recipient. If wiring instructions are sent via email, call the recipient using a phone number that you have independently obtained (do not use the phone number on the email you received). Receiving an email changing wire instruction is a red flag and should be diligently investigated.

V. What to Expect at the Table

A. Buyer's counsel will be called upon to review various documents at closing. They will generally include the following:

a. Seller's Deed
   i. Warranty of Title (general, special, fiduciary or quit claim)
   ii. Grantors match grantee in prior conveyance
   iii. How is buyer taking title (tenants by entireties, joint tenants with right of survivorship, tenants in common, tenancy in an entity)

b. Closing Disclosure/ALTA Settlement Statement

c. Loan Documents prepared by the Lender
   i. Note
   ii. Mortgage
   iv. Final Loan Application

v. Compliance Agreement
vi. Initial Escrow Disclosure
vii. Servicing/Sale Disclosures
viii. Tax return authorizations
ix. Audit verification authorizations
x. First payment letters

d. Lender required affidavits

e. Survey, if applicable

f. Resale Certificates, if applicable, with condo/planned community documentation

g. Title commitment/binder
i. Proper names and amounts of coverage
ii. Removal of conditions and negotiated exceptions
iii. Effective date: "Date of Recording"
iv. Deed and Mortgage marked "insured"
v. Match legal description to deed

h. Escrow Agreement, if any

i. Pest Inspection Reports

j. Agreement of Release (satisfaction of conditions of Agreement of Sale)

k. Corporate/Partnership organizational documents of Seller, if applicable

B. Assuming that proper preparation has occurred, the closing should be nothing more than executing and exchanging documents and transmittal of funds. That being said, issues can arise which should be anticipated, such as:

a. Has a problem arisen due to the pre-closing inspection?

b. Has the lender approved closing and the Closing Disclosure?

c. Are title issues properly addressed?

d. If escrows have been proposed, have the terms been negotiated and reviewed?

e. Have Powers of Attorney, if applicable, been reviewed and approved by the title underwriter and lender and are they in recordable form?

f. Have lender and Buyer funding issues been addressed and are funds immediately available?

g. In the case of new construction, have mechanics lien issues been addressed by the title underwriter?

h. Have all conditions of the Agreement of Sale been met?

i. Have estate/inheritance tax issues been resolved in the case of a sale by an estate?

j. Have required Court orders been obtained, to the extent required?

k. Do creditor rights issues need to be addressed?

l. Have delayed possession issues been addressed?

m. If a short sale or REO transaction, have special requirements for these situations been satisfied?

What should be kept in mind is that despite all the advance preparation, issues do arise at closing. In point of fact, some believe it best to address issues at the closing table, rather than in advance, as the parties are all present at the eleventh hour and may be more inclined to reach compromises to conclude settlement.

VI. Closing Checklist

Closing Checklist

( ) Old Deed
( ) New Deed
( ) Agreement of Sale
( ) 3 Years County Tax
( ) 3 Years School Tax
( ) 3 Years Local Tax
( ) Municipal Lien Letter
( ) Water Letter
( ) Sewage Letter
( ) Well Test
( ) Septic/Dye Test
( ) Zoning Certificate
( ) Occupancy Permit
( ) Termite Inspection
( ) Survey
( ) Building Permit
( ) Sewer Tap Permit
( ) Homeowners Insurance Policy
( ) Payoff _____
( ) Payoff _____
( ) Payoff _____
( ) Real Estate Commission Stmt.
( ) Settlement Authorization
( ) Power of Attorney

( ) Subordination Agreement
( ) Satisfaction Piece
( ) Builders Risk Insurance
( ) No Lien Agreement
( ) Release of Liens
( ) Death Certificate
( ) Estate Information
( ) Order of Court if by Admin/Guard
( ) Partnership Agreement
( ) Articles of Incorporation
( ) By-Laws
( ) Certificate of Good Standing
( ) Corporate Lien Certificate
( ) Corporate Resolution
( ) Incumbency Certificate
( ) Bulk Sale Affidavit
( ) Short Sale Requirements
( ) REO review/approval of foreclosure
( ) _____
( ) _____
( ) _____
( ) _____
( ) _____
( ) _____

NOTES/TO DO:

Chapter Five
Section 1

Appendices

NOTE

_____, _____ _____, _____
[Date] [City] [State]

_____
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. $_____ (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is _____ _____. I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of _____%.

The interest rate required by this Section 2 is the rate I will pay both before and after any Survival Event as defined in this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the _____ day of each month beginning on _____, _____. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on _____, ____, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date." I will continue to pay those amounts both before and after any Survival Event as defined in this Note, until I have paid all of the principal and interest and any other charges described below that I may owe under this Note.

I will make my monthly payments at _____ or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. $_____.

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of _____ calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be _____%

of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees. I will pay the Note Holder back for those expenses paid by the Note Holder both before and after any Survival Event as defined in this Note.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

10. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

> If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.
>
> If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

11. EFFECT OF SURVIVAL EVENTS

For purposes of this Note, "Survival Event" is defined as follows:

(a) any default described in Section 6(B) of this Note;

(b) Noteholder requiring me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount under Section 6(C) of this Note;

(c) Noteholder requiring immediate payment in full of all sums secured by the Security Instrument;

(d) the Maturity Date as defined in this Note;

(e) the entry of any judgment against me under this Note; and

(f) the entry of any judgment under the Security Instrument.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

_____(Seal)
- Borrower

_____(Seal)
- Borrower

_____(Seal)
- Borrower

[Sign Original Only]

After Recording Return To:
_____
_____
_____
_____

_____ **[Space Above This Line For Recording Data]**
_____

MORTGAGE

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20, 21 and 27. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated _____, _____, together with all Riders to this document.
(B) "Borrower" is _____. Borrower is the mortgagor under this Security Instrument.
(C) "Lender" is _____. Lender is a _____ organized and existing under the laws of _____. Lender's address is _____. Lender is the mortgagee under this Security Instrument.
(D) "Note" means the promissory note signed by Borrower and dated _____, _____. The Note states that Borrower owes Lender _____ Dollars (U.S. $_____) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than _____.
(E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.
(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

☐ Adjustable Rate Rider	☐ Condominium Rider	☐ Second Home Rider
☐ Balloon Rider	☐ Planned Unit Development Rider	☐ Other(s)_____[specify]
☐ 1-4 Family Rider	☐ Biweekly Payment Rider	

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
(I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.
(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.
(K) "Escrow Items" means those items that are described in Section 3.
(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.
(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.
(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.
(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (12 C.F.R. Part 1024), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.
(P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender the following described property located in the _____ of _____:
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

which currently has the address of _____
[Street]
_____, Pennsylvania _____("Property Address"):
[City] [Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also

pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance

required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate

from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate

from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of

the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has – if any – with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular

shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security

Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any

spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). Lender shall notify Borrower of, among other things: (a) the default; (b) the action required to cure the default; (c) when the default must be cured; and (d) that failure to cure the default as specified may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. Lender shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured as specified, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, attorneys' fees and costs of title evidence to the extent permitted by Applicable Law.

23. Release. Upon payment of all sums secured by this Security Instrument, this Security Instrument and the estate conveyed shall terminate and become void. After such occurrence, Lender shall discharge and satisfy this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Waivers. Borrower, to the extent permitted by Applicable Law, waives and releases any error or defects in proceedings to enforce this Security Instrument, and hereby waives the benefit of any present or future laws providing for stay of execution, extension of time, exemption from attachment, levy and sale, and homestead exemption.

25. Reinstatement Period. Borrower's time to reinstate provided in Section 19 shall extend to one hour prior to the commencement of bidding at a sheriff's sale or other sale pursuant to this Security Instrument.

26. Purchase Money Mortgage. If any of the debt secured by this Security Instrument is lent to Borrower to acquire title to the Property, this Security Instrument shall be a purchase money mortgage.

27. Effect of Survival Events. Both before and after any Survival Event, as defined below, Borrower shall:

(a) pay Funds for Escrow Items or pay Escrow Items directly as provided in Section 3 of this Security Instrument;

(b) pay the amounts and take the actions required by Section 4 of this Security Instrument;

(c) maintain insurance coverages and take the other actions required by Section 5 of this Security Instrument;

(d) maintain, repair and restore the Property and take the other actions required by Section 7 of this Security Instrument;

(e) if this Security Instrument is on a leasehold, comply with all the provisions of the lease;

(f) treat any amounts disbursed by Lender under Section 9 of this Security Instrument as additional debt of Borrower secured by this Security Instrument;

(g) maintain and pay the premiums for Mortgage Insurance, or make payments to Lender if Mortgage Insurance coverage is not available, and take the other actions required by Section 10 of this Security Instrument;

(h) permit the collection and application of miscellaneous proceeds as required by Section 11 of this Security Instrument;

(i) pay the fees required by Section 14 of this Security Instrument;

(j) continue to abide by the restrictions and take the actions required by Section 21 of this Security Instrument;

(k) pay any collection expenses under Section 22 of this Security Instrument; and

(l) pay interest at the rate payable from time to time under the Note.

"Survival Event" means any of the following:

(a) any default described in the Note;

(b) Lender requiring Borrower to pay immediately the full amount of Principal which has not been paid and all the interest that Borrower owes on that amount under the Note;

(c) Lender requiring immediate payment in full of all sums secured by this Security Instrument as described in the Note and Sections 18 and 22 of this Security Instrument;

(d) the Maturity Date as defined in the Note;

(e) the entry of any judgment against Borrower under the Note; and

(f) the entry of any judgment under this Security Instrument.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

_____ _____(Seal)
- Borrower

_____ _____(Seal)
- Borrower

[Space Below This Line For Acknowledgment]

ERRORS AND OMISSIONS/COMPLIANCE AGREEMENT

In consideration of the Lender's funding and closing of this loan, the borrower(s) agree(s), if requested by Lender or Closing Agent for Lender, to fully cooperate and adjust for clerical errors, any or all loan closing documentation if deemed necessary or desirable in the reasonable discretion of Lender to enable Lender to sell, convey, seek guaranty or market the loan to any entity, including but not limited to an investor, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Government National Mortgage Association, Federal Housing Authority or the Department of Veterans Affairs, or any Municipal Bonding Authority.

The borrower(s) agree(s) to comply with all above noted requests by the Lender within 30 days from date of mailing of the requests. Borrower(s) agree(s) to assume all costs including, by way of illustration and not limitation, actual expenses, legal fees and marketing losses for failing to comply with correction requests in the above noted time period.

The borrower(s) do hereby so agree in order to assure that this loan documentation executed will conform and be acceptable in the marketplace in the instance of transfer, sale or conveyance by Lender of its interest in and to the loan documentation, and to assure marketable title in the borrower(s).

DATED effective this _____ day of _____, .

_____ _____

(Borrower) (Borrower)

INITIAL ESCROW ACCOUNT DISCLOSURE STATEMENT

Your monthly mortgage payment until your next escrow analysis will consist of the following:

Principal and Interest:	**$ 955.05**
Escrow:	**$ 49.51**
Total Monthly Payment:	**$1,004.56**

The following are anticipated disbursements and deposits from your escrow account during the coming year:

Month	Deposits to Escrow	Disbursements From Escrow	Description	Escrow Account Balances
Initial deposit				***$ 58.95***
SEPTEMBER	**$ 49.51**	**$**		**$ 108.46**
OCTOBER	**$ 49.51**	**$**		**$ 157.97**
NOVEMBER	**$ 49.51**	**$**		**$ 207.48**
DECEMBER	**$ 49.51**	**$**		**$ 256.99**
JANUARY	**$ 49.51**	**$**		**$ 286.50**
FEBRUARY	**$ 49.51**	**$**		**$ 356.01**
MARCH	**$ 49.51**	**$ 177.03**	**CITY TAX**	**$ 288.49**
APRIL	**$ 49.51**	**$**		**$ 278.00**
MAY	**$ 49.51**	**$**		**$ 327.51**
JUNE	**$ 49.51**	**$**		**$ 377.02**
JULY	**$ 49.51**	**$ 240.00**	**HAZARD INSURANCE**	**$ 186.53**
AUGUST	**$ 49.51**	**$ 177.03**	**CITY TAX**	**$ 59.01**

PLEASE KEEP THIS STATEMENT TO COMPARE WITH THE ACTUAL ACTIVITY THAT WILL OCCUR IN YOUR ESCROW ACCOUNT DURING THE UPCOMING YEAR.

Cushion: **$ 59.01**

Itemization of anticipated disbursements from your escrow account:

07/01/02	**HAZARDINS**	**240.00**
03/01/02	**CITY TAX**	**177.03**
	FLDINSUR	
	ANNUALPMI	
	CNTY TAX	
09/01/02	**CITY TAX**	**177.03**
	ANN ASSESS	

NOTE: The Real Estate Settlement Procedures Act (RESPA) establishes specific guidelines regarding the amount that lenders are permitted to collect for the payment of escrow items during the initial escrow computation year, i.e, the next twelve months. Unless authorized by you to do otherwise, your lender may collect only for disbursements that will occur during the coming year. If your monthly tax escrow amount has been based on unimproved (or lot) tax amounts or if your taxes were prepaid at closing and the next disbursement is not within the initial 12 month escrow computation year, your initial escrow amount for taxes will be lower than normal or may be zero. This may cause a significant increase in your monthly payment when your escrow account is analyzed in the normal twelve month timeframe. In order to minimize the amount of this payment increase, you may request an early analysis of your escrow account prior to the scheduled annual analysis.

_____

Borrower Date

_____

Co-Borrower Date

*To be completed by the **Lender:***
Lender Loan No./Universal Loan Identifier _____ Agency Case No. _____

Uniform Residential Loan Application

Verify and complete the information on this application. If you are applying for this loan with others, each additional Borrower must provide information as directed by your Lender.

Section 1: Borrower Information.

This section asks about your personal information and your income from employment and other sources, such as retirement, that you want considered to qualify for this loan.

1a. Personal Information

Name *(First, Middle, Last, Suffix)*

Alternate Names – *List any names by which you are known or any names under which credit was previously received (First, Middle, Last, Suffix)*

Social Security Number ___ – ___ – ___
(or Individual Taxpayer Identification Number)

Date of Birth
(mm/dd/yyyy)
___/___/___

Citizenship
◯ U.S. Citizen
◯ Permanent Resident Alien
◯ Non-Permanent Resident Alien

Type of Credit
◯ I am applying for **individual credit.**
◯ I am applying for **joint credit.** Total Number of Borrowers: __
Each Borrower intends to apply for joint credit. **Your initials:** _____

List Name(s) of Other Borrower(s) Applying for this Loan
(First, Middle, Last, Suffix) – Use a separator between names

Marital Status
◯ Married
◯ Separated
◯ Unmarried
(Single, Divorced, Widowed, Civil Union, Domestic Partnership, Registered Reciprocal Beneficiary Relationship)

Dependents *(not listed by another Borrower)*
Number __
Ages _____

Contact Information
Home Phone ( ) – **Ext.**
Cell Phone ( ) –
Work Phone ( ) –
Email _____

Current Address
Street _____ Unit # _____
City _____ State _____ ZIP _____ Country _____
How Long at Current Address? ___ Years ___ Months **Housing** ◯ No primary housing expense ◯ Own ◯ Rent ($ _____ /month)

If at Current Address for LESS than 2 years, list Former Address ☐ ***Does not apply***
Street _____ Unit # _____
City _____ State _____ ZIP _____ Country _____
How Long at Former Address? ___ Years ___ Months **Housing** ◯ No primary housing expense ◯ Own ◯ Rent ($ _____ /month)

Mailing Address – *if different from Current Address* ☐ ***Does not apply***
Street _____ Unit # _____
City _____ State _____ ZIP _____ Country _____

1b. Current Employment/Self-Employment and Income

☐ ***Does not apply***

Employer or Business Name _____ Phone ( ) –
Street _____ Unit # _____
City _____ State _____ ZIP _____ Country _____

Position or Title _____
Start Date ___/___/___ *(mm/dd/yyyy)*
How long in this line of work? ___ Years ___ Months

Check if this statement applies:
☐ I am employed by a family member, property seller, real estate agent, or other party to the transaction.

☐ **Check if you are the Business Owner or Self-Employed**
◯ I have an ownership share of less than 25%.
◯ I have an ownership share of 25% or more.
Monthly Income (or Loss) $ _____

Gross Monthly Income

Base	$	/month
Overtime	$	/month
Bonus	$	/month
Commission	$	/month
Military Entitlements	$	/month
Other	$	/month
TOTAL $	**0.00**	**/month**

1c. IF APPLICABLE, Complete Information for Additional Employment/Self-Employment and Income

☐ *Does not apply*

Employer or Business Name _____ Phone (____) ____ – _____

Street _____ Unit # _____

City _____ State _____ ZIP _____ Country _____

Position or Title _____

Start Date ____ / ____ / _____ *(mm/dd/yyyy)*

How long in this line of work? ___ Years ___ Months

Check if this statement applies:

☐ I am employed by a family member, property seller, real estate agent, or other party to the transaction.

☐ **Check if you are the Business Owner or Self-Employed**

◯ I have an ownership share of less than 25%.

◯ I have an ownership share of 25% or more.

Monthly Income (or Loss) $ _____

Gross Monthly Income

Base	$ _____	/month
Overtime	$ _____	/month
Bonus	$ _____	/month
Commission	$ _____	/month
Military Entitlements	$ _____	/month
Other	$ _____	/month
TOTAL $	**0.00**	**/month**

1d. IF APPLICABLE, Complete Information for Previous Employment/Self-Employment and Income

☐ *Does not apply*

Provide at least 2 years of current and previous employment and income.

Employer or Business Name _____

Street _____ Unit # _____

City _____ State _____ ZIP _____ Country _____

Position or Title _____

Start Date ____ / ____ / _____ *(mm/dd/yyyy)*

End Date ____ / ____ / _____ *(mm/dd/yyyy)*

☐ **Check if you were the Business Owner or Self-Employed**

Previous Gross Monthly Income $ _____ **/month**

1e. Income from Other Sources

☐ *Does not apply*

Include income from other sources below. Under Income Source, choose from the sources listed here:

- Alimony
- Automobile Allowance
- Boarder Income
- Capital Gains
- Child Support
- Disability
- Foster Care
- Housing or Parsonage
- Interest and Dividends
- Mortgage Credit Certificate
- Mortgage Differential Payments
- Notes Receivable
- Public Assistance
- Retirement *(e.g., Pension, IRA)*
- Royalty Payments
- Separate Maintenance
- Social Security
- Trust
- Unemployment Benefits
- VA Compensation
- Other

NOTE: *Reveal alimony, child support, separate maintenance, or other income ONLY IF you want it considered in determining your qualification for this loan.*

Income Source – *use list above*	**Monthly Income**
	$
	$
	$
Provide TOTAL Amount Here	**$ 0.00**

Section 2: Financial Information — Assets and Liabilities.

This section asks about things you own that are worth money and that you want considered to qualify for this loan. It then asks about your liabilities (or debts) that you pay each month, such as credit cards, alimony, or other expenses.

2a. Assets – Bank Accounts, Retirement, and Other Accounts You Have

Include all accounts below. Under Account Type, choose from the types listed here:

- Checking
- Savings
- Money Market
- Certificate of Deposit
- Mutual Fund
- Stocks
- Stock Options
- Bonds
- Retirement *(e.g., 401k, IRA)*
- Bridge Loan Proceeds
- Individual Development Account
- Trust Account
- Cash Value of Life Insurance *(used for the transaction)*

Account Type – *use list above*	**Financial Institution**	**Account Number**	**Cash or Market Value**
			$
			$
			$
			$
			$
		Provide TOTAL Amount Here	**$ 0.00**

2b. Other Assets and Credits You Have

☐ ***Does not apply***

Include all other assets and credits below. Under Asset or Credit Type, choose from the types listed here:

Assets

- Proceeds from Real Estate Property to be sold on or before closing
- Proceeds from Sale of Non-Real Estate Asset
- Secured Borrowed Funds
- Unsecured Borrowed Funds
- Other

Credits

- Earnest Money
- Employer Assistance
- Lot Equity
- Relocation Funds
- Rent Credit
- Sweat Equity
- Trade Equity

Asset or Credit Type – *use list above*	**Cash or Market Value**
	$
	$
	$
	$
Provide TOTAL Amount Here	**$ 0.00**

2c. Liabilities – Credit Cards, Other Debts, and Leases that You Owe

☐ ***Does not apply***

List all liabilities below (except real estate) and include deferred payments. Under Account Type, choose from the types listed here:

- Revolving *(e.g., credit cards)*
- Installment *(e.g., car, student, personal loans)*
- Open 30-Day *(balance paid monthly)*
- Lease *(not real estate)*
- Other

Account Type – *use list above*	**Company Name**	**Account Number**	**Unpaid Balance**	*To be paid off at or before closing*	**Monthly Payment**
			$	☐	$
			$	☐	$
			$	☐	$
			$	☐	$
			$	☐	$

2d. Other Liabilities and Expenses

☐ ***Does not apply***

Include all other liabilities and expenses below. Choose from the types listed here:

- Alimony
- Child Support
- Separate Maintenance
- Job Related Expenses
- Other

Monthly Payment
$
$
$

Section 3: Financial Information — Real Estate. This section asks you to list all properties you currently own and what you owe on them. ☐ *I do not own any real estate*

3a. Property You Own **If you are refinancing, list the property you are refinancing FIRST.**

Address Street _____ Unit # _____
City _____ State _____ ZIP _____ Country _____

Property Value	**Status:** Sold, Pending Sale, or Retained	**Intended Occupancy:** Investment, Primary Residence, Second Home, Other	**Monthly Insurance,Taxes, Association Dues, etc.** *if not included in Monthly Mortgage Payment*	**For 2-4 Unit Primary or Investment Property**	
				Monthly Rental Income	**For LENDER to calculate:** Net Monthly Rental Income
$			$	$	$

Mortgage Loans on this Property ☐ *Does not apply*

Creditor Name	**Account Number**	**Monthly Mortgage Payment**	**Unpaid Balance**	*To be paid off at or before closing*	**Type:** FHA, VA, Conventional, USDA-RD, Other	**Credit Limit** *(if applicable)*
		$	$	☐		$
		$	$	☐		$

3b. IF APPLICABLE, Complete Information for Additional Property ☐ *Does not apply*

Address Street _____ Unit # _____
City _____ State _____ ZIP _____ Country _____

Property Value	**Status:** Sold, Pending Sale, or Retained	**Intended Occupancy:** Investment, Primary Residence, Second Home, Other	**Monthly Insurance, Taxes, Association Dues, etc.** *if not included in Monthly Mortgage Payment*	**For 2-4 Unit Primary or Investment Property**	
				Monthly Rental Income	**For LENDER to calculate:** Net Monthly Rental Income
$			$	$	$

Mortgage Loans on this Property ☐ *Does not apply*

Creditor Name	**Account Number**	**Monthly Mortgage Payment**	**Unpaid Balance**	*To be paid off at or before closing*	**Type:** FHA, VA, Conventional, USDA-RD, Other	**Credit Limit** *(if applicable)*
		$	$	☐		$
		$	$	☐		$

3c. IF APPLICABLE, Complete Information for Additional Property ☐ *Does not apply*

Address Street _____ Unit # _____
City _____ State _____ ZIP _____ Country _____

Property Value	**Status:** Sold, Pending Sale, or Retained	**Intended Occupancy:** Investment, Primary Residence, Second Home, Other	**Monthly Insurance, Taxes, Association Dues, etc.** *if not included in Monthly Mortgage Payment*	**For 2-4 Unit Primary or Investment Property**	
				Monthly Rental Income	**For LENDER to calculate:** Net Monthly Rental Income
$			$	$	$

Mortgage Loans on this Property ☐ *Does not apply*

Creditor Name	**Account Number**	**Monthly Mortgage Payment**	**Unpaid Balance**	*To be paid off at or before closing*	**Type:** FHA, VA, Conventional, USDA-RD, Other	**Credit Limit** *(if applicable)*
		$	$	☐		$
		$	$	☐		$

Section 4: Loan and Property Information. This section asks about the loan's purpose and the property you want to purchase or refinance.

4a. Loan and Property Information

Loan Amount $ _____ **Loan Purpose** ◯ Purchase ◯ Refinance ◯ Other *(specify)* _____

Property Address Street _____ Unit # _____

City _____ State _____ ZIP _____ County _____

Number of Units _____ **Property Value $** _____

Occupancy ◯ Primary Residence ◯ Second Home ◯ Investment Property **FHA Secondary Residence** ☐

1. Mixed-Use Property. If you will occupy the property, will you set aside space within the property to operate your own business? (*e.g., daycare facility, medical office, beauty/barber shop*) ◯ NO ◯ YES

2. Manufactured Home. Is the property a manufactured home? *(e.g., a factory built dwelling built on a permanent chassis)* ◯ NO ◯ YES

4b. Other New Mortgage Loans on the Property You are Buying or Refinancing ☐ *Does not apply*

Creditor Name	Lien Type	Monthly Payment	Loan Amount/ Amount to be Drawn	Credit Limit *(if applicable)*
	◯ First Lien ◯ Subordinate Lien	$	$	$
	◯ First Lien ◯ Subordinate Lien	$	$	$

4c. Rental Income on the Property You Want to Purchase For Purchase Only ☐ *Does not apply*

Complete if the property is a 2-4 Unit Primary Residence or an Investment Property	Amount
Expected Monthly Rental Income	$
For LENDER to calculate: Expected Net Monthly Rental Income	$

4d. Gifts or Grants You Have Been Given or Will Receive for this Loan ☐ *Does not apply*

Include all gifts and grants below. Under Source, choose from the sources listed here:

• Community Nonprofit • Federal Agency • Relative • State Agency • Lender
• Employer • Local Agency • Religious Nonprofit • Unmarried Partner • Other

Asset Type: Cash Gift, Gift of Equity, Grant	Deposited/Not Deposited	Source – *use list above*	Cash or Market Value
	◯ Deposited ◯ Not Deposited		$
	◯ Deposited ◯ Not Deposited		$

Section 5: Declarations. This section asks you specific questions about the property, your funding, and your past financial history.

5a. About this Property and Your Money for this Loan

A. Will you occupy the property as your primary residence? If YES, have you had an ownership interest in another property in the last three years? If YES, complete (1) and (2) below: (1) What type of property did you own: primary residence (PR), FHA secondary residence (SR), second home (SH), or investment property (IP)? (2) How did you hold title to the property: by yourself (S), jointly with your spouse (SP), or jointly with another person (O)?	◯ NO ◯ YES ◯ NO ◯ YES _____ _____
B. If this is a Purchase Transaction: Do you have a family relationship or business affiliation with the seller of the property?	◯ NO ◯ YES
C. Are you borrowing any money for this real estate transaction *(e.g., money for your closing costs or down payment)* or obtaining any money from another party, such as the seller or realtor, that you have not disclosed on this loan application? If YES, what is the amount of this money?	◯ NO ◯ YES $ _____
D. 1. Have you or will you be applying for a mortgage loan on another property (not the property securing this loan) on or before closing this transaction that is not disclosed on this loan application? 2. Have you or will you be applying for any new credit *(e.g., installment loan, credit card, etc.)* on or before closing this loan that is not disclosed on this application?	◯ NO ◯ YES ◯ NO ◯ YES
E. Will this property be subject to a lien that could take priority over the first mortgage lien, such as a clean energy lien paid through your property taxes *(e.g., the Property Assessed Clean Energy Program)*?	◯ NO ◯ YES

5b. About Your Finances

F. Are you a co-signer or guarantor on any debt or loan that is not disclosed on this application?	◯ NO ◯ YES
G. Are there any outstanding judgments against you?	◯ NO ◯ YES
H. Are you currently delinquent or in default on a Federal debt?	◯ NO ◯ YES
I. Are you a party to a lawsuit in which you potentially have any personal financial liability?	◯ NO ◯ YES
J. Have you conveyed title to any property in lieu of foreclosure in the past 7 years?	◯ NO ◯ YES
K. Within the past 7 years, have you completed a pre-foreclosure sale or short sale, whereby the property was sold to a third party and the Lender agreed to accept less than the outstanding mortgage balance due?	◯ NO ◯ YES
L. Have you had property foreclosed upon in the last 7 years?	◯ NO ◯ YES
M. Have you declared bankruptcy within the past 7 years? If YES, identify the type(s) of bankruptcy: ☐ Chapter 7 ☐ Chapter 11 ☐ Chapter 12 ☐ Chapter 13	◯ NO ◯ YES

Section 6: Acknowledgments and Agreements. This section tells you about your legal obligations when you sign this application.

Acknowledgments and Agreements

Definitions:

- "Lender" includes the Lender's agents, service providers, and any of their successors and assigns.
- "Other Loan Participants" includes (i) any actual or potential owners of a loan resulting from this application (the "Loan"), (ii) acquirers of any beneficial or other interest in the Loan, (iii) any mortgage insurer, (iv) any guarantor, (v) any servicer of the Loan, and (vi) any of these parties' service providers, successors or assigns.

I agree to, acknowledge, and represent the following:

(1) The Complete Information for this Application

- The information I have provided in this application is true, accurate, and complete as of the date I signed this application.
- If the information I submitted changes or I have new information before closing of the Loan, I must change and supplement this application, including providing any updated/supplemented real estate sales contract.
- For purchase transactions: The terms and conditions of any real estate sales contract signed by me in connection with this application are true, accurate, and complete to the best of my knowledge and belief. I have not entered into any other agreement, written or oral, in connection with this real estate transaction.
- The Lender and Other Loan Participants may rely on the information contained in the application before and after closing of the Loan.
- Any intentional or negligent misrepresentation of information may result in the imposition of:
  - (a) civil liability on me, including monetary damages, if a person suffers any loss because the person relied on any misrepresentation that I have made on this application, and/or
  - (b) criminal penalties on me including, but not limited to, fine or imprisonment or both under the provisions of Federal law (18 U.S.C. §§ 1001 *et seq*.).

(2) The Property's Security

The Loan I have applied for in this application will be secured by a mortgage or deed of trust which provides the Lender a security interest in the property described in this application.

(3) The Property's Appraisal, Value, and Condition

- Any appraisal or value of the property obtained by the Lender is for use by the Lender and Other Loan Participants.
- The Lender and Other Loan Participants have not made any representation or warranty, express or implied, to me about the property, its condition, or its value.

(4) Electronic Records and Signatures

- The Lender and Other Loan Participants may keep any paper record and/or electronic record of this application, whether or not the Loan is approved.
- If this application is created as (or converted into) an "electronic application", I consent to the use of "electronic records" and "electronic signatures" as the terms are defined in and governed by applicable Federal and/or state electronic transactions laws.
- I intend to sign and have signed this application either using my:
  - (a) electronic signature; or
  - (b) a written signature and agree that if a paper version of this application is converted into an electronic application, the application will be an electronic record, and the representation of my written signature on this application will be my binding electronic signature.
- I agree that the application, if delivered or transmitted to the Lender or Other Loan Participants as an electronic record with my electronic signature, will be as effective and enforceable as a paper application signed by me in writing.

(5) Delinquency

- The Lender and Other Loan Participants may report information about my account to credit bureaus. Late payments, missed payments, or other defaults on my account may be reflected in my credit report and will likely affect my credit score.
- If I have trouble making my payments I understand that I may contact a HUD-approved housing counseling organization for advice about actions I can take to meet my mortgage obligations.

(6) Authorization for Use and Sharing of Information

By signing below, in addition to the representations and agreements made above, I expressly authorize the Lender and Other Loan Participants to obtain, use, and share with each other (i) the loan application and related loan information and documentation, (ii) a consumer credit report on me, and (iii) my tax return information, as necessary to perform the actions listed below, for so long as they have an interest in my loan or its servicing:

- (a) process and underwrite my loan;
- (b) verify any data contained in my consumer credit report, my loan application and other information supporting my loan application;
- (c) inform credit and investment decisions by the Lender and Other Loan Participants;
- (d) perform audit, quality control, and legal compliance analysis and reviews;
- (e) perform analysis and modeling for risk assessments;
- (f) monitor the account for this loan for potential delinquencies and determine any assistance that may be available to me; and
- (g) other actions permissible under applicable law.

Borrower Signature _____ Date *(mm/dd/yyyy)* ____/____/_____

Additional Borrower Signature _____ Date *(mm/dd/yyyy)* ____/____/_____

Section 7: Military Service. This section asks questions about your (or your deceased spouse's) military service.

Military Service of Borrower

Military Service – Did you (or your deceased spouse) ever serve, or are you currently serving, in the United States Armed Forces? ◯ **NO** ◯ **YES**

If YES, check all that apply:
- ☐ Currently serving on active duty with projected expiration date of service/tour ___ / ___ / _____ *(mm/dd/yyyy)*
- ☐ Currently retired, discharged, or separated from service
- ☐ Only period of service was as a non-activated member of the Reserve or National Guard
- ☐ Surviving spouse

Section 8: Demographic Information. This section asks about your ethnicity, sex, and race.

Demographic Information of Borrower

The purpose of collecting this information is to help ensure that all applicants are treated fairly and that the housing needs of communities and neighborhoods are being fulfilled. For residential mortgage lending, Federal law requires that we ask applicants for their demographic information (ethnicity, sex, and race) in order to monitor our compliance with equal credit opportunity, fair housing, and home mortgage disclosure laws. You are not required to provide this information, but are encouraged to do so. You may select one or more designations for "Ethnicity" and one or more designations for "Race." **The law provides that we may not discriminate** on the basis of this information, or on whether you choose to provide it. However, if you choose not to provide the information and you have made this application in person, Federal regulations require us to note your ethnicity, sex, and race on the basis of visual observation or surname. The law also provides that we may not discriminate on the basis of age or marital status information you provide in this application. If you do not wish to provide some or all of this information, please check below.

Ethnicity: *Check one or more*
- ☐ Hispanic or Latino
  - ☐ Mexican ☐ Puerto Rican ☐ Cuban
  - ☐ Other Hispanic or Latino – *Print origin:*

    _____

    For example: Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on.
- ☐ Not Hispanic or Latino
- ☐ I do not wish to provide this information

Sex
- ☐ Female
- ☐ Male
- ☐ I do not wish to provide this information

Race: *Check one or more*
- ☐ American Indian or Alaska Native – *Print name of enrolled or principal tribe* : _____
- ☐ Asian
  - ☐ Asian Indian ☐ Chinese ☐ Filipino
  - ☐ Japanese ☐ Korean ☐ Vietnamese
  - ☐ Other Asian – *Print race:* _____

    For example: Hmong, Laotian, Thai, Pakistani, Cambodian, and so on.
- ☐ Black or African American
- ☐ Native Hawaiian or Other Pacific Islander
  - ☐ Native Hawaiian ☐ Guamanian or Chamorro ☐ Samoan
  - ☐ Other Pacific Islander – *Print race:*

    _____

    For example: Fijian, Tongan, and so on.
- ☐ White
- ☐ I do not wish to provide this information

To Be Completed by Financial Institution (for application taken in person):

Was the ethnicity of the Borrower collected on the basis of visual observation or surname? ◯ NO ◯ YES
Was the sex of the Borrower collected on the basis of visual observation or surname? ◯ NO ◯ YES
Was the race of the Borrower collected on the basis of visual observation or surname? ◯ NO ◯ YES

The Demographic Information was provided through:

◯ Face-to-Face Interview *(includes Electronic Media w/ Video Component)* ◯ Telephone Interview ◯ Fax or Mail ◯ Email or Internet

Section 9: Loan Originator Information. To be completed by your **Loan Originator**.

Loan Originator Information

Loan Originator Organization Name _____

Address _____

Loan Originator Organization NMLSR ID# _____ State License ID# _____

Loan Originator Name _____

Loan Originator NMLSR ID# _____ State License ID# _____

Email _____ Phone (_____) _____ – _____

Signature _____ Date *(mm/dd/yyyy)* _____ / _____ / _____

Loan Number:

SERVICING DISCLOSURE STATEMENT

NOTICE TO FIRST LIEN MORTGAGE LOAN APPLICANTS
THE RIGHT TO COLLECT YOUR MORTGAGE LOAN PAYMENTS MAY BE TRANSFERRED

Date:

You are applying for a mortgage loan covered by the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2601 et seq.). RESPA gives you certain rights under Federal law. This statement describes whether the servicing for this loan may be transferred to a different loan servicer. "Servicing" refers to collecting your principal, interest, and escrow payments, if any, as well as sending any monthly or annual statements, tracking account balances, and handling other aspects of your loan. You will be given advance notice before a transfer occurs.

Check the appropriate box under "Servicing Transfer Information."

SERVICING TRANSFER INFORMATION

☐ We may assign, sell, or transfer the servicing of your loan while the loan is outstanding.

or

☒ We do not service mortgage loans of the type for which you applied. We intend to assign, sell, or transfer the servicing of your mortgage loan before the first payment is due.

or

☐ The loan for which you have applied will be serviced at this financial institution and we do not intend to sell, transfer, or assign the servicing of the loan.



Loan Number:

FREEDOM TO CHOOSE
INSURANCE COMPANY AND INSURANCE PROFESSIONAL

Lender:

Borrower(s):

Property Address:

The undersigned person(s) ("you" or "your") hereby acknowledge(s) that you have been informed by the above-named Lender that:

- Although the Lender may require you to purchase insurance to cover the real property that is being used as security for the loan, the Lender may not require, as a condition to the extension of credit or any subsequent renewal or extension thereof, that you negotiate or purchase such insurance through a particular insurer, agent, solicitor or broker.
- You may purchase insurance to cover the real property that is being used as security for the loan from the insurance company, agent, solicitor or broker of your choice.
- The Lender may not disapprove any insurance policy you provide for the protection of the real property securing repayment of the loan, unless such disapproval is based solely on reasonable standards uniformly applied, relating to the extent of coverage required and the financial soundness and the services of the insurance company, agent, solicitor or broker you select.

The undersigned hereby acknowledge receipt of a true copy of this disclosure.

Borrower Date	Borrower Date
Borrower Date	Borrower Date
Borrower Date	Borrower Date

APPRAISAL DISCLOSURE

Loan Number: _____

Closing Date: _____

Lender: _____

Lender Address: _____

_____

Borrower Name: _____

_____

_____

Subject Property Address: _____

_____

You are entitled to receive a copy of any appraisal report that is obtained on your behalf, concerning your subject property, at least three business days prior to the closing of your loan. A copy of any and all such appraisal reports ("appraisal report") should have been already delivered to you, ***allowing you at least three business days to review it prior to the closing of your loan.***

If you wish to proceed with the loan closing, your signature will acknowledge either:

1. Your receipt of the appraisal report three or more business days prior to your loan closing, or alternatively,
2. That you previously have waived your right to review the appraisal report three or more business days prior to closing of your loan.

_____ _____

(Applicant name printed) (Applicant name printed)

_____ _____

(Applicant signature) Date (Applicant signature) Date

ACKNOWLEDGMENT OF RECEIPT OF APPRAISAL REPORT

Loan Number:

Date:

Lender:

Borrower:

Property Address:

I understand that I am entitled to a copy of any report concerning the value of the property securing this loan promptly upon completion at no additional cost to me, and, in any event, no less than three (3) days prior to the closing of the loan.

I hereby acknowledge receipt of the report concerning the value of the property securing this loan, at no additional cost to me, no less than three (3) days prior to the closing of my loan.

Borrower	Date	Borrower	Date
Borrower	Date	Borrower	Date
Borrower	Date	Borrower	Date

Form **4506-T**
(November 2021)
Department of the Treasury
Internal Revenue Service

Request for Transcript of Tax Return

► **Do not sign this form unless all applicable lines have been completed.**
► **Request may be rejected if the form is incomplete or illegible.**
► **For more information about Form 4506-T, visit *www.irs.gov/form4506t*.**

OMB No. 1545-1872

Tip: Get faster service: Online at www.irs.gov, **Get Your Tax Record** (Get Transcript) or by calling **1-800-908-9946** for specialized assistance. We have teams available to assist. **Note:** Taxpayers may register to use Get Transcript to view, print, or download the following transcript types: **Tax Return Transcript** (shows most line items including Adjusted Gross Income (AGI) from your original Form 1040-series tax return as filed, along with any forms and schedules), **Tax Account Transcript** (shows basic data such as return type, marital status, AGI, taxable income and all payment types), **Record of Account Transcript** (combines the tax return and tax account transcripts into one complete transcript), **Wage and Income Transcript** (shows data from information returns we receive such as Forms W-2, 1099, 1098 and Form 5498), and **Verification of Non-filing Letter** (provides proof that the IRS has no record of a filed Form 1040-series tax return for the year you request).

1a Name shown on tax return. If a joint return, enter the name shown first.	**1b First social security number on tax return, individual taxpayer identification number, or employer identification number (see instructions)**
2a If a joint return, enter spouse's name shown on tax return.	**2b Second social security number or individual taxpayer identification number if joint tax return**

3 Current name, address (including apt., room, or suite no.), city, state, and ZIP code (see instructions)

4 Previous address shown on the last return filed if different from line 3 (see instructions)

5 Customer file number (if applicable) (see instructions)

Note: Effective July 2019, the IRS will mail tax transcript requests only to your address of record. See **What's New** under **Future Developments** on Page 2 for additional information.

6 **Transcript requested.** Enter the tax form number here (1040, 1065, 1120, etc.) and check the appropriate box below. Enter only one tax form number per request. ►

a **Return Transcript,** which includes most of the line items of a tax return as filed with the IRS. A tax return transcript does not reflect changes made to the account after the return is processed. Transcripts are only available for the following returns: Form 1040 series, Form 1065, Form 1120, Form 1120-A, Form 1120-H, Form 1120-L, and Form 1120S. Return transcripts are available for the current year and returns processed during the prior 3 processing years. Most requests will be processed within 10 business days . . . . . ☐

b **Account Transcript,** which contains information on the financial status of the account, such as payments made on the account, penalty assessments, and adjustments made by you or the IRS after the return was filed. Return information is limited to items such as tax liability and estimated tax payments. Account transcripts are available for most returns. Most requests will be processed within 10 business days . ☐

c **Record of Account,** which provides the most detailed information as it is a combination of the Return Transcript and the Account Transcript. Available for current year and 3 prior tax years. Most requests will be processed within 10 business days . . . . . ☐

7 **Verification of Nonfiling,** which is proof from the IRS that you **did not** file a return for the year. Current year requests are only available after June 15th. There are no availability restrictions on prior year requests. Most requests will be processed within 10 business days . . ☐

8 **Form W-2, Form 1099 series, Form 1098 series, or Form 5498 series transcript.** The IRS can provide a transcript that includes data from these information returns. State or local information is not included with the Form W-2 information. The IRS may be able to provide this transcript information for up to 10 years. Information for the current year is generally not available until the year after it is filed with the IRS. For example, W-2 information for 2016, filed in 2017, will likely not be available from the IRS until 2018. If you need W-2 information for retirement purposes, you should contact the Social Security Administration at 1-800-772-1213. Most requests will be processed within 10 business days . ☐

Caution: If you need a copy of Form W-2 or Form 1099, you should first contact the payer. To get a copy of the Form W-2 or Form 1099 filed with your return, you must use Form 4506 and request a copy of your return, which includes all attachments.

9 **Year or period requested.** Enter the ending date of the year or period, using the mm/dd/yyyy format. If you are requesting more than four years or periods, you must attach another Form 4506-T. For requests relating to quarterly tax returns, such as Form 941, you must enter each quarter or tax period separately.

/ /	/ /	/ /	/ /

Caution: Do not sign this form unless all applicable lines have been completed.

Signature of taxpayer(s). I declare that I am either the taxpayer whose name is shown on line 1a or 2a, or a person authorized to obtain the tax information requested. If the request applies to a joint return, at least one spouse must sign. If signed by a corporate officer, 1 percent or more shareholder, partner, managing member, guardian, tax matters partner, executor, receiver, administrator, trustee, or party other than the taxpayer, I certify that I have the authority to execute Form 4506-T on behalf of the taxpayer. **Note:** This form must be received by IRS within 120 days of the signature date.

☐ **Signatory attests that he/she has read the attestation clause and upon so reading declares that he/she has the authority to sign the Form 4506-T.** See instructions.

Phone number of taxpayer on line 1a or 2a

Sign Here

► **Signature** (see instructions) Date

► **Title** (if line 1a above is a corporation, partnership, estate, or trust)

► **Spouse's signature** Date

Section references are to the Internal Revenue Code unless otherwise noted.

Future Developments

For the latest information about Form 4506-T and its instructions, go to *www.irs.gov/form4506t.* Information about any recent developments affecting Form 4506-T (such as legislation enacted after we released it) will be posted on that page.

The filing location for the Form 4506-T has changed. **Please see Chart for individual transcripts or Chart for all other transcripts** for the correct mailing location.

What's New. As part of its ongoing efforts to protect taxpayer data, the Internal Revenue Service announced that in July 2019, it will stop all third-party mailings of requested transcripts. After this date masked Tax Transcripts will only be mailed to the taxpayer's address of record.

If a third-party is unable to accept a Tax Transcript mailed to the taxpayer, they may either contract with an existing IVES participant or become an IVES participant themselves. For additional information about the IVES program, go to *www.irs.gov* and search IVES.

General Instructions

Caution: Do not sign this form unless all applicable lines have been completed.

Purpose of form. Use Form 4506-T to request tax return information. Taxpayers using a tax year beginning in one calendar year and ending in the following year (fiscal tax year) must file Form 4506-T to request a return transcript.

Note: If you are unsure of which type of transcript you need, request the Record of Account, as it provides the most detailed information.

Customer File Number. The transcripts provided by the IRS have been modified to protect taxpayers' privacy. Transcripts only display partial personal information, such as the last four digits of the taxpayer's Social Security Number. Full financial and tax information, such as wages and taxable income, are shown on the transcript.

An optional Customer File Number field is available to use when requesting a transcript. This number will print on the transcript. See Line 5 instructions for specific requirements. The customer file number is an optional field and not required.

Tip. Use Form 4506, Request for Copy of Tax Return, to request copies of tax returns.

Automated transcript request. You can quickly request transcripts by using our automated self-help service tools. Please visit us at IRS.gov and click on "Get a Tax Transcript..." under "Tools" or call 1-800-908-9946.

Where to file. Mail or fax Form 4506-T to the address below for the state you lived in, or the state your business was in, when that return was filed. There are two address charts: one for individual transcripts (Form 1040 series and Form W-2) and one for all other transcripts.

If you are requesting more than one transcript or other product and the chart shows two different addresses, send your request to the address based on the address of your most recent return.

Line 1b. Enter your employer identification number (EIN) if your request relates to a business return. Otherwise, enter the first social security number (SSN) or your individual taxpayer identification number (ITIN) shown on the return. For example, if you are requesting Form 1040 that includes Schedule C (Form 1040), enter your SSN.

Line 3. Enter your current address. If you use a P.O. box, include it on this line.

Line 4. Enter the address shown on the last return filed if different from the address entered on line 3.

Note: If the addresses on lines 3 and 4 are different and you have not changed your address with the IRS, file Form 8822, Change of Address. For a business address, file Form 8822-B, Change of Address or Responsible Party — Business.

Line 5. Enter up to 10 numeric characters to create a unique customer file number that will appear on the transcript. The customer file number **should not** contain an SSN. Completion of this line is not required.

Note. If you use an SSN, name or combination of both, we will not input the information and the customer file number will reflect a generic entry of "9999999999" on the transcript.

Line 6. Enter only one tax form number per request.

Signature and date. Form 4506-T must be signed and dated by the taxpayer listed on line 1a or 2a. The IRS must receive Form 4506-T within 120 days of the date signed by the taxpayer or it will be rejected. Ensure that all applicable lines are completed before signing.

HAZARD INSURANCE AUTHORIZATION & REQUIREMENTS

Date:

Loan Number:

Escrow Number:

Escrow Company:

Provided By:

Loan Number:

BORROWER'S CERTIFICATION AND AUTHORIZATION

CERTIFICATION

The undersigned certify the following:

1. I/We have applied for a mortgage loan from ("Lender"). In applying for the loan, I/we completed a loan application containing various information on the purpose of the loan, the amount and source of the downpayment, employment and income information, and assets and liabilities. I/We certify that all of the information is true and complete. I/We made no misrepresentations in the loan application or other documents, nor did I/we omit any pertinent information.

2. I/We understand and agree that Lender reserves the right to change the mortgage loan review process. This may include verifying the information provided on the application with the employer and/or the financial institution.

3. I/We fully understand that it is a Federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements when applying for this mortgage, as applicable under the provisions of Title 18, United States Code, Section 1014.

4. I/We provided Lender with verbal and/or written authorization to order a consumer credit report and verify other credit information, including past and present mortgage and landlord references in connection with my/our application for this loan.

AUTHORIZATION TO RELEASE INFORMATION

To Whom It May Concern:

1. I/We have applied for a mortgage loan from Lender. As part of the application process, Lender and the mortgage guaranty insurer (if any), may verify information contained in my/our loan application and in other documents required in connection with the loan, either before the loan is closed or as part of its quality control program.

2. I/We authorize you to provide to Lender and to any investor to whom you may sell my mortgage, and to the mortgage guaranty insurer (if any), any and all information and documentation that they request. Such information includes, but is not limited to, employment history and income; bank, money market, and similar account balances; credit history; and copies of income tax returns.

3. I/We further authorize Lender to order a consumer credit report and verify other credit information, including past and present mortgage and landlord references.

4. Lender or any investor that purchases the mortgage, or the mortgage guaranty insurer (if any), may address this authorization to any party named in the loan application.

5. A copy of this authorization may be accepted as an original.

6. Your prompt reply to Lender, the investor that purchased the mortgage, or the mortgage guaranty insurer (if any) to their requests in connection with your mortgage loan application is appreciated.

7. Mortgage guaranty insurer (if any):
   N/A

15. If the security property is a condominium, the Master Policy must contain a minimum of $1,000,000.00 coverage for "Directors & Officers" liability. A copy of the Master Policy, or a certificate showing proof of coverage for both the Homeowners Association and the condominium unit owner, must be submitted to Lender prior to funding.

AN ACCEPTABLE POLICY, WITH ENDORSEMENTS AND/OR ASSIGNMENTS, MUST BE FORWARDED TO AND RECEIVED BY LENDER BEFORE THIS LOAN CAN BE FUNDED; OTHERWISE, LENDER MAY BE FORCED TO PLACE INTERIM COVERAGE ON THE PROPERTY AT AN ADDITIONAL COST TO THE BORROWER(S).

Each of the undersigned acknowledges that he or she has read and understands the foregoing provisions and insurance requirements. This authorization will remain irrevocable for the undersigned as owner(s) of the subject property, and or any assignees, for as long as this loan remains on the subject property.

Borrower	Borrower
Borrower	Borrower
Borrower	Borrower

DISCLOSURE NOTICES

Loan Number:

Applicant(s)	Property Address

OCCUPANCY

AFFIDAVIT OF OCCUPANCY

The Applicant(s) hereby certify and acknowledge that, upon taking title to the real property described above, their occupancy status will be as follows:

- ☒ Primary Residence - Occupied by Applicant(s) within 30 days of closing.
- ☐ Secondary Residence - To be occupied by Applicant(s) at least 15 days yearly, as second home (vacation, etc.), while maintaining principal residence elsewhere, (Please check this box if you plan to establish it as your primary residence at a future date (i.e., retirement)).
- ☐ Investment Property - Not owner occupied. Purchased as an investment to be held or rented.

The Applicant(s) acknowledge it is a federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements concerning this loan application as applicable under the provisions of Title 18, United States Code, Section 1014.

Applicant Co-Applicant

FCRA

FAIR CREDIT REPORTING ACT

An investigation will be made as to the credit standing of all individuals seeking credit in this application. The nature and scope of any investigation will be furnished to you upon written request made within a reasonable period of time. In the event of denied credit due to an unfavorable consumer report, you will be advised of the identity of the Consumer Reporting Agency making such report and of right to request within sixty (60) days the reason for the adverse action, pursuant to provisions of Section 615(b) of the Fair Credit Reporting Act. You have the right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency if an adverse action is taken on your loan application. Under Section 612 of the Fair Credit Reporting Act you have the right to obtain within 60 days of an adverse action a free copy of the report form from the consumer reporting agency. You also have the right to dispute the accuracy or completeness of any information in a consumer credit report furnished by the consumer reporting agency.

ECOA

EQUAL CREDIT OPPORTUNITY ACT

The Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on a basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. Income which you receive as alimony, child support or separate maintenance need not be disclosed to this creditor unless you choose to rely on such sources to qualify for the loan. Income from these and other sources, including part-time or temporary employment, will not be discounted by this lender because of your sex or marital status. However, we will consider very carefully the stability and probable continuity of any income you disclose to us. The Federal Agency that administers compliance with this law concerning this creditor is:

FEDERAL TRADE COMMISSION
EQUAL CREDIT OPPORTUNITY
WASHINGTON, D.C. 20580

LOANS

FHA LOANS ONLY

IF YOU PREPAY YOUR LOAN ON OTHER THAN THE REGULAR INSTALLMENT DATE, YOU MAY BE ASSESSED INTEREST CHARGES UNTIL THE END OF THAT MONTH.

GOVERNMENT LOANS ONLY

RIGHT TO FINANCIAL PRIVACY ACT OF 1978 - This is notice to you as required by the Right to Financial Privacy Act of 1978 that the Department of Housing and Urban Development or Department of Veterans Affairs has a right of access to financial records held by a financial institution in connection with the consideration of administration of assistance to you. Financial records involving your transaction will be available to the Department of Housing and Urban Development or Department of Veterans Affairs without further notice or authorization but will not be disclosed or released to another Government agency or Department without your consent except as required or permitted by law.

EMPLOY

EMPLOYMENT CERTIFICATION

An approval for a loan is based upon employment, income and obligations as shown on the loan application. At closing, the applicant and co-applicant/spouse, if applicable, are required to execute a sworn statement affirming that they are currently working, as previously reported, have not received notice of layoff nor have knowledge of pending layoff, and that outstanding obligations are substantially the same as reported on the application. Should a change occur in your employment or financial status prior to loan closing, immediately notify your loan officer, as it will be necessary to obtain approval of any changes.

INSURANCE STATEMENT

☐

ANTI-COERCION STATEMENT

The insurance laws of this state provide that the lender may not require the applicant to take insurance through any particular insurance agent or company to protect the mortgaged property. The applicant, subject to the rules adopted by the Insurance Commissioner, has the right to have the insurance placed with an insurance agent or company of his choice, provided the company meets the requirements of the lender. The lender has the right to designate reasonable financial requirements as to the company and the adequacy of the coverage.

I have read the foregoing statement, or the rules of the Insurance Commissioner relative thereto, and understand my rights and privileges and those of the lender relative to the placing of such insurance.

I have selected the following agencies to write the insurance covering the property described above:

Insurance Company Name	Agent
Agent's Address	Agent's Telephone Number

☐

FLOOD INSURANCE NOTIFICATION

Federal regulations require us to inform you that the property used as security for this loan is located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards and that in the event of damage to the property caused by flooding in a Federally-declared disaster, Federal disaster relief assistance, if authorized, will be available for the property.

At the closing you will be asked to acknowledge your receipt of this information. If you have any questions concerning this notice, kindly contact your loan officer.

IMPORTANT: Please notify your insurance agent that the "loss payable" clause for the mortgage on both the hazard and flood insurance must read as follows, unless otherwise advised:

NOTIFICATION

I/We hereby certify that I/we have read the Notices set forth above and fully understand all of the above. In addition to these Notices, I/we the applicant(s) certify that I/we have received the "Settlement Cost Booklet" and the "Consumer Handbook on Adjustable Rate Mortgages" (CHARM booklet), if applicable.

Applicant	Date	Applicant	Date
Applicant	Date	Applicant	Date
Applicant	Date	Applicant	Date

SIGNATURE/NAME AFFIDAVIT AND AKA STATEMENT

DATE: _____ FILE NO.: _____

BORROWER: _____

THIS IS TO CERTIFY THAT MY LEGAL SIGNATURE IS AS WRITTEN AND TYPED BELOW.
(This signature must exactly match signatures on all Closing Documents.)

_____ _____
(Print or Type Name) Signature

AKA STATEMENT

I, _____ certify that I am also known as:

_____ _____
Print Name (Variation) Sample Signature (Variation)

_____ _____
Print Name (Variation) Sample Signature (Variation)

_____ _____
Print Name (Variation) Sample Signature (Variation)

)
) ss
)

Subscribed and sworn to before me this _____ day of _____, 20___, by _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person who appeared before me.

_____
Notary Public

FICUS BANK

4321 Random Boulevard • Somecity, ST 12340

Save this Loan Estimate to compare with your Closing Disclosure.

Loan Estimate

DATE ISSUED 2/15/2013
APPLICANTS Michael Jones and Mary Stone
123 Anywhere Street
Anytown, ST 12345
PROPERTY 456 Somewhere Avenue
Anytown, ST 12345
SALE PRICE $180,000

LOAN TERM 30 years
PURPOSE Purchase
PRODUCT Fixed Rate
LOAN TYPE ☒ Conventional ☐ FHA ☐ VA ☐ _____
LOAN ID # 123456789
RATE LOCK ☐ NO ☒ YES, until 4/16/2013 at 5:00 p.m. EDT
Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on **3/4/2013** *at 5:00 p.m. EDT*

Loan Terms

		Can this amount increase after closing?
Loan Amount	$162,000	**NO**
Interest Rate	3.875%	**NO**
Monthly Principal & Interest *See Projected Payments below for your Estimated Total Monthly Payment*	$761.78	**NO**
		Does the loan have these features?
Prepayment Penalty		**YES** • **As high as $3,240** if you pay off the loan during the first 2 years
Balloon Payment		**NO**

Projected Payments

Payment Calculation	Years 1-7	Years 8-30
Principal & Interest	$761.78	$761.78
Mortgage Insurance	+ 82	+ —
Estimated Escrow *Amount can increase over time*	+ 206	+ 206
Estimated Total Monthly Payment	$1,050	$968

		This estimate includes	In escrow?
Estimated Taxes, Insurance & Assessments *Amount can increase over time*	$206 a month	☒ Property Taxes	**YES**
		☒ Homeowner's Insurance	**YES**
		☐ Other:	

See Section G on page 2 for escrowed property costs. You must pay for other property costs separately.

Costs at Closing

Estimated Closing Costs	$8,054	Includes $5,672 in Loan Costs + $2,382 in Other Costs – $0 in Lender Credits. *See page 2 for details.*
Estimated Cash to Close	$16,054	Includes Closing Costs. *See Calculating Cash to Close on page 2 for details.*

Visit **www.consumerfinance.gov/mortgage-estimate** for general information and tools.

Closing Cost Details

Loan Costs

A. Origination Charges	$1,802
.25 % of Loan Amount (Points)	$405
Application Fee	$300
Underwriting Fee	$1,097

B. Services You Cannot Shop For	$672
Appraisal Fee	$405
Credit Report Fee	$30
Flood Determination Fee	$20
Flood Monitoring Fee	$32
Tax Monitoring Fee	$75
Tax Status Research Fee	$110

C. Services You Can Shop For	$3,198
Pest Inspection Fee	$135
Survey Fee	$65
Title – Insurance Binder	$700
Title – Lender's Title Policy	$535
Title – Settlement Agent Fee	$502
Title – Title Search	$1,261

D. TOTAL LOAN COSTS (A + B + C)	$5,672

Other Costs

E. Taxes and Other Government Fees	$85
Recording Fees and Other Taxes	$85
Transfer Taxes	

F. Prepaids	$867
Homeowner's Insurance Premium (6 months)	$605
Mortgage Insurance Premium (months)	
Prepaid Interest ($17.44 per day for 15 days @ 3.875%)	$262
Property Taxes (months)	

G. Initial Escrow Payment at Closing			$413
Homeowner's Insurance	$100.83 per month for 2 mo.		$202
Mortgage Insurance	per month for mo.		
Property Taxes	$105.30 per month for 2 mo.		$211

H. Other	$1,017
Title – Owner's Title Policy (optional)	$1,017

I. TOTAL OTHER COSTS (E + F + G + H)	$2,382

J. TOTAL CLOSING COSTS	$8,054
D + I	$8,054
Lender Credits	

Calculating Cash to Close

Total Closing Costs (J)	$8,054
Closing Costs Financed (Paid from your Loan Amount)	$0
Down Payment/Funds from Borrower	$18,000
Deposit	– $10,000
Funds for Borrower	$0
Seller Credits	$0
Adjustments and Other Credits	$0
Estimated Cash to Close	$16,054

Additional Information About This Loan

LENDER	Ficus Bank	**MORTGAGE BROKER**	
NMLS/__ LICENSE ID		**NMLS/__ LICENSE ID**	
LOAN OFFICER	Joe Smith	**LOAN OFFICER**	
NMLS/__ LICENSE ID	12345	**NMLS/__ LICENSE ID**	
EMAIL	joesmith@ficusbank.com	**EMAIL**	
PHONE	123-456-7890	**PHONE**	

Comparisons

Use these measures to compare this loan with other loans.

In 5 Years	$56,582	Total you will have paid in principal, interest, mortgage insurance, and loan costs.
	$15,773	Principal you will have paid off.
Annual Percentage Rate (APR)	4.274%	Your costs over the loan term expressed as a rate. This is not your interest rate.
Total Interest Percentage (TIP)	69.45%	The total amount of interest that you will pay over the loan term as a percentage of your loan amount.

Other Considerations

Appraisal
We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.

Assumption
If you sell or transfer this property to another person, we
☐ will allow, under certain conditions, this person to assume this loan on the original terms.
☒ will not allow assumption of this loan on the original terms.

Homeowner's Insurance
This loan requires homeowner's insurance on the property, which you may obtain from a company of your choice that we find acceptable.

Late Payment
If your payment is more than *15* days late, we will charge a late fee of *5% of the monthly principal and interest payment.*

Refinance
Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.

Servicing
We intend
☐ to service your loan. If so, you will make your payments to us.
☒ to transfer servicing of your loan.

Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

Applicant Signature Date

Co-Applicant Signature Date

PURCHASER'S AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA :

COUNTY OF _____ : SS No. _____

ON THE _____ day of _____, A.D. 2020, before me, the Subscriber, a Notary Public for the State of Pennsylvania , duly commissioned, personally appeared the undersigned, who, being duly sworn according to law, did depose and say:

That _____ is the purchaser of the premises situated:

_____

That it is the intention of said purchaser to take title as (state the estate or interest):

_____

That the said premises are to be owned in the following fractional interests, if any:

_____

That the newly-erected building/s, if any, on said premises is/were completed on or about (if none, so state):

_____

That said purchaser (if individual) is of full legal age and sound mind.

That said purchaser has not entered into any unrecorded leases or agreements affecting said premises.

That there are no judgments against said purchaser.

That no part of the funds used for the purchase of said premises has been borrowed except

$_____ from _____

That said purchaser is not involved in any pending divorce action with spouses in any jurisdiction.

That there are no Overdue Support Obligations of record with the Domestic Relations Section of any Court through the date of recording the instrument(s) to be insured.

That this affidavit is made for the purpose of enabling _____ to remove certain objections from the Interim Binder issued under the above cited number, and affiant avers the foregoing statements are true and correct to the best of his knowledge and belief.

_____

SUBSCRIBED AND SWORN to before me, the day and year aforesaid.

_____
Notary Public

My commission expires _____

Chapter Five
Section 2

Sellers Counsel's Perspective

Updated by
Brett M. Woodburn, Esq.
Woodburn Law
Harrisburg

Originally Written by
Hon. William "Chip" Mackrides
Delaware County Court of Common Pleas
Media

Seller's Counsel's Perspective

Introduction

The Closing, or Settlement, is a busy time for the Buyer and Buyer's attorney; usually less so for the Seller and Seller's attorney. HOWEVER, there are many important issues to which a Seller must attend.

When the Seller conveys title by signing the deed, the Seller is warranting that they have not done anything to lessen or impair the title to the property since they took title. While the Buyer's title insurer will cover defects in the title prior to Buyer's ownership, the title insurer will look to the Seller for any defects that the Seller created. After all, title insurance is purchased by the Buyer, and is designed to protect the insured (the lender and, if an owner's policy is purchased, the Buyer) from unforeseen damages to the title of their property; in other words, things that could affect the Buyer's rights of ownership. The process provides information about the property and involves the proper distributions, payoffs and paperwork involved in the transfer of the property.

Over the past twenty years, the role of the attorney at Settlement has been diminishing. Real estate licensees and title agents, many of whom work for title agencies owned by real estate licensees, have taken responsibility for much of the work that was once the province of legal counsel. In recent years, attorneys have become slightly more prevalent in residential real estate transactions; though less so than they probably should be. Nevertheless, when an attorney is involved in the transaction, no matter at what stage counsel may be engaged, the Seller's attorney is primarily responsible for protecting the Seller. Oftentimes, this means ensuring the Seller has satisfied his and/or her obligations under the agreement of sale and, in particular, the quality of title.

As attorney for the Seller, it is incumbent upon you to be ready for Settlement. What is the best way to do that, especially if you were not involved with negotiating the agreement of sale? Review the agreement of sale and any addenda; pay particular attention to the requirements of the title and any additional obligations to which the Seller agreed as part of any negotiations following inspections. Did the listing agent or the title agent make arrangements to get the loan payoff letters, or does that still rest with the Seller and you? Who is holding the deposit money? Compare what the agreement of sale provides with what has actually been paid. If the Seller's property is part of a condominium association or a planned community, verify that the 3407 resale certificate for a condominium or a 5407 resale certificate for a homeowners association and supporting documentation satisfies the Seller's obligations under the applicable laws, and verify when the Buyer was provided with the resale certificate. If the Seller is a business entity, contact the title company to find out what documents the title company is expecting the Seller to provide at or before Closing; do you need corporate resolutions, articles of incorporation, Good Standing or tax clearance certificates? If the Seller is an estate, have the estate taxes been paid and accepted, or will the title company require money to be held in escrow pending the payment and acceptance of the same? Is court-approval required by the Probate & Estates Fiduciary Code or by the title

insurance company's underwriting guidelines? Are there any restrictions on transfer that the Seller needs to resolve prior to coming to the table?

These are just a few of the questions and criteria that counsel for Sellers must consider, and all of this takes time to accomplish. You are engaged to represent the Seller, and this typically means that you are being held responsible to ensure that the Seller has provided everything required of him/her so that title can transfer and the purchase price can be received.

I. Coordination of Closing: When, Where & What Time

(Plan for this when drafting the Agreement of Sale or at least well ahead of Closing)

- this can be negotiated and is controlled by terms of the agreement of sale
- it is usually set by the Buyer unless Seller's counsel drafts provisions for a mutually convenient time and place into contract
- with technology the closing can be anywhere
- confirm in writing with title company, your Client & the Buyer's Representative (make sure that someone has sent a notice of when and where settlement will occur)

II. Client Preparation

- Explain the process to the Seller/Client: What they can expect
- Make sure they bring their ID/Driver's License
- Explain the Pre-settlement Inspection and what they can expect if the Buyer finds something lacking
- Tell them what your role is at Closing: What you will be doing
- Make sure that you know their expectations and goals (i.e. do they have another settlement to purchase that day)
- How will the funds be distributed (i.e. if they hold title as tenants in common)
- If proceeds are being wired, make sure you are aware of the protocol used by the title company and the banks involved to protect against and limit risks of wire fraud
- If they cannot attend closing, have them sign the "deed package" (closing documents) ahead of time and have them give you authority to sign the Settlement Statement for them. This can generally be done with an "Authorization" letter. Alternatively, the seller can provide a limited Power

of Attorney for you to sign the closing documents. Note that the Title Company will want to review and approve the POA prior to closing.

III. Title

The Seller typically warrants good and marketable title that is insurable at regular rates by a reputable title insurance company. "Marketable" title is title that is free from liens or adverse claims that would impair or cast doubt that ownership is vested in your Seller, the owner of record. The Seller is responsible to pay off, or at least secure the release of any liens and/or encumbrances. A lien is a legal claim or security interest in a piece of property, usually to secure a debt. An encumbrance is a legal interest, claim or restriction on a property. Encumbrances may take the form of a lien, encroachment, deed restriction, license, easement, or mortgage, to name the more common.

When preparing for closing, make sure that you review the title commitment to see what, if anything, the Seller must do in order to 'clear' title. What a Seller, real estate agent or title agent may describe to you as their understanding, and what you view as your Seller's obligations may not be identical, though they are often consistent. For example, there may be expectations that your Seller is going to bring proof that certain liens and encumbrances are satisfied, released or are levied against a different person with a name similar to your Seller's name. If your Seller fails to provide the requested documentation, Settlement could be delayed or cancelled, and your Seller may have breached the agreement of sale.

IV. Preparation/Review of Deed

You need to verify who is responsible for preparing the deed. The custom in some markets is that the Buyer will provide the deed for the Seller to sign. In many transactions, the listing broker's real estate office (or affiliated title company) will provide the deed. Sometimes, the listing broker will have a relationship with an attorney (other than you) who will prepare the deed. Whomever prepares the deed will, of course, charge a fee. You should review the deed with your Seller and if the seller has made any changes to their boundaries since taking title that they are reflected in the deed. Verify that the title company has inspected it as well. Make sure the Seller(s) and grantor(s) match, and that the deed is a Special Warranty Deed, if that is, in fact, what the agreement of sale requires.

V. Taxes, Mortgage & Lien Payoff

The Seller must provide the title agency with paid tax receipts and mortgage and lien payoff information. This can be accomplished by the Seller(s) themselves, with the assistance of the real estate licensee, the title agency or a settlement services company. It really does not matter who takes responsibility for providing this, only that it is done close enough to the Closing to be accurate.

The Seller is typically responsible for school and local real estate taxes, sewer charges and other lienable items up to and including the date of Settlement, with the Buyer taking over financial

responsibility thereafter. Realty transfer tax is usually shared equally between Buyer and Seller, but occasionally the agreement of sale will apportion financial responsibility specifically; e.g., buyer and seller shall each pay 1% realty transfer tax. Be careful! Realty transfer tax is, in some areas, higher than two (2%) percent; it is critical to be aware of these local variations.

VI. Pre-Settlement Inspection Issues

The pre-settlement walk-through is often the third and final time for Buyer and Seller to negotiate the terms of the purchase. Attorneys who are not familiar with the nuances of ongoing negotiations in residential real estate transactions can be particularly perturbed by this practice. Attorneys can also cause upset by taking a hardline approach to negotiating at this point in the transaction, especially when there is a real estate agent representing the other party. Take a practical, result-oriented approach. Can the item, appliance or condition in question be repaired or replaced? Is someone clearly responsible for this item? Does the agreement of sale apportion responsibility and shift risk of loss to one party or the other? Regardless of what the agreement says, can you negotiate a resolution?

Be prepared to draw up an agreement if the matter cannot be settled by exchange of money. As an attorney, you are in a good position to negotiate a release of liability for your client if an extra-contractual concession is made. Giving a little more or taking a little less in exchange for limiting or eliminating potential future liability is often a wise trade to make. Don't miss this opportunity because of a need to be "right".

You may have to draw up an Escrow Agreement. Be careful, lenders are very particular about escrowing money for repairs and giving credits. The buyer may need lender approval.

VII. Certificate of Occupancy

Many municipalities require an inspection and the issuance of a Use & Occupancy ("U&O) Certificate or Resale Certificate for the Seller to be able to transfer a property. The municipality may require a "list" of items to be completed before they will issue the certificate. Some municipalities experienced challenges from local codes enforcement officers who would use their authority to issue or withhold U&O Certificates in order to compel Sellers to make non-essential, even cosmetic changes. Recent changes to the law have affected the level of control that a codes officer can exert. If you represent a Seller in a community in which a U&O is required, and if the Seller is not able to get a "clear" U&O, you may need to get in touch with the solicitor if you cannot get any traction with the elected officials.

VIII. Owner's Affidavit

The Owner's Affidavit is provided by the title company. By signing this Affidavit the Seller is affirming, under oath, a number of representations that may affect the title to the property including but not limited to representations that: there are no mortgages, judgments, encumbrances, easements, bankruptcies, or pending suits, that will adversely affect the property; that there have been no repairs, additions or improvements made, ordered or contracted, that remain unpaid; that no notice has been served by any governmental authority; that there has been

no violation of any restrictions, recent tax assessment changes; and that all lienable items have been paid in full.

One version of an Owner's Affidavit attached elsewhere in these materials. Make sure each section of Affidavit is reviewed with Seller for accuracy. Make any changes necessary before it is signed.

Short format language for business entity:

> That deponent is a business entity duly created in accordance with the laws of its home state; that it is presently in good standing in its home state; and that the purchase/or mortgage of the above premises is made pursuant to a resolution of the board or in accordance with the operation agreement; and that the deponent is authorized to act on behalf of the business entity.

When a Corporation is involved:

> The affidavit may contain statements such as: that the Corporation is not transferring more than 51% of its property, that there are no unpaid corporate taxes due, that the officers of the Corporation who are authorized to execute the papers are of full legal age and in every respect competent to convey, that the Corporation is duly incorporated by the State of Pennsylvania and is currently in good standing and that conveyance of the within Premises is in accordance with the existing By-Laws of said Corporation and has been authorized by proper corporate action.
>
> It may contain an Indemnity such as:
>
> INDEMNITY: CORPORATION AGREES TO PAY ON DEMAND TO THE PURCHASERS AND/OR LENDER AND/OR TITLE COMPANIES IN THIS TRANSACTION, THEIR SUCCESSORS AND ASSIGNS, ALL AMOUNTS SECURED BY ANY AND ALL LIENS, CLAIMS, OR RIGHTS NOT SHOWN ABOVE, TOGETHER WITH ALL COSTS, LOSS AND ATTORNEY'S FEES THAT SAID PARTIES MAY INCUR IN CONNECTION WITH SUCH UNMENTIONED LIENS, PROVIDED SAID LIENS, CLAIMS, OR RIGHTS EITHER CURRENTLY APPLY TO SUCH PROPERTY, OR A PART THEREOF, OR ARE SUBSEQUENTLY ESTABLISHED AGAINST SAID PROPERTY AND ARE CREATED BY IT, KNOWN BY IT, OR HAVE AN INCEPTION OR ATTACHMENT DATE PRIOR TO THE CLOSING OF THIS TRANSACTION AND RECORDING OF THE DEED AND MORTGAGE.

When the Seller is a Partnership or LLC:

> It may contain statements such as: That the partnership/limited liability company has not filed an election under Chapter 87 of Title 15, Pa. C.S.A., that the deponent (except general partnerships) is duly registered by the State of Pennsylvania and is currently in good standing and that conveyance of the within Premises is in accordance with the existing Partnership/Operating/Management Agreement and

has been authorized by proper procedures under such Agreement. Attached to this affidavit is a true and correct copy of the original partnership (Operating/Management) agreement and all amendments thereto, which agreement is still in full force and effect. That the partnership has not conducted any business under any name other than the name set forth above.

When the Seller is an Estate:

All inheritance taxes due the Commonwealth of Pennsylvania and estate taxes due the United States on the Decedent's Estate have been paid and attached hereto is a copy of the Pennsylvania Estate Appraisement and, if applicable, the Internal Revenue Service Estate Tax Closing Letter.

IX. Other Closing Documents

Affidavit of No Judgments

- Common names like Smith and Jones will sometimes bring up multiple judgments on the title report – this document certifies that Seller is not the same person as listed in the judgments.
- Make sure Seller reviews the judgments listed and verifies they are not the correct party listed before signing the Affidavit.

Powers of Attorney

- These need to be reviewed well in advance of Settlement. The title agent will need to review the Power of Attorney to ensure it grants the attorney-in-fact the requisite authority to convey title to the property. This document will need to be recorded, so the attorney-in-fact will need an original document and will need to relinquish it to the title company for recordation. (It will be returned to the attorney-in-fact once the recorder of deeds office returns it to the title company.) Make sure your client is aware that this is a non-negotiable criterion and to prepare him/herself accordingly. Don’t forget to include the statutorily required Notice and Acknowledgement language for a Power of Attorney. See 20 P.S. 5601 et seq.

Escrow Agreements

- Sometimes Sellers simply cannot finish everything they agreed to complete prior to closing, often due to factors beyond their control. For example, perhaps the Buyer’s inspection showed the roof ‘failed’ or was significantly beyond is expected use-life and Sellers agreed to replace (or repair) the roof, but due to weather conditions and timing, the contractors were not able to complete (or perhaps start) the job. Perhaps the property has a pool but the transaction occurs after the pool has been winterized and there is no way to inspect the pool, the mechanical systems associated with the pool, and the

other components (like diving boards or slides). Escrowing proceeds at settlement may be "the" way to resolve this issue and still allow the closing to occur 'on time'.

Seller's counsel should be involved with drafting the escrow agreement, whether or not counsel is holding the escrowed funds (there are good arguments for and against counsel holding the money). Depending on where you are in Pennsylvania, the title company will be more or less inclined to hold escrowed funds for repair or inspection issues. (Title companies are more uniformly willing to hold money in escrow when the issue has to do with potential encumbrances on title.) Escrow accounts should be finite in duration, and clear about who gets the money and under what circumstances. Consider keeping the terms of the escrow agreement as basic as possible; the fewer contingencies there are affecting when and to whom the money is distributed, the fewer areas of dispute are built into the agreement. Consider whether waivers of liability and indemnifications in favor of the escrow agent are appropriate (arguably they are in most instances). Make sure both parties (Buyer and Seller) have the opportunity to review the escrow agreement with counsel, and get signatures from Buyers, Sellers, the real estate agents, and the Escrow Agent (who will be signing in a more limited capacity).

- Escrow agreements pertaining to incomplete inspections or repairs should be tools of last resort. Trying to negotiate the terms of an escrow agreement the day of settlement, even the day before settlement, can be tricky because it will invariably feel rushed. If there is a known obstacle to completing inspections and/or repairs, and escrowing proceeds is a reasonable approach (such as pool inspections and winter months) negotiate it as part of the agreement of sale; it is not a mystery to anyone that the pool cannot be inspected in January under three feet of snow. (And yet…)

- Lenders need to be aware that a situation arose that may warrant an escrow. Depending on the type of loan the Buyer has secured, the lender may refuse to permit money to be escrowed, instead insisting that the repairs be completed first.

- Avoid agreements to cooperate in the future. There are too many variables with these 'agreements', they are more often than not vague and ill-defined promises, and it is questionable as to whether or not they are enforceable. Remember, you Seller has relinquished his/her ownership in the property, the Seller wants to be ***DONE*** with the property as soon as settlement is over, because they have their own home to address.

X. Reviewing the Closing Disclosure and ALTA Settlement Statement

Seller's counsel should review the Closing Disclosure and any ALTA Settlement Statement with Seller/client to confirm its accuracy. Have the title company provide either or both documents to you as soon as practical, but preferably within three (3) days of closing. If the title company resists because it does not have all of the information, ask for only the Seller's side (which is all you really are entitled to see). Some of the items that you want to review include:

- Apportionment of real estate taxes. Although the calculations are usually correct, having been performed by the software program used by the title company, it is still a good idea to make sure the title processor input the taxes accurately.

- Transfer taxes. Verify that the apportionment is consistent with what is provided in the Agreement of Sale. The PAR Agreement defaults to Buyer and Seller sharing the realty transfer tax equally, but sometimes that is modified. Make sure that the percentage of realty transfer tax is correctly applied. Pennsylvania assesses a one (1%) percent realty transfer tax on all non-exempt transaction; localities can charge higher percentages. Make sure the title company is assessing the proper percentage.

- Amounts due from Seller, if any.

- Payment of mortgages/liens.

- Verify that the payee of the proceeds check is accurate. If your Seller wants the proceeds wired to you, to them, or to the title company that is closing the Seller's purchase of their new home, make sure security protocols are in place, AND make sure everyone (including you) are following them, assiduously.

- Are the brokers' commissions calculated correctly, and have any rebates been properly disclosed on the Closing Disclosure?

- Are there unexpected fees or settlement charges? Remember, Pennsylvania is an all-inclusive title insurance rate state, so charging a settlement fee is, in most instances, improper. Ensure the Seller is not being charged fees by the title company for work or services that it typically provides, but that you did in this transaction.

- Check to see if the title company requested and received any written authorizations from your client to perform work for the Seller (like obtaining payoffs, tax certifications, et cetera) for which it is charging a fee. This is not normal practice in Pennsylvania, but it can occur from time to time.

Chapter Five
Section 2

Appendices

OWNER'S AFFIDAVIT (INDIVIDUAL)

Issued by:
_____

Commonwealth of Pennsylvania
County of _____
Premises: _____

On the _____ DAY OF _____, 2020, before me, the undersigned officer, personally appeared the undersigned, who being duly sworn according to law and intending to be legally bound, deposes and says:

1. That the undersigned owners of the premises in question and are the same grantee in Book _____, Page_____ ; (if not explain)
2. That the affiants have never obtained and are not now obtaining a Divorce or Annulment;
3. That the owners are a citizen of the United States, have not been known by any other name, are of full legal age and in every respect competent to convey or encumber the title to the premises in question;
4. That there are no purchase money obligations or other financing being created in this transfer not already disclosed to the Company;
5. That there are no unrecorded leases or agreements affecting the premises, and that at the above premises are occupied by (grantor), (grantee), (tenant)
6. That the owners know of no liens or claims, against the property, nor any set of facts by reason of which title to the property might be disputed or questioned, and they have been in peaceable and undisputed possession of the premises since _____.
7. That there has not been any construction, repairs, alterations or improvements made, ordered or contracted to be made on or to the premises, nor materials ordered therefore within the last six months; nor are there any fixtures attached to the premises which have not been paid for in full; and there are no outstanding or disputed claims for any such work or item;
8. That there has been no work done, nor notice received that work is to be done by the municipality (city, borough, or township), or at its direction, including but no limited to the installation of water or sewer lines, or for improvements such as paving or repaving of streets or alleys, or the installation of curbs or sidewalks;

9. That to the best of our knowledge there has been no violation of any covenants, conditions or restrictions of record affecting the premises and that there are no disputes with any adjoining property owners as to the location of property lines, or the encroachment of any improvements.
10. That the present transaction is not made for the purpose of hindering, delaying or defrauding any creditors of the owner and does not come within the provisions of the Bankruptcy or Insolvency Acts;
11. That there are no defects, liens, encumbrances, adverse claims or other matters first appearing in the public records after the effective date of the above numbered commitment of title insurance to the date of settlement. The undersigned affiants hereby indemnifies and holds harmless _____ by reason of any inaccuracy of this statement
12. Further that all the real estate taxes are paid in full.
13. Further that there are no judgments or Orders pertaining to support obligations which are now past due and remain unpaid.

This affidavit is made for the purpose of aiding the _____ in determining the marketability and/or insurability of title to the property, and to induce said Company to issue its policies of title insurance, and the affiant avers the foregoing statements are true and correct to the best of their knowledge and belief.

_____

_____

SWORN TO AND SUBSCRIBED before me,
The day and year aforesaid

_____
Notary Public

My Commission Expires: _____

Prepared By:

_____
Return To:

Fee Simple Deed

This Deed, made on _____, between,

hereinafter called the Grantors of the one part, and

hereinafter called the Grantees of the other part,

Witnesseth, that in consideration of **Dollars,** ( ) in hand paid, the receipt whereof is hereby acknowledged, the said Grantors do hereby grant and convey unto the said Grantees, his/her/their heirs and assigns _____

ALL THAT CERTAIN Lot or piece of ground Situate in Pennsylvania, bounded and described according to a Plan of Subdivision of dated said Plan recorded in as Plan No. as follows, to wit:-

BEGINNING

to the first mentioned point of tangent and place of beginning.
BEING Lot No. as shown on the abovementioned Plan.
UPI NO.

BEING the same premises which by Deed dated and recorded in the Office of the Recorder of Deeds in and for the County of in Record Book Page granted and conveyed unto as tenants by the entirety.

And the said Grantors do hereby covenant to and with the said Grantees that he/she/they, the said Grantors, his/her/their heirs and assigns, SHALL and WILL, warrant and forever defend the herein above described premises, with the hereditaments and appurtenances, unto the said Grantees, his/her/their heirs and assigns, against the said Grantors and against every other person lawfully claiming or who shall hereafter claim the same or any part thereof, by, from or under him/her/them or any of them.

In witness whereof, the said Grantors has caused these presents to be duly executed the day and year first above written.

Sealed and delivered in the presence of:

Witness _____ _____

Print Witness Name:

_____

Witness _____ _____

Print: _____

State/Commonwealth of _____

County of _____

On this _____ , before me, the undersigned officer, personally appeared _____ known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged that he/she/they executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

_____
Notary Public

DEED

File No.

Grantor:

Grantee:

I certify the address of the Grantee to be, and mail tax bill to:

_____

Certified by: _____

Premises:

BORROWER'S AUTHORIZATION TO CLOSE ACCOUNT

Date:

Lender:
Borrower:
Property:
Loan No.
Payment in Full Amount:

is the closing agent for the sale or refinance of the above referenced property. Accordingly, I hereby:

1. Authorize and direct to pay off the obligation in full.
2. Represent that the above payment amount represents the full balance due on the account.
3. Agree that upon receipt of payment the account holder is directed to **CLOSE THE ACCOUNT and execute and record your Satisfaction of Mortgage _____.**
4. Represent that if this account is a line of credit that permits advances by means of a credit or debit card, checks or other orders to pay, I have not exercised any of these privileges in the last 30 days.
5. Acknowledge that all cards or checks that may be used for advances have been destroyed.
6. Covenant and agree that if the payment above is insufficient to pay the obligation in full I will be responsible for payment of the balance due and will save harmless from any liability with respect to any further amount due.

The forwarding address for the return of any escrow balance and cancelled documents is:

_____

_____

_____

_____

_____

State/Commonwealth of _____
County of _____

On this_____, before me, the undersigned officer, personally appeared
and known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged that he/she/they executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

_____

SUBSTITUTE FORM 1099-S
PROCEEDS FROM REAL ESTATE TRANSACTIONS
FOR THE TAX YEAR: 20___
OMB No. 1545-0997

SETTLEMENT AGENT/FILER'S NAME AND ADDRESS
_____
_____
_____

Filer's Federal Tax ID Number:
FILE NUMBER:_____

SELLER/TRANSFEROR'S NAME AND ADDRESS
_____
_____
_____

Transferor's Federal Tax ID Number:
_____
_____

1) Date of Closing:	**2) Gross Proceeds:**	**4) X here if property or services received:**	**5) Buyer's part of real estate tax:**
3) Address or Legal Description:			

THIS IS IMPORTANT TAX INFORMATION AND IS BEING FURNISHED TO THE INTERNAL REVENUE SERVICE. IF YOU ARE REQUIRED TO FILE A RETURN, A NEGLIGENCE PENALTY OR OTHER SANCTION WILL BE IMPOSED ON YOU IF THIS ITEM IS REQUIRED TO BE REPORTED AND THE IRS DETERMINES THAT IT HAS NOT BEEN REPORTED.

YOU ARE REQUIRED BY LAW TO PROVIDE US WITH YOUR CORRECT TAXPAYER IDENTIFICATION NUMBER. IF YOU DO NOT PROVIDE US WITH YOUR CORRECT TAXPAYER IDENTIFICATION NUMBER, YOU MAY BE SUBJECT TO CIVIL OR CRIMINAL PENALTIES IMPOSED BY LAW.

UNDER PENALTIES OF PERJURY, I CERTIFY THAT THE NUMBER SHOWN ABOVE ON THIS STATEMENT IS MY CORRECT TAX PAYER IDENTIFICATION NUMBER. I ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

_____ _____
Date

_____ _____
Date

Instructions for Transferor

You MUST enter your Federal Tax Identification Number above.

Sign and return a copy of this form immediately

For sales or exchanges of certain real estate, the person responsible for closing a real estate transaction must report the real estate proceeds to the Internal Revenue Service and must furnish this statement to you. To determine if you have to report the sale or exchange of your main home on your tax return, see the 2002 Schedule D (Form 1040) instructions. If the real estate was not your main home, report the transaction on Form 4797, Sales of Business Property, Form 6252, Installment Sales Income, and/or Schedule D (Form 1040), Capital Gains and Losses.

You may have to recapture (pay back) all or part of a Federal mortgage subsidy if all the following apply:

- You received a loan provided from the proceeds of a qualified mortgage bond or you received a mortgage credit certificate.
- Your original mortgage loan was provided after 1990, and
- You sold or disposed of your home at a gain during the first 9 years after you received the Federal mortgage subsidy.

This will increase your tax. See Form 8828, Recapture of Federal Mortgage Subsidy, and Pub. 523, Selling Your Home.

If you have already paid the real estate tax for the period that includes the sale date, subtract the amount in box 5 from the amount already paid to determine your deductible real estate tax. But if you have already deducted the real estate tax in a prior year, generally report this amount as income on the “Other income” line of Form 1040. For more information, see Pub. 523.

For Paperwork Reduction Act Notice, see the 2002 Instructions for Forms 1099, 1098, 5498, and W-G2.

Department of the Treasury - Internal Revenue Service

Chapter Five
Section 3

Understanding Title Insurance Policies and Commitments

Updated by
David J. Scaggs, Esq.
The Granger Firm
Paoli

Originally written by
Kenneth J. Yarsky, III, Esq.
Sherrard, German & Kelly, P.C.
Pittsburgh

UNDERSTANDING TITLE INSURANCE POLICIES AND COMMITMENTS

A. The Nature of Title Insurance

A title insurance policy is an insurance policy provided to an owner or lender which insures the quality of title of the owner or the lien of the lender is that set forth in the policy. It insures the owner against loss as a result of the title not being of the quantity and quality set forth in the owner's policy. It insures the lender against loss resulting in the lien not being of the priority and nature as set forth in the loan policy. Not only does it insure against a searcher's failure to discover record matters, but it also insures against matters which would not be readily discoverable, such as forgeries in prior instruments.

The most distinguishing feature of title insurance is that it insures as of a specific date and against matters arising from and prior to that date, whereas, casualty/liability and most other insurance products insure against matters that may occur in the future during the policy period. It should also be noted that the title insurance policy contains conditions which govern coverage, losses and claims. There are exclusions from coverage which are standard in all policies and there are exceptions from coverage which are unique to each policy as exceptions relate to the state of the title of the property being insured.

B. Policy Structure

The forms of title insurance policies commonly utilized by title insurers in Pennsylvania is the ALTA (American Land Title Association) Owner's or Loan policies as modified by Title Insurance Rating Bureau of Pennsylvania ("TIRBOP). This form has been filed by The Title Insurance Rating Bureau of Pennsylvania and approved by the Pennsylvania Department of Insurance. TIRBOP is a Pennsylvania Nonprofit Corporation, qualified and licensed as a title insurance rating organization which files for approval with the Department of Insurance rates and forms of policies and endorsements for use by the member companies. The most recent forms were revised in June 2006 and the discussion below is based on those 2006 policies.

1. INSURING PROVISIONS

a. Owner's Policy.

The insuring provisions are contained in the Covered Risks section the Policy and are standard provisions which do not vary from one policy to another. Copies of an Owner's and Loan policy are provided in these materials. Although the insuring provisions are relatively straight forward, it is important to understand that situation which the title insurance provides an owner coverage.

Prior to the 2006 Owners Policy, only provisions 1 through 4 below (albeit not in identical language) were contained in the Covered Risks. The 2006 policy revisions included additional Covered Risks. This coverage was previously found in the exclusions section, by exception from the exclusions such matters that were found in the Public Records at the Policy Date. The

relocation of this coverage to Covered Risks section of the policy makes it clear that there is affirmative coverage for such matters.

The preamble to the Covered Risks states the following:

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, BLANK TITLE INSURANCE COMPANY, a Blank corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

As indicated above, the following Covered Risks are subject to the Exclusions, Exceptions and Conditions contained in the Policy.

1. Title being vested other than as stated in Schedule A.

Schedule A identifies the insured (owner) and the interest (fee simple/leasehold) which is covered under the policy. This insuring provision provides coverage to the insured for a failure of title, whether complete or partial. An example of where there is a complete failure of title is where title is found vested completely in one or more persons or entities and not the insured. An example of a partial failure would be where a fractional interest is vested in one or more persons or entities with the insured, such as when joinder of another party holding an interest was required but not obtained. Another example would be title vested in a governmental entity as a result of a partial taking through condemnation (eminent domain).

2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from

(a) A defect in the Title caused by

(i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;

(ii) failure of any person or Entity to have authorized a transfer or conveyance;

(iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;

(iv) failure to perform those acts necessary to create a document by electronic means authorized by law;

(v) a document executed under a falsified, expired, or otherwise invalid power of attorney;

(vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or

(vii) a defective judicial or administrative proceeding.

(b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.

The insuring provision related to "defect" is intended to protect against matters deemed to be technical problems with title such as incorrect legal descriptions, improper acknowledgements, deficiencies in execution and the like. The term "lien" relates to a valid and properly perfected monetary interest in the insured estate held by another person or entity whether by mortgage, judgment, municipal claim, mechanics lien claim, real estate tax claim and the like, not excepted or excluded from coverage. The term "encumbrance" relates to and is intended to insure against a right or interest in the insured estate held by another person or entity such as an easement, right of way, restrictive covenant or condition, lease, option and the like not excepted or excluded from coverage.

3. Unmarketable title.

Unmarketable Title is defined in the Conditions and Stipulations as "Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title." This definition requires one to determine under state law what is or is not "Marketable Title". Pennsylvania has no "Marketable Title" statute; the meaning of the term must be gleaned from case law. The standard established by Pennsylvania courts is that title must be such that the purchaser will not be exposed to the hazard of a lawsuit with respect to title to the real estate being purchased, *La Course v Kiesel*, 77 A.2d 877 (1951). Keep in mind that marketability relates to title. The policy does not provide coverage for inability to sell a parcel of real estate as a result of physical impediments such as wetland issues, zoning issues, flood plain issues or physical conditions or lack thereof on the insured property.

4. No right of access to and from the Land.

The policy insures that the insured property will have a right of access to a public road. It does not, however, ensure a specific means of access (such as vehicular), unless identified in the description under Schedule A, or the quality of the access right. The policy, for example does not insure that the current access is physically useable or passable or that grading or improvements may be necessary to cause the access to be usable.

5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to

(a) the occupancy, use, or enjoyment of the Land;
(b) the character, dimensions, or location of any improvement erected on the Land;
(c) the subdivision of land; or
(d) environmental protection

if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.

Land use and zoning regulations are not typically covered by title insurance. This section provides coverage against loss due to certain violations *if* a notice of the violation (which described any part of the land) was recorded in the public records. As discussed above, prior to the 2006 policy version, it was understood that this coverage was provided through an exception from coverage for such violations by language such as "except to the extent that notice affecting the

land was recorded in the public record". The policy was revised in 2006 to make clear that this was a provided coverage.

The term "public records" is defined in Paragraph 1(i) of the Conditions as "records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge . . ." In most states this includes records filed in the office where deeds are recorded and offices where court records are maintained.

In regard to notices relating to environmental protection, Paragraph 1(i) definition further states that "With respect to Covered Risk 5(d) "Public Records shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district in which the Land is located." This latter sentence was added in 1987 in response to a 1986 amendment to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 which provided that assessments under the statute for environmental cleanups are to be filed in the district court clerk's office where the land is located, if state law has not designated a state office in which federal liens are to be recorded. In Pennsylvania, the Uniform Federal Lien Registration Act (74 P.S. Section 157-1 et seq.) was enacted on December 7, 1989, effective February 5, 1990. The statute provides that notices of liens on real property for obligations payable to the United States are to be filed in the Prothonotary's office in the county where the real property is located.

It is not always clear what constitutes a notice for purposes of this coverage. Common examples of this in Pennsylvania are the statutory deed notices required by the Solid Waste Management Act (35 P.S. §6018.405) and Hazardous Sites Cleanup Act (35 P.S. §6020.512(b)). The statutes require a grantor to include an acknowledgment in his deed regarding the disposal of hazardous wastes or substances if disposal is occurring on the conveyed land or has occurred to the grantor's actual knowledge. One can argue that such an acknowledgment in a deed does not constitute " . . . a notice of the enforcement . . . or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land . . ." Since this issue has not yet been litigated, underwriters may decide in an abundance of caution to raise an exception in Schedule B if a deed in the chain of title includes a waste disposal acknowledgment.

6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.

This section is broader than section 5, as police power can include virtually any legislative action for the promotion of the public health, morals, safety and general well-being of the community. *National Wood Preservers, Inc. v. Com., Dept. of Environmental Resources*, 489 Pa. 221, 231, 414 A.2d 37, 42 (Pa., 1980). This coverage was also part of the 2006 policy revisions to make it clear that there was coverage provided that a notice was recorded in the Public Records.

7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.

Similar to the prior two sections, this coverage was added as a Covered Risk with the 2006 policy changes. This coverage is for formal eminent domain proceedings by a governmental agency, as opposed to a taking, which is discussed in section 8. Also, there must be notice of the proceedings in the Public Records. This requirement limits the coverage because eminent domain proceedings are not always discoverable by a standard search.

8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge

This coverage is also new to the Covered Risk section with the 2006 policy. It is fairly limited due to the fact that the taking must have already occurred, and it must be binding on a bona fide purchaser. If a regulation is adjudicated to be a taking, then it will be either invalidated or landowner will have to be compensated by the government doing the taking. If the owner is compensated, then arguably there is no loss – unless the compensation is inadequate.

9. Title being vested other than as stated in Schedule A or being defective
(a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
(b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
(i) to be timely, or
(ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

This section provides coverage for the loss due to creditor's rights laws (in the chain of title); or because the instrument vesting Title constitutes a preferential transfer (for the subject transaction).

10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

This is referred to as "gap" coverage. It covers the period between the Date of the Policy and the date of the recording of the insured document in the Public Record.

b. <u>INSURING PROVISIONS</u> (Loan Policy)

Items 1 through 8 of the Loan Policy Covered Risks are identical to those in the Owner's policy.

9. The invalidity or unenforceability of the lien of the insured mortgage upon the Title…

Item 9 is similar to item 2, except it covers the invalidity or unenforceability of the lien of the insured mortgage. A loan policy insures that a mortgage lien is valid and enforceable. This includes coverage that the mortgage was properly executed and delivered and that the mortgagor had the capacity and authority to execute the mortgage.

The coverage does not extend to problems arising from the underlying debt. For example, the clause would cover loss resulting from the forging of the insured mortgage, but not from the forgery of the underlying note. The clause also does not cover the failure of the loan to be funded.

10. The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance.

The coverage provided by this clause, coupled with item 9 above, is the essence of the loan policy. The insured lender wants to know that it has a valid and enforceable lien (item 9) and that it is a first lien (or other insured position) against the real property, subject only to liens or encumbrances to which it has agreed to be subordinate.

It should be noted, however, that an insured lender generally must show that the existence of a prior lien or encumbrance will cause it to suffer a loss. A simple example of this is a lender with an $80,000 mortgage on real property valued at $100,000. If a prior judgment in the amount of $10,000 is discovered, the lender probably has not suffered a loss. If the value of the land is discounted for the prior judgment, it is still worth $90,000 or more than the amount of the mortgage lien. Generally, a prior lien or encumbrance will give rise to coverage only if the lender is undersecured or is unable to collect its debt upon execution or its lien is imperiled by an execution on a prior lien.

11. The lack of priority of the lien of the Insured Mortgage upon the Title

(a) as security for each and every advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for services, labor, or material arising from construction of an improvement or work related to the Land when the improvement or work is either

(i) contracted for or commenced on or before Date of Policy; or

(ii) contracted for, commenced, or continued after Date of Policy if the construction is financed, in whole or in part, by proceeds of the loan secured by the Insured Mortgage that the Insured has advanced or is obligated on Date of Policy to advance; and

(b) over the lien of any assessments for street improvements under construction or completed at Date of Policy.

This clause provides coverage to the lender against mechanics' liens. The coverage extends only to mechanics' liens which have priority over the insured mortgage. In the case of new construction, mechanics' liens have priority from the time of the visible commencement of work on the project. If the insured mortgage is recorded prior to the visible commencement of work,

any mechanics' liens which are filed later will not have priority over the mortgage and hence will not be covered under the title policy.

The coverage provided by this clause does not extend to "improvement or work…contracted for, commenced, or continued after Date of Policy" which is funded by *non-obligatory advances*. This carve-out can be a concern in a fairly common scenario: The owner enters into a contract with an excavator who commences his work on the project prior to the recording of the mortgage. Subsequent to the recording of the mortgage, the owner enters into a separate contract with a general contractor for the construction of the improvements. If the lender makes non-obligatory advances to fund work related to the second contract, the lien of the advances will not be covered under this clause.

Note: see Commerce Bank/Harrisburg, N.A. v. Kessler 2012 Pa.Super 100 (Pa.Super 2012, which held that the open-end mortgage exception in the Mechanic's Lien Law does not apply if *any* of the proceeds from the mortgage are not used for the construction of an improvement. However, in 2014 the Mechanic's Lien Law was amended to provide that "where at least sixty percent (60%) of the proceeds are intended to pay or are used to pay all or part of the costs of construction", then said mortgage will be superior to a mechanic's lien. See 49 P.S. 1508(c)(2).

12. The invalidity or unenforceability of any assignment of the Insured Mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the Insured Mortgage in the named Insured assignee free and clear of all liens.

Under Paragraph 1(e)(i)(A) of the Conditions of the policy, if a mortgage is assigned, the assignee becomes the insured, subject to any defenses which the insurer would have against a predecessor insured.

2. EXCLUSIONS FROM COVERAGE

a. Owner's Policy

As with other types of insurance, the exclusions serve to limit coverage and identify risks which are not within the scope of policy coverage. In broad terms, the exclusions remove from coverage certain risks which: (1) would not be revealed by a standard title examination or (2) result from an application of creditors rights' laws or (3) the insured is at least in part responsible for creating.

The preamble of the Exclusions from Coverage states that:

> **The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:**

Prior to 1987, ALTA policy forms did not include the language ". . . will not pay loss or damage, costs, attorneys' fees or expenses . . ." The additional language emphasizes that the title company is under no obligation to pay attorneys' fees or court costs in connection with an excluded matter.

The first three sections of the Exclusions from Coverage are virtually identical in Owner's and Loan policies. The first exclusion reads as follows:

1. (a) Any law, ordinance, permit or governmental regulation (including but not limited to building and zoning) restricting, regulating, prohibiting or relating to

(i) the occupancy, use, or enjoyment of the Land;

(ii) the character, dimensions or location of any improvement on the Land;

(iii) the subdivision of land; or

(iv) environmental protection;

or the effect of any violation of these laws, ordinances or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.

This exclusion falls within the category of risks that are not disclosed by a search of public records. Two arguments are typically made to justify the exclusion. One is that exercises of governmental regulatory powers affect the use of land, and not title. The second more practical argument is that title companies have neither the resources nor expertise to review ordinances, laws, regulations and rulings affecting use. The exclusion does not apply, however, to coverage that is afforded under Covered Risk 5 or 6.

2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.

This exclusion is similar to the first exclusion discussed above. It does not apply if coverage is afforded under Covered Risk 7 or 8. .

3. Defects, liens, encumbrances, adverse claims or other matters

(a) created, suffered, assumed or agreed to by the Insured Claimant;

This exclusion is often referred to in a more abbreviated form as "acts of the insured." The rationale for the exclusion is that if a loss results from a matter caused by the insured, the insurer should not be required to indemnify the culprit.

Some courts have interpreted this provision in favor of the insured, finding that a claim will not be excluded if the insured was only negligent or mistaken. In general the exclusion will be upheld if the claim arises from a knowing or intentional act or failure to act by the insured.

A case in Utah (*Valley Bank & Trust Company v. U. S. Life Title Insurance Company*, 776 P.2d 933 (Utah App. 1989)) presents an interesting example of how the exclusion can be used. Two loans were made by different departments of a bank, and each loan was secured by a mortgage on the same real property. A claim was filed by the insured bank asserting that the second mortgage to be recorded was not a first lien on the property. The court concluded that the acts of each department were imputed to the bank and that the bank had intentionally created each loan. As a result, the denial of the claim by the insurer was upheld.

(b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the insured claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

This exclusion provides an insured with an incentive to notify the insurer of matters affecting title, not in the public records, of which the insured has knowledge. The exclusion is often raised as a defense by insurers and is frequently litigated.

The most common issue presented by the exclusion is what is knowledge. Paragraph 1(h) of the Conditions defines "Knowledge" or "Known" as "actual knowledge, not constructive knowledge or notice . . ." Still, even where there is actual knowledge of a particular fact, it may not be sufficient to enable an insurer to invoke the exclusion. For example, a purchaser of a new home may know that the construction of his home has not been completed at the time of closing, but this does not mean that he has knowledge that mechanics' liens may be filed. The insured generally must know of the fact and also have an understanding of its impact on title.

Whether knowledge will be imputed to an insured is another issue that arises. The courts have disagreed about whether the knowledge of an insured's real estate agent or attorney will be imputed to the insured for the purpose of applying this exclusion. On the other hand, the knowledge of a title agent will generally be imputed to the insurer. For instance, if a title agent informs an insured of a particular off-record problem and the matter is not raised as an exception in the policy and the insured reasonably assumes that the title agent is handling it, the insurer will not likely be able to invoke the exclusion since the matter would be deemed to be known by the insurer.

Another issue that has been litigated involves adverse matters shown in the public records but which the insurer's title search negligently fails to disclose. If the insured had actual knowledge of the adverse matter and failed to disclose it to the insurer, will the exclusion provide the insurer with a defense to a claim? The cases generally indicate that the exclusion may not be applied since the matter was in the public records, unless it can be shown that the insured intentionally misled the insurer.

Because of this exclusion, if an insured or his counsel becomes aware of a possible unrecorded defect in title, the insured should notify the insurer, preferably in writing. In this manner, the problem can be addressed by the underwriter and, if coverage over the matter is provided, the insurer will not be able to defend against a claim on the basis of the exclusion.

(c) resulting in no loss or damage to the Insured Claimant.

This exclusion mirrors the language of the preamble to the insuring clauses stating that the policy insures "against loss or damage . . . sustained or incurred by the insured." The question that most frequently arises under the exclusion is whether a loss has occurred. Is an insured required to suffer an actual out-of-pocket loss in order to sustain a claim or is it sufficient for the insured to show that his title is affected by an adverse matter which was not excepted from coverage in Schedule B of the policy? In the case of *Sattler v. Philadelphia Title Insurance Company,* 192 Pa. Super. 337, 162 A.2d 22 (1960), two alleged encumbrances, not excepted in Schedule B of the policy, were discovered by the insured. Although the encumbrances were not valid, the court noted that they were clouds on the title and a "right of action for technical breach of the policy" existed.

Notwithstanding the technical breach, the court concluded that the insured was not entitled to be indemnified since an actual monetary loss had not occurred. As stated by the court ". . . the insured must show a loss resulting from the unexcepted encumbrances. In other words, a title insurance policy is a contract of indemnity and not of guaranty. Unless and until a loss occurs, there is no liability."

This view of what constitutes loss is not followed in all states. Another view is that the existence of an adverse matter results in a loss to an owner because the value of his title is diminished. For example, the discovery of an easement on an insured's land will generally provide a basis for a claim regardless of whether the easement holder is currently exercising his rights or whether the insured is attempting to sell his land. The existence of the easement affects value and the measure of loss will be the difference in the value of the title without the easement versus its value with the easement.

(d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10);

This exclusion underscores that coverage under a title policy is retrospective. The insurer performs a title search of the public records covering to Date of Policy and agrees to insure against matters existing prior to the Date of Policy.

One issue that arises under this exclusion is whether a lien filed subsequent to Date of Policy existed prior to such date. A mechanics' lien claim for new construction performed prior to the policy date, but filed subsequently could potentially be covered (subject to the policy terms and conditions) since the lien relates back to the visible commencement of work on the ground. On the other hand, the exclusion should apply to the underpayment of a realty transfer tax on the insured deed. The lien of an unpaid realty transfer tax does not relate back, but instead attaches at the time the taxing body enters judgment against the grantee.

The parenthetical portion refers to creditors rights and gap coverage.

(e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.

This exclusion covers risks which arise because less than full consideration has been paid by a grantee or mortgagee. As in the case of Exclusion 3(a) above, the rationale for the exclusion is that the risk results from an act of the insured and hence is one that the insured should bear.

A gift of real property is one example of a transaction covered by the exclusion. Under the recording acts, a bona fide purchaser for value is entitled to rely on deed records. If the owner of a parcel of land sells a parcel of land to A and two days later sells the same parcel to B, B's title will be superior to A's provided that B was (1) a bona fide purchaser for value and (2) recorded his deed prior to A's deed. On the other hand, if the conveyance to B was a gift, he would not prevail over A since he was not a purchaser for value. In this case, an insurer could raise Exclusion 3(e) as a defense to a claim based on A's assertion of superior title.

4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is

(a) a fraudulent conveyance or fraudulent transfer; or

(b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.

This exception is for avoidance of the *insured* transaction and is similar to Lender's exception 6. Note that Covered Risk 9a relates to occurrences in the chain of title.

The commonly cited rationale for the exclusion is that it is not within a title insurer's expertise to determine whether a transaction constitutes a preference or fraudulent transfer or that it may be equitably subordinated. The information needed to evaluate these risks is not found in the public records. Moreover, a purchaser or lender, as part of its due diligence, is in a better position to evaluate a grantor's or mortgagor's solvency or conduct.

Although the exclusion is broad, there are three risks that it does not cover. The first results from late recording. Covered Risk 9b relates to the failure to record the instrument of transfer in the Public Records timely. Under Section 547 of the Bankruptcy Code, an instrument is treated as perfected at the time of the transfer if it is recorded within 10 days of the transfer. If it is recorded after 10 days, it is treated as perfected at the time of recording. As a result, a late recorded mortgage could be avoided as a preference on the basis that it secures an antecedent debt.

It is stating the obvious to note that it is important to record instruments in a timely manner. Covered Risk 9a reinforces this importance. If a title insurer believes that it may be difficult to record within 10 days because of the nature of the transaction, a specific exception should be raised in Schedule B Covered Risk 9a.

A second risk not covered by the exclusion is a loss resulting from the failure of the recording of an instrument "to impart notice to a purchaser for value of a judgment or lien creditor." Covered Risk 9b also relates to the recording of a document in the Public Records failing to impart notice to a purchaser for value or to a judgment or lien creditor. The recorded instrument will only provide such notice if it complies with the recording acts. For example, if a document is recorded but fails to include an acknowledgement or is not properly indexed, it will not be treated as

imparting constructive notice to third parties. The rationale for Covered Risk 9a is that the insurer is better qualified to determine whether a document complies with a particular state's recording acts.

A third limitation in the exclusion is that it applies to the transaction insured. The exclusion does not apply if a transaction earlier in the chain of title is avoided. An example of this is a mortgage securing the refinance of a loan which had been used to finance a leveraged buy-out. The potentially tainted transaction in this case is a step removed from the insured mortgage. But if the leveraged buy-out was attacked as a preference in a subsequent bankruptcy, the insured mortgage lien could be jeopardized. In this type of situation, a title insurer should raise a separate exception in Schedule B to cover <u>any</u> attack on title pursuant to bankruptcy or creditors' rights laws.

5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

This provision excludes tax or assessment liens appearing in the gap.

b. <u>EXCLUSIONS FROM COVERAGE</u> (Loan Policy)

Loan policies also contain many of the exclusions that are contained in the owner's policy. As mentioned above, the first three exclusions are almost identical. Owner's exclusion 4 is similar to Lender's exclusion 6 and Owners exclusion 5 is similar to Lender's exclusion 7. To the extent they are the same or substantially similar, attention is directed to the Owner's policy materials. With respect to exclusion 3 discussed in the materials related to the Owners policy, a different standard applies to loan policies. For an insured lender, the existence of a lien or encumbrance may not give rise to a loss under the policy. As noted in the discussion of the insuring clauses, if a lender holds an $80,000 mortgage on land worth $100,000, a prior judgment in the amount of $10,000 will probably not result in a loss to the lender. If the value of the land is reduced as a result of the judgment, its value will still exceed the amount of its mortgage lien. Generally, coverage will only exist for a lender if the adverse matter results in the lender being undersecured or unable to collect its debt upon execution or its lien is imperiled by the exercise of superior rights by a creditor or other third party.

Loan Policy Exclusion 4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of the Insured to comply with applicable doing business laws of the state in which the land is situated.

This exclusion is straightforward. It places on the lender the burden and risk of complying with doing business laws. In many jurisdictions, coverage for loss resulting from the failure to comply with doing business laws can be obtained by endorsement. In Pennsylvania, however, the Manual of the Title Insurance Rating Bureau bars member underwriters from providing this coverage.

Loan Policy Exclusion 5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth in lending law.

This exclusion also is fairly straightforward. The risk that a mortgage lien may be unenforceable because the loan documents violate usury, truth in lending or consumer credit protection laws is placed on the lender and not the insurer. Endorsements providing coverage against loss resulting from violations of usury and truth in lending laws are available in many states, but not in Pennsylvania. One argument that has been made against the promulgation of a usury endorsement is that to provide the coverage would not be in the public interest since it would encourage lenders to adopt questionable approaches to calculating interest.

3. CONDITIONS AND STIPULATIONS

Conditions go to the heart of the insurance contract, containing those provisions which control and define the contractual relationship between the insurer and insured. The Conditions control not only that which is insured and the extent thereof, but also the mechanics of making claims, the obligation to defend and the rights and obligations of the insured and insurer with respect to each other in regard to claims under the policy.

C. ALTA Homeowner's Policy of Title Insurance for a One-to-Four Family Residence

This policy is an expanded coverage policy, issued in residential transactions to provide what is called "enhanced" coverage. The premium is at a level higher than a standard policy of title insurance, but the coverage goes beyond the traditional coverages. The enhanced policy covers:

1. Zoning regulation related losses;
2. Subdivision regulation related losses;
3. Building permit violation related losses;
4. Eliminates creditor's rights exclusion;
5. Losses resulting from enumerated occurrences arising after the policy date;
6. Losses arising from unfiled mechanics liens;
7. Losses arising from lack of actual vehicular and pedestrian access;
8. Losses resulting from encroachments;
9. Losses resulting from violations of covenants, conditions and restrictions;

10. Losses arising from surface activity in connection with exploration for and extraction of minerals, water or other substances; and

11. Losses arising from the assessment of supplemental real estate taxes.

Additionally, the enhanced policy also provides:

1. a value added feature that provides for insuring additional parties beyond the named insured, such as heirs of the named insured, spouse of the named insured to the extent the spouse acquires the property as a result of dissolution of a marriage, a trustee under a trust established for estate planning purpose into which the insured has transferred the property and beneficiaries thereof; and

2. rent coverage and relocation expenses during the pendency of a claim should the insured be denied access to the property.

D. The Commitment

A title insurance commitment (title report) is the title insurer's written obligation to issue either an Owner's policy of title insurance or a Loan policy of title insurance or both. Most importantly, it discloses to a purchaser or lender the status of the title based upon the title insurance search of the public records. It lists liens and encumbrances of record with respect to the title to the property. It reveals whether the quality of title is that required to be given under an agreement of sale and what will impact the future use and enjoyment of the property as relates to title. It will set forth easements, rights of way, covenants, restrictions and conditions of record, oil and gas lease, mineral right grants and the like. It will also clearly identify the property subject of and covered by the commitment to insure.

The commitment tells the owner or lender that a title policy will be issued provided certain conditions are met and provided the status of the title does not change from the time the commitment is issued and the policy is issued following compliance with the terms of the commitment.

Note that a title commitment is not a guarantee or a representation of the status of tile. It is simply a commitment to insure title.

E. Leasehold Policy

As a title insurance policy is a policy of insurance insuring against loss relative to an interest in real estate, a policy can be issued to insure a fee interest, a lender's lien interest and a leasehold interest. It should be recognized that a leasehold is not only a contract, but also an estate in land, less than a fee interest, but nonetheless an interest in land cognizable under law. The same principles apply with respect to a leasehold as with any other insurable interest. The policy insures against loss resulting from failure of title insured (in this case failure of the leasehold estate). Not only does an owner's policy insure the leasehold, but a loan policy can insure the lien upon a leasehold, as a lender can loan funds secured by a mortgage on a leasehold interest.

Chapter Five
Section 3

Appendices

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First American Title™	ALTA Commitment for Title Insurance
	ISSUED BY **First American Title Insurance Company**
Commitment	

COMMITMENT FOR TITLE INSURANCE

Issued By

FIRST AMERICAN TITLE INSURANCE COMPANY

NOTICE

IMPORTANT—READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACONTRACTUAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and the Commitment Conditions, ***First American Title Insurance Company***, a Nebraska Corporation (the "Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Policy Amount and the name of the Proposed Insured.

If all of the Schedule B, Part I—Requirements have not been met within six months after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

First American Title Insurance Company

Dennis J. Gilmore, President

Jeffrey S. Robinson, Secretary

If this jacket was created electronically, it constitutes an original document.
This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

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COMMITMENT CONDITIONS

1. DEFINITIONS
   (a) "Knowledge" or "Known": Actual or imputed knowledge, but not constructive notice imparted by the Public Records.
   (b) "Land": The land described in Schedule A and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.
   (c) "Mortgage": A mortgage, deed of trust, or other security instrument, including one evidenced by electronic means authorized by law.
   (d) "Policy": Each contract of title insurance, in a form adopted by the American Land Title Association, issued or to be issued by the Company pursuant to this Commitment.
   (e) "Proposed Insured": Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.
   (f) "Proposed Policy Amount": Each dollar amount specified in Schedule A as the Proposed Policy Amount of each Policy to be issued pursuant to this Commitment.
   (g) "Public Records": Records established under state statutes at the Commitment Date for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.
   (h) "Title": The estate or interest described in Schedule A.

2. If all of the Schedule B, Part I—Requirements have not been met within the time period specified in the Commitment to Issue Policy, this Commitment terminates and the Company's liability and obligation end.

3. The Company's liability and obligation is limited by and this Commitment is not valid without:
   (a) the Notice;
   (b) the Commitment to Issue Policy;
   (c) the Commitment Conditions;
   (d) Schedule A;
   (e) Schedule B, Part I—Requirements;
   (f) Schedule B, Part II—Exceptions; and
   (g) a counter-signature by the Company or its issuing agent that may be in electronic form.

4. COMPANY'S RIGHT TO AMEND
   The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company shall not be liable for any other amendment to this Commitment.

5. LIMITATIONS OF LIABILITY
   (a) The Company's liability under Commitment Condition 4 is limited to the Proposed Insured's actual expense incurred in the interval between the Company's delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured's good faith reliance to:
      (i) comply with the Schedule B, Part I—Requirements;
      (ii) eliminate, with the Company's written consent, any Schedule B, Part II—Exceptions; or
      (iii) acquire the Title or create the Mortgage covered by this Commitment.
   (b) The Company shall not be liable under Commitment Condition 5(a) if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.
   (c) The Company will only have liability under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.
   (d) The Company's liability shall not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Conditions 5(a)(i) through 5(a)(iii) or the Proposed Policy Amount.
   (e) The Company shall not be liable for the content of the Transaction Identification Data, if any.

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

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(f) In no event shall the Company be obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I—Requirements have been met to the satisfaction of the Company.
(g) In any event, the Company's liability is limited by the terms and provisions of the Policy.

6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT
(a) Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.
(b) Any claim must be based in contract and must be restricted solely to the terms and provisions of this Commitment.
(c) Until the Policy is issued, this Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.
(d) The deletion or modification of any Schedule B, Part II—Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.
(e) Any amendment or endorsement to this Commitment must be in writing and authenticated by a person authorized by the Company.
(f) When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy.

7. IF THIS COMMITMENT HAS BEEN ISSUED BY AN ISSUING AGENT
The issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for the purpose of providing closing or settlement services.

8. PRO-FORMA POLICY
The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.

9. ARBITRATION
The Policy contains an arbitration clause. All arbitrable matters when the Proposed Policy Amount is $2,000,000 or less shall be arbitrated at the option of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the arbitration rules at http://www.alta.org/arbitration.

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First American Title™	ALTA Commitment for Title Insurance
	ISSUED BY **First American Title Insurance Company**
Schedule A	

Transaction Identification Data for reference only:

Issuing Agent:
Issuing Office's ALTA® Registry ID:
Commitment No.: 123456789
Property Address: *100 Broad Street, Anytown, PA 19000*
Revision No.:

Issuing Office:
Loan ID No.:
Issuing Office File No.:

SCHEDULE A

1. Commitment Date: August 1, 2022
2. Policy to be issued:
   (a) ☒ ALTA® Owners Policy
   Proposed Insured: Betty Buyer
   Proposed Policy Amount: $200,000.00
   (b) ☒ ALTA® Loan Policy
   Proposed Insured: Big Bank,NA, its successor and/or assignas as their interests may appear
   Proposed Policy Amount: $
   (c) ☐ ALTA® Policy
   Proposed Insured:
   Proposed Policy Amount: $
3. The estate or interest in the Land described or referred to in this Commitment is Fee Simple
4. The Title is, at the Commitment Date, vested in: Sam Seller, a signle man.
   And was acquired by: Deed from McDonald Inc., a PA Corporation dated 4/01/2005 and recorded on 4/10/2005 in the Office for the Recording of Deeds in and for the County of Chester in Deed Book 1234 page 6789 etc. granted and conveyed unto Sam Seller, in fee
5. The Land is described as follows:
   See Exhibit A attached hereto and made a part hereof

   For informational purposes only: 100 Broad Street, Anytown, PA 19000

FIRST AMERICAN TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

First American Title™	ALTA Commitment for Title Insurance
	ISSUED BY **First American Title Insurance Company**
Schedule BI & BII	

Commitment No.: 123456789

SCHEDULE B, PART I

Requirements

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
5. Original photo identification for all parties to the transaction must be provided.
6. Proof to be furnished that as to each grantor/mortgagor who is an individual, if presently married, that he/she is neither separated from his/her spouse nor a party to any pending divorce proceeding in any jurisdiction, otherwise, the non-record spouse must join in the deed or mortgage contemplated hereunder.
7. Proof that there are no overdue support obligations of record with the Domestic Relations Section of the parties to this transaction, up through the date of recording of the instruments to be insured.
8. Town, County and School Taxes and Water and Sewer Rents for the prior three years. (Receipts to be produced and filed with the Company.) If certification of payment or amount due is obtained from the taxing and municipal authorities in lieu of such receipts, proof must be provided that the taxing and municipal authorities have not turned collection of any unpaid amounts over to a collection agency or law firm. Absent such proof, or if the taxing or municipal authorities have turned collection over to a collection agency or law firm, then additional certification of payment or amount due to be obtained from such collection agency or law firm.
9. Real Estate Taxes and Municipal Claims (If paid, receipts are to be produced and filed with the Company).
   PARCEL IDENTIFICATION NUMBER: 10-02-046810
   ASSESSMENT: $160,000.00
10. The Company may make other requirements or exceptions upon its review of the documents creating the estate or interest to be insured or otherwise ascertaining details of the transaction.

First American Title™	ALTA Commitment for Title Insurance
	ISSUED BY **First American Title Insurance Company**
Schedule BI & BII	

Commitment No.: 123456789

11. MORTGAGES

1. **Mortgage from: John Smith**
   To: Acme Lending, N.A.
   Dated: 12/17/1985 and recorded 12/28/1985 in Volume 0111 page 222
   Amount: $60,000.00

2. **Mortgage from: Sam Seller**
   To: Generic Bank
   Dated: 04/01/2009 and recorded 04/10/2009 in Volume 1234 page 6792
   Amount: $175,000.00

12. JUDGMENTS:

NONE

15. FEDERAL LIENS:

NONE

Schedule BI & BII

Commitment No.: 123456789

SCHEDULE B, PART II
Exceptions

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I—Requirements are met.
2. Rights or claims by parties in possession or under the terms of any unrecorded lease or agreement(s) of sale.
3. Any variation in location of lines or dimensions or other matters which an accurate survey would disclose.
4. Easements, or claims of easements, not shown by the Public Records.
5. Any lien or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
6. Possible tax increase based on additional assessments.
7. Accuracy of area content not insured.
8. Title to that part of the premises lying in the bed and right of way of all roads, driveways and alleyways is subject to public and private rights therein.
9. Rights granted to public utility companies in Deed Book 1518 page 319.
10. Act 319 as in Record Book 1944 page 1143 and Act 515 as in Record Book 3194 page 1145.
11. Rights granted to Mobil Pipeline and Atlantic Pipeline however acquired.
12. Agreement in Record Book 2729 page 460.
13. Declaration of Covenants, Conditions and Easements for Pennland, a Planned Community

Schedule BI & BII

14. Notes and conditions on the plan recorded in Plan Book XYZ.

15. Minerals of whatsoever kind, subsurface and surface substances, including but not limited to coal, lignite, oil, gas, uranium, clay, rock, sand and gravel in, on, under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto, whether or not appearing in the Public Records or listed in Schedule B. The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed.

EXHIBIT "A"

The land referred to in this Commitment is described as follows:

LEGAL DESCRIPTION

ALL THAT CERTAIN lot or piece of ground with the buildings and improvements thereon erected, SITUATE in the Township of East Goshen, County of Chester and bounded and described according to a Map of Property of McDonald Inc., made by Distant Engineering Association, LTD, West Chester, PA on 04/09/1980 and revised as to this lot on 12/13/1980, as follows, to wit:

BEGINNING at a point in the middle of Broad Street (50 feet wide) at the distance of 307.69 feet measured Southeastward along the said middle line of Broad Street from its intersection with the middle line of Side Avenue (33 feet wide); thence extending from said beginning point, North 77 degrees 58 minutes East 305.62 feet to a point; thence extending South 01 degree 02 minutes East 161.25 feet to a point; thence extending South 77 degrees 58 minutes West 305.62 feet to a point in the middle of said Broad Street; thence extending North 01 degree 02 minutes West along the said middle line of Broad Street 161.25 feet to the first mentioned point and place of beginning.

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First American Title™	ALTA Commitment for Title Insurance ISSUED BY **First American Title Insurance Company**
Schedule A	

Transaction Identification Data for reference only:

Issuing Agent:
Issuing Office's ALTA® Registry ID:
Commitment No.: 123456789
Property Address: *100 Broad Street, Anytown, PA 19000*
Revision No.:

Issuing Office:
Loan ID No.:
Issuing Office File No.:

SCHEDULE A

1. Commitment Date: ~~August 1, 2022~~ Date of Recording
2. Policy to be issued:
   (a) ☒ ALTA® Owners Policy
   Proposed Insured: Betty Buyer
   Proposed Policy Amount: $200,000.00
   (b) ☒ ALTA® Loan Policy
   Proposed Insured: Big Bank, NA, its successor and/or assignas as their interests may appear
   Proposed Policy Amount: $
   (c) ☐ ALTA® Policy
   Proposed Insured:
   Proposed Policy Amount: $

   End. 800

   End. 100, 300, 900, 820
3. The estate or interest in the Land described or referred to in this Commitment is Fee Simple
4. The Title is, at the Commitment Date, vested in: Sam Seller, a signle man.
   And was acquired by: Deed from McDonald Inc., a PA Corporation dated 4/01/2005 and recorded on 4/10/2005 in the Office for the Recording of Deeds in and for the County of Chester in Deed Book 1234 page 6789 etc. granted and conveyed unto Sam Seller, in fee
5. The Land is described as follows:
   See Exhibit A attached hereto and made a part hereof

   For informational purposes only: 100 Broad Street, Anytown, PA 19000

FIRST AMERICAN TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions.

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First American Title™	ALTA Commitment for Title Insurance
	ISSUED BY **First American Title Insurance Company**
Schedule BI & BII	

Commitment No.: 123456789

SCHEDULE B, PART I

Requirements

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
5. Original photo identification for all parties to the transaction must be provided.
6. Proof to be furnished that as to each grantor/mortgagor who is an individual, if presently married, that he/she is neither separated from his/her spouse nor a party to any pending divorce proceeding in any jurisdiction, otherwise, the non-record spouse must join in the deed or mortgage contemplated hereunder.
7. Proof that there are no overdue support obligations of record with the Domestic Relations Section of the parties to this transaction, up through the date of recording of the instruments to be insured.
8. Town, County and School Taxes and Water and Sewer Rents for the prior three years. (Receipts to be produced and filed with the Company.) If certification of payment or amount due is obtained from the taxing and municipal authorities in lieu of such receipts, proof must be provided that the taxing and municipal authorities have not turned collection of any unpaid amounts over to a collection agency or law firm. Absent such proof, or if the taxing or municipal authorities have turned collection over to a collection agency or law firm, then additional certification of payment or amount due to be obtained from such collection agency or law firm.
9. Real Estate Taxes and Municipal Claims (If paid, receipts are to be produced and filed with the Company).
   PARCEL IDENTIFICATION NUMBER: 10-02-046810
   ASSESSMENT: $160,000.00
10. The Company may make other requirements or exceptions upon its review of the documents creating the estate or interest to be insured or otherwise ascertaining details of the transaction.

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This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

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First American Title™	ALTA Commitment for Title Insurance
	ISSUED BY **First American Title Insurance Company**

Schedule BI & BII

Commitment No.: 123456789

Removed

11. MORTGAGES
    1. **Mortgage from: John Smith**
       To: Acme Lending, N.A.
       Dated: 12/17/1985 and recorded 12/28/1985 in Volume 0111 page 222
       Amount: $60,000.00

    2. **Mortgage from: Sam Seller**
       To: Generic Bank
       Dated: 04/01/2009 and recorded 04/10/2009 in Volume 1234 page 6792
       Amount: $175,000.00

12. JUDGMENTS:
    NONE

15. FEDERAL LIENS:
    NONE

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Schedule BI & BII

Commitment No.: 123456789

SCHEDULE B, PART II
Exceptions

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

R 1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I—Requirements are met.

E 2. Rights or claims by parties in possession or under the terms of any unrecorded lease or agreement(s) of sale.

E 3. Any variation in location of lines or dimensions or other matters which an accurate survey would disclose.

E 4. Easements, or claims of easements, not shown by the Public Records.

R 5. Any lien or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.

E 6. Possible tax increase based on additional assessments.

E 7 Accuracy of area content not insured.

E 8. Title to that part of the premises lying in the bed and right of way of all roads, driveways and alleyways is subject to public and private rights therein.

E 9. Rights granted to public utility companies in Deed Book 1518 page 319.

E 10. Act 319 as in Record Book 1944 page 1143 and Act 515 as in Record Book 3194 page 1145.

E 11. Rights granted to Mobil Pipeline and Atlantic Pipeline however acquired.

E 12. Agreement in Record Book 2729 page 460.

E 13. Declaration of Covenants, Conditions and Easements for Pennland, a Planned Community

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AMERICAN LAND TITLE ASSOCIATION

E 14. Notes and conditions on the plan recorded in Plan Book XYZ.

E 15. Minerals of whatsoever kind, subsurface and surface substances, including but not limited to coal, lignite, oil, gas, uranium, clay, rock, sand and gravel in, on, under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto, whether or not appearing in the Public Records or listed in Schedule B. The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed.

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AMERICAN LAND TITLE ASSOCIATION

EXHIBIT "A"

The land referred to in this Commitment is described as follows:

LEGAL DESCRIPTION

ALL THAT CERTAIN lot or piece of ground with the buildings and improvements thereon erected, SITUATE in the Township of East Goshen, County of Chester and bounded and described according to a Map of Property of McDonald Inc., made by Distant Engineering Association, LTD, West Chester, PA on 04/09/1980 and revised as to this lot on 12/13/1980, as follows, to wit:

BEGINNING at a point in the middle of Broad Street (50 feet wide) at the distance of 307.69 feet measured Southeastward along the said middle line of Broad Street from its intersection with the middle line of Side Avenue (33 feet wide); thence extending from said beginning point, North 77 degrees 58 minutes East 305.62 feet to a point; thence extending South 01 degree 02 minutes East 161.25 feet to a point; thence extending South 77 degrees 58 minutes West 305.62 feet to a point in the middle of said Broad Street; thence extending North 01 degree 02 minutes West along the said middle line of Broad Street 161.25 feet to the first mentioned point and place of beginning.

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AMERICAN LAND TITLE ASSOCIATION

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OWNER'S POLICY OF TITLE INSURANCE

Issued by

BLANK TITLE INSURANCE COMPANY

Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 18 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, BLANK TITLE INSURANCE COMPANY, a Blank corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
   (a) A defect in the Title caused by
      (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
      (ii) failure of any person or Entity to have authorized a transfer or conveyance;
      (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
      (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
      (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
      (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
      (vii) a defective judicial or administrative proceeding.
   (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
   (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
   (a) the occupancy, use, or enjoyment of the Land;

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(b) the character, dimensions, or location of any improvement erected on the Land;

(c) the subdivision of land; or

(d) environmental protection

if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.

6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. Title being vested other than as stated in Schedule A or being defective

   (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or

   (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
   (i) to be timely, or
   (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY: **PRESIDENT**

BY: **SECRETARY**

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EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to

   (i) the occupancy, use, or enjoyment of the Land;

   (ii) the character, dimensions, or location of any improvement erected on the Land;

   (iii) the subdivision of land; or

   (iv) environmental protection;

   or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

   (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.

2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.

3. Defects, liens, encumbrances, adverse claims, or other matters

   (a) created, suffered, assumed, or agreed to by the Insured Claimant;

   (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

   (c) resulting in no loss or damage to the Insured Claimant;

   (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or

   (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.

4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is

   (a) a fraudulent conveyance or fraudulent transfer; or

   (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.

5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

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SCHEDULE A

Name and Address of Title Insurance Company:

[File No.:] Policy No.:
Address Reference:
Amount of Insurance: $ [Premium: $]
Date of Policy: [at a.m./p.m.]

1. Name of Insured:

2. The estate or interest in the Land that is insured by this policy is:

3. Title is vested in:

4. The Land referred to in this policy is described as follows:

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SCHEDULE B

[File No.] Policy No.

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

1. [Policy may include regional exceptions if so desired by the issuing Company.]
2. [Variable exceptions such as taxes, easements, CC&R's, etc., shown here]

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CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 10 and 11 of these Conditions.

(b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.

(c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.

(d) "Insured": The Insured named in Schedule A.

(i) the term "Insured" also includes

(A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;

(B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;

(C) successors to an Insured by its conversion to another kind of Entity;

(D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title

(1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,

(2) if the grantee wholly owns the named Insured,

(3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or

(4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.

(ii) with regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.

(e) "Insured Claimant": An Insured claiming loss or damage.

(f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.

(g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

(h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.

(i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include

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environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.

(j) "Title": The estate or interest described in Schedule A.

(k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to

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prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall

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terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) to pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of

(i) the Amount of Insurance; or

(ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,

(i) the Amount of Insurance shall be increased by 10%, and

(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

(a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed

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by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

11. LIABILITY NONCUMULATIVE

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

12. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

14. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is $2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of $2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the

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award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

16. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

17. CHOICE OF LAW; FORUM

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

18. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at [fill in].

NOTE: Bracketed [ ] material optional

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American Land Title Association

Homeowner's Policy
Adopted 10-17-98
Revised 10-22-03 01-01-08 02-03-10 12-02-13

HOMEOWNER'S POLICY OF TITLE INSURANCE

For a one-to-four family residence

Issued By

BLANK TITLE INSURANCE COMPANY

OWNER'S INFORMATION SHEET

Your Title Insurance Policy is a legal contract between You and Us.

It applies only to a one-to-four family residence and only if each insured named in Schedule A is a Natural Person. If the Land described in Schedule A of the Policy is not an improved residential lot on which there is located a one-to-four family residence, or if each insured named in Schedule A is not a Natural Person, contact Us immediately.

The Policy insures You against actual loss resulting from certain Covered Risks. These Covered Risks are listed beginning on page of the Policy. The Policy is limited by:

- Provisions of Schedule A
- Exceptions in Schedule B
- Our Duty To Defend Against Legal Actions On Page _____
- Exclusions on page __
- Conditions on pages __ and __.

You should keep the Policy even if You transfer Your Title to the Land. It may protect against claims made against You by someone else after You transfer Your Title.

IF YOU WANT TO MAKE A CLAIM, SEE SECTION 3 UNDER CONDITIONS ON PAGE __.

~~The premium for this Policy is paid once. No additional premium is owed for the Policy.~~

This sheet is not Your insurance Policy. It is only a brief outline of some of the important Policy features. The Policy explains in detail Your rights and obligations and Our rights and obligations. Since the Policy–and not this sheet--is the legal document,

YOU SHOULD READ THE POLICY VERY CAREFULLY.

If You have any questions about Your Policy, contact:

BLANK TITLE INSURANCE COMPANY

_____

_____

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HOMEOWNER'S POLICY OF TITLE INSURANCE

For a one-to-four family residence

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BLANK TITLE INSURANCE COMPANY

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HOMEOWNER'S POLICY OF TITLE INSURANCE

For a one-to-four family residence

Issued By

BLANK TITLE INSURANCE COMPANY

As soon as You Know of anything that might be covered by this Policy, You must notify Us promptly in writing at the address shown in Section 3 of the Conditions.

OWNER'S COVERAGE STATEMENT

This Policy insures You against actual loss, including any costs, attorneys' fees and expenses provided under this Policy. The loss must result from one or more of the Covered Risks set forth below. This Policy covers only Land that is an improved residential lot on which there is located a one-to-four family residence and only when each insured named in Schedule A is a Natural Person.

Your insurance is effective on the Policy Date. This Policy covers Your actual loss from any risk described under Covered Risks if the event creating the risk exists on the Policy Date or, to the extent expressly stated in Covered Risks, after the Policy Date.

Your insurance is limited by all of the following:

- The Policy Amount
- For Covered Risk 16, 18, 19 and 21, Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A
- The Exceptions in Schedule B
- Our Duty To Defend Against Legal Actions
- The Exclusions on page
- The Conditions on pages and

COVERED RISKS

The Covered Risks are:

1. Someone else owns an interest in Your Title.
2. Someone else has rights affecting Your Title because of leases, contracts, or options.
3. Someone else claims to have rights affecting Your Title because of forgery or impersonation.
4. Someone else has an Easement on the Land.
5. Someone else has a right to limit Your use of the Land.

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6. Your Title is defective. Some of these defects are:

   a. Someone else's failure to have authorized a transfer or conveyance of your Title.
   b. Someone else's failure to create a valid document by electronic means.
   c. A document upon which Your Title is based is invalid because it was not properly signed, sealed, acknowledged, delivered or recorded.
   d. A document upon which Your Title is based was signed using a falsified, expired, or otherwise invalid power of attorney.
   e. A document upon which Your Title is based was not properly filed, recorded, or indexed in the Public Records.
   f. A defective judicial or administrative proceeding.

7. Any of Covered Risks 1 through 6 occurring after the Policy Date.

8. Someone else has a lien on Your Title, including a:

   a. lien of real estate taxes or assessments imposed on Your Title by a governmental authority that are due or payable, but unpaid;
   b. Mortgage;
   c. judgment, state or federal tax lien;
   d. charge by a homeowner's or condominium association; or
   e. lien, occurring before or after the Policy Date, for labor and material furnished before the Policy Date.

9. Someone else has an encumbrance on Your Title.

10. Someone else claims to have rights affecting Your Title because of fraud, duress, incompetency or incapacity.

11. You do not have actual vehicular and pedestrian access to and from the Land, based upon a legal right.

12. You are forced to correct or remove an existing violation of any covenant, condition or restriction affecting the Land, even if the covenant, condition or restriction is excepted in Schedule B. However, You are not covered for any violation that relates to:

    ~~a. any obligation to perform maintenance or repair on the Land; or~~
    b. environmental protection of any kind, including hazardous or toxic conditions or substances

    unless there is a notice recorded in the Public Records, describing any part of the Land, claiming a violation exists. Our liability for this Covered Risk is limited to the extent of the violation stated in that notice.

13. Your Title is lost or taken because of a violation of any covenant, condition or restriction, which occurred before You acquired Your Title, even if the covenant, condition or restriction is excepted in Schedule B.

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14. The violation or enforcement of those portions of any law or government regulation concerning:

    a. building;
    b. zoning;
    c. land use;
    d. improvements on the Land;
    e. land division; or
    f. environmental protection,

    if there is a notice recorded in the Public Records, describing any part of the Land, claiming a violation exists or declaring the intention to enforce the law or regulation. Our liability for this Covered Risk is limited to the extent of the violation or enforcement stated in that notice.

15. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 14 if there is a notice recorded in the Public Records, describing any part of the Land, of the enforcement action or intention to bring an enforcement action. Our liability for this Covered Risk is limited to the extent of the enforcement action stated in that notice.

16. Because of an existing violation of a subdivision law or regulation affecting the Land:

    a. You are unable to obtain a building permit;
    b. You are required to correct or remove the violation; or
    c. someone else has a legal right to, and does, refuse to perform a contract to purchase the Land, lease it or make a Mortgage loan on it.

    The amount of Your insurance for this Covered Risk is subject to Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

17. You lose Your Title to any part of the Land because of the right to take the Land by condemning it, if:

    a. there is a notice of the exercise of the right recorded in the Public Records and the notice describes any part of the Land; or
    b. the taking happened before the Policy Date and is binding on You if You bought the Land without Knowing of the taking.

18. You are forced to remove or remedy Your existing structures, or any part of them - other than boundary walls or fences - because any portion was built without obtaining a building permit from the proper government office. The amount of Your insurance for this Covered Risk is subject to Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

19. You are forced to remove or remedy Your existing structures, or any part of them, because they violate an existing zoning law or zoning regulation. If You are required to remedy any portion of Your existing structures, the amount of Your insurance for this Covered Risk is subject to Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

20. You cannot use the Land because use as a single-family residence violates an existing zoning law or zoning regulation. 21. You are forced to remove Your existing structures because they encroach onto Your neighbor's land. If the encroaching structures are boundary walls or fences, the amount of Your insurance for this Covered Risk is subject to Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

22. Someone else has a legal right to, and does, refuse to perform a contract to purchase the Land, lease it or make a Mortgage loan on it because Your neighbor's existing structures encroach onto the Land.

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23. You are forced to remove Your existing structures which encroach onto an Easement or over a building set-back line, even if the Easement or building set-back line is excepted in Schedule B.

24. Your existing structures are damaged because of the exercise of a right to maintain or use any Easement affecting the Land, even if the Easement is excepted in Schedule B.

25. Your existing improvements (or a replacement or modification made to them after the Policy Date), including lawns, shrubbery or trees, are damaged because of the future exercise of a right to use the surface of the Land for the extraction or development of minerals, water or any other substance, even if those rights are excepted or reserved from the description of the Land or excepted in Schedule B.

26. Someone else tries to enforce a discriminatory covenant, condition or restriction that they claim affects Your Title which is based upon race, color, religion, sex, handicap, familial status, or national origin.

27. A taxing authority assesses supplemental real estate taxes not previously assessed against the Land for any period before the Policy Date because of construction or a change of ownership or use that occurred before the Policy Date.

28. Your neighbor builds any structures after the Policy Date -- other than boundary walls or fences – which encroach onto the Land.

29. Your Title is unmarketable, which allows someone else to refuse to perform a contract to purchase the Land, lease it or make a Mortgage loan on it.

30. Someone else owns an interest in Your Title because a court order invalidates a prior transfer of the title under federal bankruptcy, state insolvency, or similar creditors' rights laws.

31. The residence with the address shown in Schedule A is not located on the Land at the Policy Date.

32. The map, if any, attached to this Policy does not show the correct location of the Land according to the Public Records.

OUR DUTY TO DEFEND AGAINST LEGAL ACTIONS

We will defend Your Title in any legal action only as to that part of the action which is based on a Covered Risk and which is not excepted or excluded from coverage in this Policy. We will pay the costs, attorneys' fees, and expenses We incur in that defense.

We will not pay for any part of the legal action which is not based on a Covered Risk or which is excepted or excluded from coverage in this Policy.

We can end Our duty to defend Your Title under Section 4 of the Conditions.

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THIS POLICY IS NOT COMPLETE WITHOUT SCHEDULES A AND B.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY:_____
PRESIDENT

BY:_____
SECRETARY

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EXCLUSIONS

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:

   a. building;
   b. zoning;
   c. land use;
   d. improvements on the Land;
   e. land division; and
   f. environmental protection.

   This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.

2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.

3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.

4. Risks:

   a. that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
   b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;
   c. that result in no loss to You; or
   d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.

5. Failure to pay value for Your Title.

6. Lack of a right:

   a. to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
   b. in streets, alleys, or waterways that touch the Land.

   This Exclusion does not limit the coverage described in Covered Risk 11 or 21.

7. The transfer of the Title to You is invalid as a preferential transfer or as a fraudulent transfer or conveyance under federal bankruptcy, state insolvency, or similar creditors' rights laws.

8. Contamination, explosion, fire, flooding, vibration, fracturing, earthquake or subsidence.

9. Negligence by a person or an Entity exercising a right to extract or develop minerals, water, or any other substances.

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HOMEOWNER'S POLICY OF TITLE INSURANCE

For a one-to-four family residence

Issued By

BLANK TITLE INSURANCE COMPANY

CONDITIONS

1. DEFINITIONS

   a. Easement - the right of someone else to use the Land for a special purpose.

   b. Estate Planning Entity - a legal entity or Trust established by a Natural Person for estate planning.

   c. Known - things about which You have actual knowledge. The words "Know" and "Knowing" have the same meaning as Known.

   d. Land - the land or condominium unit described in paragraph 3 of Schedule A and any improvements on the Land which are real property.

   e. Mortgage - a mortgage, deed of trust, trust deed or other security instrument.

   f. Natural Person - a human being, not a commercial or legal organization or entity. Natural Person includes a trustee of a Trust even if the trustee is not a human being.

   g. Policy Date - the date and time shown in Schedule A. If the insured named in Schedule A first acquires the interest shown in Schedule A by an instrument recorded in the Public Records later than the date and time shown in Schedule A, the Policy Date is the date and time the instrument is recorded.

   h. Public Records - records that give constructive notice of matters affecting Your Title, according to the state statutes where the Land is located.

   ~~i. Title - the ownership of Your interest in the Land, as shown in Schedule A.~~

   j. Trust - a living trust established by a Natural Person for estate planning.

   k. We/Our/Us - Blank Title Insurance Company.

   l. You/Your - the insured named in Schedule A and also those identified in Section 2.b. of these Conditions.

2. CONTINUATION OF COVERAGE

   a. This Policy insures You forever, even after You no longer have Your Title. You cannot assign this Policy to anyone else.

   b. This Policy also insures:
   (1) anyone who inherits Your Title because of Your death;

   (2) Your spouse who receives Your Title because of dissolution of Your marriage;

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(3) the trustee or successor trustee of Your Trust or any Estate Planning Entity created for You to whom or to which You transfer Your Title after the Policy Date;

(4) the beneficiaries of Your Trust upon Your death; or

(5) anyone who receives Your Title by a transfer effective on Your death as authorized by law.

c. We may assert against the insureds identified in Section 2.b. any rights and defenses that We have against any previous insured under this Policy.

3. HOW TO MAKE A CLAIM

a. Prompt Notice Of Your Claim

(1) As soon as You Know of anything that might be covered by this Policy, You must notify Us promptly in writing.

(2) Send Your notice to **Blank Title Insurance Company**, , Attention: Claims Department. Please include the Policy number shown in Schedule A , and the county and state where the Land is located. Please enclose a copy of Your policy, if available.

(3) If You do not give Us prompt notice, Your coverage will be reduced or ended, but only to the extent Your failure affects Our ability to resolve the claim or defend You.

b. Proof Of Your Loss

(1) We may require You to give Us a written statement signed by You describing Your loss which includes:

(a) the basis of Your claim;

(b) the Covered Risks which resulted in Your loss;

(c) the dollar amount of Your loss; and

(d) ~~the method You used to compute the amount of Your loss~~

(2) We may require You to make available to Us records, checks, letters, contracts, insurance policies and other papers which relate to Your claim. We may make copies of these papers.

(3) We may require You to answer questions about Your claim under oath.

(4) If you fail or refuse to give Us a statement of loss, answer Our questions under oath, or make available to Us the papers We request, Your coverage will be reduced or ended, but only to the extent Your failure or refusal affects Our ability to resolve the claim or defend You.

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4. OUR CHOICES WHEN WE LEARN OF A CLAIM

   a. After We receive Your notice, or otherwise learn, of a claim that is covered by this Policy, Our choices include one or more of the following:

      (1) Pay the claim;

      (2) Negotiate a settlement;

      (3) Bring or defend a legal action related to the claim;

      (4) Pay You the amount required by this Policy;

      (5) End the coverage of this Policy for the claim by paying You Your actual loss resulting from the Covered Risk, and those costs, attorneys' fees and expenses incurred up to that time which We are obligated to pay;

      (6) End the coverage described in Covered Risk 16, 18, 19 or 21 by paying You the amount of Your insurance then in force for the particular Covered Risk, and those costs, attorneys' fees and expenses incurred up to that time which We are obligated to pay;

      (7) End all coverage of this Policy by paying You the Policy Amount then in force, and those costs, attorneys' fees and expenses incurred up to that time which We are obligated to pay;

      (8) Take other appropriate action.

   b. When We choose the options in Sections 4.a. (5), (6) or (7), all Our obligations for the claim end, including Our obligation to defend, or continue to defend, any legal action.

   c. Even if We do not think that the Policy covers the claim, We may choose one or more of the options above. By doing so, We do not give up any rights.

5. HANDLING A CLAIM OR LEGAL ACTION

   a. You must cooperate with Us in handling any claim or legal action and give Us all relevant information.

   b. If You fail or refuse to cooperate with Us, Your coverage will be reduced or ended, but only to the extent Your failure or refusal affects Our ability to resolve the claim or defend You.

   c. We are required to repay You only for those settlement costs, attorneys' fees and expenses that We approve in advance.

   d. We have the right to choose the attorney when We bring or defend a legal action on Your behalf. We can appeal any decision to the highest level. We do not have to pay Your claim until the legal action is finally decided.

   e. Whether or not We agree there is coverage, We can bring or defend a legal action, or take other appropriate action under this Policy. By doing so, We do not give up any rights.

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6. LIMITATION OF OUR LIABILITY

a. After subtracting Your Deductible Amount if it applies, We will pay no more than the least of:

(1) Your actual loss;

(2) Our Maximum Dollar Limit of Liability then in force for the particular Covered Risk, for claims covered only under Covered Risk 16, 18, 19 or 21; or

(3) the Policy Amount then in force.

and any costs, attorneys' fees and expenses that We are obligated to pay under this Policy.

b. If We pursue Our rights under Sections 4.a.(3) and 5.e. of these Conditions and are unsuccessful in establishing the Title, as insured:

(1) the Policy Amount then in force will be increased by 10% of the Policy Amount shown in Schedule A, and

(2) You shall have the right to have the actual loss determined on either the date the claim was made by You or the date it is settled and paid.

c. (1) If We remove the cause of the claim with reasonable diligence after receiving notice of it, all Our obligations for the claim end, including any obligation for loss You had while We were removing the cause of the claim.

(2) Regardless of 6.c.(1) above, if You cannot use the Land because of a claim covered by this Policy:

(a) You may rent a reasonably equivalent substitute residence and We will repay You for the actual rent You pay, until the earlier of:

(i) the cause of the claim is removed; or

(ii) We pay You the amount required by this Policy. If Your claim is covered only under Covered Risk 16, 18, 19 or 21, that payment is the amount of Your insurance then in force for the particular Covered Risk

(b) We will pay reasonable costs You pay to relocate any personal property You have the right to remove from the Land, including transportation of that personal property for up to twenty-five (25) miles from the Land, and repair of any damage to that personal property because of the relocation. The amount We will pay You under this paragraph is limited to the value of the personal property before You relocate it.

d. All payments We make under this Policy reduce the Policy Amount then in force, except for costs, attorneys' fees and expenses. All payments We make for claims which are covered only under Covered Risk 16, 18, 19 or 21 also reduce Our Maximum Dollar Limit of Liability for the particular Covered Risk, except for costs, attorneys' fees and expenses.

e. If We issue, or have issued, a Policy to the owner of a Mortgage that is on Your Title and We have not given You any coverage against the Mortgage, then:
(1) We have the right to pay any amount due You under this Policy to the owner of the Mortgage, and any amount paid shall be treated as a payment to You under this Policy, including under Section 4.a. of these Conditions;

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(2) Any amount paid to the owner of the Mortgage shall be subtracted from the Policy Amount then in force ; and

(3) If Your claim is covered only under Covered Risk 16, 18, 19 or 21, any amount paid to the owner of the Mortgage shall also be subtracted from Our Maximum Dollar Limit of Liability for the particular Covered Risk.

f. If You do anything to affect any right of recovery You may have against someone else, We can subtract from Our liability the amount by which You reduced the value of that right.

7. TRANSFER OF YOUR RIGHTS TO US

a. When We settle Your claim, We have all the rights and remedies You have against any person or property related to the claim. You must not do anything to affect these rights and remedies. When We ask, You must execute documents to evidence the transfer to Us of these rights and remedies. You must let Us use Your name in enforcing these rights and remedies.

b. We will not be liable to You if We do not pursue these rights and remedies or if We do not recover any amount that might be recoverable.

c. We will pay any money We collect from enforcing these rights and remedies in the following order:

(1) to Us for the costs, attorneys' fees and expenses We paid to enforce these rights and remedies;

(2) to You for Your loss that You have not already collected;

(3) to Us for any money We paid out under this Policy on account of Your claim; and

(4) to You whatever is left.

d. If You have rights and remedies under contracts (such as indemnities, guaranties, bonds or other policies of insurance) to recover all or part of Your loss, then We have all of those rights and remedies, even if those contracts provide that those obligated have all of Your rights and remedies under this Policy.

8. THIS POLICY IS THE ENTIRE CONTRACT

This Policy, with any endorsements, is the entire contract between You and Us. To determine the meaning of any part of this Policy, You must read the entire Policy and any endorsements. Any changes to this Policy must be agreed to in writing by Us. Any claim You make against Us must be made under this Policy and is subject to its terms.

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9. INCREASED POLICY AMOUNT

The Policy Amount then in force will increase by ten percent (10%) of the Policy Amount shown in Schedule A each year for the first five years following the Policy Date shown in Schedule A, up to one hundred fifty percent (150%) of the Policy Amount shown in Schedule A. The increase each year will happen on the anniversary of the Policy Date shown in Schedule A.

10. SEVERABILITY

If any part of this Policy is held to be legally unenforceable, both You and We can still enforce the rest of this Policy.

11. ARBITRATION

a. If permitted in the state where the Land is located, You or We may demand arbitration.

b. The law used in the arbitration is the law of the state where the Land is located.

c. The arbitration shall be under the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). You can get a copy of the Rules from Us.

d. Except as provided in the Rules, You cannot join or consolidate Your claim or controversy with claims or controversies of other persons.

e. The arbitration shall be binding on both You and Us. The arbitration shall decide any matter in dispute between You and Us.

f. The arbitration award may be entered as a judgment in the proper court.

12. CHOICE OF LAW

The law of the state where the Land is located shall apply to this policy.

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HOMEOWNER'S POLICY OF TITLE INSURANCE

For a one-to-four family residence

Issued By

BLANK TITLE INSURANCE COMPANY

SCHEDULE A

Name and Address of Title Insurance Company:

Policy No.: [Premium: $_____] Policy Amount: $ Policy Date [and Time]:

Deductible Amounts and Maximum Dollar Limits of Liability
For Covered Risk 16, 18, 19 and 21:

	Your Deductible Amount	Our Maximum Dollar Limit of Liability
Covered Risk 16:	1% of Policy Amount Shown in Schedule A or $2,500.00 (whichever is less)	$10,000.00
Covered Risk 18:	1% of Policy Amount Shown in Schedule A or $5,000.00 (whichever is less)	$25,000.00
Covered Risk 19:	1% of Policy Amount Shown in Schedule A or $5,000.00 (whichever is less)	$25,000.00
Covered Risk 21:	1% of Policy Amount Shown in Schedule A or $2,500.00 (whichever is less)	$5,000.00

Street Address of the Land

1. Name of Insured:
2. Your interest in the Land covered by this Policy is:
3. The Land referred to in this Policy is described as:

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HOMEOWNER'S POLICY OF TITLE INSURANCE

For a one-to-four family residence

Issued By

BLANK TITLE INSURANCE COMPANY

SCHEDULE B

EXCEPTIONS

In addition to the Exclusions, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

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LOAN POLICY OF TITLE INSURANCE

Issued by

Blank Title Insurance Company

Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 17 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, BLANK TITLE INSURANCE COMPANY, a Blank corporation (the "Company") insures as of Date of Policy and, to the extent stated in Covered Risks 11, 13, and 14, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
   (a) A defect in the Title caused by
      (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
      (ii) failure of any person or Entity to have authorized a transfer or conveyance;
      (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
      (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
      (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
      (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
      (vii) a defective judicial or administrative proceeding.
   (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
3. Unmarketable Title.
4. No right of access to and from the Land.

5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to

   (a) the occupancy, use, or enjoyment of the Land;

   (b) the character, dimensions, or location of any improvement erected on the Land;

   (c) the subdivision of land; or

   (d) environmental protection

   if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.

6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.

7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.

8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.

9. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title. This Covered Risk includes but is not limited to insurance against loss from any of the following impairing the lien of the Insured Mortgage

   (a) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;

   (b) failure of any person or Entity to have authorized a transfer or conveyance;

   (c) the Insured Mortgage not being properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;

   (d) failure to perform those acts necessary to create a document by electronic means authorized by law;

   (e) a document executed under a falsified, expired, or otherwise invalid power of attorney;

   (f) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or

   (g) a defective judicial or administrative proceeding.

10. The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance.

11. The lack of priority of the lien of the Insured Mortgage upon the Title

    (a) as security for each and every advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for services, labor, or material arising from construction of an improvement or work related to the Land when the improvement or work is either

        (i) contracted for or commenced on or before Date of Policy; or

(ii) contracted for, commenced, or continued after Date of Policy if the construction is financed, in whole or in part, by proceeds of the loan secured by the Insured Mortgage that the Insured has advanced or is obligated on Date of Policy to advance; and

(b) over the lien of any assessments for street improvements under construction or completed at Date of Policy.

12. The invalidity or unenforceability of any assignment of the Insured Mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the Insured Mortgage in the named Insured assignee free and clear of all liens.

13. The invalidity, unenforceability, lack of priority, or avoidance of the lien of the Insured Mortgage upon the Title

(a) resulting from the avoidance in whole or in part, or from a court order providing an alternative remedy, of any transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction creating the lien of the Insured Mortgage because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or

(b) because the Insured Mortgage constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records

(i) to be timely, or

(ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

14. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 13 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the Insured Mortgage in the Public Records.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY: **PRESIDENT**

BY: **SECRETARY**

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to

   (i) the occupancy, use, or enjoyment of the Land;

   (ii) the character, dimensions, or location of any improvement erected on the Land;

   (iii) the subdivision of land; or

   (iv) environmental protection;

   or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

   (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.

2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.

3. Defects, liens, encumbrances, adverse claims, or other matters

   (a) created, suffered, assumed, or agreed to by the Insured Claimant;

   (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

   (c) resulting in no loss or damage to the Insured Claimant;

   (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or

   (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.

4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.

5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.

6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is

   (a) a fraudulent conveyance or fraudulent transfer, or

   (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.

7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

SCHEDULE A

Name and Address of Title Insurance Company:

[File No.:] Policy No.:
Loan No.:
Address Reference:
Amount of Insurance: $ [Premium: $]
Date of Policy: [at a.m./p.m.]

1. Name of Insured:

2. The estate or interest in the Land that is encumbered by the Insured Mortgage is:

3. Title is vested in:

4. The Insured Mortgage and its assignments, if any, are described as follows:

5. The Land referred to in this policy is described as follows:

SCHEDULE B

[File No.] Policy No.

EXCEPTIONS FROM COVERAGE

[Except as provided in Schedule B - Part II,] t[or T]his policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

[PART I

PART II

In addition to the matters set forth in Part I of this Schedule, the Title is subject to the following matters, and the Company insures against loss or damage sustained in the event that they are not subordinate to the lien of the Insured Mortgage:]

CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b) or decreased by Section 10 of these Conditions.

(b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.

(c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.

(d) "Indebtedness": The obligation secured by the Insured Mortgage including one evidenced by electronic means authorized by law, and if that obligation is the payment of a debt, the Indebtedness is the sum of

(i) the amount of the principal disbursed as of Date of Policy;

(ii) the amount of the principal disbursed subsequent to Date of Policy;

(iii) the construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the Land or related to the Land that the Insured was and continued to be obligated to advance at Date of Policy and at the date of the advance;

(iv) interest on the loan;

(v) the prepayment premiums, exit fees, and other similar fees or penalties allowed by law;

(vi) the expenses of foreclosure and any other costs of enforcement;

(vii) the amounts advanced to assure compliance with laws or to protect the lien or the priority of the lien of the Insured Mortgage before the acquisition of the estate or interest in the Title;

(viii) the amounts to pay taxes and insurance; and

(ix) the reasonable amounts expended to prevent deterioration of improvements;

but the Indebtedness is reduced by the total of all payments and by any amount forgiven by an Insured.

(e) "Insured": The Insured named in Schedule A.

(i) The term "Insured" also includes

(A) the owner of the Indebtedness and each successor in ownership of the Indebtedness, whether the owner or successor owns the Indebtedness for its own account or as a trustee or other fiduciary, except a successor who is an obligor under the provisions of Section 12(c) of these Conditions;

(B) the person or Entity who has "control" of the "transferable record," if the Indebtedness is evidenced by a "transferable record," as these terms are defined by applicable electronic transactions law;

(C) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;

(D) successors to an Insured by its conversion to another kind of Entity;

(E) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title

(1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,

(2) if the grantee wholly owns the named Insured, or

(3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity;

(F) any government agency or instrumentality that is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the Indebtedness secured by the Insured Mortgage, or any part of it, whether named as an Insured or not;

(ii) With regard to (A), (B), (C), (D) , and (E) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured, unless the successor acquired the Indebtedness as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, or other matter insured against by this policy.

(f) "Insured Claimant": An Insured claiming loss or damage.

(g) "Insured Mortgage": The Mortgage described in paragraph 4 of Schedule A.

(h) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.

(i) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

(j) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.

(k) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.

(l) "Title": The estate or interest described in Schedule A.

(m) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title or a prospective purchaser of the Insured Mortgage to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured after acquisition of the Title by an Insured or after conveyance by an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured of any claim of title or interest that is adverse to the Title or the lien of the Insured Mortgage, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title or the lien of the Insured Mortgage, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title or the lien of the Insured Mortgage, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title, the lien of the Insured Mortgage, or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

(i) To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or

(ii) To purchase the Indebtedness for the amount of the Indebtedness on the date of purchase, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of purchase and that the Company is obligated to pay.

When the Company purchases the Indebtedness, the Insured shall transfer, assign, and convey to the Company the Indebtedness and the Insured Mortgage, together with any collateral security.

Upon the exercise by the Company of either of the options provided for in subsections (a)(i) or (ii), all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in those subsections, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) to pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the least of

(i) the Amount of Insurance,

(ii) the Indebtedness,

(iii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy, or

(iv) if a government agency or instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage in satisfaction of its insurance contract or guaranty.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured,

(i) the Amount of Insurance shall be increased by 10%, and

(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In the event the Insured has acquired the Title in the manner described in Section 2 of these Conditions or has conveyed the Title, then the extent of liability of the Company shall continue as set forth in Section 8(a) of these Conditions.

(d) In addition to the extent of liability under (a), (b), and (c), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

(a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, or establishes the lien of the Insured Mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title or to the lien of the Insured Mortgage, as insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

(a) All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment. However, any payments made prior to the acquisition of Title as provided in Section 2 of these Conditions shall not reduce the Amount of Insurance afforded under this policy except to the extent that the payments reduce the Indebtedness.

(b) The voluntary satisfaction or release of the Insured Mortgage shall terminate all liability of the Company except as provided in Section 2 of these Conditions.

11. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

12. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) The Company's Right to Recover

Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title or Insured Mortgage and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of

these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Insured's Rights and Limitations

(i) The owner of the Indebtedness may release or substitute the personal liability of any debtor or guarantor, extend or otherwise modify the terms of payment, release a portion of the Title from the lien of the Insured Mortgage, or release any collateral security for the Indebtedness, if it does not affect the enforceability or priority of the lien of the Insured Mortgage.

(ii) If the Insured exercises a right provided in (b)(i), but has Knowledge of any claim adverse to the Title or the lien of the Insured Mortgage insured against by this policy, the Company shall be required to pay only that part of any losses insured against by this policy that shall exceed the amount, if any, lost to the Company by reason of the impairment by the Insured Claimant of the Company's right of subrogation.

(c) The Company's Rights Against Noninsured Obligors

The Company's right of subrogation includes the Insured's rights against non-insured obligors including the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

The Company's right of subrogation shall not be avoided by acquisition of the Insured Mortgage by an obligor (except an obligor described in Section 1(e)(i)(F) of these Conditions) who acquires the Insured Mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond, and the obligor will not be an Insured under this policy.

13. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is $2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of $2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of the status of the Title or lien of the Insured Mortgage or by any action asserting such claim shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

15. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

16. CHOICE OF LAW; FORUM

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title or the lien of the Insured Mortgage that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

17. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at [fill in].

NOTE: Bracketed [ ] material optional

Chapter Six

Fair Housing: A Right to Live

David J. Scaggs, Esq.
The Granger Firm
Paoli

Fair Housing: A Right to Live

The right of an individual to have access to housing is considered to be a fundamental right at both the Federal and state levels. The Fair Housing Act, 42 U.S. C. §3601, states it is "the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States." The Pennsylvania Human Relations Act, 43 P.S. §953, is a bit more specific in its mandate that the "opportunity for an individual … to obtain … any housing accommodation … without discrimination because of race, color, familial status, religious creed, ancestry, handicap or disability, age, sex, national origin, the use of a guide or support animal … is hereby recognized as and declared to be a civil right…" If you represent a landlord or a seller, a buyer or a tenant, you need to have an awareness of what rights are identified, what classes are protected, and what laws are implicated when someone is trying to find a home.

Exploring the Fair Housing laws encompasses far more than can adequately be addressed in this survey course. Instead of trying to 'teach' Fair Housing compliance, we will identify many of the laws that are currently implicated when discussions about discrimination come to the fore; we will also identify some laws (and concepts for laws) that are either in the legislative process or may develop in the legislative process in the foreseeable future.

Federal Fair Housing Laws:

When lawyers talk about the concept of 'fair housing', we are talking about the effect of discrimination on individuals and their ability to find a suitable place to live. Probably the most familiar federal law is the Fair Housing Act. There are a host of anti-discrimination acts that are currently enacted, and there are several other classes of individuals who suffer the consequences of discrimination who are seeking different levels of protection. The amalgamation of Fair Housing laws includes:

- Fair Housing Act – 42 U.S.C. §3601 et seq.
    - Prohibits discrimination in the sale, rental and financing of dwellings and other housing-related transactions.

- Title VI of the Civil Rights Act of 1964 – 42 U.S.C. §2000d - §2000d-7
    - Prohibits discrimination in programs and activities receiving federal financial assistance.

- Section 504 of the Rehabilitation Act of 1973– 29 U.S.C. §794
    - Prohibits discrimination based on a disability in programs and activities receiving federal financial assistance.

- Title I of the Housing and Community Development Act of 1974 – 42 U.S.C. §5309
    - Prohibits discrimination in programs of activities receiving financial assistance from HUD's Community Development and Block Grant Program.

- Title II of the American with Disabilities Act of 1990 – 42 U.S.C. §12131 et seq.
    - Prohibits discrimination based on a disability when it relates to state and local public housing, housing assistance and housing referrals.

- Architectural Barriers Act of 1968 – 42 U.S.C. §4151 et seq.
    - Requires buildings and facilities designed, constructed, altered or leased with certain federal funds to be accessible to, and useable by handicapped persons.

- Age Discrimination Act of 1975 – 42 U.S.C. §6101 et seq.
    - Prohibits discrimination on the basis of age in programs or activities receiving federal funds.

- Title IX of the Education Amendments Act of 1972 – 20 U.S.C. §1681 et seq.
    - Prohibits discrimination on the basis of sex in education programs or activities that receive federal assistance.

In 2013, President Obama signed legislation that reauthorized the Violence Against Women Act, ("VAWA") 42 U.S.C. §1404e et seq., which protects women and families from discrimination against, denial of access to, or eviction from public or subsidized housing based upon being victims of domestic violence. The VAWA applies to domestic violence, dating violence and stalking. It also provides protection for women ***and*** men, as well as individuals who are in same-sex relationships who are victims of domestic violence.

Additionally, as of March 5, 2012, the Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity Rule became effective. The rule implements the policy ensuring that all core HUD programs are open to eligible individuals regardless of sexual orientation, gender identity or marital status. The Final Rule can be found in the Federal Register at 77 FR 5662, and the regulation can be found at 24 C.F.R. §5.403.

Pennsylvania Fair Housing Laws

Currently, the Pennsylvania Human Relations Act ("PHRA") identifies eleven (11) categories, or classes, that are protected against housing discrimination: race, color, religious creed, ancestry, age, sex, national origin, handicap or disability, use of a guide animal because of blindness or deafness, use of a support animal because of a physical handicap, and the user is a handler or trainer of guide or support animals. 43 P.S. §955(h). There are currently bills pending in the Legislature to expand the definition of 'marital status' and to expand the levels of protection of the PHRA to include sexual orientation, gender identity and gender expression in the list of protected classes. Many local governments have already enacted ordinances that add sexual orientation, gender identity and gender expression to protected classes at the local level.

Discrimination and access to housing casts a wider net than many people expect at first blush. When talk about housing discrimination arises, refusing to rent to someone initially comes to mind; but refusing to sell to someone also can violate the PHRA. It is against the law to include terms in a lease or agreement of sale that levy restrictions on an individual solely because they are

a member of one of the protected classes. One example is evicting a tenant because of a pregnancy or birth of a child; another is charging a pet deposit or charging additional rent to a tenant who is dependent upon a guide or support animal.

It is important to understand that landlords must allow tenants to make reasonable accommodations to the premises; however, the landlord can require the tenant to restore the property when they vacate. Tenants are also entitled to modifications of existing rules and regulations, if such modifications are necessary to allow the individual to experience full enjoyment of the property. Beware; it is a violation of the PHRA to solicit information about whether a buyer or tenant, or anyone who has a known relationship about a buyer or potential tenant is a member of any of the protected classes. A landlord cannot ask questions that will effectively 'weed out' members of protected classes.

Not all properties are covered by all of the protections offered by the PHRA. For example, property that qualifies as 'housing for older persons' is exempt from the prohibition on discriminating against individuals on the basis of familial status. A religious or denominational institution or organization may give preference to (a.k.a. discriminate against) individuals with the same religion or denominational beliefs. Reasonable occupancy requirements that are based on safety standards are not prohibited, even if they have the effect of discriminating against a buyer or prospective tenant. A home owner may discriminate on the basis of gender, provided that the leased space is in the landlord's personal residence and the landlord and tenant will share common living area.

On the other hand, it is never acceptable to limit or indicate a preference for (or against) a tenant or a buyer based on race, color or national origin. It is acceptable to use landmarks (like Chinatown or Little Italy) to describe the property's location; or to use phrases like "Oriental garden" or "kosher kitchen" to describe features of the property. Other than when housing qualifies as 'housing for older persons' it is illegal to indicate a preference for (or limitation against) tenants or buyers who are over 40 or who have children under 18 years of age living in the household.

It violates the PHRA to advertise or market property as ***not*** being handicap accessible. However, it is permissible to advertise or market the property as being handicap accessible. Unless the property being sold or rented is owned by a religious or denominational organization, it is illegal to use religious affiliation as a basis to qualify a buyer or prospective tenant. Likewise, unless the owner is looking to rent part of their owner-occupied building ***and*** share a common living area, one cannot use gender as a basis to qualify or disqualify a buyer or prospective tenant.

Advertising and marketing property is an easy way for a landlord or a property owner (or their agent/attorney) to find themselves on the wrong end of a Fair Housing complaint. After all, Exhibit A of the complaint will be the print copy of the ad that was published. Pennsylvania has published a list of "Words to be Avoided", which can be found at 16 Pa. Code §45.181. A property owner may avoid prosecution if they publish an ad – that is later found to violate the PHRA – in good faith. Meeting this standard includes obtaining a written advisory statement from the Pennsylvania Human Relations Commission; the procedure is outlined at 16 Pa. Code §45.192 and §45.193.

Fair Housing is a priority at Federal, state and local levels. While there are certain principles that remain constant, the laws are organic and need to be consulted regularly. Operate from the base of describing the property, not the people and you will be on the right path.

Appendix: *Texas Department of Housing and Community Affairs, et al., Petitioners v. The Inclusive Communities Project, Inc., et al.* (2015)

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KeyCite Yellow Flag - Negative Treatment
Declined to Extend by Disability Support Alliance v. Billman, D.Minn., February 25, 2016

135 S.Ct. 2507
Supreme Court of the United States

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, et al., Petitioners
v.
The INCLUSIVE COMMUNITIES PROJECT, INC., et al.

No. 13–1371.
|
Argued Jan. 21, 2015.
|
Decided June 25, 2015.

Synopsis

Background: Non-profit organization brought housing-discrimination action under Fair Housing Act (FHA) against Texas Department of Housing and Community Affairs (TDHCA) and its officers, alleging their allocation of low income housing tax credits resulted in a disparate impact on African–American residents. The United States District Court for the Northern District of Texas, Sidney A. Fitzwater, Chief Judge, 749 F.Supp.2d 486, granted partial summary judgment to organization, and, after bench trial, 860 F.Supp.2d 312, found discriminatory impact, and, 2012 WL 3201401, adopted remedial plan and awarded attorney fees to organization, which ruling it later amended in part, 2012 WL 5458208, and 2013 WL 598390. Defendants appealed. The United States Court of Appeals for the Fifth Circuit, James E. Graves, Jr., Circuit Judge, 747 F.3d 275, held that disparate-impact claims were cognizable under the FHA, but reversed and remanded. Certiorari was granted.

[Holding:] The Supreme Court, Justice Kennedy, held that disparate-impact claims are cognizable under the FHA.

Affirmed and remanded.

Justice Thomas filed a dissenting opinion.

Justice Alito filed a dissenting opinion in which Chief Justice Roberts, Justice Scalia, and Justice Thomas joined.

***2510** *Syllabus*[*]

[*] The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.,* 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

The Federal Government provides low-income housing tax credits that are distributed to developers by designated state agencies. In Texas, the Department of Housing and Community Affairs (Department) distributes the credits. The Inclusive Communities Project, Inc. (ICP), a Texas-based nonprofit corporation that assists low-income families in obtaining affordable housing, brought a disparate-impact claim under §§ 804(a) and 805(a) of the Fair Housing Act (FHA), alleging that the Department and its officers had caused continued segregated housing patterns by allocating too many tax credits to housing in predominantly black inner-city areas and too few in predominantly white suburban neighborhoods. Relying on statistical evidence, the District Court concluded that the ICP had established a prima facie showing of disparate impact. After assuming the Department's proffered non-discriminatory interests were valid, it found that the Department failed to meet its burden to show that there were no less discriminatory alternatives for allocating the tax credits. While the Department's appeal was pending, the Secretary of Housing and Urban Development issued a regulation interpreting the FHA to encompass disparate-impact liability and establishing a burden-shifting framework for adjudicating such claims. The Fifth Circuit held that disparate-impact claims are cognizable under the FHA, but reversed and remanded on the merits, concluding that, in light of the new regulation, the District Court had improperly required the Department to prove less discriminatory alternatives.

The FHA was adopted shortly after the assassination of Dr. Martin Luther King, Jr. Recognizing that persistent racial segregation had left predominantly black inner cities surrounded by mostly white suburbs, the Act addresses the denial of housing opportunities on the basis of "race, color, religion, or national origin." In 1988, Congress amended the FHA, and, as relevant here, created certain exemptions from liability.

Held : Disparate-impact claims are cognizable under the Fair Housing Act. Pp. 2516 – 2526.

(a) Two antidiscrimination statutes that preceded the FHA are relevant to its interpretation. Both § 703(a)(2) of Title VII of the Civil Rights Act of 1964 and § 4(a)(2) of the Age Discrimination in Employment Act of 1967 (ADEA)

authorize disparate-impact claims. Under ***2511** *Griggs v. Duke Power Co.,* 401 U.S. 424, 91 S.Ct. 849, 28 L.Ed.2d 158, and *Smith v. City of Jackson,* 544 U.S. 228, 125 S.Ct. 1536, 161 L.Ed.2d 410, the cases announcing the rule for Title VII and for the ADEA, respectively, antidiscrimination laws should be construed to encompass disparate-impact claims when their text refers to the consequences of actions and not just to the mindset of actors, and where that interpretation is consistent with statutory purpose. Disparate-impact liability must be limited so employers and other regulated entities are able to make the practical business choices and profit-related decisions that sustain the free-enterprise system. Before rejecting a business justification—or a governmental entity's analogous public interest—a court must determine that a plaintiff has shown that there is "an available alternative ... practice that has less disparate impact and serves the [entity's] legitimate needs." *Ricci v. DeStefano,* 557 U.S. 557, 578, 129 S.Ct. 2658, 174 L.Ed.2d 490. These cases provide essential background and instruction in the case at issue. Pp. 2516 – 2518.

(b) Under the FHA it is unlawful to "refuse to sell or rent ... or otherwise make unavailable or deny, a dwelling to a person because of race" or other protected characteristic, § 804(a), or "to discriminate against any person in" making certain real-estate transactions "because of race" or other protected characteristic, § 805(a). The logic of *Griggs* and *Smith* provides strong support for the conclusion that the FHA encompasses disparate-impact claims. The results-oriented phrase "otherwise make unavailable" refers to the consequences of an action rather than the actor's intent. See *United States v. Giles,* 300 U.S. 41, 48, 57 S.Ct. 340, 81 L.Ed. 493. And this phrase is equivalent in function and purpose to Title VII's and the ADEA's "otherwise adversely affect" language. In all three statutes the operative text looks to results and plays an identical role: as a catchall phrase, located at the end of a lengthy sentence that begins with prohibitions on disparate treatment. The introductory word "otherwise" also signals a shift in emphasis from an actor's intent to the consequences of his actions. This similarity in text and structure is even more compelling because Congress passed the FHA only four years after Title VII and four months after the ADEA. Although the FHA does not reiterate Title VII's exact language, Congress chose words that serve the same purpose and bear the same basic meaning but are consistent with the FHA's structure and objectives. The FHA contains the phrase "because of race," but Title VII and the ADEA also contain that wording and this Court nonetheless held that those statutes impose disparate-impact liability.

The 1988 amendments signal that Congress ratified such liability. Congress knew that all nine Courts of Appeals to have addressed the question had concluded the FHA encompassed disparate-impact claims, and three exemptions from liability in the 1988 amendments would have been superfluous had Congress assumed that disparate-impact liability did not exist under the FHA.

Recognition of disparate-impact claims is also consistent with the central purpose of the FHA, which, like Title VII and the ADEA, was enacted to eradicate discriminatory practices within a sector of the Nation's economy. Suits targeting unlawful zoning laws and other housing restrictions that unfairly exclude minorities from certain neighborhoods without sufficient justification are at the heartland of disparate-impact liability. See, *e.g., Huntington v. Huntington Branch, NAACP,* 488 U.S. 15, 16–18, 109 S.Ct. 276, 102 L.Ed.2d 180. Recognition of disparate-impact liability under the FHA plays an important role in uncovering discriminatory ***2512** intent: it permits plaintiffs to counteract unconscious prejudices and disguised animus that escape easy classification as disparate treatment.

But disparate-impact liability has always been properly limited in key respects to avoid serious constitutional questions that might arise under the FHA, *e.g.,* if such liability were imposed based solely on a showing of a statistical disparity. Here, the underlying dispute involves a novel theory of liability that may, on remand, be seen simply as an attempt to second-guess which of two reasonable approaches a housing authority should follow in allocating tax credits for low-income housing. An important and appropriate means of ensuring that disparate-impact liability is properly limited is to give housing authorities and private developers leeway to state and explain the valid interest their policies serve, an analysis that is analogous to Title VII's business necessity standard. It would be paradoxical to construe the FHA to impose onerous costs on actors who encourage revitalizing dilapidated housing in the Nation's cities merely because some other priority might seem preferable. A disparate-impact claim relying on a statistical disparity must fail if the plaintiff cannot point to a defendant's policy or policies causing that disparity. A robust causality requirement is important in ensuring that defendants do not resort to the use of racial quotas. Courts must therefore examine with care whether a plaintiff has made out a prima facie showing of disparate impact, and prompt resolution of these cases is important. Policies, whether governmental or private, are not contrary to the disparate-impact requirement unless they are "artificial, arbitrary, and unnecessary barriers." *Griggs,* 401 U.S., at 431, 91 S.Ct. 849. Courts should avoid interpreting disparate-impact liability to be so expansive as to inject racial considerations

into every housing decision. These limitations are also necessary to protect defendants against abusive disparate-impact claims.

And when courts do find liability under a disparate-impact theory, their remedial orders must be consistent with the Constitution. Remedial orders in disparate-impact cases should concentrate on the elimination of the offending practice, and courts should strive to design race-neutral remedies. Remedial orders that impose racial targets or quotas might raise difficult constitutional questions.

While the automatic or pervasive injection of race into public and private transactions covered by the FHA has special dangers, race may be considered in certain circumstances and in a proper fashion. This Court does not impugn local housing authorities' race-neutral efforts to encourage revitalization of communities that have long suffered the harsh consequences of segregated housing patterns. These authorities may choose to foster diversity and combat racial isolation with race-neutral tools, and mere awareness of race in attempting to solve the problems facing inner cities does not doom that endeavor at the outset. Pp. 2518 – 2525.

747 F.3d 275, affirmed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. THOMAS, J., filed a dissenting opinion. ALITO, J., filed a dissenting opinion, in which ROBERTS, C.J., and SCALIA and THOMAS, JJ., joined.

Attorneys and Law Firms

Scott A. Keller, Solicitor General, for the petitioners.

Michael M. Daniel, for the respondent.

Donald B. Verrilli, Jr., Solicitor General, for the United States as amicus curiae, by ***2513** special leave of the Court, supporting the respondent.

Ken Paxton, Attorney General of Texas, Charles E. Roy, First Assistant Attorney General, Office of the Attorney General, Austin, TX, Scott A. Keller, Solicitor General, Counsel of Record, Joseph D. Hughes, Beth Klusmann, Alex Potapov, Assistant Solicitors General, for Petitioners.

Brent M. Rosenthal, Counsel of Record, Rosenthal Weiner LLP, Dallas, TX, for Respondent Frazier Revitalization Inc.

Michael M. Daniel, Counsel of Record, Laura B. Beshara, Daniel & Beshara, P.C., Dallas, TX, for Respondent The Inclusive Communities Project, Inc.

Greg Abbott, Attorney General of Texas, Daniel T. Hodge, First Assistant Attorney General, Austin, TX, Jonathan F. Mitchell, Solicitor General, Counsel of Record, Andrew S. Oldham, Deputy Solicitor General, Beth Klusmann, Alex Potapov, Assistant Solicitors General, for Petitioners.

Opinion

Justice KENNEDY delivered the opinion of the Court.

[1] The underlying dispute in this case concerns where housing for low-income persons should be constructed in Dallas, Texas—that is, whether the housing should be built in the inner city or in the suburbs. This dispute comes to the Court on a disparate-impact theory of liability. In contrast to a disparate-treatment case, where a "plaintiff must establish that the defendant had a discriminatory intent or motive," a plaintiff bringing a disparate-impact claim challenges practices that have a "disproportionately adverse effect on minorities" and are otherwise unjustified by a legitimate rationale. *Ricci v. DeStefano,* 557 U.S. 557, 577, 129 S.Ct. 2658, 174 L.Ed.2d 490 (2009) (internal quotation marks omitted). The question presented for the Court's determination is whether disparate-impact claims are cognizable under the Fair Housing Act (or FHA), 82 Stat. 81, as amended, 42 U.S.C. § 3601 *et seq.*

I

A

Before turning to the question presented, it is necessary to discuss a different federal statute that gives rise to this dispute. The Federal Government provides low-income housing tax credits that are distributed to developers through designated state agencies. 26 U.S.C. § 42. Congress has directed States to develop plans identifying selection criteria for distributing the credits. § 42(m)(1). Those plans must include certain criteria, such as public housing waiting lists, § 42(m)(1)(C), as well as certain preferences, including that low-income housing units "contribut[e] to a concerted community revitalization plan" and be built in census tracts populated predominantly by low-income residents. §§ 42(m)(1)(B)(ii)(III), 42(d)(5)(ii)(I). Federal law thus favors the distribution of these tax credits for the development of housing units in low-income areas.

In the State of Texas these federal credits are distributed by the Texas Department of Housing and Community Affairs (Department). Under Texas law, a developer's application for the tax credits is scored under a point system that gives priority to statutory criteria, such as the financial feasibility of the development project and the income level of tenants. ***2514** Tex. Govt.Code Ann. §§ 2306.6710(a)-(b) (West 2008). The Texas Attorney General has interpreted state law to permit the consideration of additional criteria, such as whether the housing units will be built in a neighborhood with good schools. Those criteria cannot be awarded more points than statutorily mandated criteria. Tex. Op. Atty. Gen. No. GA–0208, pp. 2–6 (2004), 2004 WL 1434796, *4–*6.

The Inclusive Communities Project, Inc. (ICP), is a Texas-based nonprofit corporation that assists low-income families in obtaining affordable housing. In 2008, the ICP brought this suit against the Department and its officers in the United States District Court for the Northern District of Texas. As relevant here, it brought a disparate-impact claim under §§ 804(a) and 805(a) of the FHA. The ICP alleged the Department has caused continued segregated housing patterns by its disproportionate allocation of the tax credits, granting too many credits for housing in predominantly black inner-city areas and too few in predominantly white suburban neighborhoods. The ICP contended that the Department must modify its selection criteria in order to encourage the construction of low-income housing in suburban communities.

The District Court concluded that the ICP had established a prima facie case of disparate impact. It relied on two pieces of statistical evidence. First, it found "from 1999–2008, [the Department] approved tax credits for 49.7% of proposed non-elderly units in 0% to 9.9% Caucasian areas, but only approved 37.4% of proposed non-elderly units in 90% to 100% Caucasian areas." 749 F.Supp.2d 486, 499 (N.D.Tex.2010) (footnote omitted). Second, it found "92.29% of [low-income housing tax credit] units in the city of Dallas were located in census tracts with less than 50% Caucasian residents." *Ibid.*

The District Court then placed the burden on the Department to rebut the ICP's prima facie showing of disparate impact. 860 F.Supp.2d 312, 322–323 (2012). After assuming the Department's proffered interests were legitimate, *id.,* at 326, the District Court held that a defendant—here the Department—must prove "that there are no other less discriminatory alternatives to advancing their proffered interests," *ibid.* Because, in its view, the Department "failed to meet [its] burden of proving that there are no less discriminatory alternatives," the District Court ruled for the ICP. *Id.,* at 331.

The District Court's remedial order required the addition of new selection criteria for the tax credits. For instance, it awarded points for units built in neighborhoods with good schools and disqualified sites that are located adjacent to or near hazardous conditions, such as high crime areas or landfills. See 2012 WL 3201401 (Aug. 7, 2012). The remedial order contained no explicit racial targets or quotas.

While the Department's appeal was pending, the Secretary of Housing and Urban Development (HUD) issued a regulation interpreting the FHA to encompass disparate-impact liability. See Implementation of the Fair Housing Act's Discriminatory Effects Standard, 78 Fed.Reg. 11460 (2013). The regulation also established a burden-shifting framework for adjudicating disparate-impact claims. Under the regulation, a plaintiff first must make a prima facie showing of disparate impact. That is, the plaintiff "has the burden of proving that a challenged practice caused or predictably will cause a discriminatory effect." 24 CFR § 100.500(c)(1) (2014). If a statistical discrepancy is caused by factors other than the defendant's policy, a plaintiff cannot establish a prima facie case, and there is no liability. After a plaintiff does establish a prima facie showing ***2515** of disparate impact, the burden shifts to the defendant to "prov[e] that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests." § 100.500(c)(2). HUD has clarified that this step of the analysis "is analogous to the Title VII requirement that an employer's interest in an employment practice with a disparate impact be job related." 78 Fed.Reg. 11470. Once a defendant has satisfied its burden at step two, a plaintiff may "prevail upon proving that the substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect." § 100.500(c)(3).

The Court of Appeals for the Fifth Circuit held, consistent with its precedent, that disparate-impact claims are cognizable under the FHA. 747 F.3d 275, 280 (2014). On the merits, however, the Court of Appeals reversed and remanded. Relying on HUD's regulation, the Court of Appeals held that it was improper for the District Court to have placed the burden on the Department to prove there were no less discriminatory alternatives for allocating low-income housing tax credits. *Id.*, at 282–283. In a concurring opinion, Judge Jones stated that on remand the District Court should reexamine whether the ICP had made out a prima facie case of disparate impact. She suggested the District Court incorrectly relied on bare statistical evidence without engaging in any analysis about causation. She further observed that, if the federal law providing for

the distribution of low-income housing tax credits ties the Department's hands to such an extent that it lacks a meaningful choice, then there is no disparate-impact liability. See *id.,* at 283–284 (specially concurring opinion).

The Department filed a petition for a writ of certiorari on the question whether disparate-impact claims are cognizable under the FHA. The question was one of first impression, see *Huntington v. Huntington Branch, NAACP,* 488 U.S. 15, 109 S.Ct. 276, 102 L.Ed.2d 180 (1988) (*per curiam*), and certiorari followed, 573 U.S. ——, 135 S.Ct. 46, 189 L.Ed.2d 896 (2014). It is now appropriate to provide a brief history of the FHA's enactment and its later amendment.

B

De jure residential segregation by race was declared unconstitutional almost a century ago, *Buchanan v. Warley,* 245 U.S. 60, 38 S.Ct. 16, 62 L.Ed. 149 (1917), but its vestiges remain today, intertwined with the country's economic and social life. Some segregated housing patterns can be traced to conditions that arose in the mid–20th century. Rapid urbanization, concomitant with the rise of suburban developments accessible by car, led many white families to leave the inner cities. This often left minority families concentrated in the center of the Nation's cities. During this time, various practices were followed, sometimes with governmental support, to encourage and maintain the separation of the races: Racially restrictive covenants prevented the conveyance of property to minorities, see *Shelley v. Kraemer,* 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (1948); steering by real-estate agents led potential buyers to consider homes in racially homogenous areas; and discriminatory lending practices, often referred to as redlining, precluded minority families from purchasing homes in affluent areas. See, *e.g.,* M. Klarman, Unfinished Business: Racial Equality in American History 140–141 (2007); Brief for Housing Scholars as *Amici Curiae* 22–23. By the 1960's, these policies, practices, and prejudices had created many predominantly black inner cities surrounded by mostly white suburbs. ***2516** See K. Clark, Dark Ghetto: Dilemmas of Social Power 11, 21–26 (1965).

The mid–1960's was a period of considerable social unrest; and, in response, President Lyndon Johnson established the National Advisory Commission on Civil Disorders, commonly known as the Kerner Commission. Exec. Order No. 11365, 3 CFR 674 (1966–1970 Comp.). After extensive factfinding the Commission identified residential segregation and unequal housing and economic conditions in the inner cities as significant, underlying causes of the social unrest. See Report of the National Advisory Commission on Civil Disorders 91 (1968) (Kerner Commission Report). The Commission found that "[n]early two-thirds of all nonwhite families living in the central cities today live in neighborhoods marked by substandard housing and general urban blight." *Id.,* at 13. The Commission further found that both open and covert racial discrimination prevented black families from obtaining better housing and moving to integrated communities. *Ibid.* The Commission concluded that "[o]ur Nation is moving toward two societies, one black, one white—separate and unequal." *Id.,* at 1. To reverse "[t]his deepening racial division," *ibid.,* it recommended enactment of "a comprehensive and enforceable open-occupancy law making it an offense to discriminate in the sale or rental of any housing ... on the basis of race, creed, color, or national origin." *Id.,* at 263.

In April 1968, Dr. Martin Luther King, Jr., was assassinated in Memphis, Tennessee, and the Nation faced a new urgency to resolve the social unrest in the inner cities. Congress responded by adopting the Kerner Commission's recommendation and passing the Fair Housing Act. The statute addressed the denial of housing opportunities on the basis of "race, color, religion, or national origin." Civil Rights Act of 1968, § 804, 82 Stat. 83. Then, in 1988, Congress amended the FHA. Among other provisions, it created certain exemptions from liability and added "familial status" as a protected characteristic. See Fair Housing Amendments Act of 1988, 102 Stat. 1619.

II

The issue here is whether, under a proper interpretation of the FHA, housing decisions with a disparate impact are prohibited. Before turning to the FHA, however, it is necessary to consider two other antidiscrimination statutes that preceded it.

The first relevant statute is § 703(a) of Title VII of the Civil Rights Act of 1964, 78 Stat. 255. The Court addressed the concept of disparate impact under this statute in *Griggs v. Duke Power Co.,* 401 U.S. 424, 91 S.Ct. 849, 28 L.Ed.2d 158 (1971). There, the employer had a policy requiring its manual laborers to possess a high school diploma and to obtain satisfactory scores on two intelligence tests. The Court of Appeals held the employer had not adopted these job requirements for a racially discriminatory purpose, and the plaintiffs did not challenge that holding in this Court.

Instead, the plaintiffs argued § 703(a)(2) covers the discriminatory effect of a practice as well as the motivation behind the practice. Section 703(a), as amended, provides as follows:

> "It shall be an unlawful employer practice for an employer—
>
> "(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
>
> "(2) to limit, segregate, or classify his employees or applicants for employment ***2517** in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e–2(a).

The Court did not quote or cite the full statute, but rather relied solely on § 703(a)(2). *Griggs,* 401 U.S., at 426, n. 1, 91 S.Ct. 849.

In interpreting § 703(a)(2), the Court reasoned that disparate-impact liability furthered the purpose and design of the statute. The Court explained that, in § 703(a)(2), Congress "proscribe[d] not only overt discrimination but also practices that are fair in form, but discriminatory in operation." *Id.,* at 431, 91 S.Ct. 849. For that reason, as the Court noted, "Congress directed the thrust of [§ 703(a)(2)] to the consequences of employment practices, not simply the motivation." *Id.,* at 432, 91 S.Ct. 849. In light of the statute's goal of achieving "equality of employment opportunities and remov[ing] barriers that have operated in the past" to favor some races over others, the Court held § 703(a)(2) of Title VII must be interpreted to allow disparate-impact claims. *Id.,* at 429–430, 91 S.Ct. 849.

The Court put important limits on its holding: namely, not all employment practices causing a disparate impact impose liability under § 703(a)(2). In this respect, the Court held that "business necessity" constitutes a defense to disparate-impact claims. *Id.,* at 431, 91 S.Ct. 849. This rule provides, for example, that in a disparate-impact case, § 703(a)(2) does not prohibit hiring criteria with a "manifest relationship" to job performance. *Id.,* at 432, 91 S.Ct. 849; see also *Ricci,* 557 U.S., at 587–589, 129 S.Ct. 2658 (emphasizing the importance of the business necessity defense to disparate-impact liability). On the facts before it, the Court in *Griggs* found a violation of Title VII because the employer could not establish that high school diplomas and general intelligence tests were related to the job performance of its manual laborers. See 401 U.S., at 431–432, 91 S.Ct. 849.

The second relevant statute that bears on the proper interpretation of the FHA is the Age Discrimination in Employment Act of 1967 (ADEA), 81 Stat. 602 *et seq.,* as amended. Section 4(a) of the ADEA provides:

> "It shall be unlawful for an employer—
>
> "(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;
>
> "(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or
>
> "(3) to reduce the wage rate of any employee in order to comply with this chapter." 29 U.S.C. § 623(a).

The Court first addressed whether this provision allows disparate-impact claims in *Smith v. City of Jackson,* 544 U.S. 228, 125 S.Ct. 1536, 161 L.Ed.2d 410 (2005). There, a group of older employees challenged their employer's decision to give proportionately greater raises to employees with less than five years of experience.

Explaining that *Griggs* "represented the better reading of [Title VII's] statutory text," 544 U.S., at 235, 125 S.Ct. 1536 a plurality of the Court concluded that the same reasoning pertained to § 4(a)(2) of the ADEA. The *Smith* plurality emphasized that both § 703(a)(2) of Title VII and § 4(a)(2) of the ADEA contain language ***2518** "prohibit[ing] such actions that 'deprive any individual of employment opportunities or *otherwise adversely affect* his status as an employee, because of such individual's' race or age." 544 U.S., at 235, 125 S.Ct. 1536. As the plurality observed, the text of these provisions "focuses on the *effects* of the action on the employee rather than the motivation for the action of the employer" and therefore compels recognition of disparate-impact liability. *Id.,* at 236, 125 S.Ct. 1536. In a separate opinion, Justice SCALIA found the ADEA's text ambiguous and thus deferred under *Chevron, U.S.A. Inc. v. Natural Resources Defense Council, Inc.,* 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984), to an Equal Employment Opportunity Commission regulation interpreting the ADEA to impose disparate-impact liability, see 544 U.S., at 243–247, 125 S.Ct. 1536 (opinion concurring in part and concurring in

judgment).

[2] [3] [4] Together, *Griggs* holds and the plurality in *Smith* instructs that antidiscrimination laws must be construed to encompass disparate-impact claims when their text refers to the consequences of actions and not just to the mindset of actors, and where that interpretation is consistent with statutory purpose. These cases also teach that disparate-impact liability must be limited so employers and other regulated entities are able to make the practical business choices and profit-related decisions that sustain a vibrant and dynamic free-enterprise system. And before rejecting a business justification—or, in the case of a governmental entity, an analogous public interest—a court must determine that a plaintiff has shown that there is "an available alternative ... practice that has less disparate impact and serves the [entity's] legitimate needs." *Ricci, supra,* at 578, 129 S.Ct. 2658. The cases interpreting Title VII and the ADEA provide essential background and instruction in the case now before the Court.

[5] Turning to the FHA, the ICP relies on two provisions. Section 804(a) provides that it shall be unlawful:

> "To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin." 42 U.S.C. § 3604(a).

Here, the phrase "otherwise make unavailable" is of central importance to the analysis that follows.

Section 805(a), in turn, provides:

> "It shall be unlawful for any person or other entity whose business includes engaging in real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin." § 3605(a).

Applied here, the logic of *Griggs* and *Smith* provides strong support for the conclusion that the FHA encompasses disparate-impact claims. Congress' use of the phrase "otherwise make unavailable" refers to the consequences of an action rather than the actor's intent. See *United States v. Giles,* 300 U.S. 41, 48, 57 S.Ct. 340, 81 L.Ed. 493 (1937) (explaining that the "word 'make' has many meanings, among them '[t]o cause to exist, appear or occur' " (quoting Webster's New International Dictionary 1485 (2d ed. 1934))). This results-oriented language counsels in favor of recognizing disparate-impact liability. See *Smith, supra,* at 236, 125 S.Ct. 1536. The Court has construed statutory language similar to § 805(a) to include disparate-impact liability. See, *e.g., Board of Ed. of City School Dist. of New York v.* ***2519** *Harris,* 444 U.S. 130, 140–141, 100 S.Ct. 363, 62 L.Ed.2d 275 (1979) (holding the term "discriminat[e]" encompassed disparate-impact liability in the context of a statute's text, history, purpose, and structure).

A comparison to the antidiscrimination statutes examined in *Griggs* and *Smith* is useful. Title VII's and the ADEA's "otherwise adversely affect" language is equivalent in function and purpose to the FHA's "otherwise make unavailable" language. In these three statutes the operative text looks to results. The relevant statutory phrases, moreover, play an identical role in the structure common to all three statutes: Located at the end of lengthy sentences that begin with prohibitions on disparate treatment, they serve as catchall phrases looking to consequences, not intent. And all three statutes use the word "otherwise" to introduce the results-oriented phrase. "Otherwise" means "in a different way or manner," thus signaling a shift in emphasis from an actor's intent to the consequences of his actions. Webster's Third New International Dictionary 1598 (1971). This similarity in text and structure is all the more compelling given that Congress passed the FHA in 1968—only four years after passing Title VII and only four months after enacting the ADEA.

It is true that Congress did not reiterate Title VII's exact language in the FHA, but that is because to do so would have made the relevant sentence awkward and unclear. A provision making it unlawful to "refuse to sell [,] ... or otherwise [adversely affect], a dwelling to any person" because of a protected trait would be grammatically obtuse, difficult to interpret, and far more expansive in scope than Congress likely intended. Congress thus chose words that serve the same purpose and bear the same basic meaning but are consistent with the structure and objectives of the FHA.

Emphasizing that the FHA uses the phrase "because of race," the Department argues this language forecloses disparate-impact liability since "[a]n action is not taken 'because of race' unless race is a *reason* for the action." Brief for Petitioners 26. *Griggs* and *Smith,* however, dispose of this argument. Both Title VII and the ADEA contain identical "because of" language, see 42 U.S.C. § 2000e–2(a)(2); 29 U.S.C. § 623(a)(2), and the Court nonetheless held those statutes impose disparate-impact liability.

In addition, it is of crucial importance that the existence of disparate-impact liability is supported by amendments to the FHA that Congress enacted in 1988. By that time, all

nine Courts of Appeals to have addressed the question had concluded the Fair Housing Act encompassed disparate-impact claims. See *Huntington Branch, NAACP v. Huntington,* 844 F.2d 926, 935–936 (C.A.2 1988); *Resident Advisory Bd. v. Rizzo,* 564 F.2d 126, 146 (C.A.3 1977); *Smith v. Clarkton,* 682 F.2d 1055, 1065 (C.A.4 1982); *Hanson v. Veterans Administration,* 800 F.2d 1381, 1386 (C.A.5 1986); *Arthur v. Toledo,* 782 F.2d 565, 574–575 (C.A.6 1986); *Metropolitan Housing Development Corp. v. Arlington Heights,* 558 F.2d 1283, 1290 (C.A.7 1977); *United States v. Black Jack,* 508 F.2d 1179, 1184–1185 (C.A.8 1974); *Halet v. Wend Investment Co.,* 672 F.2d 1305, 1311 (C.A.9 1982); *United States v. Marengo Cty. Comm'n,* 731 F.2d 1546, 1559, n. 20 (C.A.11 1984).

When it amended the FHA, Congress was aware of this unanimous precedent. And with that understanding, it made a considered judgment to retain the relevant statutory text. See H.R.Rep. No. 100–711, p. 21, n. 52 (1988), 1988 U.S.C.C.A.N. 2173 (H.R. Rep.) (discussing suits premised on ***2520** disparate-impact claims and related judicial precedent); 134 Cong. Rec. 23711 (1988) (statement of Sen. Kennedy) (noting unanimity of Federal Courts of Appeals concerning disparate impact); Fair Housing Amendments Act of 1987: Hearings on S. 558 before the Subcommittee on the Constitution of the Senate Committee on the Judiciary, 100th Cong., 1st Sess., 529 (1987) (testimony of Professor Robert Schwemm) (describing consensus judicial view that the FHA imposed disparate-impact liability). Indeed, Congress rejected a proposed amendment that would have eliminated disparate-impact liability for certain zoning decisions. See H.R. Rep., at 89–93.

[6] Against this background understanding in the legal and regulatory system, Congress' decision in 1988 to amend the FHA while still adhering to the operative language in §§ 804(a) and 805(a) is convincing support for the conclusion that Congress accepted and ratified the unanimous holdings of the Courts of Appeals finding disparate-impact liability. "If a word or phrase has been ... given a uniform interpretation by inferior courts ..., a later version of that act perpetuating the wording is presumed to carry forward that interpretation." A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 322 (2012); see also *Forest Grove School Dist. v. T.A.,* 557 U.S. 230, 244, n. 11, 129 S.Ct. 2484, 174 L.Ed.2d 168 (2009) ("When Congress amended [the Act] without altering the text of [the relevant provision], it implicitly adopted [this Court's] construction of the statute"); *Manhattan Properties, Inc. v. Irving Trust Co.,* 291 U.S. 320, 336, 54 S.Ct. 385, 78 L.Ed. 824 (1934) (explaining, where the Courts of Appeals had reached a consensus interpretation of the Bankruptcy Act and Congress had amended the Act without changing the relevant provision, "[t]his is persuasive that the construction adopted by the [lower federal] courts has been acceptable to the legislative arm of the government").

Further and convincing confirmation of Congress' understanding that disparate-impact liability exists under the FHA is revealed by the substance of the 1988 amendments. The amendments included three exemptions from liability that assume the existence of disparate-impact claims. The most logical conclusion is that the three amendments were deemed necessary because Congress presupposed disparate impact under the FHA as it had been enacted in 1968.

The relevant 1988 amendments were as follows. First, Congress added a clarifying provision: "Nothing in [the FHA] prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status." 42 U.S.C. § 3605(c). Second, Congress provided: "Nothing in [the FHA] prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance." § 3607(b)(4). And finally, Congress specified: "Nothing in [the FHA] limits the applicability of any reasonable ... restrictions regarding the maximum number of occupants permitted to occupy a dwelling." § 3607(b)(1).

The exemptions embodied in these amendments would be superfluous if Congress had assumed that disparate-impact liability did not exist under the FHA. See *Gustafson v. Alloyd Co.,* 513 U.S. 561, 574, 115 S.Ct. 1061, 131 L.Ed.2d 1 (1995) ("[T]he Court will avoid a reading which renders some words altogether redundant"). Indeed, none of these amendments would make sense if the FHA encompassed only disparate-treatment ***2521** claims. If that were the sole ground for liability, the amendments merely restate black-letter law. If an actor makes a decision based on reasons other than a protected category, there is no disparate-treatment liability. See, *e.g., Texas Dept. of Community Affairs v. Burdine,* 450 U.S. 248, 254, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981). But the amendments do constrain disparate-impact liability. For instance, certain criminal convictions are correlated with sex and race. See, *e.g., Kimbrough v. United States,* 552 U.S. 85, 98, 128 S.Ct. 558, 169 L.Ed.2d 481 (2007) (discussing the racial disparity in convictions for crack cocaine offenses). By adding an exemption from liability for exclusionary practices aimed at individuals with drug convictions, Congress ensured disparate-impact liability would not lie if a landlord excluded tenants with such convictions. The

same is true of the provision allowing for reasonable restrictions on occupancy. And the exemption from liability for real-estate appraisers is in the same section as § 805(a)'s prohibition of discriminatory practices in real-estate transactions, thus indicating Congress' recognition that disparate-impact liability arose under § 805(a). In short, the 1988 amendments signal that Congress ratified disparate-impact liability.

A comparison to *Smith* 's discussion of the ADEA further demonstrates why the Department's interpretation would render the 1988 amendments superfluous. Under the ADEA's reasonable-factor-other-than-age (RFOA) provision, an employer is permitted to take an otherwise prohibited action where "the differentiation is based on reasonable factors other than age." 29 U.S.C. § 623(f)(1). In other words, if an employer makes a decision based on a reasonable factor other than age, it cannot be said to have made a decision on the basis of an employee's age. According to the *Smith* plurality, the RFOA provision "plays its principal role" "in cases involving disparate-impact claims" "by precluding liability if the adverse impact was attributable to a nonage factor that was 'reasonable.' " 544 U.S., at 239, 125 S.Ct. 1536. The plurality thus reasoned that the RFOA provision would be "simply unnecessary to avoid liability under the ADEA" if liability were limited to disparate-treatment claims. *Id.,* at 238, 125 S.Ct. 1536.

A similar logic applies here. If a real-estate appraiser took into account a neighborhood's schools, one could not say the appraiser acted because of race. And by embedding 42 U.S.C. § 3605(c)'s exemption in the statutory text, Congress ensured that disparate-impact liability would not be allowed either. Indeed, the inference of disparate-impact liability is even stronger here than it was in *Smith*. As originally enacted, the ADEA included the RFOA provision, see § 4(f)(1), 81 Stat. 603, whereas here Congress added the relevant exemptions in the 1988 amendments against the backdrop of the uniform view of the Courts of Appeals that the FHA imposed disparate-impact liability.

[7] Recognition of disparate-impact claims is consistent with the FHA's central purpose. See *Smith, supra,* at 235, 125 S.Ct. 1536 (plurality opinion); *Griggs,* 401 U.S., at 432, 91 S.Ct. 849. The FHA, like Title VII and the ADEA, was enacted to eradicate discriminatory practices within a sector of our Nation's economy. See 42 U.S.C. § 3601 ("It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States"); H.R. Rep., at 15 (explaining the FHA "provides a clear national policy against discrimination in housing").

[8] These unlawful practices include zoning laws and other housing restrictions ***2522** that function unfairly to exclude minorities from certain neighborhoods without any sufficient justification. Suits targeting such practices reside at the heartland of disparate-impact liability. See, *e.g., Huntington,* 488 U.S., at 16–18, 109 S.Ct. 276 (invalidating zoning law preventing construction of multifamily rental units); *Black Jack,* 508 F.2d, at 1182–1188 (invalidating ordinance prohibiting construction of new multifamily dwellings); *Greater New Orleans Fair Housing Action Center v. St. Bernard Parish,* 641 F.Supp.2d 563, 569, 577–578 (E.D.La.2009) (invalidating post-Hurricane Katrina ordinance restricting the rental of housing units to only " 'blood relative[s]' " in an area of the city that was 88.3% white and 7.6% black); see also Tr. of Oral Arg. 52–53 (discussing these cases). The availability of disparate-impact liability, furthermore, has allowed private developers to vindicate the FHA's objectives and to protect their property rights by stopping municipalities from enforcing arbitrary and, in practice, discriminatory ordinances barring the construction of certain types of housing units. See, *e.g., Huntington, supra,* at 18, 109 S.Ct. 276. Recognition of disparate-impact liability under the FHA also plays a role in uncovering discriminatory intent: It permits plaintiffs to counteract unconscious prejudices and disguised animus that escape easy classification as disparate treatment. In this way disparate-impact liability may prevent segregated housing patterns that might otherwise result from covert and illicit stereotyping.

[9] [10] But disparate-impact liability has always been properly limited in key respects that avoid the serious constitutional questions that might arise under the FHA, for instance, if such liability were imposed based solely on a showing of a statistical disparity. Disparate-impact liability mandates the "removal of artificial, arbitrary, and unnecessary barriers," not the displacement of valid governmental policies. *Griggs, supra,* at 431, 91 S.Ct. 849. The FHA is not an instrument to force housing authorities to reorder their priorities. Rather, the FHA aims to ensure that those priorities can be achieved without arbitrarily creating discriminatory effects or perpetuating segregation.

Unlike the heartland of disparate-impact suits targeting artificial barriers to housing, the underlying dispute in this case involves a novel theory of liability. See Seicshnaydre, Is Disparate Impact Having Any Impact? An Appellate Analysis of Forty Years of Disparate Impact Claims Under the Fair Housing Act, 63 Am. U. L. Rev. 357, 360–363 (2013) (noting the rarity of this type of claim). This case, on remand, may be seen simply as an attempt to second-guess which of two reasonable approaches a

housing authority should follow in the sound exercise of its discretion in allocating tax credits for low-income housing.

[11] [12] An important and appropriate means of ensuring that disparate-impact liability is properly limited is to give housing authorities and private developers leeway to state and explain the valid interest served by their policies. This step of the analysis is analogous to the business necessity standard under Title VII and provides a defense against disparate-impact liability. See 78 Fed.Reg. 11470 (explaining that HUD did not use the phrase "business necessity" because that "phrase may not be easily understood to cover the full scope of practices covered by the Fair Housing Act, which applies to individuals, businesses, nonprofit organizations, and public entities"). As the Court explained in *Ricci,* an entity "could be liable for disparate-impact discrimination only if the [challenged practices] were not job related and consistent with business necessity." ***2523** 557 U.S., at 587, 129 S.Ct. 2658. Just as an employer may maintain a workplace requirement that causes a disparate impact if that requirement is a "reasonable measure[ment] of job performance," *Griggs, supra,* at 436, 91 S.Ct. 849 so too must housing authorities and private developers be allowed to maintain a policy if they can prove it is necessary to achieve a valid interest. To be sure, the Title VII framework may not transfer exactly to the fair-housing context, but the comparison suffices for present purposes.

[13] [14] It would be paradoxical to construe the FHA to impose onerous costs on actors who encourage revitalizing dilapidated housing in our Nation's cities merely because some other priority might seem preferable. Entrepreneurs must be given latitude to consider market factors. Zoning officials, moreover, must often make decisions based on a mix of factors, both objective (such as cost and traffic patterns) and, at least to some extent, subjective (such as preserving historic architecture). These factors contribute to a community's quality of life and are legitimate concerns for housing authorities. The FHA does not decree a particular vision of urban development; and it does not put housing authorities and private developers in a double bind of liability, subject to suit whether they choose to rejuvenate a city core or to promote new low-income housing in suburban communities. As HUD itself recognized in its recent rulemaking, disparate-impact liability "does not mandate that affordable housing be located in neighborhoods with any particular characteristic." 78 Fed.Reg. 11476.

[15] [16] In a similar vein, a disparate-impact claim that relies on a statistical disparity must fail if the plaintiff cannot point to a defendant's policy or policies causing that disparity. A robust causality requirement ensures that "[r]acial imbalance ... does not, without more, establish a prima facie case of disparate impact" and thus protects defendants from being held liable for racial disparities they did not create. *Wards Cove Packing Co. v. Atonio,* 490 U.S. 642, 653, 109 S.Ct. 2115, 104 L.Ed.2d 733 (1989), superseded by statute on other grounds, 42 U.S.C. § 2000e–2(k). Without adequate safeguards at the prima facie stage, disparate-impact liability might cause race to be used and considered in a pervasive way and "would almost inexorably lead" governmental or private entities to use "numerical quotas," and serious constitutional questions then could arise. 490 U.S., at 653, 109 S.Ct. 2115.

The litigation at issue here provides an example. From the standpoint of determining advantage or disadvantage to racial minorities, it seems difficult to say as a general matter that a decision to build low-income housing in a blighted inner-city neighborhood instead of a suburb is discriminatory, or vice versa. If those sorts of judgments are subject to challenge without adequate safeguards, then there is a danger that potential defendants may adopt racial quotas—a circumstance that itself raises serious constitutional concerns.

[17] [18] Courts must therefore examine with care whether a plaintiff has made out a prima facie case of disparate impact and prompt resolution of these cases is important. A plaintiff who fails to allege facts at the pleading stage or produce statistical evidence demonstrating a causal connection cannot make out a prima facie case of disparate impact. For instance, a plaintiff challenging the decision of a private developer to construct a new building in one location rather than another will not easily be able to show this is a policy causing a disparate impact because such a one-time decision may not be a policy at all. It may also be difficult to establish causation because ***2524** of the multiple factors that go into investment decisions about where to construct or renovate housing units. And as Judge Jones observed below, if the ICP cannot show a causal connection between the Department's policy and a disparate impact—for instance, because federal law substantially limits the Department's discretion—that should result in dismissal of this case. 747 F.3d, at 283–284 (specially concurring opinion).

[19] [20] The FHA imposes a command with respect to disparate-impact liability. Here, that command goes to a state entity. In other cases, the command will go to a private person or entity. Governmental or private policies are not contrary to the disparate-impact requirement unless they are "artificial, arbitrary, and unnecessary barriers." *Griggs,* 401 U.S., at 431, 91 S.Ct. 849. Difficult questions might arise if disparate-impact liability under the FHA

caused race to be used and considered in a pervasive and explicit manner to justify governmental or private actions that, in fact, tend to perpetuate race-based considerations rather than move beyond them. Courts should avoid interpreting disparate-impact liability to be so expansive as to inject racial considerations into every housing decision.

[21] The limitations on disparate-impact liability discussed here are also necessary to protect potential defendants against abusive disparate-impact claims. If the specter of disparate-impact litigation causes private developers to no longer construct or renovate housing units for low-income individuals, then the FHA would have undermined its own purpose as well as the free-market system. And as to governmental entities, they must not be prevented from achieving legitimate objectives, such as ensuring compliance with health and safety codes. The Department's *amici,* in addition to the well-stated principal dissenting opinion in this case, see *post,* at 2532 – 2533, 2548 – 2549 (opinion of ALITO, J.), call attention to the decision by the Court of Appeals for the Eighth Circuit in *Gallagher v. Magner,* 619 F.3d 823 (2010). Although the Court is reluctant to approve or disapprove a case that is not pending, it should be noted that *Magner* was decided without the cautionary standards announced in this opinion and, in all events, the case was settled by the parties before an ultimate determination of disparate-impact liability.

Were standards for proceeding with disparate-impact suits not to incorporate at least the safeguards discussed here, then disparate-impact liability might displace valid governmental and private priorities, rather than solely "remov[ing] ... artificial, arbitrary, and unnecessary barriers." *Griggs,* 401 U.S., at 431, 91 S.Ct. 849. And that, in turn, would set our Nation back in its quest to reduce the salience of race in our social and economic system.

[22] [23] It must be noted further that, even when courts do find liability under a disparate-impact theory, their remedial orders must be consistent with the Constitution. Remedial orders in disparate-impact cases should concentrate on the elimination of the offending practice that "arbitrar [ily] ... operate[s] invidiously to discriminate on the basis of rac[e]." *Ibid.* If additional measures are adopted, courts should strive to design them to eliminate racial disparities through race-neutral means. See *Richmond v. J.A. Croson Co.,* 488 U.S. 469, 510, 109 S.Ct. 706, 102 L.Ed.2d 854 (1989) (plurality opinion) ("[T]he city has at its disposal a whole array of race-neutral devices to increase the accessibility of city contracting opportunities to small entrepreneurs of all races"). Remedial orders that impose racial targets or quotas might raise more difficult constitutional questions.

***2525** [24] [25] While the automatic or pervasive injection of race into public and private transactions covered by the FHA has special dangers, it is also true that race may be considered in certain circumstances and in a proper fashion. Cf. *Parents Involved in Community Schools v. Seattle School Dist. No. 1,* 551 U.S. 701, 789, 127 S.Ct. 2738, 168 L.Ed.2d 508 (2007) (KENNEDY, J., concurring in part and concurring in judgment) ("School boards may pursue the goal of bringing together students of diverse backgrounds and races through other means, including strategic site selection of new schools; [and] drawing attendance zones with general recognition of the demographics of neighborhoods"). Just as this Court has not "question[ed] an employer's affirmative efforts to ensure that all groups have a fair opportunity to apply for promotions and to participate in the [promotion] process," *Ricci,* 557 U.S., at 585, 129 S.Ct. 2658 it likewise does not impugn housing authorities' race-neutral efforts to encourage revitalization of communities that have long suffered the harsh consequences of segregated housing patterns. When setting their larger goals, local housing authorities may choose to foster diversity and combat racial isolation with race-neutral tools, and mere awareness of race in attempting to solve the problems facing inner cities does not doom that endeavor at the outset.

The Court holds that disparate-impact claims are cognizable under the Fair Housing Act upon considering its results-oriented language, the Court's interpretation of similar language in Title VII and the ADEA, Congress' ratification of disparate-impact claims in 1988 against the backdrop of the unanimous view of nine Courts of Appeals, and the statutory purpose.

III

In light of the longstanding judicial interpretation of the FHA to encompass disparate-impact claims and congressional reaffirmation of that result, residents and policymakers have come to rely on the availability of disparate-impact claims. See Brief for Massachusetts et al. as *Amici Curiae* 2 ("Without disparate impact claims, States and others will be left with fewer crucial tools to combat the kinds of systemic discrimination that the FHA was intended to address"). Indeed, many of our Nation's largest cities—entities that are potential defendants in disparate-impact suits—have submitted an *amicus* brief in this case supporting disparate-impact liability under the FHA. See Brief for City of San Francisco et al. as *Amici Curiae* 3–6. The existence of disparate-impact liability in the substantial majority of the Courts of Appeals for the last several decades "has not given rise to ... dire

consequences." *Hosanna–Tabor Evangelical Lutheran Church and School v. EEOC,* 565 U.S. ——, ——, 132 S.Ct. 694, 710, 181 L.Ed.2d 650 (2012).

Much progress remains to be made in our Nation's continuing struggle against racial isolation. In striving to achieve our "historic commitment to creating an integrated society," *Parents Involved, supra,* at 797, 127 S.Ct. 2738 (KENNEDY, J., concurring in part and concurring in judgment), we must remain wary of policies that reduce homeowners to nothing more than their race. But since the passage of the Fair Housing Act in 1968 and against the backdrop of disparate-impact liability in nearly every jurisdiction, many cities have become more diverse. The FHA must play an important part in avoiding the Kerner Commission's grim prophecy that "[o]ur Nation is moving toward two societies, one black, one white—separate and unequal." Kerner Commission Report 1. The Court acknowledges the Fair ***2526** Housing Act's continuing role in moving the Nation toward a more integrated society.

The judgment of the Court of Appeals for the Fifth Circuit is affirmed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Justice THOMAS, dissenting.

I join Justice ALITO's dissent in full. I write separately to point out that the foundation on which the Court builds its latest disparate-impact regime—*Griggs v. Duke Power Co.,* 401 U.S. 424, 91 S.Ct. 849, 28 L.Ed.2d 158 (1971)—is made of sand. That decision, which concluded that Title VII of the Civil Rights Act of 1964 authorizes plaintiffs to bring disparate-impact claims, *id.,* at 429–431, 91 S.Ct. 849 represents the triumph of an agency's preferences over Congress' enactment and of assumption over fact. Whatever respect *Griggs* merits as a matter of *stare decisis,* I would not amplify its error by importing its disparate-impact scheme into yet another statute.

I

A

We should drop the pretense that *Griggs* ' interpretation of Title VII was legitimate. "The Civil Rights Act of 1964 did not include an express prohibition on policies or practices that produce a disparate impact." *Ricci v. DeStefano,* 557 U.S. 557, 577, 129 S.Ct. 2658, 174 L.Ed.2d 490 (2009). It did not include an implicit one either. Instead, Title VII's operative provision, 42 U.S.C. § 2000e–2(a) (1964 ed.), addressed only employer decisions motivated by a protected characteristic. That provision made it "an unlawful employment practice for an employer—

> "(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, *because of* such individual's race, color, religion, sex, or national origin; or
> "(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, *because of* such individual's race, color, religion, sex, or national origin." § 703, 78 Stat. 255 (emphasis added).[1]

[1] The current version of § 2000e–2(a) is almost identical, except that § 2000e–2(a)(2) makes it unlawful for an employer "to limit, segregate, or classify his employees *or applicants for employment* in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin." (Emphasis added.) This change, which does not impact my analysis, was made in 1972. 86 Stat. 109.

Each paragraph in § 2000e–2(a) is limited to actions taken "because of" a protected trait, and "the ordinary meaning of 'because of' is 'by reason of' or 'on account of,' " *University of Tex. Southwestern Medical Center v. Nassar,* 570 U.S. ——, ——, 133 S.Ct. 2517, 2527, 186 L.Ed.2d 503 (2013) (some internal quotation marks omitted). Section 2000e–2(a) thus applies only when a protected characteristic "was the 'reason' that the employer decided to act." *Id.,* at ——, 133 S.Ct., at 2527 (some internal quotation marks omitted).[2] In ***2527** other words, "to take action against an individual *because of* " a protected trait "plainly requires discriminatory intent." See *Smith v. City of Jackson,* 544 U.S. 228, 249, 125 S.Ct. 1536, 161 L.Ed.2d 410 (2005) (O'Connor, J., joined by KENNEDY and THOMAS, JJ., concurring in judgment) (internal quotation marks omitted); accord, *e.g., Gross v. FBL Financial Services, Inc.,* 557 U.S. 167, 176, 129 S.Ct. 2343, 174 L.Ed.2d 119 (2009).

[2] In 1991, Congress added § 2000e–2(m) to Title VII,

> which permits a plaintiff to establish that an employer acted "because of" a protected characteristic by showing that the characteristic was "a motivating factor" in the employer's decision. Civil Rights Act of 1991, § 107(a), 105 Stat. 1075. That amended definition obviously does not legitimize disparate-impact liability, which is distinguished from disparate-treatment liability precisely because the former does not require any discriminatory motive.

No one disputes that understanding of § 2000e–2(a)(1). We have repeatedly explained that a plaintiff bringing an action under this provision "must establish 'that the defendant had a discriminatory intent or motive' for taking a job-related action." *Ricci, supra,* at 577, 129 S.Ct. 2658 (quoting *Watson v. Fort Worth Bank & Trust,* 487 U.S. 977, 986, 108 S.Ct. 2777, 101 L.Ed.2d 827 (1988)). The only dispute is whether the same language—"because of"—means something different in § 2000e–2(a)(2) than it does in § 2000e–2(a)(1).

The answer to that question *should* be obvious. We ordinarily presume that "identical words used in different parts of the same act are intended to have the same meaning," *Desert Palace, Inc. v. Costa,* 539 U.S. 90, 101, 123 S.Ct. 2148, 156 L.Ed.2d 84 (2003) (internal quotation marks omitted), and § 2000e–2(a)(2) contains nothing to warrant a departure from that presumption. That paragraph "uses the phrase 'because of ... [a protected characteristic]' in precisely the same manner as does the preceding paragraph—to make plain that an employer is liable only if its adverse action against an individual is *motivated by* the individual's [protected characteristic]." *Smith, supra,* at 249, 125 S.Ct. 1536 (opinion of O'Connor, J.) (interpreting nearly identical provision of the Age Discrimination in Employment Act of 1967 (ADEA)).

The only difference between § 2000e–2(a)(1) and § 2000e–2(a)(2) is the type of employment decisions they address. See *Smith, supra,* at 249, 125 S.Ct. 1536 (opinion of O'Connor, J.). Section 2000e–2(a)(1) addresses hiring, firing, and setting the terms of employment, whereas § 2000e–2(a)(2) generally addresses limiting, segregating, or classifying employees. But *no* decision is an unlawful employment practice under these paragraphs unless it occurs "*because of* such individual's race, color, religion, sex, or national origin." §§ 2000e–2(a)(1), (2) (emphasis added).

Contrary to the majority's assumption, see *ante,* at 2517 – 2520, the fact that § 2000e–2(a)(2) uses the phrase "otherwise adversely affect" in defining the employment decisions targeted by that paragraph does not eliminate its mandate that the prohibited decision be made "because of" a protected characteristic. Section 2000e–2(a)(2) does not make unlawful all employment decisions that "limit, segregate, or classify ... employees ... in any way which would ... otherwise adversely affect [an individual's] status as an employee," but those that "otherwise adversely affect [an individual's] status as an employee, *because of such individual's race, color, religion, sex, or national origin*." (Emphasis added); accord, 78 Stat. 255. Reading § 2000e–2(a)(2) to sanction employers solely on the basis of the effects of their decisions would delete an entire clause of this provision, a result we generally try to avoid. Under any fair reading of the text, there can be no doubt that the ***2528** Title VII enacted by Congress did not permit disparate-impact claims.[3]

[3] Even "[f]ans ... of *Griggs [v. Duke Power Co.,* 401 U.S. 424, 91 S.Ct. 849, 28 L.Ed.2d 158 (1971),] tend to agree that the decision is difficult to square with the available indications of congressional intent." Lemos, The Consequences of Congress's Choice of Delegate: Judicial and Agency Interpretations of Title VII, 63 Vand. L. Rev. 363, 399, n. 155 (2010). In the words of one of the decision's defenders, *Griggs* "was poorly reasoned and vulnerable to the charge that it represented a significant leap away from the expectations of the enacting Congress." W. Eskridge, Dynamic Statutory Interpretation 78 (1994).

B

The author of disparate-impact liability under Title VII was not Congress, but the Equal Employment Opportunity Commission (EEOC). EEOC's "own official history of these early years records with unusual candor the commission's fundamental disagreement with its founding charter, especially Title VII's literal requirement that the discrimination be intentional." H. Graham, The Civil Rights Era: Origins and Development of National Policy 1960–1972, p. 248 (1990). The Commissioners and their legal staff thought that "discrimination" had become "less often an individual act of disparate treatment flowing from an evil state of mind" and "more institutionalized." Jackson, EEOC vs. Discrimination, Inc., 75 The Crisis 16 (1968). They consequently decided they should target employment practices "which prove to have a demonstrable racial effect without a clear and convincing business motive." *Id.,* at 16–17 (emphasis deleted). EEOC's "legal staff was aware from the beginning that a normal, traditional, and literal interpretation of Title VII could blunt their efforts" to penalize employers for practices that had a disparate impact, yet chose "to defy

Title VII's restrictions and attempt to build a body of case law that would justify [their] focus on effects and [their] disregard of intent." Graham, *supra,* at 248, 250.

The lack of legal authority for their agenda apparently did not trouble them much. For example, Alfred Blumrosen, one of the principal creators of disparate-impact liability at EEOC, rejected what he described as a "defeatist view of Title VII" that saw the statute as a "compromise" with a limited scope. A. Blumrosen, Black Employment and the Law 57–58 (1971). Blumrosen "felt that most of the problems confronting the EEOC could be solved by creative interpretation of Title VII which would be upheld by the courts, partly out of deference to the administrators." *Id.,* at 59.

EEOC's guidelines from those years are a case study in Blumrosen's "creative interpretation." Although EEOC lacked substantive rulemaking authority, see *Faragher v. Boca Raton,* 524 U.S. 775, 811, n. 1, 118 S.Ct. 2275, 141 L.Ed.2d 662 (1998) (THOMAS, J., dissenting), it repeatedly issued guidelines on the subject of disparate impact. In 1966, for example, EEOC issued guidelines suggesting that the use of employment tests in hiring decisions could violate Title VII based on disparate impact, notwithstanding the statute's express statement that "it shall not be an unlawful employment practice ... to give and to act upon the results of any professionally developed ability test provided that such test ... is not *designed, intended, or used* to discriminate because of race, color, religion, sex, or national origin," § 2000e–2(h) (emphasis added). See EEOC, Guidelines on Employment Testing Procedures 2–4 (Aug. 24, 1966). EEOC followed this up with a 1970 guideline that was even more explicit, declaring that, unless certain criteria were met, "[t]he use of any test which adversely affects hiring, promotion, transfer or any other employment ***2529** or membership opportunity of classes protected by title VII constitutes discrimination." 35 Fed.Reg. 12334 (1970).

EEOC was initially hesitant to take its approach to this Court, but the *Griggs* plaintiffs forced its hand. After they lost on their disparate-impact argument in the Court of Appeals, EEOC's deputy general counsel urged the plaintiffs not to seek review because he believed " 'that the record in the case present[ed] a most unappealing situation for finding tests unlawful,' " even though he found the lower court's adherence to an intent requirement to be " 'tragic.' " Graham, *supra,* at 385. The plaintiffs ignored his advice. Perhaps realizing that a ruling on its disparate-impact theory was inevitable, EEOC filed an *amicus* brief in this Court seeking deference for its position.[4]

[4] Efforts by Executive Branch officials to influence this Court's disparate-impact jurisprudence may not be a thing of the past. According to a joint congressional staff report, after we granted a writ of certiorari in *Magner v. Gallagher,* 564 U.S. ——, 132 S.Ct. 548, 181 L.Ed.2d 395 (2011), to address whether the Fair Housing Act created disparate-impact liability, then-Assistant Attorney General Thomas E. Perez—now Secretary of Labor—entered into a secret deal with the petitioners in that case, various officials of St. Paul, Minnesota, to prevent this Court from answering the question. Perez allegedly promised the officials that the Department of Justice would not intervene in two *qui tam* complaints then pending against St. Paul in exchange for the city's dismissal of the case. See House Committee on Oversight and Government Reform, Senate Committee on the Judiciary, and House Committee on the Judiciary, DOJ's *Quid Pro Quo* With St. Paul: How Assistant Attorney General Thomas Perez Manipulated Justice and Ignored the Rule of Law, Joint Staff Report, 113th Cong., 1st Sess., pp. 1–2 (2013). Additionally, just nine days after we granted a writ of certiorari in *Magner,* and before its dismissal, the Department of Housing and Urban Development proposed the disparate-impact regulation at issue in this case. See 76 Fed.Reg. 70921 (2011).

EEOC's strategy paid off. The Court embraced EEOC's theory of disparate impact, concluding that the agency's position was "entitled to great deference." See *Griggs,* 401 U.S., at 433–434, 91 S.Ct. 849. With only a brief nod to the text of § 2000e–2(a)(2) in a footnote, *id.,* at 426, n. 1, 91 S.Ct. 849 the Court tied this novel theory of discrimination to "the statute's perceived *purpose* " and EEOC's view of the best way of effectuating it, *Smith,* 544 U.S., at 262, 125 S.Ct. 1536 (opinion of O'Connor, J.); see *id.,* at 235, 125 S.Ct. 1536 (plurality opinion). But statutory provisions—not purposes—go through the process of bicameralism and presentment mandated by our Constitution. We should not replace the former with the latter, see *Wyeth v. Levine,* 555 U.S. 555, 586, 129 S.Ct. 1187, 173 L.Ed.2d 51 (2009) (THOMAS, J., concurring in judgment), nor should we transfer our responsibility for interpreting those provisions to administrative agencies, let alone ones lacking substantive rulemaking authority, see *Perez v. Mortgage Bankers Assn.,* 575 U.S. ——, ——– ——, 135 S.Ct. 1199, 1216–1220, 191 L.Ed.2d 186 (2015) (THOMAS, J., concurring in judgment).

II

Griggs ' disparate-impact doctrine defies not only the statutory text, but reality itself. In their quest to eradicate

what they view as institutionalized discrimination, disparate-impact proponents doggedly assume that a given racial disparity at an institution is a product of that institution rather than a reflection of disparities that exist outside of it. See T. Sowell, Intellectuals and Race 132 (2013) (Sowell). That might be true, or it might not. Standing alone, the fact that a practice has a disparate impact is not conclusive evidence, as the *Griggs* Court appeared to ***2530** believe, that a practice is "discriminatory," 401 U.S., at 431, 91 S.Ct. 849. "Although presently observed racial imbalance *might* result from past [discrimination], racial imbalance can also result from any number of innocent private decisions." *Parents Involved in Community Schools v. Seattle School Dist. No. 1,* 551 U.S. 701, 750, 127 S.Ct. 2738, 168 L.Ed.2d 508 (2007) (THOMAS, J., concurring) (emphasis added).[5] We should not automatically presume that any institution with a neutral practice that happens to produce a racial disparity is guilty of discrimination until proved innocent.

[5] It takes considerable audacity for today's majority to describe the origins of racial imbalances in housing, *ante,* at 2515 – 2516, without acknowledging this Court's role in the development of this phenomenon. In the past, we have admitted that the sweeping desegregation remedies of the federal courts contributed to " 'white flight' " from our Nation's cities, see *Missouri v. Jenkins,* 515 U.S. 70, 95, n. 8, 115 S.Ct. 2038, 132 L.Ed.2d 63 (1995); *id.,* at 114, 115 S.Ct. 2038 (THOMAS, J., concurring), in turn causing the racial imbalances that make it difficult to avoid disparate impact from housing development decisions. Today's majority, however, apparently is as content to rewrite history as it is to rewrite statutes.

As best I can tell, the reason for this wholesale inversion of our law's usual approach is the unstated—and unsubstantiated—assumption that, in the absence of discrimination, an institution's racial makeup would mirror that of society. But the absence of racial disparities in multi-ethnic societies has been the exception, not the rule. When it comes to "proportiona[l] represent [ation]" of ethnic groups, "few, if any, societies have ever approximated this description." D. Horowitz, Ethnic Groups in Conflict 677 (1985). "All multi-ethnic societies exhibit a tendency for ethnic groups to engage in different occupations, have different levels (and, often, types) of education, receive different incomes, and occupy a different place in the social hierarchy." Weiner, The Pursuit of Ethnic Equality Through Preferential Policies: A Comparative Public Policy Perspective, in From Independence to Statehood 64 (R. Goldmann & A. Wilson eds. 1984).

Racial imbalances do not always disfavor minorities. At various times in history, "racial or ethnic minorities ... have owned or directed more than half of whole industries in particular nations." Sowell 8. These minorities "have included the Chinese in Malaysia, the Lebanese in West Africa, Greeks in the Ottoman Empire, Britons in Argentina, Belgians in Russia, Jews in Poland, and Spaniards in Chile—among many others." *Ibid.* (footnotes omitted). "In the seventeenth century Ottoman Empire," this phenomenon was seen in the palace itself, where the "medical staff consisted of 41 Jews and 21 Muslims." *Ibid.* And in our own country, for roughly a quarter-century now, over 70 percent of National Basketball Association players have been black. R. Lapchick, D. Donovan, E. Loomer, & L. Martinez, Institute for Diversity and Ethics in Sport, U. of Central Fla., The 2014 Racial and Gender Report Card: National Basketball Association 21 (June 24, 2014). To presume that these and all other measurable disparities are products of racial discrimination is to ignore the complexities of human existence.

Yet, if disparate-impact liability is not based on this assumption and is instead simply a way to correct for imbalances that do not result from any unlawful conduct, it is even less justifiable. This Court has repeatedly reaffirmed that " 'racial balancing' " by state actors is " 'patently unconstitutional,' " even when it supposedly springs from good intentions. ***2531** *Fisher v. University of Tex. at Austin,* 570 U.S. ——, ——, 133 S.Ct. 2411, 2419, 186 L.Ed.2d 474 (2013). And if that "racial balancing" is achieved through disparate-impact claims limited to only some groups—if, for instance, white basketball players cannot bring disparate-impact suits—then we as a Court have constructed a scheme that parcels out legal privileges to individuals on the basis of skin color. A problem with doing so should be obvious: "Government action that classifies individuals on the basis of race is inherently suspect." *Schuette v. BAMN,* 572 U.S. ——, ——, 134 S.Ct. 1623, 1634–1635, 188 L.Ed.2d 613 (2014) (plurality opinion); accord, *id.,* at ——, 134 S.Ct., at 1643–1644 (SCALIA, J., concurring in judgment). That is no less true when judges are the ones doing the classifying. See *id.,* at ——, 134 S.Ct., at 1634–1635 (plurality opinion); *id.,* at ——, 134 S.Ct., at 1643–1644 (SCALIA, J., concurring in judgment). Disparate-impact liability is thus a rule without a reason, or at least without a legitimate one.

III

The decision in *Griggs* was bad enough, but this Court's subsequent decisions have allowed it to move to other

areas of the law. In *Smith,* for example, a plurality of this Court relied on *Griggs* to include disparate-impact liability in the ADEA. See 544 U.S., at 236, 125 S.Ct. 1536. As both I and the author of today's majority opinion recognized at the time, that decision was as incorrect as it was regrettable. See *id.,* at 248–249, 125 S.Ct. 1536 (O'Connor, J., joined by KENNEDY and THOMAS, JJ., concurring in judgment). Because we knew that Congress did not create disparate-impact liability under Title VII, we explained that "there [wa]s no reason to suppose that Congress in 1967"—four years before *Griggs*—"could have foreseen the interpretation of Title VII that was to come." *Smith, supra,* at 260, 125 S.Ct. 1536 (opinion of O'Connor, J.). It made little sense to repeat *Griggs* ' error in a new context.

My position remains the same. Whatever deference is due *Griggs* as a matter of *stare decisis,* we should at the very least confine it to Title VII. We should not incorporate it into statutes such as the Fair Housing Act and the ADEA, which were passed years before Congress had any reason to suppose that this Court would take the position it did in *Griggs*. See *Smith, supra,* at 260, 125 S.Ct. 1536 (opinion of O'Connor, J.). And we should certainly not allow it to spread to statutes like the Fair Housing Act, whose operative text, unlike that of the ADEA's, does not even mirror Title VII's.

Today, however, the majority inexplicably declares that "the logic of *Griggs* and *Smith* " leads to the conclusion that "the FHA encompasses disparate-impact claims." *Ante,* at 2518. Justice ALITO ably dismantles this argument. *Post,* at 2543 – 2547 (dissenting opinion). But, even if the majority were correct, I would not join it in following that "logic" here. "[E]rroneous precedents need not be extended to their logical end, even when dealing with related provisions that normally would be interpreted in lockstep. Otherwise, *stare decisis,* designed to be a principle of stability and repose, would become a vehicle of change ... distorting the law." *CBOCS West, Inc. v. Humphries,* 553 U.S. 442, 469–470, 128 S.Ct. 1951, 170 L.Ed.2d 864 (2008) (THOMAS, J., dissenting) (footnote omitted). Making the same mistake in different areas of the law furthers neither certainty nor judicial economy. It furthers error.

That error will take its toll. The recent experience of the Houston Housing Authority (HHA) illustrates some of the many costs of disparate-impact liability. ***2532** HHA, which provides affordable housing developments to low-income residents of Houston, has over 43,000 families on its waiting lists. The overwhelming majority of those families are black. Because Houston is a majority-minority city with minority concentrations in all but the more affluent areas, any HHA developments built outside of those areas will increase the concentration of racial minorities. Unsurprisingly, the threat of disparate-impact suits based on those concentrations has hindered HHA's efforts to provide affordable housing. State and federal housing agencies have refused to approve all but two of HHA's eight proposed development projects over the past two years out of fears of disparate-impact liability. Brief for Houston Housing Authority as *Amicus Curiae* 8–12. That the majority believes that these are not " 'dire consequences,' " see *ante,* at 2525, is cold comfort for those who actually need a home.

* * *

I agree with the majority that *Griggs* "provide[s] essential background" in this case, *ante,* at 2517: It shows that our disparate-impact jurisprudence was erroneous from its inception. Divorced from text and reality, driven by an agency with its own policy preferences, *Griggs* bears little relationship to the statutory interpretation we should expect from a court of law. Today, the majority repeats that error.

I respectfully dissent.

Justice ALITO, with whom THE CHIEF JUSTICE, Justice SCALIA, and Justice THOMAS join, dissenting.

No one wants to live in a rat's nest. Yet in *Gallagher v. Magner,* 619 F.3d 823 (2010), a case that we agreed to review several Terms ago, the Eighth Circuit held that the Fair Housing Act (or FHA), 42 U.S.C. § 3601 *et seq.,* could be used to attack St. Paul, Minnesota's efforts to combat "rodent infestation" and other violations of the city's housing code. 619 F.3d, at 830. The court agreed that there was no basis to "infer discriminatory intent" on the part of St. Paul. *Id.,* at 833. Even so, it concluded that the city's "aggressive enforcement of the Housing Code" was actionable because making landlords respond to "rodent infestation, missing dead-bolt locks, inadequate sanitation facilities, inadequate heat, inoperable smoke detectors, broken or missing doors," and the like increased the price of rent. *Id.,* at 830, 835. Since minorities were statistically more likely to fall into "the bottom bracket for household adjusted median family income," they were disproportionately affected by those rent increases, *i.e.,* there was a "disparate impact." *Id.,* at 834. The upshot was that even St. Paul's good-faith attempt to ensure minimally acceptable housing for its poorest residents could not ward off a disparate-impact lawsuit.

Today, the Court embraces the same theory that drove the decision in *Magner.*[1] This is a serious mistake. The Fair

Housing Act does not create disparate-impact liability, nor do this Court's precedents. And today's decision will have unfortunate consequences for local government, private enterprise, and those living in poverty. Something has gone badly awry when a city can't even make slumlords kill rats without fear of a lawsuit. Because Congress did not authorize any of this, I respectfully dissent.

[1] We granted certiorari in *Magner v. Gallagher,* 565 U.S. ——, 132 S.Ct. 548, 181 L.Ed.2d 395 (2011). Before oral argument, however, the parties settled. 565 U.S. ——, 132 S.Ct. 994, 1306, 181 L.Ed.2d 1035, 725 (2012). The same thing happened again in *Township of Mount Holly v. Mt. Holly Gardens Citizens in Action, Inc.,* 571 U.S. ——, 133 S.Ct. 2824, 186 L.Ed.2d 883 (2013).

***2533** I

Everyone agrees that the FHA punishes intentional discrimination. Treating someone "less favorably than others because of a protected trait" is " 'the most easily understood type of discrimination.' " *Ricci v. DeStefano,* 557 U.S. 557, 577, 129 S.Ct. 2658, 174 L.Ed.2d 490 (2009) (quoting *Teamsters v. United States,* 431 U.S. 324, 335, n. 15, 97 S.Ct. 1843, 52 L.Ed.2d 396 (1977); some internal quotation marks omitted). Indeed, this classic form of discrimination—called disparate treatment—is the only one prohibited by the Constitution itself. See, *e.g., Arlington Heights v. Metropolitan Housing Development Corp.,* 429 U.S. 252, 264–265, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977). It is obvious that Congress intended the FHA to cover disparate treatment.

The question presented here, however, is whether the FHA also punishes "practices that are not intended to discriminate but in fact have a disproportionately adverse effect on minorities." *Ricci, supra,* at 577, 129 S.Ct. 2658. The answer is equally clear. The FHA does not authorize disparate-impact claims. No such liability was created when the law was enacted in 1968. And nothing has happened since then to change the law's meaning.

A

I begin with the text. Section 804(a) of the FHA makes it unlawful "[t]o refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person *because of* race, color, religion, sex, familial status, or national origin." 42 U.S.C. § 3604(a) (emphasis added). Similarly, § 805(a) prohibits any party "whose business includes engaging in residential real estate-related transactions" from "discriminat[ing] against any person in making available such a transaction, or in the terms or conditions of such a transaction, *because of* race, color, religion, sex, handicap, familial status, or national origin." § 3605(a) (emphasis added).

In both sections, the key phrase is "because of." These provisions list covered actions ("refus[ing] to sell or rent ... a dwelling," "refus[ing] to negotiate for the sale or rental of ... a dwelling," "discriminat[ing]" in a residential real estate transaction, etc.) and protected characteristics ("race," "religion," etc.). The link between the actions and the protected characteristics is "because of."

What "because of" means is no mystery. Two Terms ago, we held that "the ordinary meaning of 'because of' is 'by reason of' or 'on account of.' " *University of Tex. Southwestern Medical Center v. Nassar,* 570 U.S. ——, ——, 133 S.Ct. 2517, 2527, 186 L.Ed.2d 503 (2013) (quoting *Gross v. FBL Financial Services, Inc.,* 557 U.S. 167, 176, 129 S.Ct. 2343, 174 L.Ed.2d 119 (2009); some internal quotation marks omitted). A person acts "because of" something else, we explained, if that something else " 'was the "reason" that the [person] decided to act.' " 570 U.S., at ——, 133 S.Ct., at 2527.

Indeed, just weeks ago, the Court made this same point in interpreting a provision of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e–2(m), that makes it unlawful for an employer to take a variety of adverse employment actions (such as failing or refusing to hire a job applicant or discharging an employee) "because of" religion. See *EEOC v. Abercrombie & Fitch Stores, Inc.,* 575 U.S. ——, ——, 135 S.Ct. 2028, 2032–2033, ——L.Ed.2d —— (2015). The Court wrote: " 'Because of' in § 2000e–2(a)(1) links the forbidden consideration to each of the verbs preceding it." *Ibid.*

***2534** Nor is this understanding of "because of" an arcane feature of legal usage. When English speakers say that someone did something "because of" a factor, what they mean is that the factor was a reason for what was done. For example, on the day this case was argued, January 21, 2015, Westlaw and Lexis searches reveal that the phrase "because of" appeared in 14 Washington Post print articles. In every single one, the phrase linked an action and a reason for the action.[2]

[2] See al-Mujahed & Naylor, Rebels Assault Key Sites in Yemen, pp. A1, A12 ("A government official ... spoke

on the condition of anonymity because of concern for his safety"); Berman, Jury Selection Starts in Colo. Shooting Trial, p. A2 ("Jury selection is expected to last four to five months because of a massive pool of potential jurors"); Davidson, Some VA Whistleblowers Get Relief From Retaliation, p. A18 ("In April, they moved to fire her because of an alleged 'lack of collegiality' "); Hicks, Post Office Proposes Hikes in Postage Rates, p. A19 ("The Postal Service lost $5.5 billion in 2014, in large part because of continuing declines in first-class mail volume"); Editorial, Last Responders, p. A20 ("Metro's initial emergency call mentioned only smoke but no stuck train [in part] ... because of the firefighters' uncertainty that power had been shut off to the third rail"); Letter to the Editor, Metro's Safety Flaws, p. A20 ("[A] circuit breaker automatically opened because of electrical arcing"); Bernstein, He Formed Swingle Singers and Made Bach Swing, p. B6 ("The group retained freshness because of the 'stunning musicianship of these singers' "); Schudel, TV Producer, Director Invented Instant Replay, p. B7 ("[The 1963 Army–Navy football game was] [d]elayed one week because of the assassination of President John F. Kennedy"); Contrera & Thompson, 50 Years On, Cheering a Civil Rights Matriarch, pp. C1, C5 ("[T]he first 1965 protest march from Selma to Montgomery ... became known as 'Bloody Sunday' because of state troopers' violent assault on the marchers"); Pressley, 'Life Sucks': Aaron Posner's Latest Raging Riff on Chekhov, pp. C1, C9 (" 'The Seagull' gave Posner ample license to experiment because of its writer and actress characters and its pronouncements on art"); A Rumpus on 'The Bachelor,' p. C2 ("Anderson has stood out from the pack ... mostly because of that post-production censoring of her nether regions" (ellipsis in original)); Steinberg, KD2DC, Keeping Hype Alive, pp. D1, D4 (explaining that a commenter "asked that his name not be used because of his real job"); Boren, Former FSU Boss Bowden Wants 12 Wins to Be Restored, p. D2 ("[T]he NCAA restored the 111 victories that were taken from the late Joe Paterno because of the Jerry Sandusky child sex-abuse scandal"); Oklahoma City Finally Moves Past .500 Mark, p. D4 ("Trail Blazers all-star LaMarcus Aldridge won't play in Wednesday night's game against the Phoenix Suns because of a left thumb injury").

Without torturing the English language, the meaning of these provisions of the FHA cannot be denied. They make it unlawful to engage in any of the covered actions "because of"—meaning "by reason of" or "on account of," *Nassar, supra,* at 2530, 133 S.Ct., at 2527—race, religion, etc. Put another way, "the terms [after] the 'because of' clauses in the FHA supply the prohibited motivations for the intentional acts ... that the Act makes unlawful." *American Ins. Assn. v. Department of Housing and Urban Development,* ——F.Supp.3d ——, —— n. 20, 2014 WL 5802283, at *8, n. 20 (D.D.C.2014). Congress accordingly outlawed the covered actions only when they are motivated by race or one of the other protected characteristics.

It follows that the FHA does not authorize disparate-impact suits. Under a statute like the FHA that prohibits actions taken "because of" protected characteristics, intent makes all the difference. Disparate impact, however, does not turn on " 'subjective intent.' " *Raytheon Co. v. Hernandez,* 540 U.S. 44, 53, 124 S.Ct. 513, 157 L.Ed.2d 357 (2003). Instead, " 'treat[ing] [a] particular person less favorably than others *because of* ' a protected trait" is " 'disparate treatment,' " *not disparate impact. Ricci,* 557 U.S., at 577, 129 S.Ct. 2658 (emphasis added). See ***2535** also, *e.g., Personnel Administrator of Mass. v. Feeney,* 442 U.S. 256, 279, 99 S.Ct. 2282, 60 L.Ed.2d 870 (1979) (explaining the difference between "because of" and "in spite of"); *Hernandez v. New York,* 500 U.S. 352, 359–360, 111 S.Ct. 1859, 114 L.Ed.2d 395 (1991) (plurality opinion) (same); *Alexander v. Sandoval,* 532 U.S. 275, 278, 280, 121 S.Ct. 1511, 149 L.Ed.2d 517 (2001) (holding that it is "beyond dispute" that banning discrimination " 'on the ground of race' " "prohibits only intentional discrimination").

This is precisely how Congress used the phrase "because of" elsewhere in the FHA. The FHA makes it a crime to willfully "interfere with ... any person because of his race" (or other protected characteristic) who is engaging in a variety of real-estate-related activities, such as "selling, purchasing, [or] renting" a dwelling. 42 U.S.C. § 3631(a). No one thinks a defendant could be convicted of this crime without proof that he acted "because of," *i.e.,* on account of or by reason of, one of the protected characteristics. But the critical language in this section—"because of"—is identical to the critical language in the sections at issue in this case. "One ordinarily assumes" Congress means the same words in the same statute to mean the same thing. *Utility Air Regulatory Group v. EPA,* 573 U.S. ——, —— , 134 S.Ct. 2427, 2441–2442, 189 L.Ed.2d 372 (2014). There is no reason to doubt that ordinary assumption here.

Like the FHA, many other federal statutes use the phrase "because of" to signify what that phrase means in ordinary speech. For instance, the federal hate crime statute, 18 U.S.C. § 249, authorizes enhanced sentences for defendants convicted of committing certain crimes "because of" race, color, religion, or other listed characteristics. Hate crimes require bad intent—indeed, that is the whole point of these laws. See, *e.g., Wisconsin v. Mitchell,* 508 U.S. 476, 484–485, 113 S.Ct. 2194, 124 L.Ed.2d 436 (1993) ("[T]he same criminal conduct may be more heavily punished if the victim is selected because of his race or other protected status"). All of this confirms that

"because of" in the FHA should be read to mean what it says.

B

In an effort to find at least a sliver of support for disparate-impact liability in the text of the FHA, the principal respondent, the Solicitor General, and the Court pounce on the phrase "make unavailable." Under § 804(a), it is unlawful "[t]o ... make unavailable ... a dwelling to any person because of race, color, religion, sex, familial status, or national origin." 42 U.S.C. § 3604(a). See also § 3605(a) (barring "discriminat[ion] against any person in making available such a [housing] transaction ... because of race, color, religion, sex, handicap, familial status, or national origin"). The Solicitor General argues that "[t]he plain meaning of the phrase 'make unavailable' includes actions that *have the result* of making housing or transactions unavailable, regardless of whether the actions were intended to have that result." Brief for United States as *Amicus Curiae* 18 (emphasis added). This argument is not consistent with ordinary English usage.

It is doubtful that the Solicitor General's argument accurately captures the "plain meaning" of the phrase "make unavailable" even when that phrase is not linked to the phrase "because of." "[M]ake unavailable" must be viewed together with the rest of the actions covered by § 804(a), which applies when a party "*refuse[s]* to sell or rent" a dwelling, "*refuse[s]* to negotiate for the sale or rental" of a dwelling, "*den[ies]* a dwelling to any person," "or otherwise *make[s] unavailable* " a dwelling. ***2536** § 3604(a) (emphasis added). When a statute contains a list like this, we "avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving 'unintended breadth to the Acts of Congress.' " *Gustafson v. Alloyd Co.,* 513 U.S. 561, 575, 115 S.Ct. 1061, 131 L.Ed.2d 1 (1995) (quoting *Jarecki v. G.D. Searle & Co.,* 367 U.S. 303, 307, 81 S.Ct. 1579, 6 L.Ed.2d 859 (1961)). See also, *e.g., Yates v. United States,* 574 U.S. ——, ——, 135 S.Ct. 1074, 1085–1086, 191 L.Ed.2d 64 (2015) (plurality opinion); *id*., at ——, 135 S.Ct., at 1089 (ALITO, J., concurring in judgment). Here, the phrases that precede "make unavailable" unmistakably describe *intentional* deprivations of equal treatment, not merely actions that happen to have a disparate effect. See *American Ins. Assn.,* —— F.Supp.3d, at ——, 2014 WL 5802283, at *8 (citing Webster's Third New International Dictionary 603, 848, 1363, 1910 (1966)). Section 804(a), moreover, prefaces "make unavailable" with "or otherwise," thus creating a catchall. Catchalls must be read "restrictively" to be "like" the listed terms. *Washington State Dept. of Social and Health Servs. v. Guardianship Estate of Keffeler,* 537 U.S. 371, 384–385, 123 S.Ct. 1017, 154 L.Ed.2d 972 (2003). The result of these ordinary rules of interpretation is that even without "because of," the phrase "make unavailable" likely would require intentionality.

The FHA's inclusion of "because of," however, removes any doubt. Sections 804(a) and 805(a) apply only when a party makes a dwelling or transaction unavailable "because of" race or another protected characteristic. In ordinary English usage, when a person makes something unavailable "because of" some factor, that factor must be a reason for the act.

Here is an example. Suppose that Congress increases the minimum wage. Some economists believe that such legislation reduces the number of jobs available for "unskilled workers," Fuller & Geide–Stevenson, Consensus Among Economists: Revisited, 34 J. Econ. Educ. 369, 378 (2003), and minorities tend to be disproportionately represented in this group, see, *e.g.,*Dept. of Commerce, Bureau of Census, Detailed Years of School Completed by People 25 Years and Over by Sex, Age Groups, Race and Hispanic Origin: 2014, online at http://www.census.gov/hhes/socdemo/education/data/cps/2014/tables.html (all Internet materials as visited June 23, 2015, and available in Clerk of Court's case file). Assuming for the sake of argument that these economists are correct, would it be fair to say that Congress made jobs unavailable to African–Americans or Latinos "because of" their race or ethnicity?

A second example. Of the 32 college players selected by National Football League (NFL) teams in the first round of the 2015 draft, it appears that the overwhelming majority were members of racial minorities. See Draft 2015, http://www.nfl.com/draft/2015. See also Miller, Powerful Sports Agents Representing Color, Los Angeles Sentinel, Feb. 6, 2014, p. B3 (noting "there are 96 players (76 of whom are African–American) chosen in the first rounds of the 2009, 2010, and 2011 NFL drafts"). Teams presumably chose the players they think are most likely to help them win games. Would anyone say the NFL teams made draft slots unavailable to white players "because of" their race?

A third example. During the present Court Term, of the 21 attorneys from the Solicitor General's Office who argued cases in this Court, it appears that all but 5(76%) were under the age of 45. Would the Solicitor General say he made argument opportunities unavailable to older attorneys "because of" their age?

***2537** The text of the FHA simply cannot be twisted to

authorize disparate-impact claims. It is hard to imagine how Congress could have more clearly stated that the FHA prohibits only intentional discrimination than by forbidding acts done "because of race, color, religion, sex, familial status, or national origin."

II

The circumstances in which the FHA was enacted only confirm what the text says. In 1968, "the predominant focus of antidiscrimination law was on intentional discrimination." *Smith v. City of Jackson,* 544 U.S. 228, 258, 125 S.Ct. 1536, 161 L.Ed.2d 410 (2005) (O'Connor, J., concurring in judgment). The very "concept of disparate impact liability, by contrast, was quite novel." *Ibid.* (collecting citations). See also Tr. of Oral Arg. 15 ("JUSTICE GINSBURG: ... If we're going to be realistic about this, ... in 1968, when the Fair Housing Act passed, nobody knew anything about disparate impact"). It is anachronistic to think that Congress authorized disparate-impact claims in 1968 but packaged that striking innovation so imperceptibly in the FHA's text.

Eradicating intentional discrimination was and is the FHA's strategy for providing fair housing opportunities for all. The Court recalls the country's shameful history of segregation and *de jure* housing discrimination and then jumps to the conclusion that the FHA authorized disparate-impact claims as a method of combatting that evil. *Ante,* at 2534 – 2536. But the fact that the 1968 Congress sought to end housing discrimination says nothing about the means it devised to achieve that end. The FHA's text plainly identifies the weapon Congress chose—outlawing disparate treatment "because of race" or another protected characteristic. 42 U.S.C. §§ 3604(a), 3605(a). Accordingly, in any FHA claim, "[p]roof of discriminatory motive is critical." *Teamsters,* 431 U.S., at 335, n. 15, 97 S.Ct. 1843.

III

Congress has done nothing since 1968 to change the meaning of the FHA prohibitions at issue in this case. In 1968, those prohibitions forbade certain housing practices if they were done "because of" protected characteristics. Today, they still forbid certain housing practices if done "because of" protected characteristics. The meaning of the unaltered language adopted in 1968 has not evolved.

Rather than confronting the plain text of §§ 804(a) and 805(a), the Solicitor General and the Court place heavy reliance on certain amendments enacted in 1988, but those amendments did not modify the meaning of the provisions now before us. In the Fair Housing Amendments Act of 1988, 102 Stat. 1619, Congress expanded the list of protected characteristics. See 42 U.S.C. §§ 3604(a), (f)(1). Congress also gave the Department of Housing and Urban Development (HUD) rulemaking authority and the power to adjudicate certain housing claims. See §§ 3612, 3614a. And, what is most relevant for present purposes, Congress added three safe-harbor provisions, specifying that "[n]othing in [the FHA]" prohibits (a) certain actions taken by real property appraisers, (b) certain occupancy requirements, and (c) the treatment of persons convicted of manufacturing or distributing illegal drugs.[3]

[3] These new provisions state:
"Nothing in this subchapter prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status." § 3605(c).
"Nothing in this subchapter limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this subchapter regarding familial status apply with respect to housing for older persons." § 3607(b)(1).
"Nothing in this subchapter prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 802 of title 21." § 3607(b)(4).

***2538** According to the Solicitor General and the Court, these amendments show that the FHA authorizes disparate-impact claims. Indeed, the Court says that they are "of crucial importance." *Ante,* at 2519. This "crucial" argument, however, cannot stand.

A

The Solicitor General and the Court contend that the 1988 Congress implicitly authorized disparate-impact liability by adopting the amendments just noted while leaving the operative provisions of the FHA untouched. Congress knew at that time, they maintain, that the Courts of Appeals had held that the FHA sanctions disparate-impact claims, but Congress failed to enact bills that would have rejected that theory of liability. Based on this, they submit that

Congress silently ratified those decisions. See *ante,* at 2519 – 2520; Brief for United States as *Amicus Curiae* 23–24. This argument is deeply flawed.

Not the greatest of its defects is its assessment of what Congress must have known about the judiciary's interpretation of the FHA. The Court writes that by 1988, "all nine *Courts of Appeals* to have addressed the question had concluded the Fair Housing Act encompassed disparate-impact claims." *Ante,* at 2519 (emphasis added). See also Brief for United States as *Amicus Curiae* 12. But *this Court* had not addressed that question. While we always give respectful consideration to interpretations of statutes that garner wide acceptance in other courts, this Court has "no warrant to ignore clear statutory language on the ground that other courts have done so," even if they have " 'consistently' " done so for " '30 years.' " *Milner v. Department of Navy,* 562 U.S. 562, 575–576, 131 S.Ct. 1259, 179 L.Ed.2d 268 (2011). See also, *e.g., CSX Transp., Inc. v. McBride,* 564 U.S. ——, ——, 131 S.Ct. 2630, 2650, 180 L.Ed.2d 637 (2011) (ROBERTS, C.J., dissenting) (explaining that this Court does not interpret statutes by asking for "a show of hands" (citing *Buckhannon Board & Care Home, Inc. v. West Virginia Dept. of Health and Human Resources,* 532 U.S. 598, 121 S.Ct. 1835, 149 L.Ed.2d 855 (2001); *McNally v. United States,* 483 U.S. 350, 107 S.Ct. 2875, 97 L.Ed.2d 292 (1987))).

In any event, there is no need to ponder whether it would have been reasonable for the 1988 Congress, without considering the clear meaning of §§ 804(a) and 805(a), to assume that the decisions of the lower courts effectively settled the matter. While the Court highlights the decisions of the Courts of Appeals, it fails to mention something that is of at least equal importance: The official view of the United States in 1988.

Shortly *before* the 1988 amendments were adopted, the United States formally argued in this Court that the FHA prohibits only intentional discrimination. See Brief for United States as *Amicus Curiae* in *Huntington v. Huntington Branch, NAACP,* O.T. 1988, No. 87–1961, p. 15 ("An action taken because of some factor other than race, *i.e.,* financial means, even if it causes a discriminatory effect, is not ***2539** an example of the intentional discrimination outlawed by the statute"); *id.,* at 14 ("The words 'because of' plainly connote a causal connection between the housing-related action and the person's race or color").[4] This was the same position that the United States had taken in lower courts for years. See, *e.g.*, *United States v. Birmingham,* 538 F.Supp. 819, 827, n. 9 (E.D.Mich.1982) (noting positional change), aff'd, 727 F.2d 560, 565–566 (C.A.6 1984) (adopting United States' "concession" that there must be a " 'discriminatory motive' "). It is implausible that the 1988 Congress was aware of certain lower court decisions but oblivious to the United States' considered and public view that those decisions were wrong.

[4] In response to the United States' argument, we reserved decision on the question. See *Huntington v. Huntington Branch, NAACP,* 488 U.S. 15, 18, 109 S.Ct. 276, 102 L.Ed.2d 180 (1988) (*per curiam*) ("Since appellants conceded the applicability of the disparate-impact test ... we do not reach the question whether that test is the appropriate one").

This fact is fatal to any notion that Congress implicitly ratified disparate impact in 1988. The canon of interpretation on which the Court and the Solicitor General purport to rely—the so-called "prior-construction canon"—does not apply where lawyers cannot "justifiably regard the point as settled" or when "other sound rules of interpretation" are implicated. A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 324, 325 (2012). That was the case here. Especially after the United States began repudiating disparate impact, no one could have reasonably thought that the question was settled.

Nor can such a faulty argument be salvaged by pointing to Congress' failure in 1988 to enact language that would have made it clear that the FHA does not authorize disparate-impact suits based on zoning decisions. See *ante,* at 2519 – 2520.[5] To change the meaning of language in an already enacted law, Congress must pass a new law amending that language. See, *e.g., West Virginia Univ. Hospitals, Inc. v. Casey,* 499 U.S. 83, 100, 101, and n. 7, 111 S.Ct. 1138, 113 L.Ed.2d 68 (1991). Intent that finds no expression in a statute is irrelevant. See, *e.g., New York Telephone Co. v. New York State Dept. of Labor,* 440 U.S. 519, 544–545, 99 S.Ct. 1328, 59 L.Ed.2d 553 (1979); Easterbrook, Statutes' Domains, 50 U. Chi. L. Rev. 533, 538–540 (1983). Hence, "we walk on quicksand when we try to find in the absence of corrective legislation a controlling legal principle." *Helvering v. Hallock,* 309 U.S. 106, 121, 60 S.Ct. 444, 84 L.Ed. 604 (1940).

[5] In any event, the Court overstates the importance of that failed amendment. The amendment's sponsor disavowed that it had anything to do with the broader question whether the FHA authorizes disparate-impact suits. Rather, it "left to caselaw and eventual Supreme Court resolution whether a discriminatory intent or discriminatory effects standard is appropriate ... [in] all situations but zoning." H.R.Rep. No. 100–711, p. 89 (1988), 1988 U.S.C.C.A.N. 2173, 2224. Some in Congress, moreover, supported the amendment *and* the

House bill. Compare *ibid.* with 134 Cong. Rec. 16511 (1988). It is hard to believe they thought the bill—which was silent on disparate impact—nonetheless decided the broader question. It is for such reasons that failed amendments tell us "little" about what a statute means. *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.,* 511 U.S. 164, 187, 114 S.Ct. 1439, 128 L.Ed.2d 119 (1994). Footnotes in House Reports and law professor testimony tell us even less. *Ante,* at 2519 – 2520.

Unsurprisingly, we have rejected *identical* arguments about implicit ratification in other cases. For example, in ***2540** *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N. A.,* 511 U.S. 164, 114 S.Ct. 1439, 128 L.Ed.2d 119 (1994), a party argued that § 10(b) of the Securities Exchange Act of 1934 imposes liability on aiders and abettors because "Congress ha[d] amended the securities laws on various occasions since 1966, when courts first began to interpret § 10(b) to cover aiding and abetting, but ha[d] done so without providing that aiding and abetting liability is not available under § 10(b)." *Id.,* at 186, 114 S.Ct. 1439. "From that," a party asked the Court to "infer that these Congresses, by silence, ha[d] acquiesced in the judicial interpretation of § 10(b)." *Ibid.* The Court dismissed this argument in words that apply almost verbatim here:

> " 'It does not follow that Congress' failure to overturn a statutory precedent is reason for this Court to adhere to it. It is "impossible to assert with any degree of assurance that congressional failure to act represents" affirmative congressional approval of the courts' statutory interpretation. Congress may legislate, moreover, only through the passage of a bill which is approved by both Houses and signed by the President. See U.S. Const., Art. I, § 7, cl. 2. Congressional inaction cannot amend a duly enacted statute.' *Patterson v. McLean Credit Union,* 491 U.S. 164, 175, n. 1 [109 S.Ct. 2363, 105 L.Ed.2d 132] (1989) (quoting *Johnson v. Transportation Agency, Santa Clara Cty.*, 480 U.S. 616, 672 [107 S.Ct. 1442, 94 L.Ed.2d 615] (1987) (SCALIA, J., dissenting))." *Ibid.* (alterations omitted).

We made the same point again in *Sandoval,* 532 U.S. 275, 121 S.Ct. 1511, 149 L.Ed.2d 517. There it was argued that amendments to Title VI of the Civil Rights Act of 1964 implicitly ratified lower court decisions upholding a private right of action. We rejected that argument out of hand. See *id.,* at 292–293, 121 S.Ct. 1511.

Without explanation, the Court ignores these cases.

B

The Court contends that the 1988 amendments provide "convincing confirmation of Congress' understanding that disparate-impact liability exists under the FHA" because the three safe-harbor provisions included in those amendments "would be superfluous if Congress had assumed that disparate-impact liability did not exist under the FHA." *Ante,* at 2520, 2521. As just explained, however, what matters is what Congress *did,* not what it might have "assumed." And although the Court characterizes these provisions as "exemptions," that characterization is inaccurate. They make no reference to § 804(a) or § 805(a) or any other provision of the FHA; nor do they state that they apply to conduct that would otherwise be prohibited. Instead, they simply make clear that certain conduct is not forbidden by the Act. *E.g.,* 42 U.S.C. § 3607(b)(4) ("Nothing in this subchapter prohibits ..."). The Court should read these amendments to mean what they say.

In 1988, policymakers were not of one mind about disparate-impact housing suits. Some favored the theory and presumably would have been happy to have it enshrined in the FHA. See *ante,* at 2519 – 2520; 134 Cong. Rec. 23711 (1988) (statement of Sen. Kennedy). Others worried about disparate-impact liability and recognized that this Court had not decided whether disparate-impact claims were authorized under the 1968 Act. See H.R.Rep. No. 100–711, pp. 89–93 (1988). Still others disapproved of disparate-impact liability and believed that the 1968 Act did not authorize it. That was the view of President Reagan when he signed the amendments. See Remarks on Signing the Fair Housing Amendments Act of ***2541** 1988, 24 Weekly Comp. of Pres. Doc. 1140, 1141 (1988) (explaining that the amendments did "not represent any congressional or executive branch endorsement of the notion, expressed in some judicial opinions, that [FHA] violations may be established by a showing of disparate impact" because the FHA "speaks only to intentional discrimination").[6]

[6] At the same hearings to which the Court refers, *ante,* at 2519, Senator Hatch stated that if the "intent test versus the effects test" were to "becom[e] an issue," a "fair housing law" might not be enacted at all, and he noted that failed legislation in the past had gotten "bogged down" because of that "battle." Fair Housing Amendments Act of 1987: Hearings on S. 558 before the Subcommittee on the Constitution of the Senate Committee on the Judiciary, 100th Cong., 1st Sess., 5 (1987). He also noted that the bill under consideration did "not really go one way or the other" on disparate impact since the sponsors were content to "rely" on the lower court opinions. *Ibid.* And he emphasized that "the

issue of intent versus effect—I am afraid that is going to have to be decided by the Supreme Court." *Ibid*. See also *id.,* at 2517 ("It is not always a violation to refuse to sell, but only to refuse to sell 'because of' another's race. This language made clear that the 90th Congress meant only to outlaw acts taken with the intent to discriminate.... To use any standard other than discriminatory intent ... would jeopardize many kinds of beneficial zoning and local ordinances" (statement of Sen. Hatch)).

The 1988 safe-harbor provisions have all the hallmarks of a compromise among these factions. These provisions neither authorize nor bar disparate-impact claims, but they do provide additional protection for persons and entities engaging in certain practices that Congress especially wished to shield. We "must respect and give effect to these sorts of compromises." *Ragsdale v. Wolverine World Wide, Inc*., 535 U.S. 81, 93–94, 122 S.Ct. 1155, 152 L.Ed.2d 167 (2002).

It is not hard to see why such a compromise was attractive. For Members of Congress who supported disparate impact, the safe harbors left the favorable lower court decisions in place. And for those who hoped that this Court would ultimately agree with the position being urged by the United States, those provisions were not surplusage. In the Circuits in which disparate-impact FHA liability had been accepted, the safe-harbor provisions furnished a measure of interim protection until the question was resolved by this Court. They also provided partial protection in the event that this Court ultimately rejected the United States' argument. Neither the Court, the principal respondent, nor the Solicitor General has cited any case in which the canon against surplusage has been applied in circumstances like these.[7]

[7] In any event, even in disparate-treatment suits, the safe harbors are not superfluous. For instance, they affect "the burden-shifting framework" in disparate-treatment cases. *American Ins. Assn. v. Department of Housing and Urban Development,* —— F.Supp.3d ——, 2014 WL 5802283, *10 (D.D.C.2014). Under the second step of the burden-shifting scheme from *McDonnell Douglas Corp. v. Green,* 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973), which some courts have applied in disparate-treatment housing cases, see, *e.g., 2922 Sherman Avenue Tenants' Assn. v. District of Columbia,* 444 F.3d 673, 682 (C.A.D.C.2006) (collecting cases), a defendant must proffer a legitimate reason for the challenged conduct, and the safe-harbor provisions set out reasons that are necessarily legitimate. Moreover, while a factfinder in a disparate-treatment case can sometimes infer bad intent based on facially neutral conduct, these safe harbors protect against such inferences. Without more, conduct within a safe harbor is insufficient to support such an inference as a matter of law. And finally, even if there is additional evidence, these safe harbors make it harder to show pretext. See *Fair Housing Advocates Assn., Inc. v. Richmond Heights,* 209 F.3d 626, 636–637, and n. 7 (C.A.6 2000).
Even if they were superfluous, moreover, our "preference for avoiding surplusage constructions is not absolute." *Lamie v. United States Trustee,* 540 U.S. 526, 536, 124 S.Ct. 1023, 157 L.Ed.2d 1024 (2004). We "presume that a legislature says in a statute what it means," notwithstanding "[r]edundanc[y]." *Connecticut Nat. Bank v. Germain,* 503 U.S. 249, 253–254, 112 S.Ct. 1146, 117 L.Ed.2d 391 (1992).

***2542** On the contrary, we have previously refused to interpret enactments like the 1988 safe-harbor provisions in such a way. Our decision in *O'Gilvie v. United States,* 519 U.S. 79, 117 S.Ct. 452, 136 L.Ed.2d 454 (1996)—also ignored by the Court today—is instructive. In that case, the question was whether a provision of the Internal Revenue Code excluding a recovery for personal injury from gross income applied to punitive damages. Well after the critical provision was enacted, Congress adopted an amendment providing that punitive damages for nonphysical injuries were not excluded. Pointing to this amendment, a taxpayer argued: "Why ... would Congress have enacted this amendment removing punitive damages (in nonphysical injury cases) unless Congress believed that, in the amendment's absence, punitive damages did fall within the provision's coverage?" *Id.,* at 89, 117 S.Ct. 452. This argument, of course, is precisely the same as the argument made in this case. To paraphrase *O'Gilvie,* the Court today asks: Why would Congress have enacted the 1988 amendments, providing safe harbors from three types of disparate-impact claims, unless Congress believed that, in the amendments' absence, disparate-impact claims did fall within the FHA's coverage?

The Court rejected the argument in *O'Gilvie*. "The short answer," the Court wrote, is that Congress might have simply wanted to "clarify the matter in respect to nonphysical injuries" while otherwise "leav[ing] the law where it found it." *Ibid.* Although other aspects of *O'Gilvie* triggered a dissent, see *id.,* at 94–101, 117 S.Ct. 452 (opinion of SCALIA, J.), no one quarreled with this self-evident piece of the Court's analysis. Nor was the *O'Gilvie* Court troubled that Congress' amendment regarding nonphysical injuries turned out to have been unnecessary because punitive damages for any injuries were not excluded all along.

The Court saw the flaw in the argument in *O'Gilvie,* and

the same argument is no better here. It is true that *O'Gilvie* involved a dry question of tax law while this case involves a controversial civil rights issue. But how we read statutes should not turn on such distinctions.

In sum, as the principal respondent's attorney candidly admitted, the 1988 amendments did not create disparate-impact liability. See Tr. of Oral Arg. 36 ("[D]id the things that [Congress] actually did in 1988 expand the coverage of the Act? MR. DANIEL: No, Justice").

C

The principal respondent and the Solicitor General—but not the Court—have one final argument regarding the text of the FHA. They maintain that even if the FHA does not unequivocally authorize disparate-impact suits, it is at least ambiguous enough to permit HUD to adopt that interpretation. Even if the FHA were ambiguous, however, we do not defer "when there is reason to suspect that the agency's interpretation 'does not reflect the agency's fair and considered judgment on the matter in question.' " *Christopher v. SmithKline Beecham Corp.,* 567 U.S. ——, ——, 132 S.Ct. 2156, 2166, 183 L.Ed.2d 153 (2012).

Here, 43 years after the FHA was enacted and nine days after the Court granted certiorari in *Magner* (the "rodent infestation" case), HUD proposed "to prohibit ***2543** housing practices with a discriminatory effect, even where there has been no intent to discriminate." Implementation of the Fair Housing Act's Discriminatory Effects Standard, 76 Fed.Reg. 70921 (2011). After *Magner* settled, the Court called for the views of the Solicitor General in *Township of Mount Holly v. Mt. Holly Gardens Citizens in Action, Inc.,* 568 U.S. ——, 133 S.Ct. 569, 184 L.Ed.2d 336 (2012), another case raising the same question. Before the Solicitor General filed his brief, however, HUD adopted disparate-impact regulations. See Implementation of the Fair Housing Act's Discriminatory Effects Standard, 78 Fed.Reg. 11460 (2013). The Solicitor General then urged HUD's rule as a reason to deny certiorari. We granted certiorari anyway, 570 U.S. ——, 133 S.Ct. 2824, 186 L.Ed.2d 883 (2013), and shortly thereafter *Mount Holly* also unexpectedly settled. Given this unusual pattern, there is an argument that deference may be unwarranted. Cf. *Young v. United Parcel Service, Inc.,* 575 U.S. ——, ——, 135 S.Ct. 1338, 1352, 191 L.Ed.2d 279 (2015) (refusing to defer where "[t]he EEOC promulgated its 2014 guidelines only recently, after this Court had granted certiorari" (discussing *Skidmore v. Swift & Co.,* 323 U.S. 134, 140, 65 S.Ct. 161, 89 L.Ed. 124 (1944))).[8]

[8] At argument, the Government assured the Court that HUD did not promulgate its proposed rule because of *Magner*. See Tr. of Oral Arg. 46 ("[I]t overestimates the efficiency of the government to think that you could get, you know, a supposed rule-making on an issue like this out within seven days"). The Government also argued that HUD had recognized disparate-impact liability in adjudications for years. *Ibid.*

There is no need to dwell on these circumstances, however, because deference is inapt for a more familiar reason: The FHA is not ambiguous. The FHA prohibits only disparate treatment, not disparate impact. It is a bedrock rule that an agency can never "rewrite clear statutory terms to suit its own sense of how the statute should operate." *Utility Air Regulatory Group,* 573 U.S., at ——, 134 S.Ct., at 2446. This rule makes even more sense where the agency's view would open up a deeply disruptive avenue of liability that Congress never contemplated.

IV

Not only does disparate-impact liability run headlong into the text of the FHA, it also is irreconcilable with our precedents. The Court's decision today reads far too much into *Griggs v. Duke Power Co.,* 401 U.S. 424, 91 S.Ct. 849, 28 L.Ed.2d 158 (1971), and far too little into *Smith v. City of Jackson,* 544 U.S. 228, 125 S.Ct. 1536, 161 L.Ed.2d 410 (2005). In *Smith,* the Court explained that the statutory justification for the decision in *Griggs* depends on language that has no parallel in the FHA. And when the *Smith* Court addressed a provision that does have such a parallel in the FHA, the Court concluded—*unanimously*—that it does not authorize disparate-impact liability. The same result should apply here.

A

Rather than focusing on the text of the FHA, much of the Court's reasoning today turns on *Griggs*. In *Griggs,* the Court held that black employees who sued their employer under § 703(a)(2) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e–2(a)(2), could recover without proving that the employer's conduct—requiring a high school diploma or a qualifying grade on a standardized test as a condition for certain jobs—was motivated by a discriminatory intent. Instead, the Court held that, unless it

was proved that the requirements were "job related," the plaintiffs could recover by showing that ***2544** the requirements "operated to render ineligible a markedly disproportionate number of Negroes." 401 U.S., at 429, 91 S.Ct. 849.

Griggs was a case in which an intent to discriminate might well have been inferred. The company had "openly discriminated on the basis of race" prior to the date on which the 1964 Civil Rights Act took effect. *Id*., at 427, 91 S.Ct. 849. Once that date arrived, the company imposed new educational requirements for those wishing to transfer into jobs that were then being performed by white workers who did not meet those requirements. *Id*., at 427–428, 91 S.Ct. 849. These new hurdles disproportionately burdened African–Americans, who had "long received inferior education in segregated schools." *Id*., at 430, 91 S.Ct. 849. Despite all this, the lower courts found that the company lacked discriminatory intent. See *id*., at 428, 91 S.Ct. 849. By convention, we do not overturn a finding of fact accepted by two lower courts, see, *e.g., Rogers v. Lodge,* 458 U.S. 613, 623, 102 S.Ct. 3272, 73 L.Ed.2d 1012 (1982); *Blau v. Lehman,* 368 U.S. 403, 408–409, 82 S.Ct. 451, 7 L.Ed.2d 403 (1962); *Graver Tank & Mfg. Co. v. Linde Air Products Co*., 336 U.S. 271, 275, 69 S.Ct. 535, 93 L.Ed. 672 (1949), so the Court was confronted with the question whether Title VII always demands intentional discrimination.

Although *Griggs* involved a question of statutory interpretation, the body of the Court's opinion—quite remarkably—does not even cite the provision of Title VII on which the plaintiffs' claims were based. The only reference to § 703(a)(2) of the 1964 Civil Rights Act appears in a single footnote that reproduces the statutory text but makes no effort to explain how it encompasses a disparate-impact claim. See 401 U.S., at 426, n. 1, 91 S.Ct. 849. Instead, the Court based its decision on the "objective" of Title VII, which the Court described as "achiev[ing] equality of employment opportunities and remov[ing] barriers that have operated in the past to favor an identifiable group of white employees over other employees." *Id*., at 429–430, 91 S.Ct. 849.

That text-free reasoning caused confusion, see, *e.g., Smith, supra,* at 261–262, 125 S.Ct. 1536 (O'Connor, J., concurring in judgment), and undoubtedly led to the pattern of Court of Appeals decisions in FHA cases upon which the majority now relies. Those lower courts, like the *Griggs* Court, often made little effort to ground their decisions in the statutory text. For example, in one of the earliest cases in this line, *United States v. Black Jack,* 508 F.2d 1179 (C.A.8 1974), the heart of the court's analysis was this: "Just as Congress requires 'the removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification,' such barriers must also give way in the field of housing." *Id.,* at 1184 (quoting *Griggs, supra,* at 430–431, 91 S.Ct. 849; citation omitted).

Unlike these lower courts, however, this Court has never interpreted *Griggs* as imposing a rule that applies to all antidiscrimination statutes. See, *e.g., Guardians Assn. v. Civil Serv. Comm'n of New York City,* 463 U.S. 582, 607, n. 27, 103 S.Ct. 3221, 77 L.Ed.2d 866 (1983) (holding that Title VI, 42 U.S.C. § 2000d *et seq.,* does "not allow compensatory relief in the absence of proof of discriminatory intent"); *Sandoval,* 532 U.S., at 280, 121 S.Ct. 1511 (similar). Indeed, we have never held that *Griggs* even establishes a rule for all *employment* discrimination statutes. In *Teamsters,* the Court rejected "the *Griggs* rationale" in evaluating a company's seniority rules. 431 U.S., at 349–350, 97 S.Ct. 1843. And because *Griggs* was focused ***2545** on a particular problem, the Court had held that its rule does not apply where, as here, the context is different. In *Los Angeles Dept. of Water and Power v. Manhart,* 435 U.S. 702, 98 S.Ct. 1370, 55 L.Ed.2d 657 (1978), for instance, the Court refused to apply *Griggs* to pensions under the Equal Pay Act of 1963, 29 U.S.C. § 206(d) or Title VII, even if a plan has a "disproportionately heavy impact on male employees." 435 U.S. at 711, n. 20, 98 S.Ct. 1370. We explained that "[e]ven a completely neutral practice will inevitably have *some* disproportionate impact on one group or another. *Griggs* does not imply, and this Court has never held, that discrimination must always be inferred from such consequences." *Ibid.*

B

Although the opinion in *Griggs* did not grapple with the text of the provision at issue, the Court was finally required to face that task in *Smith,* 544 U.S. 228, 125 S.Ct. 1536, 161 L.Ed.2d 410, which addressed whether the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. § 621 *et seq.,* authorizes disparate-impact suits. The Court considered two provisions of the ADEA, §§ 4(a)(1) and 4(a)(2), 29 U.S.C. §§ 623(a)(1) and (a)(2).

The Court unanimously agreed that the first of these provisions, § 4(a)(1), does not authorize disparate-impact claims. See 544 U.S., at 236, n. 6, 125 S.Ct. 1536 (plurality opinion); *id*., at 243, 125 S.Ct. 1536 (SCALIA, J., concurring in part and concurring in judgment) (agreeing with the plurality's reasoning); *id*., at 249, 125 S.Ct. 1536

(O'Connor, J., concurring in judgment) (reasoning that this provision "obvious[ly]" does not allow disparate-impact claims).

By contrast, a majority of the Justices found that the terms of § 4(a)(2) either clearly authorize disparate-impact claims (the position of the plurality) or at least are ambiguous enough to provide a basis for deferring to such an interpretation by the Equal Employment Opportunity Commission (the position of Justice SCALIA). See 544 U.S., at 233–240, 125 S.Ct. 1536 (plurality opinion); *id*., at 243–247, 125 S.Ct. 1536 (opinion of SCALIA, J.).

In reaching this conclusion, these Justices reasoned that § 4(a)(2) of the ADEA was modeled on and is virtually identical to the provision in *Griggs,* 42 U.S.C. § 2000e–2(a)(2). Section 4(a)(2) provides as follows:

> "It shall be unlawful for an employer—
>
> . . . . .
>
> "(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's *age*." 29 U.S.C. § 623(a) (emphasis added).

The provision of Title VII at issue in *Griggs* says this:

> "It shall be an unlawful employment practice for an employer—
>
> . . . . .
>
> "(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's *race, color, religion, sex, or national origin*." 42 U.S.C. § 2000e–2(a)(2) (emphasis added).

For purposes here, the only relevant difference between these provisions is that the ADEA provision refers to "age" and the Title VII provision refers to "race, color, religion, or national origin." Because identical language in two statutes ***2546** having similar purposes should generally be presumed to have the same meaning, the plurality in *Smith,* echoed by Justice SCALIA, saw *Griggs* as "compelling" support for the conclusion that § 4(a)(2) of the ADEA authorizes disparate-impact claims. 544 U.S., at 233–234, 125 S.Ct. 1536 (plurality opinion) (citing *Northcross v. Board of Ed. of Memphis City Schools,* 412 U.S. 427, 428, 93 S.Ct. 2201, 37 L.Ed.2d 48 (1973) (*per curiam*)).

When it came to the other ADEA provision addressed in *Smith,* namely, § 4(a)(1), the Court unanimously reached the opposite conclusion. Section 4(a)(1) states:

> "It shall be unlawful for an employer—
>
> "(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, *because of such individual's age*." 29 U.S.C. § 623(a)(1) (emphasis added).

The plurality opinion's reasoning, with which Justice SCALIA agreed, can be summarized as follows. Under § 4(a)(1), *the employer* must act because of age, and thus must have discriminatory intent. See 544 U.S., at 236, n. 6, 125 S.Ct. 1536.[9] Under § 4(a)(2), on the other hand, it is enough if the *employer's actions* "adversely affect" an individual "because of ... age." 29 U.S.C. § 623(a).

[9] The plurality stated:
> "Paragraph (a)(1) makes it unlawful for an employer 'to fail or refuse to hire ... *any individual* ... because of *such individual* 's age.' (Emphasis added.) The focus of the paragraph is on the employer's actions with respect to the targeted individual. Paragraph (a)(2), however, makes it unlawful for an employer 'to limit ... his *employees* in any way which would deprive or tend to deprive *any individual* of employment opportunities or otherwise adversely affect his status as an employee, because of *such individual* 's age.' (Emphasis added.) Unlike in paragraph (a)(1), there is thus an incongruity between the employer's actions—which are focused on his employees generally—and the individual employee who adversely suffers because of those actions. Thus, an employer who classifies his employees without respect to age may still be liable under the terms of this paragraph if such classification adversely affects the employee because of that employee's age—the very definition of disparate impact." 544 U.S., at 236, n. 6, 125 S.Ct. 1536.

This analysis of §§ 4(a)(1) and (a)(2) of the ADEA confirms that the FHA does not allow disparate-impact claims. Sections 804(a) and 805(a) of the FHA resemble § 4(a)(1) of the ADEA, which the *Smith* Court unanimously agreed does not encompass disparate-impact liability. Under these provisions of the FHA, like § 4(a)(1) of the ADEA, a defendant must act "because of" race or one of the other prohibited grounds. That is, it is unlawful for a person or entity to "[t]o refuse to sell or rent," "refuse to

negotiate," "otherwise make unavailable," etc. for a forbidden reason. These provisions of the FHA, unlike the Title VII provision in *Griggs* or § 4(a)(2) of the ADEA, do not make it unlawful to take an action that happens to adversely affect a person because of race, religion, etc.

The *Smith* plurality's analysis, moreover, also depended on other language, unique to the ADEA, declaring that "it shall not be unlawful for an employer 'to take any action *otherwise prohibited* ... where the differentiation is based on reasonable factors other than age.' " 544 U.S., at 238, 125 S.Ct. 1536 (quoting 81 Stat. 603; emphasis added). This "otherwise prohibited" language was key to the plurality opinion's reading of the statute because it arguably suggested disparate-impact liability. See 544 U.S., at 238, 125 S.Ct. 1536. This language, moreover, was *essential* to Justice SCALIA's controlling ***2547** opinion. Without it, Justice SCALIA would have agreed with Justices O'Connor, KENNEDY, and THOMAS that *nothing* in the ADEA authorizes disparate-impact suits. See *id.,* at 245–246, 125 S.Ct. 1536. In fact, even with this "otherwise prohibited" language, Justice SCALIA merely concluded that § 4(a)(2) was ambiguous—*not* that disparate-impacts suits are required. *Id.,* at 243, 125 S.Ct. 1536.

The FHA does not contain any phrase like "otherwise prohibited." Such language certainly is nowhere to be found in §§ 804(a) and 805(a). And for all the reasons already explained, the 1988 amendments do not presuppose disparate-impact liability. To the contrary, legislative enactments declaring only that certain actions are *not* grounds for liability do not implicitly create a new theory of liability that all other facets of the statute foreclose.

C

This discussion of our cases refutes any notion that "[t]ogether, *Griggs* holds[10] and the plurality in *Smith* instructs that antidiscrimination laws must be construed to encompass disparate-impact claims when their text refers to the consequences of actions and not just to the mindset of actors, and where that interpretation is consistent with statutory purpose." *Ante,* at 2517. The Court stumbles in concluding that § 804(a) of the FHA is more like § 4(a)(2) of the ADEA than § 4(a)(1). The operative language in § 4(a)(1) of the ADEA—which, per *Smith,* does not authorize disparate-impact claims—is materially indistinguishable from the operative language in § 804(a) of the FHA.

[10] *Griggs,* of course, "holds" nothing of the sort. Indeed, even the plurality opinion in *Smith* (to say nothing of Justice SCALIA's controlling opinion or Justice O'Connor's opinion concurring in the judgment) did not understand *Griggs* to create such a rule. See 544 U.S., at 240, 125 S.Ct. 1536 (plurality opinion) (relying on multiple considerations). If *Griggs* already answered the question for all statutes (even those that do not use effects language), *Smith* is inexplicable.

Even more baffling, neither alone nor in combination do *Griggs* and *Smith* support the Court's conclusion that § 805(a) of the FHA allows disparate-impact suits. The action forbidden by that provision is "*discriminat[ion]* ... because of" race, religion, etc. 42 U.S.C. § 3605(a) (emphasis added). This is precisely the formulation used in § 4(a)(1) of the ADEA, which prohibits "*discriminat[ion]* ... because of such individual's age," 29 U.S.C. § 623(a)(1) (emphasis added), and which *Smith* holds *does not* authorize disparate-impact claims.

In an effort to explain why § 805(a)'s reference to "discrimination" allows disparate-impact suits, the Court argues that in *Board of Ed. of City School Dist. of New York v. Harris,* 444 U.S. 130, 100 S.Ct. 363, 62 L.Ed.2d 275 (1979), "statutory language similar to § 805(a) [was construed] to include disparate-impact liability." *Ante,* at 2518. In fact, the statutory language in *Harris* was quite different. The law there was § 706(d)(1)(B) of the 1972 Emergency School Aid Act, which barred assisting education agencies that " 'had in effect any practice, policy, or procedure which results in the disproportionate demotion or dismissal of instructional or other personnel from minority groups in conjunction with desegregation ... *or* otherwise engaged in discrimination based upon race, color, or national origin in the hiring, promotion, or assignment of employees.' " 444 U.S., at 132–133, 142, 100 S.Ct. 363 (emphasis added).

After stating that the first clause in that unusual statute referred to a "disparate- ***2548** impact test," the *Harris* Court concluded that "a similar standard" should apply to the textually "closely connected" second clause. *Id.,* at 143, 100 S.Ct. 363. This was so, the Court thought, even though the second clause, standing alone, may very well have required discriminatory "intent." *Id.,* at 139, 100 S.Ct. 363. The Court explained that the Act's "less than careful draftsmanship" regarding the relationship between the clauses made the "wording of the statute ... ambiguous" about teacher assignments, thus forcing the Court to "look closely at the structure and context of the statute and to review its legislative history." *Id.,* at 138–140, 100 S.Ct. 363. It was the combined force of all those markers that persuaded the Court that disparate impact applied to the

second clause too.

Harris, in other words, has nothing to do with § 805(a) of the FHA. The "wording" is different; the "structure" is different; the "context" is different; and the "legislative history" is different. *Id.,* at 140, 100 S.Ct. 363. Rather than digging up a 36–year–old case that Justices of this Court have cited all of twice, and never once for the proposition offered today, the Court would do well to recall our many cases explaining what the phase "because of" means.

V

Not only is the decision of the Court inconsistent with what the FHA says and our precedents, it will have unfortunate consequences. Disparate-impact liability has very different implications in housing and employment cases.

Disparate impact puts housing authorities in a very difficult position because programs that are designed and implemented to help the poor can provide the grounds for a disparate-impact claim. As *Magner* shows, when disparate impact is on the table, even a city's good-faith attempt to remedy deplorable housing conditions can be branded "discriminatory." 619 F.3d, at 834. Disparate-impact claims thus threaten "a whole range of tax, welfare, public service, regulatory, and licensing statutes." *Washington v. Davis,* 426 U.S. 229, 248, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1976).

This case illustrates the point. The Texas Department of Housing and Community Affairs (the Department) has only so many tax credits to distribute. If it gives credits for housing in lower income areas, many families—including many minority families—will obtain better housing. That is a good thing. But if the Department gives credits for housing in higher income areas, some of those families will be able to afford to move into more desirable neighborhoods. That is also a good thing. Either path, however, might trigger a disparate-impact suit.[11]

[11] Tr. of Oral Arg. 44–45 ("Community A wants the development to be in the suburbs. And the next state, the community wants it to be in the poor neighborhood. Is it your position ... that in either case, step one has been satisfied[?] GENERAL VERRILLI: That may be right").

This is not mere speculation. Here, one respondent has sued the Department for not allocating enough credits to higher income areas. See Brief for Respondent Inclusive Communities Project, Inc., 23. But *another* respondent argues that giving credits to wealthy neighborhoods violates "the moral imperative to improve the substandard and inadequate affordable housing in many of our inner cities." Reply Brief for Respondent Frazier Revitalization Inc. 1. This latter argument has special force because a city can build more housing where property is least expensive, thus benefiting more people. In fact, federal ***2549** law often favors projects that revitalize low-income communities. See *ante,* at 2513.

No matter what the Department decides, one of these respondents will be able to bring a disparate-impact case. And if the Department opts to compromise by dividing the credits, both respondents might be able to sue. Congress surely did not mean to put local governments in such a position.

The Solicitor General's answer to such problems is that HUD will come to the rescue. In particular, HUD regulations provide a defense against disparate-impact liability if a defendant can show that its actions serve "substantial, legitimate, nondiscriminatory interests" that "necessar[ily]" cannot be met by "another practice that has a less discriminatory effect." 24 CFR § 100.500(b) (2014). (There is, of course, no hint of anything like this defense in the text of the FHA. But then, there is no hint of disparate-impact liability in the text of the FHA either.)

The effect of these regulations, not surprisingly, is to confer enormous discretion on HUD—without actually solving the problem. What is a "substantial" interest? Is there a difference between a "legitimate" interest and a "nondiscriminatory" interest? To what degree must an interest be met for a practice to be "necessary"? How are parties and courts to measure "discriminatory effect"?

These questions are not answered by the Court's assurance that the FHA's disparate-impact "analysis 'is analogous to the Title VII requirement that an employer's interest in an employment practice with a disparate impact be job related.' " *Ante,* at 2514 (quoting 78 Fed.Reg. 11470). See also *ante,* at 2522 (likening the defense to "the business necessity standard"). The business-necessity defense is complicated enough in employment cases; what it means when plopped into the housing context is anybody's guess. What is the FHA analogue of "job related"? Is it "housing related"? But a vast array of municipal decisions affect property values and thus relate (at least indirectly) to housing. And what is the FHA analogue of "business necessity"? "Housing-policy necessity"? What does that mean?

Compounding the problem, the Court proclaims that

"governmental entities ... must not be prevented from achieving legitimate objectives, such as ensuring compliance with health and safety codes." *Ante,* at 2524. But what does the Court mean by a "legitimate" objective? And does the Court mean to say that there can be no disparate-impact lawsuit if the objective is "legitimate"? That is certainly not the view of the Government, which takes the position that a disparate-impact claim may be brought to challenge actions taken with such worthy objectives as improving housing in poor neighborhoods and making financially sound lending decisions. See Brief for United States as *Amicus Curiae* 30, n. 7.

Because HUD's regulations and the Court's pronouncements are so "hazy," *Central Bank,* 511 U.S., at 188–189, 114 S.Ct. 1439 courts—lacking expertise in the field of housing policy—may inadvertently harm the very people that the FHA is meant to help. Local governments make countless decisions that may have some disparate impact related to housing. See *ante,* at 2522 – 2523. Certainly Congress did not intend to "engage the federal courts in an endless exercise of second-guessing" local programs. *Canton v. Harris,* 489 U.S. 378, 392, 109 S.Ct. 1197, 103 L.Ed.2d 412 (1989).

Even if a city or private entity named in a disparate-impact suit believes that it is likely to prevail if a disparate-impact suit ***2550** is fully litigated, the costs of litigation, including the expense of discovery and experts, may "push cost-conscious defendants to settle even anemic cases." *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 559, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). Defendants may feel compelled to "abandon substantial defenses and ... pay settlements in order to avoid the expense and risk of going to trial." *Central Bank, supra,* at 189, 114 S.Ct. 1439. And parties fearful of disparate-impact claims may let race drive their decisionmaking in hopes of avoiding litigation altogether. Cf. *Ricci,* 557 U.S., at 563, 129 S.Ct. 2658. All the while, similar dynamics may drive litigation against private actors. *Ante,* at 2522.

This is not the Fair Housing Act that Congress enacted.

VI

Against all of this, the Court offers several additional counterarguments. None is persuasive.

A

The Court is understandably worried about pretext. No one thinks that those who harm others because of protected characteristics should escape liability by conjuring up neutral excuses. Disparate-treatment liability, however, is attuned to this difficulty. Disparate impact can be *evidence* of disparate treatment. *E.g., Church of Lukumi Babalu Aye, Inc. v. Hialeah,* 508 U.S. 520, 541–542, 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993) (opinion of KENNEDY, J.); *Hunter v. Underwood,* 471 U.S. 222, 233, 105 S.Ct. 1916, 85 L.Ed.2d 222 (1985). As noted, the facially neutral requirements in *Griggs* created a strong inference of discriminatory intent. Nearly a half century later, federal judges have decades of experience sniffing out pretext.

B

The Court also stresses that "many of our Nation's largest cities—entities that are potential defendants in disparate-impact suits—have submitted an *amicus* brief in this case supporting disparate-impact liability under the FHA." *Ante,* at 2525 – 2526.

This nod to federalism is puzzling. Only a minority of the States and only a small fraction of the Nation's municipalities have urged us to hold that the FHA allows disparate-impact suits. And even if a majority supported the Court's position, that would not be a relevant consideration for a court. In any event, nothing prevents States and local government from enacting their own fair housing laws, including laws creating disparate-impact liability. See 42 U.S.C. § 3615 (recognizing local authority).

The Court also claims that "[t]he existence of disparate-impact liability in the substantial majority of the Courts of Appeals for the last several decades" has not created " 'dire consequences.' " *Ante,* at 2526. But the Court concedes that disparate impact can be dangerous. See *ante,* at 2522 – 2525. Compare *Magner,* 619 F.3d, at 833–838 (holding that efforts to prevent violations of the housing code may violate the FHA), with 114 Cong. Rec. 2528 (1968) (remarks of Sen. Tydings) (urging enactment of the FHA to help combat violations of the housing code, including "rat problem[s]"). In the Court's words, it is "paradoxical to construe the FHA to impose onerous costs on actors who encourage revitalizing dilapidated housing." *Ante,* at 2522. Our say-so, however, will not stop such costly cases from being filed—or from getting past a motion to dismiss (and so into settlement).

C

At last I come to the "purpose" driving the Court's analysis: The desire to eliminate ***2551** the "vestiges" of "residential segregation by race." *Ante,* at 2515, 2525. We agree that all Americans should be able "to buy decent houses without discrimination ... *because of* the color of their skin." 114 Cong. Rec. 2533 (remarks of Sen. Tydings) (emphasis added). See 42 U.S.C. §§ 3604(a), 3605(a) ("because of race"). But this Court has no license to expand the scope of the FHA to beyond what Congress enacted.

When interpreting statutes, " '[w]hat the legislative intention was, can be derived only from the words ... used; and we cannot speculate beyond the reasonable import of these words.' " *Nassar,* 570 U.S., at ——, 133 S.Ct., at 2528–2529 (quoting *Gardner v. Collins,* 2 Pet. 58, 93, 7 L.Ed. 347 (1829)). "[I]t frustrates rather than effectuates legislative intent simplistically to assume that *whatever* furthers the statute's primary objective must be the law." *Rodriguez v. United States,* 480 U.S. 522, 526, 107 S.Ct. 1391, 94 L.Ed.2d 533 (1987) (*per curiam*). See also, *e.g., Board of Governors, FRS v. Dimension Financial Corp.,* 474 U.S. 361, 373–374, 106 S.Ct. 681, 88 L.Ed.2d 691 (1986) (explaining that " 'broad purposes' " arguments "ignor[e] the complexity of the problems Congress is called upon to address").

Here, privileging purpose over text also creates constitutional uncertainty. The Court acknowledges the risk that disparate impact may be used to "perpetuate race-based considerations rather than move beyond them." *Ante,* at 2524. And it agrees that "racial quotas ... rais[e] serious constitutional concerns." *Ante,* at 2523. Yet it still reads the FHA to authorize disparate-impact claims. We should avoid, rather than invite, such "difficult constitutional questions." *Ante,* at 2524. By any measure, the Court today makes a serious mistake.

* * *

I would interpret the Fair Housing Act as written and so would reverse the judgment of the Court of Appeals.

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U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-0500

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Office of General Counsel Guidance on
Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions

I. Introduction

The Fair Housing Act (or Act) prohibits discrimination in the sale, rental, or financing of dwellings and in other housing-related activities on the basis of race, color, religion, sex, disability, familial status or national origin.[1] HUD's Office of General Counsel issues this guidance concerning how the Fair Housing Act applies to the use of criminal history by providers or operators of housing and real-estate related transactions. Specifically, this guidance addresses how the discriminatory effects and disparate treatment methods of proof apply in Fair Housing Act cases in which a housing provider justifies an adverse housing action – such as a refusal to rent or renew a lease – based on an individual's criminal history.

II. Background

As many as 100 million U.S. adults – or nearly one-third of the population – have a criminal record of some sort.[2] The United States prison population of 2.2 million adults is by far the largest in the world.[3] As of 2012, the United States accounted for only about five percent of the world's population, yet almost one quarter of the world's prisoners were held in American prisons.[4] Since 2004, an average of over 650,000 individuals have been released annually from federal and state prisons,[5] and over 95 percent of current inmates will be released at some point.[6] When individuals are released from prisons and jails, their ability to access safe, secure and affordable housing is critical to their successful reentry to society.[7] Yet many formerly incarcerated individuals, as well as individuals who were convicted but not incarcerated, encounter significant barriers to securing housing, including public and other federally-subsidized housing,

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[1] 42 U.S.C. § 3601 *et seq.*

[2] Bureau of Justice Statistics, U.S. Dep't of Justice, *Survey of State Criminal History Information Systems, 2012*, 3 (Jan. 2014), *available at* https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf.

[3] Nat'l Acad. Sci., Nat'l Res. Couns., *The Growth of Incarceration in the United States: Exploring Causes and Consequences* 2 (Jeremy Travis, et al. eds., 2014), *available at:* http://www.nap.edu/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes.

[4] *Id.*

[5] E. Ann Carson, Bureau of Justice Statistics, U.S. Dep't of Justice, *Prisoners in 2014* (Sept. 2015) at 29, appendix tbls. 1 and 2, *available at* http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5387.

[6] Bureau of Justice Statistics, U.S. Dep't of Justice, *Reentry Trends in the United States*, *available at* http://www.bjs.gov/content/pub/pdf/reentry.pdf.

[7] *See, e.g.*, S. Metraux, et al. "Incarceration and Homelessness," in *Toward Understanding Homelessness: The 2007 National Symposium on Homelessness Research, #9* (D. Dennis, et al. eds., 2007), *available at:* https://www.huduser.gov/portal//publications/pdf/p9.pdf (explaining "how the increasing numbers of people leaving carceral institutions face an increased risk for homelessness and, conversely, how persons experiencing homelessness are vulnerable to incarceration.").

because of their criminal history. In some cases, even individuals who were arrested but not convicted face difficulty in securing housing based on their prior arrest.

Across the United States, African Americans and Hispanics are arrested, convicted and incarcerated at rates disproportionate to their share of the general population.[8] Consequently, criminal records-based barriers to housing are likely to have a disproportionate impact on minority home seekers. While having a criminal record is not a protected characteristic under the Fair Housing Act, criminal history-based restrictions on housing opportunities violate the Act if, without justification, their burden falls more often on renters or other housing market participants of one race or national origin over another (i.e., discriminatory effects liability).[9] Additionally, intentional discrimination in violation of the Act occurs if a housing provider treats individuals with comparable criminal history differently because of their race, national origin or other protected characteristic (i.e., disparate treatment liability).

III. Discriminatory Effects Liability and Use of Criminal History to Make Housing Decisions

A housing provider violates the Fair Housing Act when the provider's policy or practice has an unjustified discriminatory effect, even when the provider had no intent to discriminate.[10] Under this standard, a facially-neutral policy or practice that has a discriminatory effect violates the Act if it is not supported by a legally sufficient justification. Thus, where a policy or practice that restricts access to housing on the basis of criminal history has a disparate impact on individuals of a particular race, national origin, or other protected class, such policy or practice is unlawful under the Fair Housing Act if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the housing provider, or if such interest could be served by another practice that has a less discriminatory effect.[11] Discriminatory effects liability is assessed under a three-step burden-shifting standard requiring a fact-specific analysis.[12]

The following sections discuss the three steps used to analyze claims that a housing provider's use of criminal history to deny housing opportunities results in a discriminatory effect in violation of the Act. As explained in Section IV, below, a different analytical framework is used to evaluate claims of intentional discrimination.

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[8] *See infra* nn. 16-20 and accompanying text.

[9] The Fair Housing Act prohibits discrimination based on race, color, religion, sex, disability, familial status, and national origin. This memorandum focuses on race and national origin discrimination, although criminal history policies may result in discrimination against other protected classes.

[10] 24 C.F.R. § 100.500; *accord Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.*, ___ U.S. ___, 135 S. Ct. 2507 (2015).

[11] 24 C.F.R. § 100.500; *see also Inclusive Cmtys. Project*, 135 S. Ct. at 2514-15 (summarizing HUD's Discriminatory Effects Standard in 24 C.F.R. § 100.500); *id.* at 2523 (explaining that housing providers may maintain a policy that causes a disparate impact "if they can prove [the policy] is necessary to achieve a valid interest.").

[12] *See* 24 C.F.R. § 100.500.

A. Evaluating Whether the Criminal History Policy or Practice Has a Discriminatory Effect

In the first step of the analysis, a plaintiff (or HUD in an administrative adjudication) must prove that the criminal history policy has a discriminatory effect, that is, that the policy results in a disparate impact on a group of persons because of their race or national origin.[13] This burden is satisfied by presenting evidence proving that the challenged practice actually or predictably results in a disparate impact.

Whether national or local statistical evidence should be used to evaluate a discriminatory effects claim at the first step of the analysis depends on the nature of the claim alleged and the facts of that case. While state or local statistics should be presented where available and appropriate based on a housing provider's market area or other facts particular to a given case, national statistics on racial and ethnic disparities in the criminal justice system may be used where, for example, state or local statistics are not readily available and there is no reason to believe they would differ markedly from the national statistics.[14]

National statistics provide grounds for HUD to investigate complaints challenging criminal history policies.[15] Nationally, racial and ethnic minorities face disproportionately high rates of arrest and incarceration. For example, in 2013, African Americans were arrested at a rate more than double their proportion of the general population.[16] Moreover, in 2014, African Americans comprised approximately 36 percent of the total prison population in the United States, but only about 12 percent of the country's total population.[17] In other words, African Americans were incarcerated at a rate nearly three times their proportion of the general population. Hispanics were similarly incarcerated at a rate disproportionate to their share of the

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[13] 24 C.F.R. § 100.500(c)(1); *accord Inclusive Cmtys. Project*, 135 S. Ct. at 2522-23. A discriminatory effect can also be proven with evidence that the policy or practice creates, increases, reinforces, or perpetuates segregated housing patterns. *See* 24 C.F.R. § 100.500(a). This guidance addresses only the method for analyzing disparate impact claims, which in HUD's experience are more commonly asserted in this context.

[14] *Compare Dothard v. Rawlinson*, 433 U.S. 321, 330 (1977) ("[R]eliance on general population demographic data was not misplaced where there was no reason to suppose that physical height and weight characteristics of Alabama men and women differ markedly from those of the national population.") *with Mountain Side Mobile Estates P'ship v. Sec'y of Hous. & Urban Dev.*, 56 F.3d 1243, 1253 (10th Cir. 1995) ("In some cases national statistics may be the appropriate comparable population. However, those cases are the rare exception and this case is not such an exception.") (citation omitted).

[15] *Cf. El v. SEPTA*, 418 F. Supp. 2d 659, 668-69 (E.D. Pa. 2005) (finding that plaintiff proved prima facie case of disparate impact under Title VII based on national data from the U.S. Bureau of Justice Statistics and the Statistical Abstract of the U.S., which showed that non-Whites were substantially more likely than Whites to have a conviction), *aff'd on other grounds,* 479 F.2d 232 (3d Cir. 2007).

[16] *See* FBI Criminal Justice Information Services Division, *Crime in the United States, 2013*, tbl.43A, *available at* https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/tables/table-43 (Fall 2014) (reporting that African Americans comprised 28.3% of all arrestees in 2013); U.S. Census Bureau, Monthly Postcensal Resident Population by Single Year of Age, Sex, Race and Hispanic Origin: July 1, 2013 to December 1, 2013, *available at* http://www.census.gov/popest/data/national/asrh/2014/2014-nat-res.html (reporting data showing that individuals identifying as African American or Black alone made up only 12.4% of the total U.S. population at 2013 year-end).

[17] *See* E. Ann Carson, Bureau of Justice Statistics, U.S. Dep't of Justice, *Prisoners in 2014* (Sept. 2015) at tbl. 10, *available at* http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5387; and U.S. Census Bureau, Monthly Postcensal Resident Population by Single Year of Age, Sex, Race and Hispanic Origin: July 1, 2014 to December 1, 2014, *available at* http://www.census.gov/popest/data/national/asrh/2014/2014-nat-res.html.

general population, with Hispanic individuals comprising approximately 22 percent of the prison population, but only about 17 percent of the total U.S. population.[18] In contrast, non-Hispanic Whites comprised approximately 62 percent of the total U.S. population but only about 34 percent of the prison population in 2014.[19] Across all age groups, the imprisonment rates for African American males is almost six times greater than for White males, and for Hispanic males, it is over twice that for non-Hispanic White males.[20]

Additional evidence, such as applicant data, tenant files, census demographic data and localized criminal justice data, may be relevant in determining whether local statistics are consistent with national statistics and whether there is reasonable cause to believe that the challenged policy or practice causes a disparate impact. Whether in the context of an investigation or administrative enforcement action by HUD or private litigation, a housing provider may offer evidence to refute the claim that its policy or practice causes a disparate impact on one or more protected classes.

Regardless of the data used, determining whether a policy or practice results in a disparate impact is ultimately a fact-specific and case-specific inquiry.

B. Evaluating Whether the Challenged Policy or Practice is Necessary to Achieve a Substantial, Legitimate, Nondiscriminatory Interest

In the second step of the discriminatory effects analysis, the burden shifts to the housing provider to prove that the challenged policy or practice is justified – that is, that it is necessary to achieve a substantial, legitimate, nondiscriminatory interest of the provider.[21] The interest proffered by the housing provider may not be hypothetical or speculative, meaning the housing provider must be able to provide evidence proving both that the housing provider has a substantial, legitimate, nondiscriminatory interest supporting the challenged policy and that the challenged policy actually achieves that interest.[22]

Although the specific interest(s) that underlie a criminal history policy or practice will no doubt vary from case to case, some landlords and property managers have asserted the protection of other residents and their property as the reason for such policies or practices.[23] Ensuring

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[18] *See id.*
[19] *See id.*
[20] E. Ann Carson, Bureau of Justice Statistics, U.S. Dep't of Justice, *Prisoners in 2014* (Sept. 2015) at table 10, *available at* http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5387.
[21] 24 C.F.R. § 100.500(c)(2); *see also Inclusive Cmtys. Project*, 135 S. Ct. at 2523.
[22] *See* 24 C.F.R. § 100.500(b)(2); *see also* 78 Fed. Reg. 11460, 11471 (Feb. 15, 2013).
[23] *See, e.g.*, Answer to Amended Complaint at 58, *The Fortune Society, Inc. v. Sandcastle Towers Hsg. Dev. Fund Corp.*, No. 1:14-CV-6410 (E.D.N.Y. May 21, 2015), ECF No. 37 ("The use of criminal records searches as part of the overall tenant screening process used at Sand Castle serves valid business and security functions of protecting tenants and the property from former convicted criminals."); *Evans v. UDR, Inc.*, 644 F.Supp.2d 675, 683 (E.D.N.C. 2009) (noting, based on affidavit of property owner, that "[t]he policy [against renting to individuals with criminal histories is] based primarily on the concern that individuals with criminal histories are more likely than others to commit crimes on the property than those without such backgrounds ... [and] is thus based [on] concerns for the safety of other residents of the apartment complex and their property."); *see also* J. Helfgott, *Ex-Offender Needs Versus Community Opportunity in Seattle*, Washington, 61 Fed. Probation 12, 20 (1997) (finding in a survey of 196

resident safety and protecting property are often considered to be among the fundamental responsibilities of a housing provider, and courts may consider such interests to be both substantial and legitimate, assuming they are the actual reasons for the policy or practice.[24] A housing provider must, however, be able to prove through reliable evidence that its policy or practice of making housing decisions based on criminal history actually assists in protecting resident safety and/or property. Bald assertions based on generalizations or stereotypes that any individual with an arrest or conviction record poses a greater risk than any individual without such a record are not sufficient to satisfy this burden.

1. Exclusions Because of Prior Arrest

A housing provider with a policy or practice of excluding individuals because of one or more prior arrests (without any conviction) cannot satisfy its burden of showing that such policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest.[25] As the Supreme Court has recognized, "[t]he mere fact that a man has been arrested has very little, if any, probative value in showing that he has engaged in any misconduct. An arrest shows nothing more than that someone probably suspected the person apprehended of an offense."[26] Because arrest records do not constitute proof of past unlawful conduct and are often incomplete (*e.g.*, by failing to indicate whether the individual was prosecuted, convicted, or acquitted),[27] the fact of an arrest is not a reliable basis upon which to assess the potential risk to resident safety or property posed by a particular individual. For that reason, a housing provider who denies housing to persons on the basis of arrests not resulting in conviction cannot prove that the exclusion actually assists in protecting resident safety and/or property.

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landlords in Seattle that of the 43% of landlords that said they were inclined to reject applicants with a criminal history, the primary reason for their inclination was protection and safety of community).

[24] As explained in HUD's 2013 Discriminatory Effects Final Rule, a "substantial" interest is a core interest of the organization that has a direct relationship to the function of that organization. The requirement that an interest be "legitimate" means that a housing provider's justification must be genuine and not false or fabricated. *See* 78 Fed. Reg. at 11470; *see also Charleston Hous. Auth. v. U.S. Dep't of Agric.*, 419 F.3d 729, 742 (8th Cir. 2005) (recognizing that, "in the abstract, a reduction in the concentration of low income housing is a legitimate goal," but concluding "that the Housing Authority had not shown a need for deconcentration in this instance, and in fact, had falsely represented the density [of low income housing] at the location in question in an attempt to do so").

[25] HUD recently clarified that arrest records may not be the basis for denying admission, terminating assistance, or evicting tenants from public and other federally-assisted housing. *See* Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions, HUD PIH Notice 2015-19, (November 2, 2015), available at: http://portal.hud.gov/hudportal/documents/huddoc?id=PIH2015-19.pdf.

[26] *Schware v. Bd of Bar Examiners*, 353 U.S. 232, 241 (1957); *see also United States v. Berry*, 553 F.3d 273, 282 (3d Cir. 2009) ("[A] bare arrest record – without more – does not justify an assumption that a defendant has committed other crimes and it therefore cannot support increasing his/her sentence in the absence of adequate proof of criminal activity."); *United States v. Zapete-Garcia*, 447 F.3d 57, 60 (1st Cir. 2006) ("[A] mere arrest, especially a lone arrest, is not evidence that the person arrested actually committed any criminal conduct.").

[27] *See, e.g.*, U.S. Dep't of Justice, *The Attorney General's Report on Criminal History Background Checks* at 3, 17 (June 2006), *available at* http://www.bjs.gov/content/pub/pdf/ag_bgchecks_report.pdf (reporting that the FBI's Interstate Identification Index system, which is the national system designed to provide automated criminal history record information and "the most comprehensive single source of criminal history information in the United States," is "still missing final disposition information for approximately 50 percent of its records").

Analogously, in the employment context, the Equal Employment Opportunity Commission has explained that barring applicants from employment on the basis of arrests not resulting in conviction is not consistent with business necessity under Title VII because the fact of an arrest does not establish that criminal conduct occurred.[28]

2. Exclusions Because of Prior Conviction

In most instances, a record of conviction (as opposed to an arrest) will serve as sufficient evidence to prove that an individual engaged in criminal conduct.[29] But housing providers that apply a policy or practice that excludes persons with prior convictions must still be able to prove that such policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest. A housing provider that imposes a blanket prohibition on any person with any conviction record – no matter when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since then – will be unable to meet this burden. One federal court of appeals held that such a blanket ban violated Title VII, stating that it "could not conceive of any business necessity that would automatically place every individual convicted of any offense, except a minor traffic offense, in the permanent ranks of the unemployed."[30] Although the defendant-employer in that case had proffered a number of theft and safety-related justifications for the policy, the court rejected such justifications as "not empirically validated."[31]

A housing provider with a more tailored policy or practice that excludes individuals with only certain types of convictions must still prove that its policy is necessary to serve a "substantial, legitimate, nondiscriminatory interest." To do this, a housing provider must show that its policy accurately distinguishes between criminal conduct that indicates a demonstrable risk to resident safety and/or property and criminal conduct that does not.[32]

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[28] *See* U.S. Equal Emp't Opportunity Comm'n, *EEOC Enforcement Guidance, Number 915.002,* 12 (Apr. 25, 2012), *available at* http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm; *see also Gregory v. Litton Systems, Inc.*, 316 F. Supp. 401, 403 (C.D. Cal. 1970) (holding that defendant employer's policy of excluding from employment persons with arrests without convictions unlawfully discriminated against African American applicants in violation of Title VII because there "was no evidence to support a claim that persons who have suffered no criminal convictions but have been arrested on a number of occasions can be expected, when employed, to perform less efficiently or less honestly than other employees," such that "information concerning a ... record of arrests without conviction, is irrelevant to [an applicant's] suitability or qualification for employment"), *aff'd*, 472 F.2d 631 (9th Cir. 1972).

[29] There may, however, be evidence of an error in the record, an outdated record, or another reason for not relying on the evidence of a conviction. For example, a database may continue to report a conviction that was later expunged, or may continue to report as a felony an offense that was subsequently downgraded to a misdemeanor. *See generally* SEARCH, *Report of the National Task Force on the Commercial Sale of Criminal Justice Record Information* (2005), *available at* http://www.search.org/files/pdf/RNTFCSCJRI.pdf.

[30] *Green v. Missouri Pacific R.R.*, 523 F.2d 1290, 1298 (8th Cir. 1975).

[31] *Id.*

[32] *Cf. El*, 479 F.3d at 245-46 (stating that "Title VII ... require[s] that the [criminal conviction] policy under review accurately distinguish[es] between applicants that pose an unacceptable level or risk and those that do not").

A policy or practice that fails to take into account the nature and severity of an individual's conviction is unlikely to satisfy this standard.[33] Similarly, a policy or practice that does not consider the amount of time that has passed since the criminal conduct occurred is unlikely to satisfy this standard, especially in light of criminological research showing that, over time, the likelihood that a person with a prior criminal record will engage in additional criminal conduct decreases until it approximates the likelihood that a person with no criminal history will commit an offense.[34]

Accordingly, a policy or practice that fails to consider the nature, severity, and recency of criminal conduct is unlikely to be proven necessary to serve a "substantial, legitimate, nondiscriminatory interest" of the provider. The determination of whether any particular criminal history-based restriction on housing satisfies step two of the discriminatory effects standard must be made on a case-by-case basis.[35]

C. Evaluating Whether There Is a Less Discriminatory Alternative

The third step of the discriminatory effects analysis is applicable only if a housing provider successfully proves that its criminal history policy or practice is necessary to achieve its substantial, legitimate, nondiscriminatory interest. In the third step, the burden shifts back to the plaintiff or HUD to prove that such interest could be served by another practice that has a less discriminatory effect.[36]

Although the identification of a less discriminatory alternative will depend on the particulars of the criminal history policy or practice under challenge, individualized assessment of relevant mitigating information beyond that contained in an individual's criminal record is likely to have a less discriminatory effect than categorical exclusions that do not take such additional information into account. Relevant individualized evidence might include: the facts or circumstances surrounding the criminal conduct; the age of the individual at the time of the conduct; evidence that the individual has maintained a good tenant history before and/or after the conviction or conduct; and evidence of rehabilitation efforts. By delaying consideration of criminal history until after an individual's financial and other qualifications are verified, a housing provider may be able to minimize any additional costs that such individualized assessment might add to the applicant screening process.

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[33] *Cf. Green*, 523 F.2d at 1298 (holding that racially disproportionate denial of employment opportunities based on criminal conduct that "does not significantly bear upon the particular job requirements is an unnecessarily harsh and unjust burden" and violated Title VII).

[34] *Cf. El*, 479 F.3d at 247 (noting that plaintiff's Title VII disparate impact claim might have survived summary judgment had plaintiff presented evidence that "there is a time at which a former criminal is no longer any more likely to recidivate than the average person...."); *see also Green*, 523 F.2d at 1298 (permanent exclusion from employment based on any and all offenses violated Title VII); *see* Megan C. Kurlychek et al., *Scarlet Letters and Recidivism: Does an Old Criminal Record Predict Future Offending?*, 5 Criminology and Pub. Pol'y 483 (2006) (reporting that after six or seven years without reoffending, the risk of new offenses by persons with a prior criminal history begins to approximate the risk of new offenses among persons with no criminal record).

[35] The liability standards and principles discussed throughout this guidance would apply to HUD-assisted housing providers just as they would to any other housing provider covered by the Fair Housing Act. *See* HUD PIH Notice 2015-19 *supra* n. 25. Section 6 of that Notice addresses civil rights requirements.

[36] 24 C.F.R. § 100.500(c)(3); *accord Inclusive Cmtys. Project*, 135 S. Ct. 2507.

D. Statutory Exemption from Fair Housing Act Liability for Exclusion Because of Illegal Manufacture or Distribution of a Controlled Substance

Section 807(b)(4) of the Fair Housing Act provides that the Act does not prohibit "conduct against a person because such person has been convicted ... of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)."[37] Accordingly, a housing provider will not be liable under the Act for excluding individuals because they have been convicted of one or more of the specified drug crimes, regardless of any discriminatory effect that may result from such a policy.

Limitation. Section 807(b)(4) only applies to disparate impact claims based on the denial of housing due to the person's *conviction* for drug manufacturing or distribution; it does not provide a defense to disparate impact claims alleging that a policy or practice denies housing because of the person's *arrest* for such offenses. Similarly, the exemption is limited to disparate impact claims based on drug *manufacturing or distribution* convictions, and does not provide a defense to disparate impact claims based on other drug-related convictions, such as the denial of housing due to a person's conviction for drug *possession*.

IV. Intentional Discrimination and Use of Criminal History

A housing provider may also violate the Fair Housing Act if the housing provider intentionally discriminates in using criminal history information. This occurs when the provider treats an applicant or renter differently because of race, national origin or another protected characteristic. In these cases, the housing provider's use of criminal records or other criminal history information as a pretext for unequal treatment of individuals because of race, national origin or other protected characteristics is no different from the discriminatory application of any other rental or purchase criteria.

For example, intentional discrimination in violation of the Act may be proven based on evidence that a housing provider rejected an Hispanic applicant based on his criminal record, but admitted a non-Hispanic White applicant with a comparable criminal record. Similarly, if a housing provider has a policy of not renting to persons with certain convictions, but makes exceptions to it for Whites but not African Americans, intentional discrimination exists.[38] A disparate treatment violation may also be proven based on evidence that a leasing agent assisted a White applicant seeking to secure approval of his rental application despite his potentially disqualifying criminal record under the housing provider's screening policy, but did not provide such assistance to an African American applicant.[39]

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[37] 42 U.S.C. § 3607(b)(4).

[38] *Cf. Sherman Ave. Tenants' Assn. v. District of Columbia*, 444 F.3d 673, 683-84 (D.C. Cir. 2006) (upholding plaintiff's disparate treatment claim based on evidence that defendant had not enforced its housing code as aggressively against comparable non-Hispanic neighborhoods as it did in plaintiff's disproportionately Hispanic neighborhood).

[39] *See, e.g., Muriello*, 217 F. 3d at 522 (holding that Plaintiff's allegations that his application for federal housing assistance and the alleged existence of a potentially disqualifying prior criminal record was handled differently than those of two similarly situated white applicants presented a prima facie case that he was discriminated against because of race, in violation of the Fair Housing Act).

Discrimination may also occur before an individual applies for housing. For example, intentional discrimination may be proven based on evidence that, when responding to inquiries from prospective applicants, a property manager told an African American individual that her criminal record would disqualify her from renting an apartment, but did not similarly discourage a White individual with a comparable criminal record from applying.

If overt, direct evidence of discrimination does not exist, the traditional burden-shifting method of establishing intentional discrimination applies to complaints alleging discriminatory intent in the use of criminal history information.[40] First, the evidence must establish a prima facie case of disparate treatment. This may be shown in a refusal to rent case, for example, by evidence that: (1) the plaintiff (or complainant in an administrative enforcement action) is a member of a protected class; (2) the plaintiff or complainant applied for a dwelling from the housing provider; (3) the housing provider rejected the plaintiff or complainant because of his or her criminal history; and (4) the housing provider offered housing to a similarly-situated applicant not of the plaintiff or complainant's protected class, but with a comparable criminal record. It is then the housing provider's burden to offer "evidence of a legitimate, nondiscriminatory reason for the adverse housing decision."[41] A housing provider's nondiscriminatory reason for the challenged decision must be clear, reasonably specific, and supported by admissible evidence.[42] Purely subjective or arbitrary reasons will not be sufficient to demonstrate a legitimate, nondiscriminatory basis for differential treatment.[43]

While a criminal record can constitute a legitimate, nondiscriminatory reason for a refusal to rent or other adverse action by a housing provider, a plaintiff or HUD may still prevail by showing that the criminal record was not the true reason for the adverse housing decision, and was instead a mere pretext for unlawful discrimination. For example, the fact that a housing provider acted upon comparable criminal history information differently for one or more individuals of a different protected class than the plaintiff or complainant is strong evidence that a housing provider was not considering criminal history information uniformly or did not in fact have a criminal history policy. Or pretext may be shown where a housing provider did not actually know of an applicant's criminal record at the time of the alleged discrimination. Additionally, shifting or inconsistent explanations offered by a housing provider for the denial of an application may also provide evidence of pretext. Ultimately, the evidence that may be offered to show that the plaintiff or complainant's criminal history was merely a pretextual

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[40] *See, generally, McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) (articulating the concept of a "prima facie case" of intentional discrimination under Title VII); s*ee, e.g., Allen v. Muriello*, 217 F. 3rd 517, 520-22 (7th Cir. 2000) (applying prima facie case analysis to claim under the Fair Housing Act alleging disparate treatment because of race in housing provider's use of criminal records to deny housing).

[41] *Lindsay v. Yates*, 578 F.3d 407, 415 (6th Cir. 2009) (quotations and citations omitted).

[42] *See, e.g., Robinson v. 12 Lofts Realty, Inc.*, 610 F.2d 1032, 1039-40 (2d Cir. 1979) ("A prima facie case having been established, a Fair Housing Act claim cannot be defeated by a defendant which relies on merely hypothetical reasons for the plaintiff's rejection.").

[43] *See, e.g., Muriello*, 217 F.3d at 522 (noting that housing provider's "rather dubious explanation for the differing treatment" of African American and White applicants' criminal records "puts the issue of pretext in the lap of a trier of fact"); *Soules v. U.S. Dep't of Hous. and Urban Dev.*, 967 F.2d 817, 822 (2d Cir. 1992) ("In examining the defendant's reason, we view skeptically subjective rationales concerning why he denied housing to members or protected groups [because] 'clever men may easily conceal their [discriminatory] motivations.'" (quoting *United States v. City of Black Jack, Missouri*, 508 F.2d 1179, 1185 (8th Cir. 1974)).

justification for intentional discrimination by the housing provider will depend on the facts of a particular case.

The section 807(b)(4) exemption discussed in Section III.D., above, does not apply to claims of intentional discrimination because by definition, the challenged conduct in intentional discrimination cases is taken because of race, national origin, or another protected characteristic, and not because of the drug conviction. For example, the section 807(b)(4) exemption would not provide a defense to a claim of intentional discrimination where the evidence shows that a housing provider rejects only African American applicants with convictions for distribution of a controlled substance, while admitting White applicants with such convictions.

V. Conclusion

The Fair Housing Act prohibits both intentional housing discrimination and housing practices that have an unjustified discriminatory effect because of race, national origin or other protected characteristics. Because of widespread racial and ethnic disparities in the U.S. criminal justice system, criminal history-based restrictions on access to housing are likely disproportionately to burden African Americans and Hispanics. While the Act does not prohibit housing providers from appropriately considering criminal history information when making housing decisions, arbitrary and overbroad criminal history-related bans are likely to lack a legally sufficient justification. Thus, a discriminatory effect resulting from a policy or practice that denies housing to anyone with a prior arrest or any kind of criminal conviction cannot be justified, and therefore such a practice would violate the Fair Housing Act.

Policies that exclude persons based on criminal history must be tailored to serve the housing provider's substantial, legitimate, nondiscriminatory interest and take into consideration such factors as the type of the crime and the length of the time since conviction. Where a policy or practice excludes individuals with only certain types of convictions, a housing provider will still bear the burden of proving that any discriminatory effect caused by such policy or practice is justified. Such a determination must be made on a case-by-case basis.

Selective use of criminal history as a pretext for unequal treatment of individuals based on race, national origin, or other protected characteristics violates the Act.

Helen R. Kanovsky, General Counsel

Chapter Seven

Boundary Disputes

Submitted by
David J. Scaggs, Esq.
The Granger Firm
Paoli

Originally Written by
James S. Tupitza, Esq.
Tupitza & Associates, P.C.
West Chester

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Boundary Disputes:

I. Consentable Lines

Boundary Determined by Consent

i. Generally

1. The Doctrine of Consentable Lines is a rule of repose for the purpose of quieting title and discouraging confusing and vexatious litigation. Plott v. Cole, 377 Pa. Super. 585, 547 A.2d 1216 (1988).

2. "The general rule is that one who claims title to property through another, regardless of the nature of the transfer, whether by the act of the parties or the act of law, is bound by the earlier acts or declarations of his predecessor and takes the title *cum onere*. Under this rule, all acts and declarations of the owner of land made during the continuation of his interest tending to show the character or extent of his possession or interest, or the location of boundaries, are competent evidence not only against himself, but also against those who claim through or under him." Plauchak v. Boling, 439 Pa. Super. 156, 653 A.2d 671 (1995) quoting Dawson v. Coulter, 262 Pa. 566, 106 A. 187 (1919).

3. There are two means of proving a binding consentable line: (1) by dispute and compromise; and (2) by recognition and acquiescence. Corbin v. Cowan, 716 A.2d 614 (Pa. Super, 1998) appeal denied 559 Pa. 704 740 A.2d 233 (Pa. 1999).

4. The establishment of a consentable line is not a conveyance of land within the meaning of the Statute of Frauds because no estate is thereby created. Therefore, such a line may be initiated by oral agreement improved by parole evidence. See Plauchak V. Boling, 653 A.2d 671 (Pa. Super 1995) and Non-Precedential Decision of Dennis v. Palman, 2017 WL 347609 (Pa. Super 2017)

ii. Recognition and Acquiescence

1. "Recognition and acquiescence" requires: (1) a finding that each party has claimed the land on his side of the line as his own; and (2) a finding that this occupation has occurred for the statutory period of twenty-one years. See e.g., Corbin v. Cowan, 716 A.2d 614 (Pa. Super, 1998) (a long-standing fence); Zeglin v. Gahagen, 571 Pa. 321, 326; 812 A.2d 558, 561 (2002). See also, Niles v. Fall Creek Hunting Club, Inc., 376 Pa. Super. 260, 545 A.2d 926 (1988) (*en banc*)).

2. Recognition and acquiescence do not require that the parties specifically consented to the location of the line. Plauchak v. Boling, 439 Pa. Super. 156, 653 A.2d 671 (1995), citing Inn Le'Daerda, Inc. v. Davis, 241 Pa. Super. 150, 360 A.2d 209 (1976).

3. "Occupation up to a fence on each side by a party or two parties for more than twenty-one years, each party claiming the land on his side as his own, gives to each an incontestable right up to the fence, and equally whether the fence is precisely on the right line or not.' [Citation omitted]. In such a situation the parties need not have specifically consented to the location of the line." Sorg v. Cunningham, 455 Pa. Super. 171, 687 A.2d 846 (1997), citing Dimura v. Williams, 446 Pa. 316, 286 A.2d 370 (1972).

4. The establishment of a boundary line by acquiescence for the statutory period of twenty-one years has long been recognized in Pennsylvania. Two elements are prerequisites: 1) each party must have claimed and occupied the land on his side of the line as his own; and 2) such occupation must have continued for the statutory period of twenty-one years. See, Jedlicka v. Clemmer, 450 Pa. Super. 647, 654, 677 A.2d 1232, 1235 (1996); Plott, 377 Pa.Super. at 594, 547 A.2d at 1221; Zeglin v. Gahagen, 571 Pa. 321, 812 A.2d 558 (2002); Moore v. Moore, 921 A.2d 1 (Pa. Super. 2007), appeal denied, 934 A.2d 1278 (Pa. 2007).

5. There must be "unequivocal acts of ownership [and it is] immaterial that the holder supposed the visible boundary to be correct …." Tamburo v. Miller, 203 Md. 329, 100 A.2d 818, 821 (Md. 1953), quoted in Zeglin, supra. Both parties must know and claim their respective rights and take actions consistent therewith in mutually adopting a line as a division between them. Parks v. Boynton, 98 Pa. 370 (1981).

6. The line must be visible, physical, and contiguous to the land held by the adverse claimant, continuous but not necessarily consisting of the same material, appear like a boundary, and intended to be a boundary. Maintained fences and hedges are "standard bearers for *consentable* lines." Moyerman v. Glanzberg, 391 Pa. 387, 138 A.2d 681 (1958); Miles v. The Pennsylvania Coal Company, 245 Pa. 94, 91 Atl. 211 (1914); See also, Zeglin v. Gahagen, 571 Pa. 321, 812 A.2d 558 (2002) (Row of bushes, utility poles, and fences are standard consentable lines) hedgerow, Plauchak v. Boling, 439 Pa. Super. 156, 653 A.2d 671 (1915) (Hedgerows are consentable lines; Sorg, Trustee v. Cunningham, 455 Pa. Super. 171, 687 A.2d 846 (1997) (Rows of pine trees are consentable lines).

7. The boundary line does not need to be substantial. Jedlicka v. Clemmer, 677 A. 2d 1232 (Pa. Super 1996)

8. The required acquiescence under the boundary-by-acquiescence doctrine must be on the part of the owner or the owner's authorized representative. See, Johnston v. Furnier, 69 Pa. 499 (1892). The party acquiescing must have knowledge of the adverse possession and must recognize the putative line as the boundary. See Henry v. Huff, 143 Pa. 548 (1891)]

9. An examination of the decisional law demonstrates, however, that the doctrinal roots of acquiescence are grounded in adverse possession theory; indeed, occupancy with open manifestations of ownership throughout the statutory period will generally satisfy the traditional elements of adverse possession. Decisions involving acquiescence are frequently distinguishable from adverse possession cases only in that possession in the former are often based on a mistake as to the location of property lines. *See generally* Annotation, *Adverse Possession Involving Ignorance or Mistake as to Boundaries--Modern Views,* 80 A.L.R.2d 1171, 1173 (1961 & Supp.2002). [FN6]. Cited in Zeglin v. Gahagen, 571 Pa. 321, 812 A.2d 558 (2002).

10. Examples of lines not qualifying as consentable lines: Non-continuous fence insufficient unless the acts of the parties support that conclusion. Holland v. Hayes, 40 Pa. Super. 195 (1909), Fisher v. Pennsylvania Company, 3 Walker. 390, 1886 Pa. Lexis 550 (Supr. Ct. 1886), Dumara v. Williams, 446 Pa. 316, 286 A.2d 370 (1972); broken or irregular lines, Ross v. Golden, 344 Pa. 487, 25 A.2d 700 (1942), cf. Madera v. DuBois, 187 Pa. 431, 41 Atl. 322 (1898).

11. See Non-Precedential Decision of Dennis v. Palman, 2017 WL 347609 (Pa. Super 2017) where the property line was considered to be established by two trees and the corners of the tract. The party who planted the trees and claimed they were the boundary later did a survey and found the trees were on his side of the survey line.

12. Where the claimed boundary within a large, wooded area was marked by blazed trees, the fact that both neighbors used the disputed area without disturbance, there was no recognition of the line and therefore no consentable line. Bowser v. Bebout, 2016 WL 4975320. Non-Precedential

iii. **Tacking**

1. The similarity between acquiescence and adverse possession seems to end at tacking. For adverse possession privity of estate is necessary. Baylor v. Soska 658 A.2d 743 (PA 1995).

2. Privity of estate requires language in the deed into the current owner to describe the land being adversely possessed. Acquiescence, on the other hand, seems to only require privity of possession Zeglin v. Gahagen, 571 Pa. 321, 812 A.2d 558 (2002).

iv. **Dispute and Compromise**

1. To prove a *consentable* line by dispute and compromise, the following three elements must be satisfied: (1) a dispute with regard to the location of a common boundary line; (2) the establishment of a line; and (3) the giving up of their respective claims that are inconsistent with the line. Jedlicka v. Clemmer, 450 Pa. Super. 647, 677 A.2d 1232 (1996), citing Niles v. Fall Creek Hunting Club, Inc., 376 Pa. Super. 260, 545 A.2d 926 (1988) (*en banc*) ; Plott v. Cole, 377 Pa. Super. 585, 547 A.2d 1216 (1988).

2. A consentable line is not created under the dispute and compromise theory where the parties are both unsure about the boundary location and, in an abundance of caution, adjust their fences and/or behavior in conformity with a line that turns out not to be the true boundary. However, this can become the boundary line after 21 years, under the recognition and acquiescence theory discussed above. Niles v. Fall Creek Hunting Club, Inc., 376 Pa. Super. 260, 545 A.2d 926 (1988) (*en banc*), citing Inn Le'Daerda, Inc. v. Davis, 241 Pa. Super. 150, 360 A.2d 209 (1976) (quoting Perkins v. Gay, 2 S&R 327 (1817)).

    a. **Example:** In Rec. Land Corp. v. Hartzfeld, 2008 Pa. Super. 76, 947 A.2d 771 (Pa. Super. Ct. 2008), the Superior Court did not err when it found the disputed property to be "woodlands" (was extensively wooded character and unenclosed). The disputed property was 150 ft wide strip of land—wooded area; defendant planted pines along one side of strip, planted grass; maintained area by removing limbs, cutting grass, removing dead trees, grading the ground, clearing the brush, and cutting saplings; defendant and 2 other neighbors constructed permanent docks; defendant uses ground for boat storage, camping and other recreational activities; constructed dog pen on disputed land as well (Land at issue far less extensive or forested than land in Bride (18 acres of woodland used for hunting and removing

timber) or Niles (113.4 acres of undeveloped timberland) as discussed above.

v. **Consentable Line Distinguished from Adverse Possession**

1. Adverse Possession is discussed in section IV, infra, but for purposes of this section it requires (1) exclusive possession of the property sought to be acquired; and (2) for tacking purposes, transfer from predecessor including reference to the disputed property in the instrument.

2. In adverse possession, the possession of successive occupants may be tacked where each predecessor claimed title to the property in dispute, and in transferring it to his successor, purported to include it. Corbin v. Cowan, 716 A.2d 614 (Pa. Super, 1998). See also, Plot v. Cole, 377 Pa. Super. 585, 547 A.2d 1216 (1988).

3. The consentable line doctrine can be an attractive alternative to an adverse possession claim where tacking is necessary, because the former does not actually require reference in the deed to the transfer of inchoate rights. Caution should be exercised because the failure of the claim to ripen by 21 years into an inchoate right might be the basis for an argument that specific reference to the claimed boundary line must appear in a deed for tacking to apply.

    a. Supporting this line of analysis, the Pennsylvania Supreme Court held that "the reason why privity of estate should not be deemed necessary to support (tacking) in this setting (a boundary dispute involving a consentable line) is, simply, because a prospective purchaser will see the fence or similar marking; given its "obvious presence as apparent boundary," he is therefore put on notice to inquire about its origin, history, and function. Zeglin v. Gahagen, 571 Pa. 321, 812 A.2d 558 (2002).

4. The doctrine of consentable lines does not require exclusive possession, but that each party claimed the land on his side of the line as his own. Schimp v. Allaman, 442 Pa. Super. 365, 659 A.2d 1032 (1995).

5. The modern trend and the better rule is that where the visible boundaries have existed for the period set forth in the Statute of Limitations, title will vest in the adverse possessor where there is evidence of unequivocal acts of ownership. In this view it is immaterial that the holder supposed the visible boundary to be correct or, in other words, the fact that the possession was due to

inadvertence, ignorance, or mistake, is entirely immaterial. See Tamburo v. Miller, 203 Md. 329, 100 A.2d 818, 821 (1953).

vi. **General Considerations**

1. A consentable boundary line need not necessarily be a fence, and a boundary line established by survey is sufficient. Niles v. Fall Creek Hunting Club, Inc., 376 Pa. Super. 260, 545 A.2d 926 (1988) (*en banc*). The boundary line need not be substantial. Jedlicka v. Clemmer, 450 Pa. Super. 647, 677 A.2d 1232 (1996).

2. When a consentable line is established, the land behind such a line becomes the property of each neighbor, regardless of what the deed specifies. In essence, each neighbor gains marketable title to that land behind the lines, which may not have been theirs under their deeds. Soderberg v. Weisel, 455 Pa. Super. 158, 687 A.2d 839 (1997).

3. The question of where a boundary line is actually located is a question for the trier of fact. Plott v. Cole, 377 Pa. Super. 585, 547 A.2d 1216 (1988). The question of what constitutes a boundary line is a matter of law. Id.

4. The establishment of a consentable line is not a conveyance of land within the meaning of the statute of frauds, because no estate is created thereby. Plauchak v. Boling, 439 Pa. Super. 156, 653 A.2d 671 (1995), citing Hagey v. Detweiler, 35 Pa. 409 (1860). Therefore, such a line may be initiated by oral agreement and proved by parol evidence. Id., citing Beals v. Allison, 161 Pa. Super. 125, 54 A.2d 84 (1947).

II. ADVERSE POSSESSION

a. **MAJOR AMENDMENT TO THE LAW** Because this is the first radical change to what many consider an ancient doctrine in Pennsylvania, we reproduce the new statute in full:

42 Pa.C.S.A. § 5527.1 *[Effective 6/19/2019]* Ten-year limitation (EMPHASIS ADDED)

(a) **Adverse possession.** --Title to real property may be acquired after no less than **10 years** of actual, continuous, exclusive, visible, notorious, distinct and hostile possession of the real property.

(b) **Contiguous lots.** --

(1) Where an **additional lot abuts and is contiguous** to real property and has been **regularly used** as part of an incident to the real property, a possessor who seeks to acquire title to real property under this section **may also include** the contiguous lot in the action to quiet title under subsection (c).

(2) In order to acquire title to the **contiguous lot,** the possessor must show that:

(i) The area of the contiguous lot as **described by the metes and bounds does not exceed a total area of one-half acre when combined** with the real property.

(ii) The possessor has made actual, continuous, exclusive, visible, notorious, distinct and hostile possession of the contiguous lot for a period of not less than 10 years.

(c) **Quiet title action required.** --

(1) A possessor who seeks to acquire title to real property under this section **must**, after meeting the requirements of subsections (a) and (b), **commence a quiet title action and provide notice as required in this section.**

(2) Notice of the action **shall include** information relating to the respondent's **opportunity to cure** as specified in subsection (d) and shall be provided to the **record owners, their heirs, successors and assigns**.

(3) Notice shall be provided in a form approved by rule of the Pennsylvania Supreme Court, which form **shall include** the metes and bounds description, deed reference, street address, postal zip code, uniform parcel identifier or tax parcel number and the **notices of the one-year period to cure** as stated in subsection (d).

(d) **One-year notice.** --

(1) The record owners or their heirs, successors and assigns **shall have one year in which to respond by commencing an action in ejectment against the possessor,** which action disputes the claim of adverse possession.

(2)

(i) If an action in ejectment is so filed and served in accordance with the requirements of this section and the verdict and judgment in the ejectment action are rendered in favor of the record owners, or their heirs, successors and assigns, then both the 10-year statute of limitations set forth in this section and the 21-year statute of limitations set forth in section 5330 (relating to twenty-one year limitation) are **tolled,** and the court **shall** render a judgment in favor of the record owners, or their heirs, successors and assigns, disposing of the quiet title action.

(ii) The period for running the statute of limitations for any **subsequent claim** seeking title by adverse possession under this section or section 5530 shall commence at a date not earlier than the date of the judgment granting the relief requested in the ejectment action.

(3) If no action in ejectment is so filed and served within the one-year period, then judgment **may be entered** by the court granting title to the real property by adverse possession under this section and the Pennsylvania Rules of Civil Procedure.

(4) A judgment granting title by adverse possession under this section **shall not**, in and of itself:

(i) discharge, **terminate** or give rise to a presumption of satisfaction or release of any interest in the property that **runs with title** to the property, including, but not limited to, easements, profits, covenants, mortgages, liens, judgments and leases;

(ii) otherwise extend or limit the period of time in which claims relating to the property may be asserted against a possessor granted title by a judgment of adverse possession; or

(iii) supersede any applicable provision of law, including, but not limited to, the act of July 31, 1968 (P.L. 805, No.247), known as the Pennsylvania Municipalities Planning Code, or a zoning code of a city of the first class or city of the second class as the case may be, and any subdivision or land use ordinance, to the extent applicable, then in effect in the jurisdiction where the subject property is located. Nothing contained in this section shall limit the otherwise applicable jurisdiction of any zoning officer, zoning hearing board, zoning board of adjustment or governing body with respect to the subject property.

(e) **Limitations.** --This section shall not apply to real property that is part of a common interest ownership community established under 68 Pa.C.S. Pt. II Subpts. B (relating to condominiums), C (relating to cooperatives) and D (relating to planned communities).

(f) **Nonapplicability.** --This section shall **not apply** to real property that is:

(1) part of a **common interest ownership** community established under 68 Pa.C.S. Pt. II Subpt. B, C or D; or

(2) owned by the United States, the Commonwealth, **a local government**, or any agency, authority or other unit of the United States, the Commonwealth or local government, including, but not limited to, a redevelopment authority, municipal

authority and school district or joint agency or authority of the United States, the Commonwealth or local government unit.

(g) **Nonexclusive remedy.**--The relief available under this section is intended to be cumulative and not exclusive of any other rights or remedies that may be available under law or equity, including, but not limited to, the determination of title to a decedent's interest in real estate under 20 Pa.C.S. § 3546 (relating to determination of title to decedent's interest in real estate).

(h) **Definitions.** --As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Real property." Real estate **not exceeding one-half acre** in area that is:

(1) **Improved by a single-family dwelling** that is and has been **occupied by a possessor** seeking title under this section for the full 10 years.

(2) Identified as a **separate lot** in a recorded conveyance, recorded subdivision plan or recorded official map or plan of a municipality.

"Single-family dwelling." A residence designed for occupancy by one household, whether detached from or attached to other structures.

b. **Nature of Adverse Possession**

i. **ELEMENTS**. A claimant must prove actual, exclusive, visible, notorious, distinct and hostile possession of the land continuously for 21 years. Conneaut Lake Park, Inc. v. Klingensmith, 362 Pa. 592, 66 A.2d 828 (1949). The burden is on the claimant to establish each of the elements by credible, clear and definitive proof. Stevenson v. Stein, 412 Pa. 478, 195 A.2d 268 (1963). There is a great deal of overlap between the elements. See, e.g., Lilly v. Markvan, 563 Pa. 553, 556, 763 A.2d 370, 371 (2000).

ii. **STATUTORY BASIS**. The statutory basis for adverse possession is 42 Pa. C.S. § 5530, which provides that an owner is barred from commencing an action for the possession of real property after 21 years. See also 42 Pa.C.S.A. 5527.1 amending the time period to 10 years in certain circumstances.

iii. **EFFECT**. When the elements of adverse possession have been satisfied, the record owner is divested of title and absolute fee ownership vests in the claimant. Philadelphia Electric Co. v. City of Philadelphia, 303 Pa. 422, 154 A. 492 (1931). Title obtained by adverse possession is marketable. Plauchak v. Boling, 439 Pa. Super. 156, 653 A.2d 671 (1995). However, the author is not aware of a title insurance underwriter that will insure such title, absent a final, unappealed and unappealable court order.

iv. **DIVESTITURE**. "Title [acquired by adverse possession] may be divested only in the manner in which title acquired by formal grant or conveyance may be divested and is not lost by 'neglecting to keep up the possession.'" Plauchak v. Boling, 439 Pa. Super. 156, 653 A.2d 671 (1995), citing Schall v. Williams Valley Railroad Co., 35 Pa. 191 (1860).

v. **RECORDING**. Any person who acquires title by adverse possession and who, thereafter, ceases to remain in possession of the property, must file a statement of claim within 6 months of leaving possession. 68 P.S. § 81. Failure to record such a statement renders such title invalid against any purchaser, mortgagee or judgment creditor for value and without notice. 68 P.S. § 85. See also, Nulton v. Nulton, 247 Pa. 572, 583, 93 A. 630, 633 (1915); Moore v. Duran, 455 Pa. Super. 124, 687 A.2d 822 (1996).

c. **Property Not Subject to Adverse Possession**

i. **FEDERAL, COMMONWEALTH, AND MUNICIPAL LANDS DEVOTED TO PUBLIC USE.** "There is no question that adverse possession will not lie against lands held by the Federal Government. Nor can a claim of adverse possession be asserted against the Commonwealth. As to political subdivisions, such as counties, townships and boroughs the rule seems to be that title by presumption against such governing bodies, and in this case, may be asserted unless the land in question is devoted to public use." Lysicki v. Montour School Dist., 701 A.2d 630 (Pa. Cmwlth., 1997), quoting Torch v. Constantino, 227 Pa. Super. 427, 323 A.2d 278 (1974). See also City of Philadelphia v. Galdo 181 A.3d 1289 (Pa. Cmwlth. 2018) where the Court rejected the argument that the property was held by the city at the behest of the Commonwealth.

ii. **RAILROADS.** Land within a railroad right-of-way cannot be acquired by adverse possession. A. D. Graham & Co. v. Pennsylvania Turnpike Commission, 347 Pa. 622, 33 A.2d 22 (1943).

iii. **MINORS.** Title may not be acquired by adverse possession if, at the commencement of possession, the legal owner is an unemancipated minor. In that case, the 21-year period begins when the owner attains the age of 18. 42 Pa.C.S. § 5533.

iv. **FUTURE INTERESTS.** Adverse possession against a life tenant will only yield title to a life estate *per autre vie*, unless possession continues for 21 years beyond the life tenant's death. Dice v. Reese, 342 Pa. 379, 21 A.2d 89 (1941).

v. **CLAIMS OF MUNICIPALITIES.** A municipal body having the power of eminent domain is presumed to have acquired title by eminent domain and not adverse possession. This is a rebuttable presumption. Barter v. Palmerton Area School District, 399 Pa. Super. 16, 581 A.2d 652 (1990).

vi. **UNENCLOSED WOODLANDS**. Title to woodlands can be acquired by adverse possession, but there is a stricter standard applied. The adverse possessor must prove, by clear and convincing evidence, that he or she was in actual possession of the land. “"In general, actual possession of land means dominion over the property." Bride v. Robwood Lodge, 713 A.2d 109, 112 (Pa. Super. 1998). The requirements for "actual" possession of a property will necessarily vary based on the nature of the property. *See id.* Our case law has developed a rather strict standard for proving adverse possession of woodland. "A person establishes actual possession of a woodland by 'residence or cultivation of a part of the tract of land to which the woodland belongs.'" Bride, 713 A.2d at 112, quoting Niles v. Fall Hunting Creek Club, Inc., 376 Pa. Super. 260, 545 A.2d 926, 929 (Pa. Super. 1988); See also, Niles, *supra* ("substantial" enclosure of woodland may also qualify as "actual" possession under certain circumstances).” Rec. Land Corp. v. Hartzfeld, 2008 Pa. Super. 76, 947 A.2d 771 (Pa. Super. Ct. 2008).

1. “Our case law has developed a rather strict standard for proving adverse possession of woodland. A person establishes actual possession of a woodland by residence or cultivation of a part of the tract of land to which the woodland belongs.” Piston v. Campbell, 2013 PA Super 32 (Pa. Super. Ct 2013)

d. **Elements of Adverse Possession**

i. **Generally.** The elements of Adverse Possession are “Actual Possession” that is “distinct and exclusive,” “visible and notorious,” “Hostile,” and “Continuous and Uninterrupted.”

ii. **Actual Possession**

1. Actual possession requires dominion over the property; actual possession is not the equivalent of occupancy. Bride v. Robwood Lodge, 713 A.2d 109 (Pa. Super., 1998), citing Moore v. Duran, 455 Pa. Super. 124, 687 A.2d 822 (1996). *See also*, Reed v. Wolyniec, 323 Pa. Super. 550, 471 A.2d 80 (1983).

2. Actual possession requires acts signifying permanent occupation of land, which are performed continuously throughout the statutory period. Smith v. Peterman, 263 Pa. Super. 155, 397 A.2d 793 (1978).

3. "If the possession proved is inconsistent with the possession or right of possession by another, it is sufficient to found a title upon, provided it is of such a character as owners of similar land in the vicinity usually maintain regarding their own property." Hutchinson v. Little Four Oil and Gas Co., 275 Pa 380, 119 A.534 (1923).

4. A determination of what constitutes actual possession depends on the facts of each case and, to a great extent, on the character of the premises. Fred E. Young, Inc. v. Brush Mountain Sportsmen's Assn., 697 A.2d 984 (Pa. Super., 1997), Niles v. Fall Creek Hunting Club, Inc., 376 Pa. Super. 260, 545 A.2d 926 (1988).

5. A claim of ownership must be evidenced by conduct sufficient to put a reasonable person on notice that the claimant is claiming the land as his own. Glenn v. Shuey, 407 Pa. Super. 213, 595 A.2d 606 (1991).

6. Sporadic, temporary, or repeated acts do not constitute actual possession, regardless of how often such acts are repeated. Inn Le'Daerda, Inc., v. Davis, 241 Pa. Super. 150, 360 A.2d 209 (1976).

7. **Woodlands.** To establish adverse possession of undeveloped woodlands, the claimant must either **erect a residence** or **enclose and cultivate the property**. Bride v. Robwood Lodge, 713 A.2d 109 (Pa. Super., 1998).

8. **Adverse Possession of Oil and Gas Rights.** "[I]n order achieve title to oil and natural gas by adverse possession, actual possession, meaning drilling and production, of the minerals must occur. See e.g., Natural Gas Pipeline Co. of America v. Pool, 124 S.W.3d 188 (Tex. 2003); Schaneman v. Wright, 238 Neb. 309, 470 N.W.2d 566, 577 (Neb. 1991)(mere execution, delivery or recording of oil and gas lease or mineral deeds will not constitute adverse possession); Piney Oil & Gas Co. v. Scott, 258 Ky. 51, 79 S.W.2d 394, 401 (Ky. 1934)(adverse occupation and use of property "cannot be wrought in the office of the county clerk no matter how many deeds or leases the would-be disseisor may record there.") Lyles v. Dodge, 228 S.W. 316, 317 (Tex. Civ. App. 1921) (registration of oil lease, even if they had been recorded for a sufficient length of time to meet the requirements of the statute, would not constitute notice of adverse

possession of the minerals.) Hoffman v. Arcelormittal Pristine Res., Inc., 2011 U.S. Dist. LEXIS 50170, 9-11 (W.D. Pa. May 10, 2011).

a. **Open and Notorious Requirement.** In 2015, the Pennsylvania Superior Court ruled that a challenger to legal title of oil and gas rights must provide "awareness of which would be recognized by a reasonable person in like circumstances." Stewart v. T.W. Phillips Gas Supply Corp., No. 791 WDA 2014, 2015 WL 7721596, at *6 (Pa. Super. Ct. Jan. 12, 2015) quoting Estate v. Klett v. Eboch, 633 A.2d 1204, 1208 (Pa. Super. 1993). The Court went on to say that "mere receipt of royalties and free gas at a home located several miles from the oil and gas tract was insufficient to alert . . . that a challenge had been asserted[.]" Id.

9. **Color of Title.** Color of title is not a prerequisite for acquisition of title by adverse possession. However, if one enters the property under color of title (i.e., under invalid deed or other document which the possessor believes is valid) and meets the requirements of adverse possession, he may thereby have constructive possession of the whole tract described in his invalid document. Beck v. Beck 436 Pa. Super. 516, 520 648 A.2d 341, 343 (Pa. Super. 1994); Arcadia Co. v. Peles, 395 Pa. Super 203, 576 A.2d 1114 (1990).

   a. However, adverse possession under color of title is defeated where the true owner is, at the same time, in actual possession of part of the land and claiming title to the whole. Id.

10. **Payment of Taxes.** The fact that the claimant paid taxes on the disputed property is not dispositive and will not help the claim unless there is some evidence of continuous dominion over the property. Flickinger v. Huston, 291 Pa. Super. 4, 435 A.2d 190 (1981).

11. **Examples of Actual Possession**

   a. Erecting a residence. Susquehanna & Wyoming Valley Railroad & Coal Co. v. Quick, 68 Pa. 189 (1871).

   b. Using property to pasture cattle and fencing property on two of its three sides (it was not necessary to fence third side, as this would render property useless for grazing). Moore v. Duran, 455 Pa. Super. 124, 687 A.2d 822 (1996).

   c. Using land for lawn purposes and the continuous maintenance thereof in connection with a residence. Klos v. Molenda, 355 Pa. Super. 399, 513 A.2d 490 (1986).

d. Enclosure of property by fence can be sufficient to establish title to property by adverse possession, but only if fence is continuously and substantially maintained for 21 years. Robin v. Brown, 308 Pa. 123, 162 A. 161 (1932).

e. Making improvements on the property and paying the property taxes. Glenn v. Shuey, 407 Pa. Super. 213, 595 A.2d 606 (1991) citing McCall v. Neely, 3 Watts 69 (1834) (claimant entered land, cleared trees, made improvements and paid taxes on entire tract for 21 years).

f. Constructing a sawmill. Beck v. Beck, 436 Pa. Super. 516, 648 A.2d 341 (1994).

g. Continuous cultivation. Glenn v. Shuey, 407 Pa. Super. 213, 595 A.2d 606 (1991) citing M'Caffrey v. Fisher, 4 Watts & Serg. 181 (1842); Heacock v. Rawn, 93 Montg. 239 (1970).

h. Cultivating garden, planting trees, removing gravel from roadbed and replacing it with topsoil, planting and cutting grass, and keeping trailer, boat and cars on property. Palac v. DiSanto, 424 Pa. Super. 277, 622 A.2d 378 (1993).

12. **Examples of what is NOT Actual Possession**

a. Where the land had been partially enclosed by single strand of wire which had broken and fallen to ground in several places and the claimant used the land sporadically for hunting and timbering. Niles v. Fall Creek Hunting Club, Inc., 376 Pa. Super. 260, 545 A.2d 926 (1988).

b. Entry onto the property for hunting, fishing and boating. Matthews v. Bagnik, 157 Pa. Super. 115, 41 A.2d 875 (1945). *See also* Beck v. Beck, 436 Pa. Super. 516, 648 A.2d 341 (1994); Niles v. Fall Creek Hunting Club, Inc., 376 Pa. Super. 260, 545 A.2d 926 (1988).

c. Clearing of two stream banks, drainage of swampy areas, use of land for occasional picnicking and planting trees. While payment of taxes on this property provided some support for the claim, the Court considered it insufficient to rescue an otherwise inadequate showing. Flickinger v. Huston, 291 Pa. Super. 4, 435 A.2d 190 (1981).

d. Where claimant's use of the property was limited to sporadic hunting and berrry-picking, and where he had planted saplings but failed to maintain them, the claimant failed to

establish the elements for possession of woodlands. Bride v. Robwood Lodge, 713 A.2d 109 (Pa. Super., 1998).

e. A fence that appears neglected and abandoned is inadequate to support a claim of adverse possession. Dimura v. Williams, 446 Pa. 316, 286 A.2d 370 (1972).

f. Merely depositing manure upon another's land. Shroder v. Breneman, 21 Pa. 225 (1853).

g. Sporadic entry upon land to dump trash or cut down trees. Lilly v. Markvan, 2000 WL 1863116 (Pa. Dec. 10, 2000)

iii. **Distinct and Exclusive**

1. "Distinct and exclusive" is met by possession that would characterize an owner's use. Glenn v. Shuey, 407 Pa. Super. 213, 595 A.2d 606 (1991). It is not required to be absolutely exclusive use and possession. Lyons v. Andrews, 226 Pa. Super. 351, 313 A.2d 313 (1973).

2. The exclusivity element is not destroyed merely because others passed, unobserved, over the property. It was sufficient that the claimant's possession was to the general exclusion of others and that he remonstrated with persons who, without permission, attempted to use the land. Reed v. Wolyniec, 323 Pa. Super. 550, 471 A.2d 80 (1983).

3. The actions of the claimant must give notice of a denial of the record owners asserted right to ownership. Lyons v. Andrews, 226 Pa. Super. 351, 313 A.2d 313 (1973). "Two owners on good terms may quite possibly use each other's property to a limited extent without express consent, yet without a usurpatory intent." Id.

4. Except where co-tenants jointly claim adverse possession, exclusive possession cannot be based on a use or occupation in common with a third party. Conneaut Lake Park v. Klingensmith, 362 Pa. 592, 66 A.2d 828 91949), citing Henry v. Grove, 356 Pa. 541, 52 A.2d 451 (1947). Therefore, a wife could not gain title by adverse possession where possession was not adverse to her husband (her co-tenant) even though her possession was adverse as to the record owner. Id.

5. Adverse possession, unlike prescription, requires exclusivity. Newell Rod & Gun Club, Inc. v. Bauer, 409 Pa. Super. 75, 597 A.2d 667 (1991), Dunlap v. Larkin, 342 Pa. Super. 594, 493 A.2d 750 (1985). Therefore, when the use of an area is shared with the true owner or with the general public, the possessor will not acquire fee title (however, a prescriptive easement may result).

iv. **Visible and Notorious**

1. "Visible and notorious" requires conduct sufficient to place a reasonable person on notice that his land is being held by the claimant as his own. Fred E. Young Inc. v. Brush Mountain Ass'n, 697 A.2d 984, 990 (Pa.Super. 1997); Sterner v. Freed, 391 Pa. Super. 254, 520 A.2d 1079 (1990).

2. "An adverse possessor must intend to hold the land for himself, and that intention must be made manifest by his acts... He must keep his flag flying and present a hostile front to all adverse pretensions." Fred E. Young Inc. v. Brush Mountain Ass'n, 697 A.2d 984, 990 (Pa.Super. 1997); Smith v. Peterman, 263 Pa. Super. 155, 397 A.2d 793 (1978).

3. **Privity and Permission.** Where use and possession are originally either permissive, by right, under a subordinate title, or where there is special privity between the possessor and true owner (e.g., vendor and purchaser), the claimant must show that the record owner was clearly made aware (or should have been aware) that the use had become adverse. "'[T]he rule requires that the specific acts or declarations relied upon as showing a change from the original tenure must be the equivalent of an actual ouster' and 'the statute will only begin to run from the date when such specific acts or declarations were made...'" O'Boyle v. Kelly, 249 Pa. 13, 94 A. 448 (1915), quoting Johns v. Johns, 244 Pa. 48, 90 A. 535 (1914). See also, discussion of "Hostility" element, *infra*.

4. **Hostile.** Adverse possession does not require "hostility" in the sense of ill will. Rather, hostility implies an assertion of ownership rights adverse to the true owner and all others. Brennan v. Manchester Crossings, Inc., 708 A.2d 815 (Pa. Super., 1998) ; Schlagel v. Lombardi, 337 Pa. Super. 83, 486 A.2d 491 (1984). The element of hostility requires that the court examine not just the *physical acts* of possession, but also the evidence, if any, probative of the *intent* with which the land in question was possessed. Rumbold v. Richard Guzzetti, LLC, No. 1159 EDA 2015, 2015 WL 6965275 (Pa. Super. Ct. Nov. 10, 2015) citing Flannery v. Stump, 786 A.2d 255 (Pa. Super. 2001).

5. Citing, Flannery v. Stump, 786 A.2d 255 (Pa. Super. 2001)

6. While the word "hostile" has been held not to mean ill will or hostility, it does imply the intent to hold title against the record title holder. Vlachos v. Witherow, 3 D & C 2d 698 (1954), *aff'd with opinion*, 383 Pa. 174, 118 A.2d 174 (1955).

7. Possession may be hostile even if the claimant knows of no other claim and falsely believes that he owned the land in question. Tioga Coal Co. v. Supermarkets General Corp., 519 Pa. 66, 546 A.2d 1 (1988), citing Schlagel v. Lombardi, 337 Pa. Super. 83, 486 A.2d 491 (1984).

8. One who has the right to enter upon land is presumed to have entered by virtue of such right rather than as a trespasser. Sayre Land Co. v. Borough of Sayre, 384 Pa. 534, 121 A.2d 579 (1956).

9. When claimant asks true owner for a quitclaim deed prior to the expiration of the 21-year period, the element of continuous hostility is destroyed. Myers v. Beam, 551 Pa. 670 713 A.2d 61 (Pa., 1998). Similarly, an attempt by the claimant to purchase the property from the true owner prior to the running of the statutory period breaks the hostility. Pistner Bros., Inc. v. Agheli, 359 Pa. Super. 177, 518 A.2d 838 (1986). But if the offer is after the 21-year period, the offer cannot defeat title that has already been acquired by adverse possession. Shaffer et al vs. O'Toole et al, 964 A.2d 420 (Pa. Super. Ct. 2009).

10. When all of the other elements of adverse possession are met, hostility is implied, regardless of the claimant's actual state of mind. Tioga Coal Co. v. Supermarkets General Corp., 519 Pa. 66, 546 A.2d 1 (1988). The burden then shifts to the legal owner to prove that the use was not hostile. Palac v. DiSanto, 424 Pa. Super. 277, 622 A.2d 378 (1993).

11. Possession is still considered hostile even when claimant and legal owner are both laboring under a mutual mistake concerning ownership. Lyons v. Andrews, 226 Pa. Super. 351, 313 A.2d 313 (1973).

12. **Permission**

    a. When possession of the land is permissive, there is no hostile nexus and, thus, no adverse possession. Lehmann v. Keller, 454 Pa. Super. 42, 684 A.2d 618 (1996).

    b. Permissive use can change into hostile use: "Where the possession, at its inception, is permissive ...., [The statutory period for an adverse possession claim] will not begin to run against the real owner until there has been some subsequent act of disseizin or open disavowal of the true owner's title...." Kamiski Bros., Inc. v. Lussi, 308 Pa. Super. 250, 454 A.2d 115 (1982) citing Roman v. Roman, 485 Pa. 196, 401 A.2d

361 (1979) ; Moser v. Granquist, 362 Pa. 302, 66 A.2d 267 (1949).

i. Example: Possession under a self-renewing year-to-year lease was originally permissive. However, possession became adverse when lessee stopped paying rent and refused to sign a lease when it was presented to him. Kamiski Bros., Inc. v. Lussi, 308 Pa. Super. 250, 454 A.2d 115 (1982).

c. It is incumbent upon the true owner of land to prove that the use was permissive. Brennan v. Manchester Crossings, Inc., 708 A.2d 815 (Pa. Super., 1998), *app. den'd*, 1998 WL 574193 (Pa., 9/1/98).

d. Adverse use is not rendered permissive merely because the record owner is aware of such use and fails to object. Brennan v. Manchester Crossings, Inc., 708 A.2d 815 (Pa. Super., 1998), *app. den'd*, 1998 WL 574193 (Pa., 9/1/98) (where claimant is maintaining property that belongs to record owner without the record owner's express consent. The record owner cannot simply tell claimant: "I noticed that you are maintaining my property, but I am not going to worry about it until later." The record owner must attempt to cause a cessation of the claimant's use of the property in order to stop the clock from running).

e. Permissive use terminates on the sale of the servient tenement. Thus, when the owner who gave permission sells the property, further use is deemed hostile (unless the new owner also gives express permission). Sterner v. Freed, 391 Pa. Super. 254, 571 A.2d 1079 (1990). Similarly, the fact that a predecessor used the land with permission does not mean that his successor's use of the land is not adverse. Waltimyer v. Smith, 383 Pa. Super. 291, 556 A.2d 912 (1989). *But see* Margoline v. Holefelder, 420 Pa. 544, 218 A.2d 227 (1966) (contra rule was applied, in the context of prescriptive easements).

f. Presumption. Where a use has been open and continuous into the indefinite past such that how, when and why the use began predates living human memory and is incapable of present proof, the use is "presumed to have been in pursuance of an unqualified grant [i.e., a prescriptive easement], and the burden of showing the contrary is upon the party denying the presumption." Wedge v. Schrock, 22

A.2d 305, 309–10 (Pa. Super. 1941); see also Predwitch v. Chrobak, 142 A.2d 388, 389 (Pa. Super. 1958).

g. Exception to rule in Wedge. 1958). Where a familial relationship exists, "permissive use will be presumed, thereby negating the element of hostility." Watkins, 775 A.2d at 846. Not only is "[t]he use of the disputed land deemed permissive when a familial relationship exists," the familial relationship need not be with "an immediate family member." Watkins v. Watkins, 2001 PA Super 128, ¶ 8, 775 A.2d 841, 846 (Pa. Super. Ct. 2001). See also Waltimyer v. Smith, 556 A.2d 912, 914 (Pa. Super1989).

13. A use will be presumed to be permissive in a variety of situations involving familial or fiduciary relationships. See e.g., Ingles v. Ingles, 150 Pa. 397, 24 A. 677 (1892) (grantor/grantee); Appeal of Norris, 71 Pa. 106 (1872) (executor/heirs); Clark v. Trindle, 52 Pa. 492 (1866) (family); Martin v. Jackson, 27 Pa. 504 (1856) (agent/principal); Hart v. Gregg, 10 Watts 185 (Pa.1840) (co-heirs); Union Canal Co. v. Young, 1 Whart. 410 (Pa.1836) (vendor/vendee); Priester v. Milleman, 161 Pa.Super. 507, 55 A.2d 540 (1947) (bailor/bailee), cited in Watkins v. Watkins, 2001 Pa Super 128, 775 A.2d 841 (2001).

14. "The evidence shows that, as of the date Mr. Pfenninger purchased Lot 292, the entire driveway had been freely used for more than 21 years by both the prior owners of Lot 292 and the current and prior owners of Lot 291, without regard to which side of the property line was used and without asking permission. The evidence also shows that the cost of maintenance of the driveway, which had a gravel surface, was shared equally by those owners. Mr. Pfenninger argues that the necessary element of use that is adverse, open, and notorious is not made out by the evidence. He argues that because the use was "shared" and "amicable," it must be regarded as permissive. We disagree" Mariani v. Pfenninger, 2012 Pa. Dist. & Cnty. Dec. LEXIS 29, 5-6 (Pa. County Ct. 2012)

15. **Privity**

a. When a vendor or grantor remains in possession, such possession becomes hostile only upon the commission of some unequivocal act brought to the actual knowledge of the purchaser or grantee. Vlachos v. Witherow, 3 D & C 2d 698 (1954), *aff'd*, 383 Pa. 174, 118 A.2d 174 (1955).

b. See discussion of "Visible and Notorious" element, *supra*.

v. **Continuous and Uninterrupted**

1. The law does not require that the claimant remain continuously on the land and perform acts of ownership from day to day. See Fred E. Young, Inc., v. Brush Mountain Sportsmens' Assn., 697 A.2d 984 (Pa. Super., 1997) citing Glenn v. Shuey, 407 Pa. Super. 213, 595 A.2d 606 (1991).

2. A temporary break or interruption, not of unreasonable duration, does not destroy continuity. Reed v. Wolyniec, 323 Pa. Super. 550, 471 A.2d 80 (1983).

3. In order to break continuity, there must be abandonment, or possession taken by one who is disconnected with the prior holder. Kamiski Bros., Inc. v. Grassi, 237 Pa. Super. 478, 352 A.2d 80 (1975). The vacancy must not be merely accidental or incident to a change of tenants, or for want of a tenant. Thompson v. Kauffelt, 110 Pa. 209, 1 A. 267 (1885).

4. Where the possessor vacated the premises for several months for renovations, this did not break the continuity. Kamiski Bros., Inc. v. Grassi, 237 Pa. Super. 478, 352 A.2d 80 (1975).

5. **Burden.** "The burden is always on the party claiming by adverse title to show when his adverse holding began, for without such initial point established, there can be no telling whether, if it existed at all, it continued for the statutory period." Johns v. Johns, 244 Pa. 48, 90 A. 535 (1914).

6. Adverse possession begins to run from the time the true owner first has a cause of action in ejectment. 42 Pa.C.S. § 5530.

7. In order to interrupt an adverse user and toll the running of the statute of limitations, the true owner must: a) bring, and pursue to judgment, legal proceedings in which the use is determined to be without legal justification; or b) cause a cessation of the use without the aid of legal proceedings. Brennan v. Manchester Crossings, Inc., 708 A.2d 815 (Pa. Super., 1998), *app. den'd*, 1998 WL 574193 (Pa., 9/1/98), citing Reed v. Wolyniec, 323 Pa. Super. 550, 471 A.2d 80 (1983). A single attempt to interrupt possession which does not actually interrupt possession, and which is not followed up, does not destroy the continuity of adverse possession. Id.

8. **Bankruptcy.** On appeal, the Appellate Court of Illinois concluded that General Iron Industries, Inc. could not establish the elements of adverse possession because it could not prove possession for the required period of time. General Iron Industries, Inc., v. A. Finkl and Sons Company, 686 N.E.2d 1, 5 (1st Dist. 1997). The Illinois court

held that a landowner's petition for bankruptcy protection interrupts a claimant's continuity of possession, because upon the filing of the petition in bankruptcy all of the property in the bankruptcy estate is regarded as in custodia legis, or in the custody of the law. See also, Showalter v. Pantaleo, 2010 PA Super 212 (Pa. Super. Ct. 2010)

9. **Tacking.**

   a. In determining whether a claimant has established the requisite 21 years of possession the concept of tacking may be applicable. Tacking consists of combining the possession of a claimant with that of his predecessor in title and it is permitted where the possessions are continuous. Furthermore, "[e]ach predecessor must have claimed title to the property in dispute, and in transferring to his successor must have purported to include it. That is, the deed to the successor must contain a description of the land claimed. Inn Le'Daerda v. Davis, 360 A.2d at 209(Pa. Super 1976).

   b. Tacking the possessory period of a predecessor in order to reach 21 years is possible, but privity is required. Baylor v. Soska, 540 Pa. 435, 658 A.2d 743 (1995). The Baylor court narrowed the concept of privity and criticized the manner in which the Superior Court had developed exceptions to the concept of strict privity when it held that "the only method by which an adverse possessor may convey the title asserted by adverse possession is to describe in the instrument of conveyance, by means minimally acceptable for conveyancing of realty, that which is intended to be conveyed."

   c. Baylor, supra was restricted in Zeglin v. Gahagen, 571 Pa. 321, 812 A.2d 558 (2002). where the court stated: Although Baylor was a boundary case, it proceeded on the theory of adverse possession, as opposed to acquiescence. While we recognize that this is a fine basis for distinction given the relatedness of these doctrines, strict application of Baylor's holding in the acquiescence paradigm would eliminate tacking in cases involving successive owners and mistaken boundaries, which would appear to be the prevailing set of circumstances in this line of decisions. The Supreme Court went on to hold that in cases brought under the theory of acquiescence, tacking is permitted "upon sufficient and credible proof of delivery of possession of land not within (but contiguous to) property described by deed of conveyance."

III. EASEMENTS

a. Generally

i. An easement has been defined as "a liberty, privilege or advantage which one may have in the lands of another without profit...." Morning Call, Inc. v. Bell Atlantic-Pennsylvania, Inc. 761 A.2d 139, 142 (Pa. Super. 2000), quoting Coffin v. Old Orchard Dev. Corp., 408 Pa. 487, 494, 186 A.2d 906, 910 (1962). Generally, it requires that there be two tenements owned by distinct proprietors, one to which the right is attached and another on which it is imposed. Id. An easement may be created by express agreement in compliance with the Statute of Frauds, or by implication, necessity, or prescription. Id. The remainder of this section deals with easements that arise other than by written agreement of the landowners because they, more than express easements, give rise to more litigation.

ii. Under Pennsylvania law, a holder of a geographically undefined easement, such as exists here, has the right to an area which is reasonable for the grantee's intended use. Lease v. Doll, 485 Pa. 615, 403 A.2d 558 (1979). See also, Texas E. Transmission Corp. v. Gorski, 1993 U.S. Dist. LEXIS 13135 (E.D. Pa. Sept. 1, 1993)

b. Easements by Prescription……

i. **Definition.** An easement by prescription is created by **adverse**, **open**, **continuous**, **notorious** and **uninterrupted** use of land for 21 years. POA Co. v. Findlay Tp. Zon. Hrg. Bd., 713 A.2d 70 (Pa., 1998); Morning Call, Inc. v. Bell Atlantic - Pennsylvania, Inc. 761 A.2d 139, 143 (Pa. Super. 2000); Tricker v. Pennsylvania Turnpike Com'n, 717 A.2d 1078 (Pa. Cmwlth., 1998).

ii. A prescriptive easement is the right to use the property of another that is not inconsistent with the property owner's rights. Soderberg v. Weisel, 455 Pa. Super. 158, 687 A.2d 839 (1997).

iii. The concept of prescriptive easement is based on the presumption grant (presumption that arises from continuous use of the land indicating a claim of right). Steigelman v. Pennsylvania Yacht Club, Inc., 432 Pa. 111, 246 A.2d 116 (1968); Pierce v. Cloud, 42 Pa. 102 (1862); Pittsburgh Railway Co. v. McGrady, 117 Pitts. L. J. 386 (1969).

iv. A prescriptive claimant need not prove that the easement is necessary. Boyd v. Teeple, 460 Pa. 91, 331 A.2d 433 (1975).

v. One cannot acquire a prescriptive easement to light, air or view. Adasiak v. Cyback, 31 D & C 3d 1 (1982).

vi. The area claimed by prescriptive easement must be located with certainty, and with definite limits, in a fixed position on the ground. Schall v. Barnes, 10 Chest. 252 (1962).

vii. The true owner has the burden of proving that the use of the easement was under license, indulgence, or special contract inconsistent with a claim of right by the prescriptive user. Steigelman v. Pennsylvania Yacht Club, Inc., 432 Pa. 111, 246 A.2d 116 (1968); Okeson v. Patterson, 29 Pa. 22 (1857); Eastland v. Stager, 22 Cambria C. R. 155.

viii. Where the party has a written easement to use the servient property for one purpose and claims a prescriptive right to use it for another purpose, the use does not qualify as hostile, and the prescriptive rights do not mature. Non-Precedential Decision of Peoples Natural Gas Company, LLC. 2017WL 3711063 (Pa. Super 2017)

ix. A prescriptive easement cannot be acquired where the dominant tenement and the servient tenement share a common owner. Kerstetter v. Witmer, 55 Dauph. 352 (1944).

x. Once the claimant obtains a prescriptive easement, the servient owner can be enjoined from interfering with the easement. Tarrity v. Pittston Area School Dist., 16 Pa. Cmwlth. 371, 328 A.2d 205 (1974).

xi. Where delivery trucks used a portion of defendant's land in order to make a sharp turn onto claimant's property, such use was insufficient to put the defendant on notice, and therefore did not support a claim of prescriptive easement. Treedman's Cleaners, Inc. v. Myers, 34 D & C 2d 306 (1964).

xii. It is possible to acquire a prescriptive easement for the discharge of storm water onto the servient tenement. Girdersleeve v. Northeast Pennsylvania Borough, 52 Erie C. L. J. 89 (1969).

xiii. In Robinon Family Ltd. Partnership v. Biono, 178 A.3d 839 (Pa. Super. 2017), the Court reversed a finding of the trial court finding an easement by prescription where no public body was a party, and no claim of public prescriptive easement was ever asserted.

xiv. A prescriptive easement is extinguished in the same manner as any other type of easement (i.e., in the same manner as an easement by either grant, implication, exception or reservation).

xv. The statute that requires an out-of-possession holder of title by adverse possession to file a statement (68 P.S. § 81) applies only to claims to fee title and not to prescriptive easements. Jackson v. Pace, 20 Monroe L. R. 104 (1958).

xvi. Trees have been the subject of a question at most presentations of the Boundary Law course. The Superior Court held that no prescriptive easements are acquired by the growth of tree branches or roots which encroach onto a neighbor's property. The Court based its reasoning on the concept that the growth of trees cannot notify a landowner of a claim to the use of the ground and because of the "potential of widespread uncertainty occasioned by such easements convinces us that they should not be recognized as a matter of public policy." Koresko v. Farley, 2004 Pa. Cmwlth, 844 A. 2d 607 (2004).

xvii. "It is well settled that both a public body and the general public can acquire a prescriptive easement over the property of another. See Gehres v. Falls Township, 948 A.2d 249 (Pa. Cmwlth. 2008) (holding township acquired prescriptive easement to use another's property for storm water drainage; drainage pipes and channels were clearly visible, and employees periodically cleaned pipes and ditches). See also, Wampler v. Shenk, 404 Pa. 395, 172 A.2d 313 (1961) (holding public acquired prescriptive easement to use roadway where it had been continuously and adversely used by general public for fifty years). Similar to the requirements for adverse possession, a prescriptive easement is created by "adverse, open, notorious, continuous and uninterrupted use of land for a period of 21 years." Gehres, 948 A.2d at 252." Pa. Fish & Boat Comm'n v. Demaree, 2012 Pa. Commw. Unpub. LEXIS 767 (Pa. Commw. Ct. 2012)

xviii. A prescriptive easement cannot be acquired over unenclosed woodland.

xix. "Another factor for establishing a prescriptive easement that is somewhat less stringent than that required for adverse possession is the 'continuous use' of the property." Id. "In establishing a prescriptive easement, constant use need not be demonstrated in order to establish the continuity of the use." Id. Rather, "continuity is established if the evidence shows a settled course of conduct indicating an attitude of mind on the part of the user or users that the use is the exercise of a property right." Newell Rod and Gun Club, Inc. v. Bauer, 597 A.2d 667, 670 (Pa. Super. 1991) cited by Cawley Family Limited Partnership v. Fiorelli, 1372 MDA 2017 (Pa. Super. 2018). See also Robinson Family Ltd Partnership v. Biono, 178 A.3d 839 (Pa Super. 2017)

xx. **Adverse Possession Distinguished.** Adverse possession and prescription are different in that the former requires actual possession (dominion over the land) and exclusive use, while the latter involves an easement-like use of the property. Newell Rod and Gun Club, Inc. v. Bauer, 409 Pa. Super. 75, 597 A.2d 667 (1991). Therefore, if the claimant and the true owner use the property in common, it is not possible for the claimant to acquire fee title, but it is possible for him to obtain a prescriptive easement. Id. In a Non-Precedential decision at 797 WDA 2017 in 2019 the Superior Court pointed out another difference. While adverse possession requires proof of the metes and bounds of the area claimed, the fact that "unlike with express

easements, the location of a prescriptive easement is not fixed…." as held by the Super Court in McNaughton Properties v. Barr, 981 A2d 222 (Pa. Super. 2009) permitted a claimant to prevail even though no evidence of the length or breadth of the right of way was proven.

xxi. **Unenclosed Woods.** A prescriptive easement cannot be acquired through unenclosed woodlands. 68 P.S. § 411; Martin v. Sun Pipe Line Co., 666 A.2d 637 (PA 1995); Humberston v. Humbert, 267 Pa. Super. 518, 407 A.2d 31 (1979). Even where a right-of-way runs through improved land as well as unenclosed woodlands, 68 P.S. § 411 nonetheless applies to preclude the property owner from claiming the right to any easement by prescription. Trexler v. Lutz, 180 Pa. Super. 24, 118 A.2d 210 (1955), citing Kurtz v. Hoke, 172 Pa. 165, 33 A. 549 (1896). See also Williams v. Taylor, 188 A.3d 447 (Pa. Super. 2018)

xxii. **Continuity.**

1. In order for an obstruction to interrupt the prescriptive period, the true owner must have intended for the obstruction to stop the use, and it must actually stop the use. Keefer v. Jones, 467 Pa. 544, 359 A.2d 735 (1976); Steigelman v. Pennsylvania Yacht Club, Inc., 432 Pa. 111, 246 A.2d 116 (1968)(owners' annual ritual of putting a chain across the driveway for a day or two, in an attempt to block the public from gaining a prescriptive easement was ineffective); Margoline v. Holefelder, 420 Pa. 544, 218 A.2d 227 (1966).

2. Placing a gate across a driveway has no effect on a claim of prescriptive easement where the claimant continued to use the driveway at will. Mihalko v. Demko, 41 Luz. L. R. 327 (1951).

3. Claimant need not show constant use of the property but is simply required to demonstrate evidence of a settled course of conduct that indicates claimant's attitude that his use is the exercise of a property right. Moore v. Duran, 455 Pa. Super. 124, 687 A.2d 822 (1996); Matakitis v. Woodmansee, 446 Pa. Super. 433, 667 A.2d 228 (1995); Burkett v. Smyder, 369 Pa. Super. 519, 535 A.2d 671 (1988).

4. It has been held that in order to tack a predecessor's prescriptive use, a conveyance of the property to the claimant is all that is required, not a written instrument or reference in the deed to the inchoate right. This is because easements pass by conveyance of the estate to which they are appurtenant. Predwitch v. Chrobak, 186 Pa. Super. 601, 142 A.2d 388 (1958); Partidge v. Ruttenberg, 54 Del. Co. 334 (1967) Matakitis v. Woodmansee, 446 Pa. Super. 433, 667 A.2d 228 (1995).

5. However, in light of the decision of the Supreme Court in Baylor v. Soska, 540 Pa. 435, 658 A.2d 743 (1995), caution must be exercised. While it may be true that easements pass with title to the land to which they are appurtenant, there is no authority to support the contention that an unripened claim to an easement must be afforded the same treatment. The Supreme Court almost addressed this issue in 1998 when they agreed to hear an appeal where the framed issue was whether or not the holding in Baylor v. Soska, supra. regarding the necessity of privity for tacking also applied to prescriptive easements. Unfortunately, before the matter could be decided the appeal was dismissed as improvidently granted.

6. Occasional use for certain purposes or on extraordinary occasions is inadequate to support the claim of a prescriptive easement. Lotz v. Kutz, 58 Berks. 30 (1965); Hoch v. Reicheneder, 53 Berks. 190 (1961).

7. Where land is used continuously for a particular purpose, a limited prescriptive easement may be established (e.g., the use of a road to transport farm machinery). Brouse v. Hauck, 34 D & C 3d 563 (1982).

8. A claimant cannot count the period that he owned fee title to both the dominant and servient tenements towards reaching 21 years of prescriptive use. Tosh v. Witts, 381 Pa. 255, 113 A.2d 226 (1955).

xxiii. **Permissive Use**

1. "If the use is permissive, a prescriptive easement cannot arise, no matter how long the use continues..." Morning Call, Inc. v. Bell Atlantic - Pennsylvania, Inc. 761 A.2d 139, 143 (Pa. Super. 2000).

2. A landowner cannot sit back and watch in silence as an openly prescriptive use continues for twenty-one years, and then claim that the use was permissive because he did not object. Kaufer v. Beccaris, 401 Pa. Super. 1, 584 A.2d 357 (1991).

3. There appears to be some uncertainty in the law as to whether a permissive use automatically becomes adverse when the dominant tenement is transferred to another, and where the new owner is not given express permission. Obviously, the controlling authority is the Supreme Court, which in Margoline v. Holefelder, 420 Pa. 544, 218 A.2d 227 (1966) said: "The trial court was correct in saying that even where there is no attempt at tacking of uses by the adverse user a prior permissive use by a predecessor in title will be deemed to continue as such until the contrary is shown. Pribek v. McGahan, 314 Pa. 529, 172 A. 709 (1934); Fidler v. Rehmeyer, 34 Pa. Super.

275 (1907); A. H. Miller v. Pellizzari, 342 S.W.2d 48 (Tex.Civ.App.1961), 28 C.J.S. Easements s 14 (1941)."

4. But see Waltimyer v. Smith, 383 Pa. Super. 291, 556 A.2d 912 (1989): "The fact that a predecessor in interest may have made similar use of the land in question by permission does not affect the adverse character of a successor's use, because the predecessor's prior permissive use involves merely a revocable personal license. By its very nature such a license is not alienable: That a license is a personal privilege, and not assignable, is a well-settled principle. It is induced almost always by confidence in the character of the licensee."

5. However, where the party has a written easement to use the servient property for one purpose and claims a prescriptive right to use it for another purpose, the use does not qualify as hostile, and the prescriptive rights do not mature. Non-Precedential Decision of Peoples Natural Gas Company, LLC. 2017WL 3711063 (Pa. Super 2017)

xxiv. **Scope of Prescriptive Easement**

1. An easement must be measured by the enjoyment of it, and the holder has no right to use it in a different and more extensive manner. Pittsburgh & L. & E. RR. Co. v. Stowe Tp., 374 Pa. 54, 96 A.2d 892 (1953); Klebe v. Pickar, 15 Chest. 312 (1966).

2. An easement for the benefit of a particular piece of ground cannot be enlarged and extended. The purpose of this rule is to prevent an increase of the burden upon the servient estate, and it applies whether the easement is created by grant, reservation, prescription, or implication. Percy A. Brown Co. v. Raub, 357 Pa. 271, 293, 54 A.2d 35 (1947)

3. The scope of use during the prescriptive period determines the scope of easement obtained, except with respect to a reasonable evolution of use which is not unduly burdensome. Waltimyer v. Smith, 556 A.2d 912 (1989), citing Hash v. Sofinowski, 337 Pa. Super. 451, 487 A.2d 32 (1985). The Court in Hash relies on the following two sections of Restatement of Property:

    a. *5 Restatement of Property 2994, Section 478*. Factors in Ascertaining Extent of Easements Created by Prescription. In ascertaining whether a particular use is permissible under an easement created by prescription a comparison must be made between such use and the use by which the easement was created with respect to (1) their physical character, (2)

their purpose, (3) the relative burden caused by them upon the servient tenement.

b. *5 Restatement of Property 3000, Section 479*. Extent of Easement Appurtenant as Affected by Evolution of the Dominant Tenement. In ascertaining whether a particular use is permissible under an easement appurtenant created by prescription there must be considered, in addition to the factors enumerated in Section 478, the needs which result from a normal evolution in the use of the dominant tenement and the extent to which the satisfaction of those needs increases the burden on the servient tenement.

xxv. **Relocation of Prescriptive Easement**

1. "[T]here is no per se prohibition against a landowner relocating a prescriptive easement unless such action completely denies the easement holder the intended use of the original easement. [cite omitted]. Rather, courts employ the test of whether the relocation will unreasonably interfere with the easement holder's use and enjoyment of his right of way. [cite omitted].

2. What constitutes unreasonable interference on the part of the servient owner depends upon the owner and his desired use, as well as the disadvantage to the owner of the easement. [cite omitted]. Our court has indicated that it would permit a servient estate to relocate a prescriptive easement where the resulting easement is as safe as the original location, the relocation results in a relatively minor change, and landowner's reasons for moving the easement are substantial." Soderberg v. Weisel, 455 Pa. Super. 158, 687 A.2d 839 (1997), citing Palmer v. Soloe, 411 Pa. Super. 444, 601 A.2d 1250 (1992).

3. This line of cases is expressly not applicable to Express Easements. In McNaughton Properties v. Barr et al, 981 A.2d 222 (Pa. Super. Ct. 2009) the Court reviewed the holding of the Common Pleas Court refusing to recognize Section 4.8(3) of the Restatement 3rd of Property to permit the relocation of an express easement. The Superior Court held the easement must be construed according to contract principles and that the courts do not have the authority to modify contracts.

xxvi. **Termination of Prescriptive Easement**

1. An easement “created by prescription could not be terminated for mere non-use and the party seeking to terminate another's right to use the easement must present evidence demonstrating some

conduct by the holder of the right that manifests his intent to abandon and permanently terminate his right to use the easement." Sabados v. Kiraly, 258 Pa. Super 532, 393 A. 2d 486 (1978); Croyle v. Dellape, 2003 Pa. Super 328, 832 A.2d 466 (2004).

c. **Implied Easements from Prior Use**

i. **Definition.** "[W]here an owner of land subjects' part of it to an open, visible, permanent, and continuous servitude or easement in favor of another part and then alienates either, the purchaser takes subject to the burden or the benefit, as the case may be. "Bucciarelli v. DeLisa, 547 Pa. 431, 691 A.2d 446 (1997).

ii. Generally, an easement may be implied if that was the intent of the parties to the transaction as shown by the terms of the grant and the surrounding circumstances. National Christian Conf. Center v. Schuylkill Tp., 142 Pa. Commonw. 308, 311, 597 A.2d 248, 249 (1991).

iii. Factors showing intent include, whether claimant is grantor or grantee, extent of any necessity, consideration given, presence of reciprocal benefits to both dominant and servient tenement, and knowledge by others of the existing use. Necessity means convenient or beneficial to the dominant tenement. *See* Hann v. Saylor, 386 Pa. Super. 248, 562 A.2d 891 (1989).

iv. Prior to severance, allowing residents of one portion of land to use road evidences intent by the grantor to convey easement after actual severance. Bucciarelli, supra.

v. Circumstances can also show intent. For instance, a driveway that is used by tenants of one part of the property prior to severance, can be used to show intent. Dadonna, 749 A.2d at 484.

vi. **Elements.** Notwithstanding the above requirement of intent, courts generally refer to the following as the pre-requisites to showing an implied easement:

1. unity of ownership prior to severance;

2. before the separation, the use giving rise to the easement must be so well established and obvious as to show that it was meant to be permanent.

vii. **Related Elements.**

1. Some courts also require that the easement be continuous and self-acting. Dadonna, 749 A.2d at 483.

2. Use must not be occasional, accidental, or temporary. Id.

3. **Visibility Expanded.** Photos showing the road, coupled with testimony from a neighbor that the road was visible from a distance, all together met the elements of an open, visible, and permanent easement. Bucciarelli, supra.

4. **Temporary Use.** Evidence that a Coal company made *temporary* use of right of way solely for mining and timber purposes was insufficient to show easement was open, visible, continuous, and permanent. Phillipi v. Knotter, 748 A.2d 757, 762 (Pa. Super. 2000).

5. **Necessity.** The easement must be necessary to the beneficial enjoyment of the land. Daddonna v. Thorpe, 749 A.2d 475, 483 (Pa. Super. 2000)(citing Bucciarelli, supra); Possessky v. Diem, 440 Pa. Super. 387, 655 A.2d 1004 (1995).

6. **Lack of Necessity.** Easements across a neighboring land are not necessary to beneficial use where landowner had access to the road via land that was retained by grantor. Possessky, 440 Pa. Super at 397, 655 A.2d at 1008.

7. **Alternate Test for Finding of an Implied Easement**. The Supreme Court has refused to adopt but has recognized the usefulness of the test set forth in the Restatement of Property Section 476. Bucciarelli, supra. This test is a flexible approach looking to the following factors with no factor being more important than another:

    a. whether the claimant is the conveyor or the conveyee;

    b. the terms of the conveyance;

    c. the consideration given for it;

d. whether the claim is made against a simultaneous conveyance;

e. the extent of necessity of the easement to the claimant;

f. whether reciprocal benefits result to the conveyor and the conveyee;

g. the manner on which the land was used prior to its conveyance; and

h. the extent to which the manner of prior use was or might have been known to the parties. See Dadonna, 749 A.2d at 483.

8. The Scope of an implied easement depends upon the circumstances under which the conveyance was made, whether the conveyance was gratuitous, and the use of the servient tenement before and after conveyance. See Hann v. Saylor, 386 Pa. Super. 248, 562 A.2d 891, 893 (1989).

9. Express easements may be expanded under the doctrine of implied easements. See Porter v. Kalas, 409 Pa. Super. 159, 166 597 A.2d 709, 713 (Pa. Super. 1991).

d. Easements by Necessity

i. Also known as implied easements by necessity. Graff v. Scanlon, 673 A.2d 1028 (Pa. Commonw. 1996).

ii. **Distinguishing Easements by Necessity from Implied Easements for Existing Use.** Implied easements on the grounds of necessity must be distinguished from implied easements from a prior use (also referred to as easements by implied reservation). The two types of easements are often confused by both litigants and the courts because both easements require

unity of ownership and subsequent severance. Graff, 673 A.2d at 1042 & n.4. (Citing 11 Am. Jur. Proof of Facts 3d 601, Way of Necessity.)

1. An easement by necessity arises upon a showing that there was a conveyance of a part of a tract of land in such a manner that the part conveyed or the part retained is denied access to a public road. Conversely, an implied easement from a prior use "[is] based on the theory that continuous use of a permanent right-of-way gives rise to the implication that the parties intended that such use would continue, notwithstanding the absence of necessity for the use." Id.

iii. **Requirements**: (a) unity of ownership prior to severance by common grantor; (b) severance by conveyance; and c) easement must be "strictly" necessary in order for the owner of the dominant tenement to use his land, with the necessity existing both at the time of the severance of title and at the time of the exercise of the easement. Phillipi v. Knotter, 748 A.2d 757, 761 (Pa. Super. 2000)

iv. **Timing** The necessity must be demonstrated at the time of the original severance. See Phillippi v. Knotter, 748 A.2d 757, 760 (Pa. Super. 2000) and Peoples Nat. Gas Co., LLC v. Camesi, 1502 WDA 2016, 2017 WL 3711063, at *8 (Pa. Super. Ct. Aug. 29, 2017) (Non-Precedential)

v. **Landlocked Properties.** Generally, necessity exists where the dominant tenement is landlocked. *See* Bodman v. Bodman, 456 Pa. 412 (1976); Tricker v. Pennsylvania Turnpike Comm'n 717 A.2d 1078 (Pa. Commonw. 1998) appeal denied in 559 Pa. 684 739 A.2d 547 (1999).

1. Strict necessity does not exist where some access to land exists; property must be without *any* access. See Phillipi, 748 A.2d at 761.

2. Unlike implied easements from existing use, there is no need that any use be apparent and continuous. See 7 Summ. Pa. Juris. 2d Section 18:50.

vi. **Scope of Easements by Necessity**. The owner of a dominant tenement is entitled to reasonable and lawful use of the easement.

vii. **Termination.** An easement by necessity will terminate as soon as the necessity ceases to exist. Philippi, 748 A.2d at 760.

e. **Negative Easements**

i. **Definition.** Negative easements, also known as servitudes, do not bestow upon the owner of the dominant tract the right to travel physically upon the servient tract, which is the feature common to all affirmative easements, but only the legal right to object to a use of the servient tract by its owner inconsistent with the terms of the easement. In this sense, negative easements have been described as consisting solely of 'a veto power. United States v. Blackman, 270 Va. 68, 76, 613 S.E.2d 442, 446 (2005) cited in Ephrata Area School Dist. v. County of Lancaster, 886 A.2d 1169, 204 Ed. Law Rep. 323 (2005).

ii. **Agricultural Preservation Easement**. Municipal authorities do not need to obtain prior approval under the Agricultural Area Security Law (Act) by the Agricultural Lands Condemnation Approval before exercising eminent domain in an agricultural security district.

iii. **Open Space Preservation Easement.** These easements are considered to be negative easements in gross. "Entities which may acquire and use a right-of-way despite the existence of an open space easement are those, such as school districts, which enjoy the power of eminent domain." Ephrata Area School Dist. v. County of Lancaster, 886 A.2d 1169, 204 Ed. Law Rep. 323, (2005) Allocator Granted. In the context of 32 Pa. Stat. Ann. § 5011(a), where a body other than a public utility seeks a right-of-way over property subject to an open space property interest vested in a local government unit, the entity seeking the right-of-way can secure it only if, after a public hearing, the governmental unit approves the right-of-way. Ephrata Area Sch. Dist. V. County of Lancaster, 595 Pa. 111 (2007)

f. **Easements by Estoppel (License Coupled with an Interest)**

i. **Definition.** The Federal Court in Phila. Reg'l Port Auth. v. Approximately 1.22 Acre..., 2008 U.S. Dist. LEXIS 29243 discussed an easement by estoppel, which traditionally referred to as an **irrevocable license** in Pennsylvania, by stating that one will arise when a landowner permits a use of property under circumstances suggesting that the permission will not be revoked, and the user changes his or her position in reasonable reliance on that permission. See Morning Call, Inc. v. Bell Atlantic-Pennsylvania, 2000 PA Super 294, 761 A.2d 139, 144 (Pa. Super. Ct. 2000) (citing Huff v.

McCauley, 53 Pa. 206, 208, 14 Pitts. Leg. J. 351 (1866)); RESTATEMENT (THIRD) OF PROPERTY (SERVITUDES) § 2.10 (2000);

1. See also Pennsylvania Game Comm'n v. Bowman, 81 Pa. Commw. 381, 474 A.2d 383, 384 (Pa. Commw. Ct. 1984) ("A license to use another's land will become irrevocable where the licensee, in reliance upon it, treats his land in a way he would not have treated it except for the license, that is, by spending money for such changes as would prevent his being restored to [*13] his original position.")(citing Bieber v. Zellner, 421 Pa. 444, 220 A.2d 17 (Pa. 1966)).

2. An owner who allows a use of the land to continue "under circumstances in which it is reasonable to foresee that the [user] will substantially change position" is thereafter estopped from denying the existence of an easement in favor of the user. RESTATEMENT (THIRD) OF PROPERTY (SERVITUDES) at § 2.10(1).

3. Thus, the easement by estoppel or irrevocable license gives "absolute rights and protects the licensee in the enjoyment of those rights." Morning Call, Inc., 761 A.2d at 144 (quoting Cole v. Ellwood, 216 Pa. 283, 65 A. 678, 680 (Pa. 1907))."

IV. **Encroachments**

a. Generally. Where an object encroaches on the land or another, the owner has the right to compel the removal of the encroachment, unless the court refrains, on the basis of equitable considerations, from so ordering. Baugh v. Bergdoll, 207 Pa. 420, 76 A. 207 (1910), Hunter v. Greenya, 4 Lycoming 64 (1953), Damario v. Miller, 44 Berks. 43 (1951).

b. Equitable Considerations.

i. **Possible Equitable Considerations.** Laches, inducement, acquiescence, inadvertence, or mistake. Baugh v. Berdoll, 207 Pa. 420, 76 A. 207 (1910).

ii. **Not Equitable Considerations**. Damage or expense. See Ochroch v. Kia-Noury, 345 Pa. Super. 161, 497 A.2d 1354 (1985), citing Dodson v. Brown, 70 Pa. Super. 359 (1918); Ventresca v. Ventresca, 182 Pa. Super. 248, 126 A.2d 515 (1956).

iii. A trial court has the discretion to weigh the equities and decide that removal of an encroachment is not warranted, on the basis that it would do the owner no good and work a hardship on the defendant. Yeakel v. Driscoll, 321 Pa. Super. 238, 467 A.2d 1342 (1983) (where the fire wall between twin homes encroached on the owner's property by two inches, the doctrine of *de minimis* was applied. Judge Brosky filed a dissenting opinion claiming that

the majority failed to follow the holding of Pile v. Pedrick, 167 Pa. 296, 31 A. 646 (1895), which did not recognize a *de minimis* exception.)

iv. In Ochroch v. Kia-Noury, 345 Pa. Super. 161, 497 A.2d 1354 (1985), the Court attempted to reconcile the conflict between the "*de minimis*" rule applied in Yeakel, and prior law, which implied that courts would compel the removal of an encroachment unless one of the following is present: laches, inducement, acquiescence, inadvertence, or mistake. The Ochroch court noted: "The court in Yeakel based its decision on facts indicating the plaintiff's acquiescence, express consent, as well as her actual utilization of the offending encroachment."

v. **Laches.** Where the parties obtained title from a common grantor, and plaintiff knew of the encroachment at the time of his purchase but did not commence an action until ten years later, the plaintiff is guilty of laches and equity will not enforce his claim. Trumpeter v. Boeshore, 9 Leb. C. L. J. 115 (1962). See also Barndollar v. Groszkiewicz, 102 Pitts. L. J. 315 (1954) (Where plaintiffs waited more than a year to seek removal of an encroaching wall, they were guilty of laches and could only recover damages for the permanent trespass).

c. General Principles

i. An owner has a choice of remedies: either compel removal of the encroachment or regard it as a permanent trespass and recover compensatory damages. Unless the equities of the case dictate otherwise, the owner has the right to demand removal of the encroachment. Baugh v. Berdoll, 227 Pa. 420, 76 A.207 (1910). Bailey v. Heiser, 45 Sch. L.R. 180 (1950). *See also*, Ola v. Moore, 111 Pitts. L.J. 284 (1963) (If encroachment is neither willful nor substantially affects plaintiff's property, plaintiff's relief *may* be limited to compensatory damages.)

ii. From the standpoint of the law, it makes no difference whether the object encroaches by a fraction of an inch or by several feet. Any measurable encroachment is considered a trespass. Dodson v. Brown, 70 Pa. Super. 359 (1918). Of course, the amount of encroachment will often be factored in with any other equitable considerations.

iii. A showing of harm is not a prerequisite to an action in trespass. Jones v. Wagner, 425 Pa. Super. 102, 624 A.2d 166 (1993).

iv. Under Fannie Mae underwriting guidelines, it is acceptable to have an encroachment of one foot or less by eaves or other overhanging projections or by driveways, as long as there is at least a ten-foot clearance between buildings on the mortgaged property and the boundary line affected by the encroachment. Furthermore, Fannie Mae guidelines permit encroachments on adjoining properties by hedges or removable fences.

v. An owner may lose the right to contest or obtain relief from an encroachment due to prescription, or the doctrine of consentable lines. Bussier v. Weekey, 4 Pa. Super. 69 (1897), Schneck v. Podrasky, 23 D & C 2d 260 (1960).

vi. A structure which qualifies as a party wall is not considered an encroachment. Philadelphia Scoop & Scale Mfg. Co. v. Silberman, 351 Pa. 154, 40 A.2d 395 (1945).

vii. An owner claiming encroachment has the burden of proving the boundary line and the alleged encroachment. See Koletar v. Shingara, 34 Northumb. L. J. 10 (1962).

V. Trees and Bushes at Property Lines

a. Do Trees Support Adverse Possession Claims?

i. A landowner may use self-help to remove encroaching tree limbs (so long as he does not trespass on the neighbor's property), and thereafter recover his reasonable expenses from the trespasser. The landowner will not be held responsible for any resultant damage to the trees. In the alternative, the landowner may seek injunctive relief, together with incidental and consequential damages. Jones v. Wagner, 425 Pa. Super. 102, 624 A.2d 166 (1993) (Note: In a footnote, the court notes that it may be possible to have a prescriptive easement for the tree limbs after 21 years, but that there were, at that time, no reported decisions which address this issue. Of course, a party attempting to use such a defense may find it difficult to prove exactly when the limbs became an encroachment.).

ii. The Superior Court specifically addressed this issue and held that no prescriptive easements are acquired by the growth of tree branches or roots which encroach onto a neighbor's property. The Court based its reasoning on the concept that the growth of trees cannot notify a landowner of a claim to the use of the ground and because of the "potential of widespread uncertainty occasioned by such easements convinces us that they should not be recognized as a matter of public policy." Koresko v. Farley, 2004 Pa. Cmwlth, 844 A. 2d 607 (2004).

b. Can you Cut a Neighbors Branches, Roots or Trunk?

i. "Pennsylvania law affords a full panoply of remedies to a landowner whose property is encroached by overhanging branches or tree limbs. First, an aggrieved landowner is entitled to exercise a self-help remedy by either trimming or lopping off the branches to the extent his property is encroached. Second, if the landowner has incurred reasonable expenses in the course of exercising a self-help remedy, he may recoup those expenses from the trespasser. Third, he may, on a trespass theory, seek equitable relief compelling the trespassing neighbor to remove the trees to the extent of the

encroachment and seek appropriate incidental and consequential damages. Jones v. Wagner, 425 Pa. Super. 102, 112 (Pa. Super. Ct. 1993)

ii. A landowner may use self-help to remove encroaching tree limbs (so long as he or she does not trespass on the neighbor's property), and thereafter recover his reasonable expenses from the trespasser. The landowner will not be held responsible for any resultant damage to the trees. In the alternative, the landowner may seek injunctive relief, together with incidental and consequential damages. Jones v. Wagner, 425 Pa. Super. 102, 624 A.2d 166 (1993)

iii. "In Pennsylvania encroaching tree parts are a trespass which a landowner may remove. … Neighbors have no right to maintain the encroachment, and they have no right to damages to encroaching tree parts." Koresko v. Farley, 844 A.2d 607, 617 (Pa. Commw. Ct. 2004)

iv. **Trees Growing on The Boundary Line.** "Under the terms of this rather ancient statute (68 P.S. 115), the owners of adjacent tracts of real estate own all **trees** growing on their common boundary line as tenants in common. Tenants in common are prohibited from unilaterally cutting down or removing such commonly owned line trees**.** Applying the general rules of law governing tenancy in common, we conclude neither adjoining real estate owner may remove a tree growing on a common boundary line." Wolfinger v. Moats, 1990 Pa. Dist. & Cnty. Dec. LEXIS 197 (Pa. C.P. 1990)

v. **Trees Growing Near State Highways.** "[S]ection 410 of the State Highway Law (36 P.S. § 670-410) permits the Department of Transportation 'to trim and cut away any trees…growing on adjacent property in so far as they overhang or encroach upon the legal right-of-way of any state highway.' This statute clearly gives the Commonwealth a right but creates no duty to trim. Nothing in the statute magically makes the Commonwealth the "owner" of an encroaching tree." Wynkoop v. Luke, 2004 Pa. Dist. & Cnty. Dec. LEXIS 185 (Pa. County Ct. 2004)

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PBA Working Rules of Professionalism



The practice of law is a profession, a genuine calling inspirited with service to the system of justice, not a common business enterprise. The quality of the profession is only as worthy as the character of the people who practice it.

Self-esteem, shared respect for each other, the clients we serve, the judges and the officers with whom we work, are essential to it.

Civility is a virtue, not a shortcoming. Willingness to temper zeal with respect for society's interest in preserving responsible judicial process will help to preserve it.

Unwritten rules of professional courtesy have long sustained us. Since they are sometimes forgotten, we should set them down again and conscientiously observe them.

1. Treat with civility the lawyers, clients, opposing parties, the Court, and all the officials with whom we work. Professional courtesy is compatible with vigorous advocacy and zealous representation.

2. Communications are lifelines. Keep the lines open. Telephone calls and correspondence are a two-way channel; respond to them promptly.

3. Respect other lawyers' schedules as your own. Seek agreement on meetings, depositions, hearings and trial dates. A reasonable request for a scheduling accommodation should never be unreasonably refused.

4. Be punctual in appointments, communications and in honoring scheduled appearances. Neglect and tardiness are demeaning to others and the judicial system.

5. Procedural rules are necessary to judicial order and decorum. Be mindful that pleadings, discovery processes and motions cost time and money. They should not be heedlessly used. If an adversary is entitled to something, provide it without unnecessary formalities.

6. Grant extensions of time when they are reasonable and when they will not have a material, adverse effect on your client's interest.

7. Resolve differences through negotiation, expeditiously and without needless expense.

8. Enjoy what you are doing and the company you keep. You and the world will be better for it.

Beyond all this, the respect of our peers and the society which we serve is the ultimate measure of responsible professional conduct.