

# MINNESOTA RESIDENTIAL PURCHASE AGREEMENTS — 2000

INTERNET/WEB EDITION: Current through the 2000 Legislative Session and Minnesota cases reported through November 1, 2000.

*In Minnesota, the Form That Is the Most Significant Consumer Contract in Commerce Is Unregulated.*



This article has been prepared for three purposes. First, this serves as a detailed analytical tool for the lawyer, enabling the lawyer to accurately compare provisions of the two published purchase agreement forms. Second, this serves as an in-depth study for the consumer who needs or desires this level of analysis. Finally, this serves as the official Report of the Residential Real Estate Committee ["Committee"] to the Minnesota State Bar Association's Real Property Council. As a report, this article focuses on the content, development, and rationale for Real Property Form No. 1, "Minnesota Standard Residential Purchase Agreement."

The Committee intends to update and republish this article periodically as the forms evolve through changes in the law and changes in practice. The 2000 revisions to this article include a supplement describing the vacant land purchase agreement forms published by the Committee and a progress report on the Committee's "New Construction Purchase Agreement" form.

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By Residential Real Estate Committee, Real Property Section, Minnesota State Bar Association

Edited 1999, 2000, by Steven G. Thorson for the Committee.  
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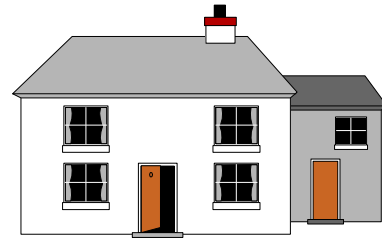
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Home ownership is a social cornerstone in our culture. The purchase or sale of a home is a highly significant personal economic event and, collectively, all home sales are a significant part of our economy. For most people, the purchase or sale of a home is the most legally complex event of their lives. This paper examines the two principal purchase agreement forms currently in use in Minnesota.



The process of buying and selling a home is generally unregulated. The parties to the sale of a home, and the people who help to get the deal done, are guided by their individual knowledge of the real estate law and their practical knowledge. Sometimes the law and the practical necessities of the transaction come into sharp conflict. This is why it is imperative that the transaction be based upon a well-drafted purchase agreement.

### **I. PURCHASE AGREEMENTS GENERALLY: AN OVERVIEW**

The contract for the sale of real estate is the blueprint for the entire transaction. Usually, a real estate broker or agent asks the seller and buyer to sign a document that may be called a contract, bid, binder, offer to purchase, deposit receipt, memo or any of a number of other names. Whatever it is called, when signed by both the buyer and the seller, the contract is a legal, binding document. Both the seller and the buyer are legally obligated to act in the manner outlined in the contract from the time it is signed until the closing and sometimes even after the closing.

When the agreement is signed, the buyer must usually deposit some money with the seller or the seller's real estate broker. That deposit may be called a good faith or earnest money deposit or a down payment. Once the buyer pays that money, its disposition in the event the transaction is not consummated is controlled by the terms of the contract. It is a good idea for both the seller

and the buyer to each have their lawyer check the contract before signing. Unfortunately, most sellers and buyers are not aware of their need to have a lawyer's assistance.

It is not unusual for the seller and buyer to sign the contract, prepared by the agent or broker, before having a lawyer review it. Generally, this should not be done, but in such cases, the contract form should include the phrase, "SUBJECT TO THE APPROVAL OF THE LAWYERS FOR THE PARTIES WITHIN \_\_\_\_ DAYS" (usually 7 or 10 days). Without such a condition in the contract, both the seller and the buyer will be bound by the terms of the contract, some of which may be ambiguous or may not be as the parties intended. This practice is common in other states, but does not seem to have widespread use in Minnesota.

The contract for sale will include numerous provisions that should reflect all of the terms of sale. At a minimum, the contract should cover the following:

1. Purchase price and how it is to be paid, including the amount of cash required, any planned financing, its cost, interest charges and length of the mortgage.
2. Legal description of the property (a street address is not adequate; in some cases a survey of the property should be required).
3. Good and marketable title furnished by the seller, as indicated by an abstract of title or a registered property abstract.<sup>1</sup>
4. Warranties of title, including title restrictions and any other rights and limitations to which the title may be subject.
5. Date of transfer of possession.
6. Prorations of utility bills, property taxes and similar expenses.
7. Party responsible for risk of fire or other hazard pending closing or transfer of possession.
8. Itemization of furnishings, appliances, shrubbery, air conditioners, other personal property and fixtures, included in the sale.
9. Basic terms of any escrow agreement.
10. Provision for return of initial payment (earnest money or binder deposit) if the sale is not completed.
11. Signatures of the parties.

The buyer might also want to include some other items in the contract. For example, if financing must be obtained to purchase the home, a financing contingency clause should be inserted so that the

**A common misconception is that there is some form of "standard, legal purchase agreement form," which will work in every situation. Minnesota law does not require any particular form. The Minnesota Association of Realtors® publishes forms for use by brokers who are members of that organization. The Minnesota State Bar Association has published its "Minnesota Standard Residential Purchase Agreement" for several years. That form was intentionally designed to be well-balanced between the interests of the seller and the interests of the buyer.**

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<sup>1</sup>In Minnesota, only the Abstract of Title or a Registered Property Abstract are recognized as legally competent evidence of the title apart from a direct examination of the records in the office of the County Recorder / Registrar of Titles. Title insurance commitments or lawyers' title opinions are not "evidence of the title," but are forms of reports based upon an examination of the evidence of title. See the discussion in [Part 14](#) of this article.

contract can be legally rescinded if financing is not obtained. The buyer may also want to have a separate, extensive inventory of furnishings and personal property items that will be included in the sale. The buyer will normally want to have an inspection of the premises and may also want to bring in a mechanical engineer to check the electrical, plumbing and heating and air conditioning systems.

The seller may want to limit warranties of the furnace, roof or major appliances included in the sale by adding an "as is" clause to the contract. An inventory of the personal property items and furnishings is also helpful to the seller, especially if there are some items that may be removed from the home.

Both parties should consider tax prorations. Depending on whether general real estate taxes are paid in advance or arrears, either the seller or buyer will receive credit against the purchase price at the closing. In residential transactions in Minnesota, prorating the current taxes to the actual date of closing is customary. Past taxes and special assessments should be paid by the seller. A firm date for possession should be established. The buyer should request a provision requiring the seller to pay rent if the home is not vacated by the agreed date. In case the purchaser wishes to take possession before closing, the seller should ask that the purchaser pay rent for that period of time. Both the seller and purchaser should have an agreement on who will be responsible if the property is damaged or destroyed by fire or other hazard. In Minnesota, the seller has the risk of loss until either title or possession is transferred. After the transfer of either title or possession, the risk of loss is on the buyer.

In addition to these types of provisions, the contract will include many provisions of a technical, legal nature. For example, the contract will probably include a "time is of the essence" clause which makes the closing date legally binding. Also, both parties need to consider whether the contract will be binding on the successors, heirs or representatives of the other party so that death or incapacity of one party will not render the contract void. All of these and many other terms will be included by your lawyer.

Another way of viewing the Purchase Agreement is to see it as a script. If it is a well-written script, it will carry the parties from the moment of signing through to a successful closing. If it is poorly written, it will create misery for everyone involved in the transaction.

## II. THE REGULATORY SCHEME

**There is no statutory or regulatory control over the form and content of the Purchase Agreement** as a whole. There are particular Minnesota disclosure statutes that require that certain statements be included in the form, e.g., well disclosure<sup>2</sup> and individual on-site sewage treatment system disclosure.<sup>3</sup> There are federal regulations<sup>4</sup> that require the disclosures regarding lead paint to any buyer of residential property. Lending regulations<sup>5</sup>, adopted by federal agencies with insured or special mortgage programs or with regulatory control over lenders, require certain disclosures to be in the financing terms. Normally, the financing terms are contained in a separate addendum to the Purchase Agreement.



The Minnesota Department of Commerce has the authority to regulate<sup>6</sup> its real estate licensees and their conduct. But, it presently does not have the authority<sup>7</sup> to adopt a standard form or to require the use of a standard form.

The Uniform Conveyancing Blanks Commission, organized and operating under MINN. STAT. Chapter 507 as an adjunct agency of the Commerce Department<sup>8</sup> may have the authority to adopt a standard form, but does not have the authority to require that the forms be used.

The Residential Real Estate Committee has considered the possibility of statutory regulation of the purchase agreement form. This idea still has support within the Committee. It may be that when there is a general consensus in the Real Property Section that the form has reached “maturity,” legislation will be proposed by the bar association. “Maturity” here is used in the sense that few significant revisions to the form are foreseen by the Committee.

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<sup>2</sup>MINN. STAT. §103I.235.

<sup>3</sup>The earlier law requiring disclosure was MINN. STAT. §115.55, Subdivision 6 (1994 MINN. SESS. LAWS, Chapter 617). 1997 MINN. SESS. LAWS, Chapter 235, revised the requirements of the disclosure for a “transfer” on or after June 3, 1997.

<sup>4</sup>Federal Register: March 6, 1996 (Volume 61, Number 45) [Pages 9063-9088]: Part VIII Department of Housing and Urban Development and Environmental Protection Agency; 24 CFR Part 35; 40 CFR Part 745. *Lead; Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing; Final Rule.*

<sup>5</sup>The various federal lending regulations are too numerous to cite here. The most familiar purchase agreement provisions that derive from these regulations are the “escape clauses” in FHA and VA financing addenda.

<sup>6</sup>MINN. STAT. Chapter 82, generally.

<sup>7</sup>The Commerce Department’s authority on the form and content of residential purchase agreements remains unchanged through the 2000 legislative regular session.

<sup>8</sup>The Commission on Uniform Conveyancing Blank Forms is authorized by MINN. STAT. § 507.09.

When it was the Hennepin County Bar Association's Purchase Agreement Committee, the Committee worked with the Minnesota Association of Realtors® ["MAR"] to develop a jointly-endorsed residential purchase agreement form. That joint effort failed in 1988.

As stated above, two significant groups have published Purchase Agreement forms. Started as the Hennepin County Bar Association "Purchase Agreement Committee" in January of 1985, the Residential Real Estate Committee became a permanent committee of the Minnesota State Bar Association ["MSBA"] Real Property Section in June 1991.<sup>9</sup> Its form, "Minnesota Standard Residential Purchase Agreement," was first published in 1987 and has been revised several times since then.

The Minnesota Association of Realtors® ["MAR"] has also publishes purchase agreement forms. The MAR is a trade group which counts approximately half of all Minnesota real estate licensees as members.<sup>10</sup> In the Committee's opinion, the MAR purchase agreement form is not a consumer-oriented form. As used here, "consumer oriented" means that care has been used to draft a purchase agreement form that considers the best interests of the buyer and seller.

This paper offers legal analysis and constructive criticism about this state of affairs. The detailed analysis which follows will point out the comparative strengths and weaknesses of the MSBA and MAR forms in side-by-side comparison of terms. This analysis will assist the lawyer or agent who is drafting a purchase agreement.

In doing this, it needs to be flatly stated that this paper is not a critique of the MAR, but rather a critique of one of its published forms. This paper also critiques the shortcomings of the MSBA form. This paper is not intended to convey any negative message about individual real estate brokers and agents or Realtors®. Brokers and agents, when employed in a classic, single-agency role, provide a valuable service to a significant part of our economy.

The MSBA Residential Real Estate Committee serves in the public interest, aiming to make the residential real estate marketplace a fair, open, honest, and dignified arena by, in part, presenting

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<sup>9</sup>The M.S.B.A. Real Property Section is governed by the Real Property Council.

<sup>10</sup>The Minnesota Department of Commerce reports that as of December 31, 1996, there were 21,086 real estate licensees (brokers and agents) in the state. By telephone inquiry to their offices (at 935-8313 on March 11, 1997), the Minnesota Association of Realtors® reports that it has 11,800 members state-wide, a figure which includes brokers, agents, and affiliate members such as bankers, lawyers, appraisers, and builders. Of that total: there are 6,789 members in the Minneapolis Area Association of Realtors® (754 brokers, 4,206 agents) [roughly equivalent to Hennepin County]; there are 1,829 members in the St. Paul Area Association of Realtors® (244 brokers, 1,585 agents) [roughly equivalent to Ramsey County]; there are approximately another 2,300 members in the associations of the other five metropolitan counties; and the rest of the members [882, by subtraction] are "outstate." From these statistics, it appears that 92.5% of the Realtors® are in the seven county metropolitan area, and that same group comprises 51.8% of the state's real estate licensees.

The MAR is a trade group which exercises a good deal of influence at the state legislature. Minnesota Ethical Practices Board, Reports on Lobbying Disbursements for 1993, 1994, and 1995. The Minnesota Association of Realtors® consistently spends a significant amount each year. In the 1995 report, the MAR is shown to be in the top 50 in monies spent on legislative lobbying. The 1996 report will not be available until late-1997.



issue-disclosing comprehensive forms. In that aim, the Committee is aware of these elements from the Preamble to the Minnesota Rules of Professional Conduct:

“A lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.”

“As a public citizen, a lawyer should seek improvement of the law, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor and sometimes persons who are not poor, cannot afford adequate legal assistance, and should therefore devote professional time and civic influence in their behalf. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.”

**In Minnesota, the form which is arguably the most significant consumer contract in commerce is unregulated.** Whether or not the residential real estate purchase agreement should be regulated is a matter for public debate. The Committee would welcome a public examination of these issues by our legislature and by our regulatory agencies.

The MSBA purchase agreement form, by raising most of the issues and by providing either solutions or suggestions for negotiated solutions, provides the participants (the seller and the buyer and their lawyers, brokers and agents) with a balanced and thorough guide for the transaction before signatures are applied to the form.

### III. MINNESOTA’S TWO PREDOMINANT FORMS

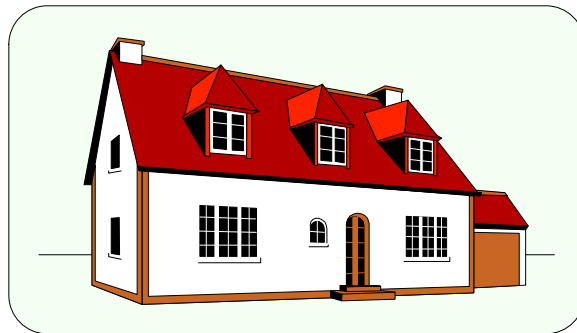
Two pre-printed purchase agreement forms are predominantly used in Minnesota for residential transactions:

- (1) the Minnesota State Bar Association form approved for statewide use by the Real Property Section (hereinafter the "MSBA Form");
- (2) the form approved by the Minnesota Association of Realtors® (hereinafter the "MAR Form").

See [Exhibit A](#) for a copy of the current MSBA Form, and see [Exhibit B](#) for a copy of the current MAR Form. All of the recent editions of the MAR form are considered here: the versions published in 8/96, 9/97, 9/98, 9/99, and 9/00.

The following is a side-by-side comparison of the current versions of the two forms, with comments from the original Hennepin County Bar Association Purchase Agreement Committee. The format for this comparison is to show the treatment of the purchase agreement issues in side-by-side boxes. The boxes are followed by COMPARISONS and other comments. Then, the

OFFICIAL COMMENTS of the original Purchase Agreement Committee follow. Text discussion of earlier versions of the forms (for those that might still be encountering the older forms) has either been retained or excerpted as a footnote.



**1. PARTIES TO THE CONTRACT. SELLER'S MARITAL STATUS. BUYER'S TITLE PREFERENCE.**

<b>MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT, M.S.B.A Real Property Form No. 1</b> (Rev. 1996; Rev. 1997; Rev. Aug. 1997)	Minnesota Association of Realtors® ["MAR"] <b>PURCHASE AGREEMENT</b> , Form No. MN:PA (8/96, 9/97, 9/98, 9/99, and 9/00 versions), published as Miller / Davis Form 1519A
<b>1. PARTIES.</b> This Purchase Agreement is made on ___, by and between ___, ( <u>marital status</u> ) of ___, SELLER, and ___, as joint tenants [strike "joint tenants" if tenancy-in-common is intended] of ___, BUYER.	<i>[at the top of the form...]</i> DATE _____ Page 1 of ___ pages. <b>RECEIVED OF</b> _____ [buyer's name]  <i>[at the end of the form...]</i> _____ (Seller's signature)  _____ (Seller's printed name)

**COMPARISONS.**

**Identity of the Seller.** The MSBA form shows the identity of both parties to the contract. This is a fundamental element of contract law. The MAR form is **silent about the identity of the seller**. In the MAR form, the identity of the seller is not disclosed to buyer until after the seller has decided to accept the offer by signing the purchase agreement. By not disclosing the identity of the seller in the MAR form, pre-signing communication between the prospective buyer and the seller is inhibited.

There are some be some very good reasons to allow direct communication between the seller and the buyer. There may be issues that are not properly handled in the draft of the agreement which could be discovered and resolved by direct communication between the parties. By directing communication between the principals to the transaction through the broker, the broker assumes the responsibility (and liability) for full and accurate communications.<sup>11</sup> No good purpose is served by not disclosing the identity of the seller.

**Seller's marital status.** Another problem with the MAR form is that it fails to disclose the seller's marital status. If the seller is married, there is a concern about transferring the interest of the seller's spouse. A purchase agreement which lacks a spouse's signature is unenforceable against that spouse's interest. **In the sale of a homestead, the lack of a spouse's signature**

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<sup>11</sup>See, e.g., a recent Minnesota decision on this point in Remes v. Burnet Realty, Inc., et. al., Minn. Ct. Appeals, Case No. C6-96-1815, unpublished opinion, Finance & Commerce, March 7, 1997, pp. 47-48, and the line of cases cited therein. A copy of the opinion may be obtained from the Unpublished Cases Archives for the Minnesota Court of Appeals at: <http://www.courts.state.mn.us/home>.

**renders the contract void.**<sup>12</sup> Therefore, both husband and wife must execute the purchase agreement as sellers. Identifying the **seller's marital status** is a critical element of the purchase agreement. By not obtaining this representation on the face of the contract, the broker is assuming the liability for ensuring that the contract is properly executed by all required sellers. If the broker has engaged in a dual-agency representation and the transaction fails because a necessary seller was not a signatory to the MAR purchase agreement form, the broker might be liable to the buyer.

**Buyer's choice of title status.** The MAR Form does not indicate whether the Buyers intend to take title as joint tenants or tenants-in-common. This is a shortcoming of the MAR form. Equitable title, in the buyers, is created at the moment of contract formation. It is a title interest which is so significant that it cannot be involuntarily terminated, in light of buyer's breach of contract, without exercising the provisions of MINN. STAT. §559.21 or a district court

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<sup>12</sup>MINN. STAT. §507.02.

proceeding. The buyer's choice of joint ownership<sup>13</sup> needs to be stated in the Purchase Agreement.

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<sup>13</sup>The lack of joint ownership designation might not be a problem in the majority of transactions because husband-and-wife buyers will typically correct the problem by designating joint tenancy or tenancy-in-common on the deed that they accept from the seller. However, if the Purchase Agreement contains a survival clause, binding the surviving buyer in the event of a pre-closing death of one of the buyers, the broker's failure to include a joint-tenancy designation in the form probably means that the broker will be liable for the probate costs of clearing the deceased buyer's interest. This is especially true if the broker has engaged in dual agency. And it is probably generally true if one recognizes the broker's limited ability to practice law within a narrow range of issues.

**Unauthorized practice of law.** *[The reader might not appreciate the depth of concern over this state of affairs without also briefly considering the authorized or unauthorized practice of law by brokers. This discussion is placed here even though it might seem to be a digression. This is a concern that will reappear throughout this article.]*

There is another problem for any broker who utilizes the MAR form if the broker does not address the three issues discussed above. The broker might be risking legal malpractice in not modifying the form to address these issues (and others to be discussed later). Under Cowern v. Nelson, 207 Minn. 642, 290 N.W. 795 (1939), it was deemed not to be the unauthorized practice of law for a broker to draw the papers "incidental to the sale" of real estate if there were no additional charges for that service. Under Gardner v. Conway, 234 Minn. 468, 48 N.W.2d 788 (1951), it became acceptable (i.e., not the unauthorized practice of law) for a broker to prepare "the ordinary instruments of conveyance" necessary for the closing of the transaction.

In Cardinal v. Merrill Lynch, 433 N.W.2d 864 (Minn. 1988), it was decided that a broker, acting through the broker's closer, may charge fees for the drafting of necessary closing documents. If one assumes that the case is not an aberrant decision, but represents correct thinking on the unauthorized practice of law (and the authorized practice of law by brokers), then the "fees" that were allowed to be charged in Cardinal case are attorneys' fees -- attorneys' fees charged by brokers within the narrow scope of the statutory exemption.

MINN. STAT. §481.02, Subd. 3a, was added to the statute on the unauthorized practice of law and supplants the Cardinal case. It states: "Nothing in this section shall be construed to prevent a real estate broker, a real estate salesperson, or a real estate closing agent \*\*\* from drawing or assisting in drawing papers incident to the sale, trade, lease or loan of property, or from charging for drawing or assisting in drawing them, except as hereafter provided by the supreme court." If one removes the double negative from that statutory statement to derive the converse of that statement, we find that it is the *authorized* practice of law for a broker to draft a purchase agreement. The implicit legislative presumption behind this statute is that the broker will have the legal education, skill, and expertise to be able to competently advise the parties to the contract as to the meaning and implication of all of the contract terms. Without that implicit legislative presumption, the exemption from the prohibition on the unauthorized practice of law for brokers does not make much sense.

Following this line of reasoning then, and assuming for the sake of argument that brokers do have the requisite legal training and expertise to properly advise the parties to the purchase agreement, is there any reason to not hold brokers to the same standards of legal practice (and legal malpractice) to which lawyers would be held for making the same kinds of drafting errors that will occur if the MAR form is used in an unedited manner? [If brokers do not have the requisite legal skill and expertise to properly advise the parties to the purchase agreement, why is there still an exemption for brokers from the unauthorized practice of law in our statutes?] Would a lawyer, having been fully apprised of the deficiencies of the MAR form, permit his buyer-client or seller-client to proceed with the transaction based on an unedited version of that form? If not, and if a broker is authorized to practice law within this same area of the law, is it possible to view the broker's failure to correct these omissions and shortcomings in the MAR form as legal malpractice on the part of the broker if the unedited form causes damage to either party?

This concern, about the narrow, authorized practice of law by brokers, is a concern for many other provisions in the MAR purchase agreement, the details of which follow in this report.

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**OTHER COMMENTS.**

**Parties.** If you have the Abstract prior to the signing of the Purchase Agreement, do the Sellers' names and marital status as shown on the Purchase Agreement agree with the Abstract of Title? And, are the parties identified as "Sellers" the same parties as the fee owners in the Abstract? If you are reviewing a Purchase Agreement prepared by someone else, have the parties signed using the same names that are used at the top of Purchase Agreement?

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From "OFFICIAL COMMENTS" of the Purchase Agreement Committee, Real Property Section, Hennepin County Bar Association, 1988 on Paragraph 1 - PARTIES:

Our old purchase agreement began with "receipt" language. The Committee changed this language to identify the Buyer and Seller. Since a purchase agreement is ineffective to bind the non-signing spouse of a Seller, the proposed Purchase Agreement indicates that the marital status of the Seller is to be shown. A Buyer should thereby be alerted to request that a married Seller's spouse sign the Purchase

Agreement.

Since Minnesota Law holds that Buyers acquire an equitable interest in the property upon execution of the Purchase Agreement by both parties, this Purchase Agreement calls for the Buyers to indicate their choice of joint tenancy or tenancy in common.

**2. CONTRACT OFFER AND ACCEPTANCE CLAUSE. LEGAL DESCRIPTION.**

<p><b>MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT</b>, M.S.B.A Real Property <b>Form No. 1</b> (Rev. 1996; Rev. 1997; Rev. Aug. 1997)</p>	<p>Minnesota Association of Realtors® ["MAR"] <b>PURCHASE AGREEMENT</b>, Form No. MN:PA (8/96, 9/97, 9/98, 9/99, and 9/00 versions), published as Miller / Davis Form 1519A</p>
<p><b>2. OFFER / ACCEPTANCE.</b> Buyer offers to purchase and Seller agrees to sell real property legally described as:</p> <p>[Property Tax Identification Number:        ]</p> <p>located at _____, City of _____, County of _____, State of Minnesota, zip code _____.</p>	<p><i>[lines 8-12...]</i>                  Said earnest money is part payment for the purchase of the property located at: Street Address: _____ City of _____, County of _____, State of Minnesota, legally described as: ____.</p> <p><i>[lines 23-24 (8/96, 9/97, 9/00)] [lines 25-26 (9/98, 9/99)]</i>                  ...all of which property Seller has this day agreed to sell to Buyer for the sum of: _____</p> <p><i>[lines 100-101 (8/96, 9/97)] [lines 110-111 (9/98, 9/99, 9/00)]</i>  <b>ACCEPTANCE:</b> Buyer understands and agrees that this Purchase Agreement is subject to acceptance by Seller in writing.</p>
<p><i>[above sellers' signatures...]</i>                  I agree to sell the property for the price and terms and conditions set forth above.</p> <p><i>[above buyers' signatures...]</i>                  I agree to purchase the property for the price and terms and conditions set forth above.</p>	<p><i>[8/96 version: lines 162-165...] [9/97 version: lines 175-178...] [9/98, 9/99 versions: lines 188-191. 9/00, lines 192-195]</i>  <i>[above sellers' signatures...]</i>                  I, the owner of the property, accept this Agreement and authorize the listing broker to withdraw said property from the market, unless instructed otherwise in writing and I have reviewed all pages of this Purchase Agreement.</p> <p><i>[above buyers' signatures...]</i>                  I agree to purchase the property for the price in accordance with the terms and conditions set forth above and I have reviewed all pages of this Purchase Agreement.</p>

**COMPARISONS.** Note that the MSBA form includes the **Legal Description**, property tax identification number, and street location (and zip code) in this section. And the MSBA form includes this very fundamental contract term: a statement of offer and acceptance. The MAR form places the legal description in the paragraph with the earnest money provisions. The MAR form has two different provisions concerning acceptance, one of which is in the "boilerplate" on page 2 of that form.

Compare the succinct agreement term above the signatures in the MSBA form with the verbiage above the signatures in the MAR form. The law presumes that people read their contracts. So, why does the MAR form include, "...and I have reviewed all pages of this Purchase Agreement..." in the signature block?

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**OTHER COMMENTS.** Does the legal description match or approximate the caption description on the Abstract of Title?

There is no adequate substitute for a complete legal description. However, a description is sufficient to satisfy the Statute of Frauds if it provides an adequate guide with which to locate and identify the property. Malevich v. Hakola, 378 N.W.2d 251. Beware of reliance on:

**Street addresses.** They may not include all lots or parts of lots, or vacated streets or alley.

**Tax parcel number or tax description.** These are often defective because of their obtuse abbreviations or because they include only part of the actual legal description.

**"Legal to Govern".** A very poor practice.

**Accuracy of the Legal Description.** The legal description should be specific and cover the real property being conveyed. When possible, the lawyer should take the description from a previous deed or title policy. Lawyers should not create metes-and-bounds legal descriptions, unless they have the mathematical training to compute the description's closure or unless they have the software to compute the description's closure. Otherwise, the description should be prepared with the assistance of a Registered Land Surveyor.

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From "OFFICIAL COMMENTS" of the Purchase Agreement Committee, Real Property Section, Hennepin County Bar Association, 1988 on Paragraph 2 - OFFER/ACCEPTANCE

The Committee simplified the language of old purchase agreements to say that the Buyer offers to buy and the

Seller agrees to sell. The list of fixtures and personal property was moved to a separate paragraph.

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### 3. ACCEPTANCE DEADLINE.

<b>MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT</b> , M.S.B.A Real Property <b>Form No. 1</b> (Rev. 1996; Rev. 1997; Rev. Aug. 1997)	Minnesota Association of Realtors® ["MAR"] <b>PURCHASE AGREEMENT</b> , Form No. MN:PA (8/96, 9/97, 9/98, 9/99, and 9/00 versions), published as Miller / Davis Form 1519A
<b>3. ACCEPTANCE DEADLINE.</b> The acceptance date of this Agreement is the date it is delivered by the last party signing to the other party. This offer to purchase, unless accepted sooner, shall be void at 11:59 P.M., on (date) _____, and in such event all earnest money shall be refunded to Buyer.	<i>[No comparable provision.]</i>

**COMPARISONS.** This is a simple provision in the MSBA form that, when utilized by the buyer, requires responsiveness on the part of the seller. If the seller is working with a broker, it requires that the broker handle the paperwork expeditiously. Buyer should not have an offer held open indefinitely by a slow or unresponsive seller.

The omission of this term is a shortcoming in the MAR form because it can lead to abuses such as "shopping the offer."

A lawyer representing a buyer is advised to add an acceptance deadline.

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From "OFFICIAL COMMENTS" of the Purchase Agreement Committee, Real Property Section, Hennepin County Bar Association, 1988 on Paragraph 3 - ACCEPTANCE DEADLINE:

The old acceptance language contained no limit on the life of the Buyer's offer. We provided for the offer to expire at a set time, if the Seller has not agreed to the terms by then.

The Committee has considered but rejected adding the words "and returned to buyer" after acceptance, believing that the courts should decide disputes as to what constitutes "acceptance."

**4. PERSONAL PROPERTY AND FIXTURES INCLUDED IN SALE. BILL OF SALE.**

<p><b>MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT</b>, M.S.B.A Real Property <b>Form No. 1</b> (Rev. 1996; Rev. 1997; Rev. Aug. 1997)</p>	<p>Minnesota Association of Realtors® ["MAR"] <b>PURCHASE AGREEMENT</b>, Form No. MN:PA (8/96, 9/97, 9/98, 9/99, and 9/00 versions), published as Miller / Davis Form 1519A</p>
<p><b>4. PERSONAL PROPERTY AND FIXTURES INCLUDED IN SALE.</b> The following items of personal property and fixtures owned by Seller and currently located on the property are included in this sale [Strike out items not included]: garden bulbs, plants, shrubs, trees, storm windows and inserts, storm doors, screens, awnings, window shades, blinds, curtain-traverse-drapery rods, attached lighting fixtures with bulbs, plumbing fixtures, sump pumps, water heaters, heating systems, heating stoves, fireplace inserts, fireplace doors and screens, built-in humidifiers, built-in air conditioning units, built-in electronic air filters, automatic garage door openers with controls, television antennas, water softeners, built-in dishwashers, garbage disposals, built-in trash compactors, built-in ovens and cooking stoves, hood-fans, intercoms, installed carpeting, work benches, security systems, and also the following property: _____ Upon delivery of the deed, Seller shall also deliver a <b>Warranty Bill of Sale</b> for the above personal property. <i>[Check the box if the following provision applies to this Purchase Agreement:]</i> Seller shall use M.S.B.A. Real Property Form No. 90 (1997), Warranty Bill of Sale.</p>	<p><i>[lines 13-20...(8/96, 9/97, 9/00)] [lines 15-24...(9/98, 9/99)]</i> ...including the following property, if any, owned by Seller and used and located on said property: garden bulbs, plants, shrubs and trees; storm sash, storm doors, screens and awnings; window shades, blinds, traverse and curtain and drapery rods; attached lighting fixtures and bulbs; plumbing fixtures, water heater, heating plants (with any burners, tanks, stokers and other equipment used connection therewith), built-in air conditioning equipment, electronic air filter, water softener <u>/OWNED / RENTED/ NONE</u>, built-in humidifier and dehumidifier, liquid gas tank and controls (if the property of Seller), sump pump; attached television antenna, cable TV jacks and wiring; <b>BUILT-INS</b>: dishwashers, garbage disposals, trash compactors, ovens, cook top stoves, microwave ovens, hood fans, intercoms; <b>ATTACHED</b>: carpeting; mirrors, garage door openers and all controls; smoke detectors, fireplace screens, doors and heatilators; <b>AND</b>: the following personal property:_____.</p>

**COMPARISONS.** These appear to be functionally similar forms. In using either form, the drafter needs to carefully "walk" the parties through the house to make sure that all of the personalty that is intended to be a part of the sale is listed on the Purchase Agreement.

Note that the MSBA form requires a formal Bill of Sale to be delivered at closing. The MAR form omits this simple requirement. This is a defect in the MAR form. Although not common, the refusal of a seller to sign a Bill of Sale at closing occurs often enough to warrant the inclusion of this contract term, especially in a consumer-oriented contract form.

The MSBA form also specifies that **the Bill of Sale needs to be a Warranty Bill of Sale**. Some practitioners have had the unpleasant experience of discovering that the language in the Bill of Sale that their clients received at closing was in the form of a "quit claim" document which can mislead the buyer into thinking that the buyer is receiving title to a rented water softener or rented propane tank.

Some contract-for-deed transactions sales do not involve a great deal of personal property (appliances). In those settings, it might be appropriate to deliver the Warranty Bill of Sale with

the Contract for Deed. Accordingly, the Purchase Agreement should be modified to indicate that. The suggestion under consideration by the Committee is that the sentence referring to the bill of sale be modified to read as follows:

Upon delivery of the *[select one]* deed / contract-for-deed, Seller shall also deliver a **Warranty Bill of Sale** for the above personal property. *[Check the box if the following provision applies to this Purchase Agreement:]* Seller shall use M.S.B.A. Real Property Form No. 90 (1997), Warranty Bill of Sale.

The MSBA Residential Real Estate Committee has published a standard MSBA version of the Warranty Bill of Sale form. A copy of the form and the pending revisions to this form are attached as [Exhibit H](#).

**Pending Revisions.** A lengthy revision to this section of the Purchase Agreement has been under consideration by the Committee for many months. A copy of the latest draft of the proposal is included in the supplemental materials as [Exhibit L](#).

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From "OFFICIAL COMMENTS" of the Purchase Agreement Committee, Real Property Section, Hennepin County Bar Association, 1988 on: [Paragraph 4 - PERSONAL PROPERTY AND FIXTURES INCLUDED IN SALE](#)

Prior purchase agreement forms distinguished between fixtures and personal property. The Committee found it unnecessary and possibly problematical to distinguish personal property from fixtures. The Committee also changed the old clause, "which are the property of the Seller" to "owned by Seller." If the listed items are owned by the Seller and located on the property, they are included in the sale unless the drafter strikes out the items which are not included. Hopefully this will alert the Buyer to determine which items, if any, are not owned by the Seller.

The actual list of items included here has been modernized, adding some new items and deleting some of the older items.

This form includes a positive statement not appearing in other forms: "Upon delivery of the deed, Seller shall also deliver a Bill of Sale for the above personal property." This provision may need to be modified for some Contract for Deed transactions.

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**5. PRICE AND TERMS. DATE OF CLOSING. FINANCING ADDENDUM.**

<p><b>MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT</b>, M.S.B.A Real Property <b>Form No. 1</b> (Rev. 1996; Rev. 1997; Rev. Aug. 1997)</p>	<p>Minnesota Association of Realtors® ["MAR"] <b>PURCHASE AGREEMENT</b>, Form No. MN:PA (8/96, 9/97, 9/98, 9/99, and 9/00 versions), published as Miller / Davis Form 1519A</p>
<p><b>5. PRICE AND TERMS.</b> The price for the real and personal property included in this sale is _____ Dollars (\$ _____), which Buyer shall pay as follows:</p> <p>Earnest money of \$ _____ by (CASH, CHECK, NOTE - state which) _____ payable to <i>[select one:]</i></p> <p>Seller, to be deposited and held by Seller (and may be commingled with Seller's other funds) pending closing, Seller's lawyer, to be deposited and held in the lawyer's trust account pending closing, Seller's broker, to be deposited or held by broker according to the requirements of Minnesota Statutes, Other <i>[describe how the earnest money will be held]</i> _____,</p> <p>receipt of which is hereby acknowledged and \$ _____ cash, on _____, the DATE OF CLOSING, and the balance of \$ _____ by financing as shown on the <b>attached Financing Addendum.</b></p>	<p><i>[8/96 version: lines 5-7...]</i> ...the sum of _____ Dollars (\$) by CHECK - CASH-NOTE as earnest money to be deposited upon acceptance of Purchase Agreement by all parties, on or before the <b>next</b> business day after acceptance, in the trust account of listing broker, but to be returned to Buyer if Purchase Agreement is not accepted by Seller.</p> <p><i>[9/97, 9/98, 9/99, 9/00 versions: lines 5-7...]</i> ...the sum of _____ Dollars (\$) by CHECK - CASH-NOTE as earnest money to be deposited upon acceptance of Purchase Agreement by all parties, on or before the <b>third</b> business day after acceptance, in the trust account of listing broker, but to be returned to Buyer if Purchase Agreement is not accepted by Seller.</p> <p><i>[8/96, 9/97 versions: lines 23-28...]</i> <i>[9/98, 9/99, 9/00 versions: lines 25-30...]</i> ...which Buyer agrees to pay in the following manner: Earnest money of _____ Dollars, and _____ cash on _____, the date of closing, and the balance of _____ by financing in accordance with the attached addendum: <del>[strike out those that do not apply Conventional FHA VA Assumption Contract for Deed Purchase Money Mortgage Other: _____]</del></p>

**COMPARISONS.** These are functionally similar terms, but the MSBA forms gathers all of the price terms together in one location. The options of where to "park" the earnest money are a reflection of a 1997 change in the law.<sup>14</sup> Note that the MAR form requires that the earnest money amount be entered twice.

In using either form, the drafter needs to ensure that the price components (earnest money, cash at closing, and amount to be financed) add up to equal the purchase price. Both forms place the lengthy financing provisions on separate, specialized addenda.

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**OTHER COMMENTS.**

**Financing Addendum.** The discussion of this topic is beyond the scope of this paper. There are numerous scenarios, many of which are covered by relatively standardized forms. Both the MSBA and the MAR have published several financing addenda. The MSBA forms are included in the list at [Exhibit G](#).

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<sup>14</sup>1997 MINN. SESS. LAWS, Ch. 222, Sec. 36, amending MINN. STAT. §82.24.

From "OFFICIAL COMMENTS" of the Purchase Agreement Committee, Real Property Section, Hennepin County Bar Association, 1988 on: Paragraph 5 - PRICE AND TERMS

The only significant change to this paragraph is to provide for the financing method to be written on an addendum instead of including it on the face of the purchase

agreement. The practice has already moved in that direction since Buyers need more room to provide the details of their financing.

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**6. DEED / MARKETABLE TITLE. TITLE EXCEPTIONS. ENCUMBRANCES.**

<p><b>MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT</b>, M.S.B.A Real Property <b>Form No. 1</b> (Rev. 1996; Rev. 1997; Rev. Aug. 1997)</p>	<p>Minnesota Association of Realtors® ["MAR"] <b>PURCHASE AGREEMENT</b>, Form No. MN:PA (8/96, 9/97, 9/98, 9/99, and 9/00 versions), published as Miller / Davis Form 1519A</p>
<p><b>6. DEED/MARKETABLE TITLE.</b> Upon performance by Buyer, Seller shall execute and deliver a _____ <b>Warranty Deed</b>, joined in by spouse, if any, conveying marketable title of record, subject to:</p> <ul style="list-style-type: none"> <li>A. Building and zoning laws, ordinances, state and federal regulations;</li> <li>B. Restrictions relating to use or improvement of the real property without effective forfeiture provisions;</li> <li>C. Reservation of any mineral rights by the State of Minnesota;</li> <li>D. Utility and drainage easements which do not interfere with existing improvements;</li> <li>E. Exceptions to title which constitute encumbrances, restrictions, or easements which have been disclosed to Buyer and accepted by Buyer in this Purchase Agreement (must be specified in writing): _____</li> </ul>	<p>[8/96 version: lines 35-40...]                  [9/97 version: lines 35-41...]                  [9/98 version: lines 36-43...]  <b>DEED/MARKETABLE TITLE:</b> Upon performance by Buyer, Seller shall deliver a _____ Warranty Deed joined in by spouse, if any, conveying marketable title, subject to:</p> <ul style="list-style-type: none"> <li>(A) Building and zoning laws, ordinances, state and federal regulations;</li> <li>(B) Restrictions relating to use or improvement of the property without effective forfeiture provisions;</li> <li>(C) Reservation of any mineral rights by the State of Minnesota;</li> <li>(D) Utility and drainage easements which do not interfere with existing improvements.</li> <li>(E) Rights of tenants as follows (unless specified, not subject to tenancies):</li> <li>(F) Others (Must be specified in writing): _____</li> </ul> <p>[9/99 version: lines 36-43. 9/00, lines 34-40. This is the same as the 9/98 version except for the deed reference:]                  Upon performance by Buyer, Seller shall deliver a Warranty <b>or Other</b> _____ Deed...[Emphasis added.]</p>

**COMPARISONS.**

**Form of Deed.** If the purchase agreement is silent as to the form or quality of deed to be delivered at closing, then the buyer is entitled to receive a statutory Warranty Deed subject to no exceptions or encumbrances.<sup>15</sup> The change to the MAR form for 1999 is a poor contract term. **Buyers need to strike "...or Other..."** If not stricken, the MAR contract term is ambiguous because it may be interpreted to mean that seller has a choice of what form of deed to deliver, warranty deed or quit claim deed. Historically, the contract covenant to deliver a Warranty Deed has been an essential contract element. If the contract is not specific or is ambiguous, Minnesota courts have held that the Buyer is entitled to receive a warranty deed. A Buyer should not be placed in the position of having to argue case law.

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<sup>15</sup>The purchase agreement should specify the type of deed by which the seller will convey title. If the type of deed is not specified, Minnesota courts will hold that the buyer is entitled to a warranty deed. *Building Industries, Inc. v. Wright Products, Inc.*, 240 Minn. 473, 62 N.W.2d 208 (1953).

**Type of Conveyance and Conveyancing Documents.** If the seller is offering to convey the title with anything less than a Warranty Deed (e.g., a Limited Warranty Deed or a Quit Claim Deed), the buyer needs to understand the reason for the deed before signing the purchase agreement.

**Marketable Title: "...conveying marketable title of record..."** This is the most important phrase in the entire purchase agreement. The MAR form uses the older phrase, "...marketable title..." The MSBA form adds, "...of record," language that is needed because of the *Lucas* case discussed below.

**Marketable Title Generally.** Most purchase agreements require that the seller convey a marketable title<sup>16</sup> to the premises, subject to certain exceptions, as discussed below. An examination of the record title, as shown in the abstract of title, will usually reveal numerous technical problems in the many conveyances made (such as variation in names used in taking and conveying title, failure to indicate marital status, use of or failure to use a middle initial), and often disclose old unsatisfied interests (old mortgages, leases, mechanics liens, etc.). While these are technically "defects" in the title, the seller's title need not be perfect, but rather "marketable".

"Marketable title" is a title that is free from reasonable doubt as tested from the standpoint of the prospective purchaser, not the viewpoint of the seller or the court. *Lucas v. Independent School District No. 284*, 433 N.W.2d 94 (Minn. 1988). *Lucas* distinguishes between "marketable title" and "marketable title of record." The MAR Purchase Agreement calls for delivery of "marketable title," as opposed to a "marketable title of record." If the purchase agreement calls for "marketable title of record," then the purchaser need not examine further than the county recorder's records. However, "marketable title" may involve examination and acceptance of matters beyond the county recorder's records. Further discussion of this distinction can be found at §46, *Patton on Land Titles*, 2d Ed., R.G. Patton & C. Patton (West 1957). The distinction is made academic for the lawyer - title examiner by the statement of general purpose appearing in the opening pages of the Minnesota Title Standards:

"The purpose of the examination and of objections, if any, made to the title, shall be to secure for the examiner's client a title which marketable *both in fact and of record* {emphasis added} and subject to no other encumbrances than that expressly provided for by the client's contract."

*Lucas* implies a two-part test for determining the quality of title that the Buyer is to receive: If the purchase agreement calls for delivery of "marketable title," and if the purchase agreement also calls for delivery of an abstract evidencing that good title, then the buyer is actually entitled to receive "marketable title of record." Since an abstract is required, older versions of the MSBA purchase agreement form met this test. *Lucas* misreads Patton's authorities to reach this conclusion. The Minnesota cases that Patton

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<sup>16</sup>§46, *Patton on Land Titles*, 2d Ed., R.G. Patton & C. Patton (West 1957).

cites are case which support the rule that good and marketable title should be demonstrated from the abstract. The abstracter can include only those things which are "...of record."

From the Committee's perspective, it would have been better, given the opportunity, for the *Lucas* court to abolish the distinction between "marketable title" and "marketable title of record."

The distinction between "marketable title" and "marketable title of record" may not be academic for the purchaser (and the lawyer for the purchaser) if the seller later asks the purchaser to accept something that is outside of the public records as evidenced by the abstract, e.g., a title insurance commitment without an abstract. See the discussion in the Official Comments for Paragraph 14 of the MSBA Purchase Agreement.

Until this matter is addressed by the appellate courts again, it is advisable to revise the form to add the words "...of record..." to the seller's marketable title covenant. [ As of the date of this writing (3/10/97), no cases have been found in any citation reporter overruling or clarifying the *Lucas* distinction.] The 1997 revision of the MSBA Purchase Agreement contains this revision.

**Marketable Title Compared to Insurable Title.** Marketable title should be distinguished from an "insurable title." Title insurance companies will, in appropriate circumstances, agree to "insure over" claims involving defects which make the title unmarketable. Title insurance companies exist for the purpose of assuming liability for such defects in return for the premium paid on the basis of the business risk involved in the transaction. Whether the title is insurable will depend on several factors including the extent of the liability exposure, the cost of eliminating the defect, the extent of any additional security or indemnity provided by the seller and likelihood that the defect will be eliminated by lapse of time. Lawyers frequently negotiate with title companies to insure over particular defects which make title unmarketable. The standards for insurability vary from title company to title company. The better companies examine titles using the Minnesota Title Standards, so their "insurability standards" tend to be indistinguishable from "marketability standards." If one title company refuses to insure over the defect, a lawyer may wish to negotiate with another title company. It is a competitive business environment, and assessment of the business risk may vary from one company to the next. Often a company may accommodate the request in order to obtain the business.

**Condition of Title: "...subject to..."**

- (a) **"Building and zoning laws, ordinances, state and federal regulations."** The forms are identical here. This is a reflection of the collaborative effort between HCBA and MAR during 1985-88.
  - i. **Zoning Regulations and Building Codes.** If the buyer intends to change the use of the property, add or alter improvements to the property or plat the property, the purchase agreement should be made expressly contingent upon the



buyer obtaining the requisite permits, approvals or consents. Even if no changes are contemplated, the buyer should obtain the additional warranty of the seller that the property and improvements comply with all applicable building and zoning laws, ordinances, state and federal regulations.

- ii. **Environmental Regulations.** Where new construction or a different use of the property is planned, or involvement from flood plain, shoreland management, or wetlands regulations is suspected, the buyer should investigate compliance with environmental regulations. Existing improvements may be non-conforming. Flood insurance may be required by the lender. The MSBA Residential Real Estate Committee published a new disclosure form to deal with these issues.<sup>17</sup> The form requires seller's disclosure of known flood plains, shorelands, and wetlands, and allows the buyer an investigation period.
- (b) **"Restrictions relating to use or improvement of the premises without effective forfeiture provision."** The forms are identical here.

Existing restrictive covenants and architectural control requirements, even without forfeiture provisions, may well affect the use or contemplated change in use of the property. When representing the buyer, consideration should be given to striking this clause unless the restrictions can be examined by the buyer before signing.

An argument can be made that an association's declaration falls under this exception to the title covenants. However, most declarations include more than restrictive covenants. A better practice is to fully disclose the declaration as discussed in e., immediately below.

- (c) **"Reservation of any mineral rights to the State of Minnesota."** The forms are identical here.
- (d) **"Utility and drainage easements which do not interfere with present improvements."** The forms are identical here.

Such easements can be either public or private. As printed, this clause can bind a buyer to a purchase of vacant land even if an easement cuts diagonally across the property. Unless the easements can be examined by the buyer before signing the purchase agreement, the clause should be struck if the buyer is purchasing vacant land or intends to add or modify improvements.

- (e) **"Exceptions to title which constitute encumbrances, restrictions, or easements which have been disclosed to Buyer and accepted by Buyer in this Purchase"**

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<sup>17</sup>MSBA Real Property Form No. 8 (1997), "Addendum to Purchase Agreement: Wetlands, Shoreland and Flood Plain Disclosure."

**Agreement; (Must be specified in writing.)**" There are serious differences between the two forms here.

The MAR form does not overtly require the seller to disclose encumbrances to which buyer's title will be subjected. This is a shortcoming. In a deed transaction and in the absence of a financing addendum dealing with assumption of encumbrances, does the seller expect the buyer to assume existing financing?

More commonly encountered in contract-for-deed transactions, the failure to disclose encumbrances becomes a more serious shortcoming, sometimes leading to failed transactions. Some commentators have publicly stated that an unsatisfied mortgage in the context of a proposed contract-for-deed sale is not a title objection and does not necessarily need to be disclosed in the purchase agreement. The MSBA form takes a different approach, requiring full disclosure and acceptance by the buyer of any encumbrances, regardless of the context of the financing.<sup>18</sup> There is a great deal of risk for the buyer to take title subject to "senior encumbrances." The buyer needs to be given full disclosure of the senior encumbrances and an opportunity to analyze them before agreeing to take title subject to them. To not disclose to the buyer that the buyer will be taking title subject to existing encumbrances is a risky practice.

A broker known to some Committee members has indicated an unwillingness to require the disclosure because it could delay the signing of the purchase agreement. If "senior encumbrances" are disclosed, the buyer would rightfully be cautious about signing the purchase agreement until the encumbrances had been analyzed. A broker cannot obtain a sales commission unless there is first a signed purchase agreement. Getting signatures on the purchase agreement, no matter how many omissions or shortcomings the agreement may have at the time it is signed, vastly improves the odds that the commission will be paid. The apparent thinking of this broker is that if the senior encumbrances are disclosed in the title examination, they can be dealt with at the closing in an amendment to the purchase agreement and contract for deed. The Committee finds this to be an unacceptable practice -- and this is precisely the reason that the MSBA form is written as it is. Brokers, too, should find this to be unacceptable, especially in a dual agency setting where full disclosure of relevant facts needs to be given to each principal. The nondisclosure "blind sides" the buyer with unwanted encumbrances. If the buyer balks at the transaction, the seller is also harmed with delay because the property must be marketed again and a new buyer found.

The other matters disclosed under this provision of the Purchase Agreement must be examined carefully. The Buyer may be "bargaining away" an objectionable matter. Whether or not there was "knowing consent" in such a bargain is a matter for a trier of

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<sup>18</sup>The title exceptions clause is deemed to be the best place to address this as a "title" concern. The same subject may be addressed as a "financing" concern in the financing addendum in the context of assuming a pre-existing encumbrance. For example, see M.S.B.A Real Property Form No. 6, "Financing Addendum for Contract for Deed."

fact. If an objectionable matter is overlooked by the Buyer's lawyer, the Buyer will be stuck with the provision and the lawyer will have a claim against him or her by the client.

If the property being sold is subject to a declaration for the benefit of the homeowners, it must be disclosed here. Additionally, the buyer must be given an opportunity to examine the association's disclosure (includes the declaration) as is shown in the proposed addendum included in this article as [Exhibit O](#). The legislature has mandated the form to be used by the association as the disclosure in a resale. The proposed Minnesota Common Interest Community Resale Disclosure Certificate<sup>19</sup> is included as [Exhibit P](#). There is additional discussion of association assessments in [Part 13](#) of this article.

The marketplace is now divided into pre-MCIOA and MCIOA<sup>20</sup> associations, each with its own particular needs. It is something of a misnomer to describe older associations as "pre-MCIOA" since all planned communities, regardless of when they were created, are subject to some of the provisions of MCIOA.<sup>21</sup>

It is commonplace for sellers to not know the MCIOA status of their planned community or common interest community. Since there is a high quality to the MCIOA disclosures contained in the statutes, no harm will come to either buyer or seller by assuming that the property is fully within the requirements of MCIOA for the purposes of providing disclosures about the association. Consequently, a broad contingency in favor of buyer can be added to the Purchase Agreement covering all of the possibilities:

**Association, Planned Community, and Common Interest Ownership Property.** Seller has disclosed that the property is subject to a declaration and is part of an association, planned community or common interest ownership community. Seller does not presently know if the association or community was formed under or has elected to be fully governed by the provisions of Minn. Stat. Chapter 515B. M.S.B.A. Real Property Form No. 12 [pending] **ADDENDUM TO PURCHASE AGREEMENT REGARDING COMMON INTEREST OWNERSHIP PROPERTY [PLANNED COMMUNITY]** is made a part of this Purchase Agreement. If, prior to closing, it is determined that the association or community was not formed under or has not elected to be fully governed by the provisions of Minn. Stat. Chapter 515B, then Seller's disclosure requirements shall meet the substantive requirements of Minn. Stat. sections 515B.4-101--4-108, and -4-110, and Buyer shall have the 10 day rescission period described in the attached Addendum.

**(f) "Rights of tenants, as follows (unless specified, not subject to tenancies)."**

The Minnesota State Bar Association Purchase Agreement form does not include this as a standard exception. The MAR form originally contained this clause: "Rights of tenants, if any." Possession in the hands of tenants is a significant fact. It should be fully and overtly disclosed,

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<sup>19</sup>MINN. STAT. section 515B.4-107 (amended by MINN. SESS. LAWS 2000, Chapter 450, Section 5, effective August 1, 2000).

<sup>20</sup>"MCIOA" is Minnesota's Common Interest Ownership Act, MINN. STAT. Chapter 515B.

<sup>21</sup>MINN. STAT. §515B.1-102(a)(3) lists the MCIOA sections that apply to all planned communities.

not carried in preprinted text. The current MAR form does call attention to the issue and then effectively negates the "...subject to rights of tenants..." with its parenthetical, "... (unless specified, not subject to tenancies)..."

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From "OFFICIAL COMMENTS" of the Purchase Agreement Committee, Real Property Section, Hennepin County Bar Association, 1988 on Paragraph 6 - DEED/MARKETABLE TITLE:

The previous "standard" form purchase agreements made reference to "... the rights of tenants, if any." That reference has been *deleted* from the new purchase agreement and instead a blank space at Paragraph (E) has been provided for that purpose and any other title matter which needs to be disclosed. This is a standard *residential*

purchase agreement which contemplates the sale of owner-occupied single family properties and not the sale of rental properties. However, this purchase agreement could be used for the sale of small rental properties provided an addendum is attached to deal with landlord-tenant issues.

**7. REAL ESTATE TAXES AND SPECIAL ASSESSMENTS.**

<p><b>MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT</b>, M.S.B.A Real Property <b>Form No. 1</b> (Rev. 1996; Rev. 1997; Rev. Aug. 1997)</p>	<p>Minnesota Association of Realtors® ["MAR"] <b>PURCHASE AGREEMENT</b>, Form No. MN:PA (8/96, 9/97, 9/98, 9/99, and 9/00 versions), published as Miller / Davis Form 1519A</p>
<p><i>Provisions concerning real estate taxes:</i></p>	
<p><b>7. REAL ESTATE TAXES AND SPECIAL ASSESSMENTS.</b> Real estate taxes due and payable in and for the year of closing shall be prorated between Seller and Buyer on a calendar year basis to the actual date of closing, unless otherwise provided in this Purchase Agreement. If tax statements for such taxes are not available on the date of closing, the amount to be prorated shall be _____% of the prior year's taxes, and such estimated proration shall be <del>[strike one]</del> <b>FULL AND FINAL BETWEEN SELLER AND BUYER / ADJUSTED UPON RECEIPT OF THE ACTUAL TAX STATEMENTS FOR SUCH YEAR (in which case the party entitled to a credit as a result of the adjustment shall receive the amount of such credit from the other party within 30 days of issuance of the tax statements).</b> Seller represents the taxes due and payable in the year(s) 19____ will be <u>FULL, PART, or NON</u> -homestead classification, unless Buyer changes the tax classification for taxes payable in the year following closing by taking possession of the property as Buyer's homestead and filing a new homestead declaration within the time required by law. If the taxes due and payable in the year of closing are <b>PART</b> or <b>NON</b>-homestead classification, Seller shall pay to Buyer at closing \$_____, in addition to Seller's prorated share of the taxes. If the taxes due and payable in the year following closing are <b>PART</b> or <b>NON</b>-homestead classification and the closing takes place after the date by which Buyer must take possession of the real property as Buyer's homestead to file for homestead tax status for taxes due and payable in such year, Seller shall pay to Buyer at closing \$_____ as Seller's share of such taxes.</p> <p>[Strike one:] BUYER SHALL ASSUME / SELLER SHALL PAY ON DATE OF CLOSING any deferred real estate taxes (including "Green Acres" taxes under MINN. STAT. §273.111) or special assessments payment of which is required as a result of the closing of this sale.</p> <p>Buyer shall pay real estate taxes due and payable in the year following closing and thereafter and any unpaid special assessments payable therewith and thereafter, the payment of which is not otherwise provided herein. Seller makes no representation concerning the amount of future real estate taxes or of future special assessments.</p>	<p><i>[various lines in the succeeding years...]</i></p> <p><b>REAL ESTATE TAXES</b> shall be paid as follows: Buyer shall pay, PRORATED FROM DAY OF CLOSING ___12ths, ALL, NONE of the real estate taxes due and payable in the year ____.</p> <p>Seller shall pay PRORATED TO DAY OF CLOSING ___12ths, ALL, NONE real estate taxes due and payable in the year ____.</p> <p>If the closing date is changed, the real estate taxes paid shall, if prorated, be adjusted to the new closing date.</p> <p>Seller warrants taxes due and payable in the year ____ will be FULL PART NON- homestead classification. If part or non-homestead classification is checked, Seller agrees to pay Buyer at closing \$_____ toward the <i>non-homestead real estate taxes</i>. [Bold italics added for emphasis.] Buyer agrees to pay any remaining balance of non-homestead taxes when they become due and payable. No representations are made concerning the amount of subsequent real estate taxes.</p> <p>BUYER SHALL <b>PAY</b> [ASSUME in older versions] / SELLER SHALL PAY on date of closing any deferred real estate taxes (i.e. Green Acres, etc.) or special assessments payment of which is required as a result of the closing of this sale. Buyer shall pay <i>real estate taxes</i> due and payable in the year following closing [Bold italics added for emphasis] and thereafter any unpaid special assessments payable therewith and thereafter, the payment of which is not otherwise provided.</p>

<p><b>MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT</b>, M.S.B.A Real Property <b>Form No. 1</b> (Rev. 1996; Rev. 1997; Rev. Aug. 1997)</p>	<p>Minnesota Association of Realtors® ["MAR"] <b>PURCHASE AGREEMENT</b>, Form No. MN:PA (8/96, 9/97, 9/98, 9/99, and 9/00 versions), published as Miller / Davis Form 1519A</p>
<p><i>Provisions concerning special assessments:</i></p>	
<p>[Strike one:] BUYER AND SELLER SHALL PRORATE AS OF THE DATE OF CLOSING / SELLER SHALL PAY ON DATE OF CLOSING all installments of special assessments certified for payment with the real estate taxes due and payable in the year of closing.</p> <p>[Strike one:] BUYER SHALL ASSUME / SELLER SHALL PAY ON DATE OF CLOSING all other special assessments levied as of the date of this Purchase Agreement.</p> <p>[Strike one:] BUYER SHALL ASSUME / SELLER SHALL PROVIDE FOR PAYMENT OF special assessments pending as of the date of this Purchase Agreement for improvements that have been ordered by the City Council or other governmental assessing authorities. (Seller's provision for payment shall be by payment into escrow of 1¾ times the estimated amount of the assessments.) As of the date of this Purchase Agreement, Seller represents that Seller has not received a Notice of Hearing of a new public improvement project from any governmental assessing authority, the costs of which project may be assessed against the real property. If a special assessment becomes pending <b>after</b> the date of this Purchase Agreement and <b>before</b> the date of closing, Buyer may, at Buyer's option:</p> <ul style="list-style-type: none"> <li>A. Assume payment of the pending special assessment without adjustment to the purchase price of the real property; or,</li> <li>B. Require Seller to pay the pending special assessment (or escrow for payment of same as provided above) and Buyer shall pay a commensurate increase in the purchase price of the real property, which increase shall be the same as the estimated amount of the assessment; or,</li> <li>C. Declare this Purchase Agreement void by notice to Seller, and earnest money shall be refunded to Buyer.</li> </ul> <p>[Strike one:] BUYER SHALL ASSUME / SELLER SHALL PAY ON DATE OF CLOSING any deferred real estate taxes (including "Green Acres" taxes under MINN. STAT. §273.111) or special assessments payment of which is required as a result of the closing of this sale. Buyer shall pay real estate taxes due and payable in the year following closing and thereafter and any unpaid special assessments payable therewith and thereafter, the payment of which is not otherwise provided herein. Seller makes no representation concerning the amount of future real estate taxes or of future special assessments.</p>	<p><i>[various lines in the succeeding years...]</i></p> <p><b>SPECIAL ASSESSMENTS</b> shall be paid as follows: BUYER AND SELLER SHALL PRORATE AS OF THE DATE OF CLOSING / SELLER SHALL PAY ON DATE OF CLOSING all installments of special assessments certified for payment with the real estate taxes due and payable in the year of closing.</p> <p>BUYER SHALL ASSUME / SELLER SHALL PAY on date of closing all other special assessments levied as of the date of this agreement.</p> <p>BUYER SHALL ASSUME / SELLER SHALL PROVIDE FOR PAYMENT OF special assessments pending as of the date of this agreement for improvements that have been ordered by the City Council or other assessing authorities. (Seller's provision for payment shall be payment into escrow of 2 times the estimated amount of the assessments, or less as required by Buyer's lender.)</p> <p>As of the date of this agreement, Seller represents that Seller HAS / HAS NOT received a notice of hearing for a new public improvement project from any governmental assessing authority, the costs of which project may be assessed against the property.</p> <p>If a notice of pending special assessment is issued after the dater of this agreement and on or before the date of closing, Buyer shall assume payment of ALL / NONE/ OTHER: _____ of any such special assessments, and Seller shall provide for payment on date of closing ALL / NONE/ OTHER: _____ of any such special assessments. If such special assessments or escrow amounts for said special assessments as required by Buyer's lender shall exceed \$ _____, then either party may agree in writing on or before the date of closing to assume, pay or provide for the payment of such excess. In the absence of such agreement, either party may declare this Purchase Agreement null and void; the parties shall immediately sign a cancellation of Purchase Agreement and all earnest money paid hereunder shall be refunded to Buyer.</p>

**COMPARISONS: Real Estate Taxes and Special Assessments.** There are significant differences between the two forms. The precise quality of the treatment of these "money issues" in the MSBA form can be appreciated after reading the Official Comments section below.

One shortcoming of the MAR form is its treatment of "FULL PART NON-homestead classification." The MAR form fails to adequately address this issue. The text is at the end of the MAR section. Much of this issue is affected by the timing of the Buyer's homestead declaration. The MAR form uses a term that is legally meaningless, i.e., "...non-homestead taxes..." This term is not defined in the form or in the statutes nor is its meaning discernable from the context of the MAR form: "Buyer agrees to pay any remaining balance of non-homestead taxes when they become due and payable." A lawyer representing either a seller or a buyer should **strike this provision** and substitute the language from the MSBA form.

**Pending Special Assessments.** In dealing with assessments that become pending after the purchase agreement has been signed, the MSBA text gives the parties three possible outcomes, dependent upon the Buyer's ability to absorb the cost of the assessments. This is simply keeping the benefit of the bargain balanced in the event that new assessments become pending after the date of the purchase agreement. The special assessment reflects that value has been added to the property. If the Buyer can afford it, there are two ways to restructure the deal. If the Buyer cannot afford it, the Seller will need to remarket the property at a price which has been increased by the amount of the special assessment.<sup>22</sup>

**Minnesota Agricultural Property Tax Law.** MINN. STAT. §273.111, commonly referred to as the "Green Acres Tax," attempts to equalize the tax burden on agricultural land within the state by establishing valuation standards and scheduled tax deferments for qualified real estate of 10 acres or more which is actively or exclusively devoted to agriculture. "Green Acres Tax" continues to be deferred after sale if property continues to qualify and the new owner files an application for deferment within 30 days after the sale. MINN. STAT. §§273.111(3), -(6) and -(11). "Green Acres" taxation can be a troublesome matter at the closing table if it has not been dealt with in the Purchase Agreement. The county auditor will go back three years in time from the date of transfer and reassess the property as if it had not been receiving the benefit of lower taxation.

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<sup>22</sup>One early printing of the 8/96 version of the MAR form contained a serious typographical error. The Committee understands that the misprinted forms have been withdrawn, but there may still be some blanks in the marketplace. The error is highlighted below.

BUYER SHALL ASSUME / SELLER SHALL PAY on date of closing all other special assessments *levied as of the date of closing*. [Bold italics added for emphasis.] If a *notice* of pending special assessment is issued after the date of this agreement and on or before the date of closing, Buyer shall assume payment of ALL / NONE/ OTHER: \_\_\_\_\_ of any such special assessments, \*\*\*

Neither buyer nor seller should be bound to pay special assessments "levied as of the date of closing," which may or may not be "pending" *as of the date of the purchase agreement*, without first knowing the amount of those assessments. The amount of the assessments "levied as of the date of closing" is a serious uncertainty. Neither party should be bound to pay an uncertain item. This first MAR provision is a defective provision that should be struck and replaced with the MSBA text. In the version with the typographical error, these two MAR provisions are in serious conflict with each other. By failing to recognize that a pending assessment could become a levied assessment by the closing date, these two paragraphs in the typographically incorrect MAR form carry the risk of being conflicting at the closing.

“Green Acres” is a troublesome issue if the land is being converted from agricultural to nonagricultural use after the conveyance. An argument can be made that “Green Acres” reassessed taxes are not “deferred” taxes, but rather a different category of taxes. This argument runs into the specific language of the statute, which reads, “...tax deferment...” MINN. STAT. §273.111(3). The argument also runs contrary to the general understanding of the bar as to the meaning of “Green Acres.” To ensure that the “Green Acres” deferrals are properly handled by the terms of the purchase agreement, the reference to deferred real estate taxes should be augmented to include “Green Acres” taxes under MINN. STAT. §273.111. Note that both forms include this additional reference.

**Special Assessments.** Where there is no provision in the Purchase Agreement, the seller is liable for all special assessments levied prior to closing, since they are liens against the property. Their status as liens is the generally accepted opinion of the practicing bar. Without a fully supporting legal analysis, the Minnesota Court of Appeals held that special assessments are not a lien affecting marketability of title. *Glaser v. Minn. Fed. S & L Assoc.*, 389 N.W.2d 763 (1986).

**Property Tax and Special Assessment Data.** If there is any uncertainty as to the amounts or kinds of taxes or special assessments that might be levied against the property, it will necessary to visit the county auditor/treasurer for current and delinquent property tax data. Hennepin County leads the way into the age of e-information with its web site for property tax data: <http://www2.co.hennepin.mn.us/pins/main.htm>. Special assessment data can be obtained from the city assessor.

**Pending Revisions (Summer, 2000).** The Committee has a pending revision to the section on taxes and special assessments. It is printed in the supplemental materials to this article as [Exhibit K](#).

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From "OFFICIAL COMMENTS" of the Purchase Agreement Committee, Real Property Section, Hennepin County Bar Association, 1988 on Paragraph 7 - REAL ESTATE TAXES AND SPECIAL ASSESSMENTS:

The Committee requested and obtained the "standard" purchase agreement forms from many real estate brokers in an attempt to fully evaluate possible treatment of the issues of real estate taxes and special assessments. In the final analysis, the Committee determined that there are three categories of real estate taxes and six categories of special assessments which need to be specifically addressed in a properly drafted purchase agreement. The form does not specifically address delinquent real estate taxes or delinquent special assessments since these are presumed to be liens and therefore the Seller's obligation.

The specifically addressed real estate tax categories are as follows:

1. Real estate taxes due and payable in and for the year of closing.
2. Deferred real estate taxes.
3. Real estate taxes due and payable in the year following closing.

The six categories of special assessments which are

specifically addressed are:

1. Special assessments certified for payment with this year's real estate taxes.
2. Pending special assessments. ("Pending" means that the assessing authority has ordered that an improvement be constructed to benefit the subject property but that the exact amount of the assessment to be levied has not yet been determined even though the assessment itself is a certainty.)
3. Special assessments levied as of the date of the Purchase Agreement. ("Levied" means that the assessing authority has conducted its assessment hearing and has fixed the exact dollar amount to be charged against the subject property.)
4. Deferred special assessments. ("Deferred" means that the assessment has been levied but that collection has been delayed.)
5. Special assessments which are not pending or levied as of the date of closing but which become levied subsequent to the closing.



6. Special assessments which become pending *after* the date of the Purchase Agreement and *before* the closing date.

Paragraph 7 has thus been rewritten to call attention to each of these categories, requiring the Buyer and the Seller to investigate these matters and make them a part of their bargain. Even though the practicing bar understands that unpaid real estate taxes and unpaid special assessments are a lien\* on the property and are therefore generally the Seller's expense, the previously used "standard" form purchase agreements were not detailed enough to call attention to these matters. The consensus of the Committee is that, too often, unnecessary conflict arises at or shortly before the closing because of the failure of the drafter of the purchase agreement to properly disclose or provide for payment of real estate taxes and special assessments. [\* This purchase agreement is neutral on whether or not special assessments are a lien. Without a fully supporting legal analysis, the Minnesota Court of Appeals recently held that special assessments are not a lien affecting marketability of title. *Glaser v. Minn. Fed. S&L Assoc.*, 389 N.W.2d 763 (1986).]

This latest revision of the purchase agreement form also addresses special assessments which become pending *after* the date of the Purchase Agreement and *prior to* the date of closing. New pending assessments are incapable of accurate anticipation. The "surprise" of new pending special assessments has been a troublesome matter. In the past, the surprise has resulted in one of the following:

- (1) Litigation or involuntary cancellation;
- (2) Voluntary cancellation;
- (3) Either Seller or Buyer paying the new assessment (but losing the original "benefit of the bargain");
- (4) Renegotiation to increase the purchase price to reflect the added value of the assessed improvement and then charge Seller (in escrow) for payment of the new assessment. I.e., if Seller "buys" the assessed improvement for the

- property, the purchase price should be increased to reimburse Seller; or,
- (5) Renegotiation to hold the original purchase price and require Buyer to assume the payment of the new assessment when it is finally levied. i.e., the original purchase price does not reflect the added value of the pending improvement. The pending improvement will benefit only Buyer, therefore Buyer should assume payment of the assessment. [Caution: Some mortgage insurance programs do not allow this second solution.]

In evaluating all of these possible outcomes, the Committee finds that the results obtained in (2), (4), and (5) are fair and equitable. Voluntary cancellation is a fair result since the new assessment was not in the contemplation of the parties at the moment the agreement was signed. The renegotiation scenarios in (4) and (5) are fair since both leave the parties with substantially the same "benefit of the bargain" as the original Purchase Agreement.

These three results have been drafted into a provision which gives the Buyer the choice of selecting the result. It should be the Buyer's choice to make since the assessment is going to add to the Buyer's total acquisition costs. If the assessment is too large and therefore unaffordable, the Buyer can easily escape the transaction. If the assessment is affordable, this Purchase Agreement provides two other methods of paying the assessment. [If the price is increased and the Seller pays the assessment, presumably the Buyer could increase the amount of the financing, although reappraisal may be necessary.]

Finally, with respect to new pending special assessments, this Purchase Agreement requires the Seller to represent that, as of the date of the Agreement, the Seller has not received Notice of a Hearing for a public improvement project, the costs of which may be assessed against the property. This is intended to call the Seller's attention to the significance of a Notice of Hearing.

**8. RISK OF LOSS. DAMAGES TO REAL PROPERTY.**

<p><b>MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT</b>, M.S.B.A Real Property <b>Form No. 1</b> (Rev. 1996; Rev. 1997; Rev. Aug. 1997)</p>	<p>Minnesota Association of Realtors® ["MAR"] <b>PURCHASE AGREEMENT</b>, Form No. MN:PA (8/96, 9/97, 9/98, 9/99, and 9/00 versions), published as Miller / Davis Form 1519A</p>
<p><b>8. DAMAGES TO REAL PROPERTY.</b> If the real property is substantially damaged prior to closing, this Purchase Agreement shall terminate and the earnest money shall be refunded to Buyer. If the real property is damaged materially but less than substantially prior to closing, Buyer may rescind this Purchase Agreement by notice to Seller within 21 days after Seller notifies Buyer of such damage, during which 21-day period Buyer may inspect the real property, and in the event of such rescission, the earnest money shall be refunded to Buyer.</p>	<p><i>[All versions: various line numbers...]</i>  <b>RISK OF LOSS:</b> If there is any loss or damage to the property between the date hereof and the date of closing, for any reason including fire, vandalism, flood, earthquake or act of God, the risk of loss shall be on Seller. If the property is destroyed or substantially damaged before the closing date, this Purchase Agreement shall become null and void, at Buyer's option, and earnest money shall be refunded to Buyer; Buyer and Seller shall immediately sign a cancellation of Purchase Agreement.</p>

**COMPARISONS.** Neither one of these forms provides exhaustive treatment for this issue. Both forms are somewhat cursory, but leave the final "judgment call" in the hands of the Buyer when there has been "substantial damage."

The Official Comments below provide a good discussion.

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From "OFFICIAL COMMENTS" of the Purchase Agreement Committee, Real Property Section, Hennepin County Bar Association, 1988 on Paragraph 8 - DAMAGES TO REAL PROPERTY

Prior standard Purchase Agreement Forms provided a remedy only in the case of substantial damage to the property. It was a unilateral remedy that provided an option to the Buyer to declare the Agreement null and void.

After vigorous debate by the Committee, it was determined that the remedy available should be mutual, not unilateral, and a remedy should also exist in cases of damages that are material, but less than substantial.

The Committee decided that Seller might want to terminate the purchase agreement following substantial damage to the property in situations where Buyer demanded that Seller restore the improvements to their prior condition, where the property became more valuable following destruction of the improvements, or where the risk of lost doctrine imposed an inequity upon Seller. If there is substantial damage to the property, the basis or value for the original Agreement no longer exists. The only fair way to deal with changed value in a mutual manner is to terminate the

Agreement and allow the parties to renegotiate new terms applicable to the new situation.

If prior to closing, the property is damaged materially, but the damage is "less than substantial", the Buyer is given the option to declare the Agreement null and void. In these circumstances, the Buyer's value would most likely be adversely affected, and this new term would provide an option solely to the Buyer.

The Committee recognizes the difficulty in using any language or terms such as "material" or "less than substantial". With many of the terms in the Purchase Agreement, the Committee recognizes that there are things which cannot easily be defined and we leave those matters to judicial interpretation and development of a standard practice which will be incorporated into future revisions of this form.

**9. SELLER'S BOUNDARY LINE, ACCESS, RESTRICTIONS AND LIEN WARRANTIES.**

<p><b>MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT, M.S.B.A Real Property Form No. 1</b> (Rev. 1996; Rev. 1997; Rev. Aug. 1997)</p>	<p>Minnesota Association of Realtors® ["MAR"] <b>PURCHASE AGREEMENT</b>, Form No. MN:PA (8/96, 9/97, 9/98, 9/99, and 9/00 versions), published as Miller / Davis Form 1519A</p>
<p><b>9. SELLER'S BOUNDARY LINE, ACCESS, RESTRICTIONS AND LIEN WARRANTIES.</b>                  Seller warrants that buildings, if any, are entirely within the boundary lines of the real property. Seller warrants that there is a right of access to the real property from a public right of way. Seller warrants that there has been no labor or material furnished to the real property for which payment has not been made. Seller warrants that there are no present violations of any restrictions relating to the use or improvement of the real property. These warranties shall survive the delivery of the deed or contract for deed.</p>	<p><i>[8/96 version: lines 83-84...]</i> <i>[9/97 version: lines 82-84...]</i> <i>[9/98, 9/99 versions: lines 89-91...]</i> <i>[9/00, lines 91-93.]</i>                  Seller warrants that buildings, are or will be, constructed entirely within the boundary lines of the property. Seller warrants that there is a right of access to the property from a public right of way. These warranties shall survive the delivery of the deed or contract for deed.</p> <p><i>[8/96 and 9/97 versions: lines 85-87...]</i> <i>[9/98 version: lines 92-94...]</i> <i>[9/99 version: lines 91-93...]</i> <i>[9/00, line 94-97.]</i>                  Seller warrants that prior to the closing, payment in full will have been made for all labor, materials, machinery, fixtures or tools furnished within the 120 days immediately preceding the closing in connection with construction, alteration or repair of any structure on or improvement to the property.</p>

**A. COMPARISONS.** There are substantial differences between the two forms.

1. The MSBA form includes an additional warranty: "Seller warrants that there are no present violations of any restrictions relating to the use or improvement of the property."
2. The MSBA form's survival clause<sup>23</sup> encompasses all of the seller's warranties in this paragraph. The MAR form has a paragraph structure which seems to omit the mechanics' lien provisions from the survival clause.
3. The MAR form's treatment of mechanics' liens displays some ambiguity regarding the mechanics' lien laws. The text can be interpreted to be referring to payments made, rather than work performed, within the *120 day period prior to the date of closing*. The Buyer needs to be concerned with the *120 days before and after the date of closing*. The Seller could have contracted work the day before the closing, not paid for it, and thereby trigger a new 120 lien period. The buyer in this scenario could have a lien filed against the property 119 days after closing. In most transactions, a seller's affidavit is taken at

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<sup>23</sup>Survival clauses (or the lack thereof) and the doctrine of merger continue to be the subject of litigation. See, e.g., *Bruggeman v. Jerry's Enterprises, Inc.*, 591 N.W.2d 705 (Minn. 1999). Any obligation contained in the purchase agreement that is intended to be fulfilled after the delivery of the deed or contract for deed ("the closing") should be covered by a survival clause.

closing. The seller's affidavit<sup>24</sup> has the correct coverage for the mechanics' lien concerns. But, if the affidavit is not taken at closing, this MAR form could be failing to disclose a problem. The MAR form could easily be corrected here by deleting the phrase, "... within the 120 days immediately preceding the closing..."

When representing a buyer, the lawyer should **strike the ambiguous language** from the MAR form and replace it with the language from the MSBA form.

### OTHER COMMENTS.

**B. Seller's Warranties Regarding Access, Boundary Lines, and Liens.** In any purchase agreement, these are rather important title warranties. See the companion paragraph regarding Seller's Affidavit in the MSBA form at paragraph 22.

**C. Access.** Both forms treat the access issue similarly. Although there is no title standard addressing the issue, most title examiners regard lack of access to a public right-of-way as an objectionable title defect.<sup>25</sup> Obtaining the seller's warranty as to access makes the issue a contractually-derived title standard for the transaction.

**D. Survey.** Although routinely neglected in the real estate sales industry (and omitted from both MSBA and MAR forms), the Buyer should always be advised to consider a survey. The best time for the Buyer to enforce the Seller's boundary line and access warranties is prior to the closing. The only satisfactory evidence of description, boundary line, encroachment, or access problems is a certificate of survey prepared by a registered land surveyor. The survey provisions from M.S.B.A. **Real Property Form No. 30** (1997; Revised August, 1997), **Minnesota Vacant Lot Purchase Agreement -- Single Dwelling**, will work in most situations:

**SURVEY.** Buyer's obligation to close under this Purchase Agreement is contingent upon Buyer obtaining, at Buyer's expense, by *[date]* \_\_\_\_\_ a survey of the property certified to Buyer as of a current date (no earlier than the date of this Purchase Agreement) evidencing conditions satisfactory to Buyer and containing certifications meeting the following minimum standards:

- (a) Prepared, dated and signed by a Minnesota Registered Land Surveyor with his or her seal affixed.
- (b) Includes legal description properly identifying the property described in this Purchase Agreement.
- (c) Locates all platted and unplatted property lines and lot lines.

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<sup>24</sup>Minnesota Uniform Conveyancing Blank Forms No. 116-M, 117-M, and 118-M. See MINN. STAT. Chapter 507.

<sup>25</sup>The editor is unaware of any reported Minnesota cases on point. In *Bastyr v. Zipse*, CO-97-1965, 1998 WL 281908 (Minn. App. 1998) (unpublished), the court held, without further comment, that the lack of access was a marketable title issue. A copy of the opinion may be obtained from the Unpublished Cases Archives for the Minnesota Court of Appeals at: <http://www.courts.state.mn.us/home>.

- (d) Locates all streets adjacent to the property.
- (e) Locates all curb cuts, driveways and fences.
- (f) Locates all easements described in the plat, if any, and in the record title of the property.
- (g) Locates all visible utility lines that service the property and improvements (sewer, water, gas, electric and telephone).
- (h) Locates any building setback lines.
- (i) Locates all encroachments or makes a positive statement that there are no encroachments.
- (j) Locates all improvements on the property.
- (k) Shows all descriptions, angles, and other calls contained in the legal description.

Buyer shall promptly retain a surveyor. If the survey reveals boundary or title problems, Buyer shall promptly deliver a copy of the survey to Seller. If the survey has been delivered to Buyer after Buyer's date for stating title objections, Buyer shall have an additional ten (10) days from the date of receiving the survey in which to state additional title objections. If the boundary or title problems prevent this transaction from closing, Seller shall reimburse Buyer for all expenses of survey and Buyer shall assign all rights in and to the survey to Seller.

**E. Medical Assistance Liens.** Similar to the unpleasant experience of having a Mechanic's Lien attach to the property after the closing, it is possible for a medical assistance lien to be recorded after the closing.<sup>26</sup> In order to attach to the title, the medical assistance lien must be filed (Torrens) or recorded (abstract) in the same county as the property.<sup>27</sup> Once the lien has become attached to the property, it is now possible for the lien to remain enforceable against the property for up to 20 years.<sup>28</sup> With the state of Minnesota effectively asserting and collecting Medical Assistance Liens,<sup>29</sup> the form should be modified to include a Seller's representation. The Committee is considering a change to Part 9, as follows:

**9. SELLER'S BOUNDARY LINE, ACCESS, RESTRICTIONS AND LIEN WARRANTIES.** Seller warrants that buildings, if any, are entirely within the boundary lines of the real property. Seller warrants that there is a right of access to the real property from a public right of way. Seller warrants that there has been no labor or material furnished to the real property for which payment has not been made. Seller warrants that there are no present violations of any restrictions relating to the use or improvement of the real property. Seller warrants that the real property [check one] is is not subject to a lien for Medical Assistance or other public assistance. These warranties shall survive the delivery of the Deed or Contract for Deed.

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<sup>26</sup>MINN. STAT. §514.981, Subd. 2.

<sup>27</sup>MINN. STAT. §514.982, Subd. 2.

<sup>28</sup>Minnesota Session Laws, 2000, CHAPTER 400, Sec. 4.(S.F. No. 1896), amended MINN. STAT. §514.981, subdivision 6, to provide for two successive 10-year periods of enforceability.

<sup>29</sup>MINN. STAT. Sections 514.980 to 514.985. The full discussion of Medical Assistance Liens (enforceability against homesteads, proper amounts, proper recordation, etc., are beyond the scope of this article.

Drafting note: Any warranty or representation made in the Purchase Agreement should be added to the seller's affidavit given at closing. See the discussion of the seller's affidavit at [Part 23](#) of this article.

**F. Indian Artifacts; Archeological Sites.** Although the concerns about Indian artifacts, burial mounds, historical sites, and archeological sites are more likely relevant for the purchase of vacant land, these concerns should be considered when purchasing a home with a large tract of land. These items all have protection under various state and federal laws.<sup>30</sup> Another representation from Seller could be added to Part 9 of Real Property Forms No. 1 and Nos. 30-32:

**9. SELLER'S BOUNDARY LINE, ACCESS, RESTRICTIONS AND LIEN WARRANTIES.** Seller warrants that buildings on adjoining real property, if any, are entirely outside of the boundary lines of the property. Seller warrants that there is a right of access to the real property from a public right of way. Seller warrants that there has been no labor or material furnished to the property for which payment has not been made. Seller warrants that there are no present violations of any restrictions relating to the use or improvement of the property. Seller represents that Seller does not know if there are historical, native American, or archeological materials on or in the subject property that might be protected by law. These warranties shall survive the delivery of the Deed or Contract for Deed.

If there is reason to suspect that there might be a real (instead of merely precautionary) concern for these issues (e.g., proximity to known burial mounds), a contingency could be added to the form for Buyer's benefit:

**¶#. PROTECTED HISTORICAL SITES.** Seller represents that the property does not have any American Indian burial grounds, other human burial grounds, ceremonial earthworks, historical materials, and/or other archeological sites that are protected by federal or state law. Buyer's obligation to close is contingent upon Buyer determining to Buyer's satisfaction that the property does not have any American Indian burial grounds, other human

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<sup>30</sup>The National Historic Preservation Act, 16 U.S.C. 470, *et seq.* The Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa, *et seq.* Federal regulations adopted under these and other acts (not cited here): 36 CFR § 296.1, *et seq.*; 32 CFR § 229.1 *et seq.*; 43 CFR § 7.1, *et seq.*; (others not cited here). Minnesota citations are: MINN. STAT. Chapter 138, generally. MINN. STAT. §307.08. **"Damages; illegal molestation of human remains; burials; cemeteries; penalty.** Subdivision 1. It is a declaration and statement of legislative intent that all human burials and human skeletal remains shall be accorded equal treatment and respect for human dignity without reference to their ethnic origins, cultural backgrounds, or religious affiliations. The provisions of this section shall apply to all human burials or human skeletal remains found on or in all public or private lands or waters in Minnesota. Subd. 2. **Felony; gross misdemeanor.** \*\*\* [Text omitted.] Subd. 7. All unidentified human remains or burials found outside of platted, recorded, or identified cemeteries and in contexts which indicate antiquity greater than 50 years shall be dealt with according to the provisions of this section. If such burials are not Indian or their ethnic identity cannot be ascertained, as determined by the state archaeologist, they shall be dealt with in accordance with provisions established by the state archaeologist. If such burials are Indian, as determined by the state archaeologist, efforts shall be made by the state archaeologist and the Indian affairs council to ascertain their tribal identity. If their probable tribal identity can be determined, such remains shall at the discretion of the state archaeologist and Indian affairs council, be turned over to contemporary tribal leaders for disposition. If it is deemed desirable by the state archaeologist or the Indian affairs council, such remains shall be studied by a qualified professional archaeologist before being delivered to the tribal leaders. If tribal identity cannot be determined, the Indian remains must be dealt with in accordance with provisions established by the state archaeologist and the Indian affairs council." \*\*\* [Sections omitted.]

burial grounds, ceremonial earthworks, historical materials, and/or other archeological sites that are protected by federal or state law.

**Drafting note:** Any warranty or representation made in the Purchase Agreement should be added to the seller's affidavit given at closing. See the discussion of the seller's affidavit at [Part 23](#) of this article.

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From "OFFICIAL COMMENTS" of the Purchase Agreement Committee, Real Property Section, Hennepin County Bar Association, 1988: on Paragraph 9 - SELLER'S BOUNDARY LINE, RESTRICTION ACCESS, AND LIEN WARRANTIES

The warranty as to boundary lines is the same as some standard Purchase Agreements. The warranty as to a right of access is new. Also new is the placement or separation of these warranties from other warranties or representations. The Committee felt that these two warranties should be separate from the other warranties because the effect can be substantially adverse to the Buyer if the building is not within the boundary lines or if the property does not have access to a public road. Warranty of access was added because, in general practice, the Buyer is unable to determine whether such access exists from an examination of the Abstract of Title. Again, it is believed that the Seller is in the best position to have knowledge of these matters and to make these warranties to the Buyer.

The lien warranty paraphrases the standard form Seller's affidavit. MINN. STAT. Chapter 507, *Uniform Conveyancing Blanks*, Form 116-M. Including this warranty in the Purchase Agreement illuminates one of Seller's many responsibilities.

The latest revision of this Purchase Agreement contains the Seller's warranty that there are no present violations of any restrictions relating to the use or improvement of the property. This is a separate and distinct provision from the disclosure contained in Paragraph 11.

"These warranties shall survive the delivery of the Deed or Contract for Deed" was included in this paragraph to clarify that these warranties are not merged in the Deed or in the Contract.



**10. CONDITION OF PROPERTY.**

<p><b>MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT, M.S.B.A Real Property Form No. 1</b> (Rev. 1996; Rev. 1997; Rev. Aug. 1997)</p>	<p>Minnesota Association of Realtors® ["MAR"]  <b>PURCHASE AGREEMENT</b>, Form No. MN:PA (8/96, 9/97, 9/98, 9/99, and 9/00 versions), published as Miller / Davis Form 1519A</p>
<p><b>10. CONDITION OF PROPERTY.</b></p> <p>A. Seller warrants that all appliances, fixtures, heating and air conditioning equipment, fireplaces (including mechanisms, dampers, flues, and doors), wiring, and plumbing used and located on the real property are in working order on the date of closing.</p> <p>Seller represents that the property <u>has / has not</u> had a wet basement or water in the basement. Seller discloses that the roof <u>has / has not</u> leaked. Seller warrants that the property: <u>is / is not</u> connected to: city sewer [<del>strike one</del>] <b>-YES/NO</b>; city water <b>-YES/NO</b>; cable TV <b>-YES/NO</b>. Seller shall remove all debris and all personal property not included in this sale from the property before possession date. Seller has not received any notice from any governmental authority as to the existence of any Dutch elm disease, oak wilt, or other disease of any trees on the real property.</p> <p>B. Seller knows of no hazardous substances or petroleum products having been placed, stored, or released from or on the real property by any person in violation of any law, nor of any underground storage tanks having been located on the real property at any time, except as follows: _____</p> <p>C. Seller's warranties and representations contained in this paragraph 10 shall survive the delivery of the Deed or Contract for Deed, provided that any notice of a defect or claim of breach of warranty must be in writing and any such notice with respect to matters referred to in A above must be given by Buyer to Seller within one year of the date of closing or be deemed waived.</p> <p>D. Buyer shall have the right to have inspections of the property conducted prior to closing. Unless required by local ordinance or lending regulations, Seller does not plan to have the property inspected. Other than the representations made in this paragraph 10, the property is being sold "<b>AS IS</b>" with no express or implied representations or warranties by Seller as to physical conditions, quality of construction, workmanship, or fitness for any particular purpose. (This paragraph is not intended to waive or limit any provisions of MINN. STAT., Chapter 327A.)</p>	<p>[All versions: various line numbers...]                  Seller warrants that central air conditioning, heating, plumbing and wiring systems used and located on said property will be in working order on the date of closing, except as noted in this agreement.</p> <p>[All versions: various line numbers...]                  Seller warrants that the property is DIRECTLY connected to: city sewer: ___yes___no city water:___yes___no                  Buyer acknowledges that no oral representations have been made regarding possible problems of water in basement, or damage caused by water or ice build-up on roof of the property and buyer relies solely in that regard on the following statement by Seller: Seller <u>has / has not</u> had a wet basement, and <u>has / has not</u> had roof, wall or ceiling damage caused by water or ice build-up. Buyer <u>has / has not</u> received a <b>Seller's Property Disclosure Statement</b> [<i>emphasis added</i>].<sup>31</sup></p> <p>[All versions: various line numbers...]                  Seller agrees to remove ALL DEBRIS AND ALL PERSONAL PROPERTY NOT INCLUDED HEREIN from the property by possession date.</p> <p>[All versions: various line numbers...]                  ENVIRONMENTAL CONCERNS: To the best of Seller's knowledge there are no hazardous substances or underground storage tanks, except as herein noted:_____</p> <p>[All versions: various line numbers...]                  Buyer has received the inspection reports, if required by municipality.</p> <p>[All versions: various line numbers...]                  Seller agrees to allow reasonable access to the property for performance of any surveys or inspections agreed to herein.</p> <p>[New in the 9/98, 9/99, and 9/00 versions: various lines .] <b>BUYER HAS THE RIGHT TO WALK-THROUGH REVIEW OF THE PROPERTY PRIOR TO CLOSING TO ESTABLISH THAT THE PROPERTY IS IN SUBSTANTIALLY THE SAME CONDITION AS OF THE DATE OF PURCHASE AGREEMENT. SELLER AGREES TO NOTIFY BUYER IMMEDIATELY IN WRITING OF ANY SUBSTANTIVE CHANGES FROM ANY PRIOR REPRESENTATIONS REGARDING THE PHYSICAL CONDITION OF THE PROPERTY.</b></p>

**COMPARISONS.** There are numerous differences between these two forms. The MSBA form has a much more thorough treatment of these issues. By comparison, the MAR form is deficient for the following reasons:

1. It does not include a functional representation concerning hazardous substances. There is no exemption in the law for residential properties for this issue.

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<sup>31</sup> The MAR SELLER'S PROPERTY DISCLOSURE STATEMENT ["Seller's Disclosure"] states on the face of the document that it is not a warranty and it is not part of the contract. That renders it ambiguous. Buyers should modify the Seller's Disclosure so that it is meaningful, binding, and part of the Purchase Agreement. Prudent buyers will also obtain an inspection contingency. Unfortunately, the vast majority of buyers are unaware of this problem.



2. It does not have an "as is" clause to encompass the entire property.<sup>32</sup>
3. It does not have a survival clause<sup>33</sup> for the buyer's benefit.

When representing either party, the lawyer should strike the MAR language and substitute the MSBA language for these issues.

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From "OFFICIAL COMMENTS" of the Purchase Agreement Committee, Real Property Section, Hennepin County Bar Association, 1988 on Paragraph 10 - CONDITION OF PROPERTY

(a) Warranties.

The prior standard Purchase Agreement does not include "fixtures" in this warranty. The new language included this term to be consistent with paragraph 4 "Personal Property and Fixtures Included in Sale". The new language also states "are in working order" instead of "proper working order" as in the old form. The Committee felt that the term "proper" working order did not clarify the standard any better than "working order."

This Purchase Agreement places a burden upon the Buyer to satisfy himself/herself at his/her expense that these items are in proper working order before closing, presumably by inspection. But, it still obligates the Seller to have these items in working order.

In the new language, Seller warrants that the property is connected to cable T.V., in addition to city sewer and city water. With the advent of and widespread use of cable T.V., this information is important to Buyers.

(b) Disclosure/Representations.

The new language requires the Seller to affirmatively disclose whether Seller has or has not had a wet basement, or water in the basement, or that the roof has or has not leaked. The Committee thinks that these are areas of

concern for Buyers of residential property. These defects could seriously impair the use and enjoyment of the property, could entail large expenses for repairs and by nature could not easily be discovered by reasonable inspection by Buyer. The Seller is in the best position to know these things and should affirmatively disclose them to the Buyer.

The new language inserts a representation by Seller that Seller has not received any notice from any governmental authority as to the existence of any Dutch Elm disease, Oak Wilt, or other diseases of any trees on the subject property. The Committee felt that this new item should be included because tree diseases have been prevalent in our cities and a loss of trees affects the value of the property. Again, the Seller would be in the best position to have knowledge of the existence of disease, or to have received notice. Again, the Buyer may not be able to discover this information by a reasonable inspection.

(c) Buyers Inspection and "As Is" Provision.

The Committee believed that a balancing was necessary in that Seller should not be subjected to absolute liability nor should the Buyer be strictly held to the "caveat emptor" maxim. For this reason, the following new language has been added to promote the Buyer's responsibility to be reasonably informed and the Seller's responsibility to

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<sup>32</sup>The wisdom of the MSBA form's ¶10.D., coupling the "as is" clause with an open opportunity for the buyer to have the house professionally inspected is evident when compared to the MAR's somewhat confusing "Seller's Statement of Condition." That MAR form, by its own terms, "...is not intended to be a part of any contract between [the parties]...or a substitute for any warranty..." The confusing nature of the MAR form was discussed in *Kleist v. Alwin*, an unpublished opinion appearing in Finance & Commerce, April 25, 1997, pp. 56-58 (Minn. Ct. App., Case No. C0-96-1986, WL 193781 ). A copy of the case is included in the supplemental materials as [Exhibit M](#).

<sup>33</sup>Unless there is specific "survival language" or unless the warranty is restated in the deed, no warranty will survive the delivery of the deed under Minnesota's doctrine of merger. *Bernard v. Schneider*, 264 Minn. 104, 117 N.W.2d 755 (1962). *Resolution Trust Corp. v. Kahn*, 501 N.W.2d 703 (Minn. App., 1993, review denied, 1993.) In spite of these lucid decisions, the doctrine of merger continues to be litigated: e.g., *Cruz v. Lamey*, unpublished opinion appearing in Finance & Commerce, January 24, 1997, pp. 52-54 (Minn. Ct. App., Case No. C7-96-804). A copy of the opinion may be obtained from the Unpublished Cases Archives for the Minnesota Court of Appeals at: <http://www.courts.state.mn.us/home>.

reasonably inform the Buyer. This new language states buyer is encouraged to have inspections of the property conducted prior to closing. Unless required by local ordinance or lending regulations, Seller does not plan to have the property inspected. Other than the representations made in this paragraph 10, the property is being sold 'as is' with no express or implied representations or warranties by the Seller as to the physical conditions, quality of construction, workmanship or fitness for any particular purpose." The Committee concluded that it should not attempt to legislate any resolution of this developing area of the law. The March, 1987, draft of this agreement contained an additional exculpatory clause benefiting the Seller: "... and the Seller is under no duty to discover any defects prior to closing..." At a hearing before the Real Property Section, it was suggested to the Committee that this clause is no longer a fair representation of the state of the law. The clause has been removed from the latest draft of the Purchase Agreement.

Placement of the previous requirement, "Seller shall remove all debris and all personal property not included in this sale from the property before possession date", has been included in paragraph 10 under Condition of Property. The term "shall" has been substituted in the

language to make this an affirmative mandate, rather than merely a promise, as in the old language.

(d) Survival of Warranties and Representation.

New language states that the Seller's warranties and representations are to survive the closing, allowing the Buyer to make a claim by written notice to the Seller within one year of the date of closing. The Buyer may not discover some defects until sometime later, and possibly in other seasons in the case of the heating, air conditioning, roof or basement warranty. In fairness, the Buyer needs to have a post-closing claim period.

The Committee placed this survival clause in a separate paragraph to appropriately highlight and separate this term.

Lastly, new language has been added which mirrors the exact language of MINN. STAT. Chapter 327A, New Construction Warranties, to inform both parties that these warranties are available by law and cannot be waived or restricted. Consequently, this Paragraph 10 is not appropriate for a new construction sale between Contractor and first Buyer, but could be used in subsequent sales.

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## 11. DISCLOSURE OF NOTICES.

<b>MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT</b> , M.S.B.A Real Property <b>Form No. 1</b> (Rev. 1996; Rev. 1997; Rev. Aug. 1997)	Minnesota Association of Realtors® ["MAR"] <b>PURCHASE AGREEMENT</b> , Form No. MN:PA (8/96, 9/97, 9/98, 9/99, and 9/00 versions), published as Miller / Davis Form 1519A
<b>11. DISCLOSURE OF NOTICES.</b> Seller has not received any notice from any governmental authority as to violation of any law, ordinance or regulation affecting the real property. If the real property is subject to restrictive covenants, Seller has not received any notice from any person as to a breach of the covenants. Seller has not received any notice from any governmental authority concerning any eminent domain, condemnation, special taxing district, or rezoning proceedings.	<i>[All versions: various line numbers...]</i> Seller warrants that seller has not received any notice from any governmental authority as to condemnation proceedings <i>[added in 9/98 &amp; 9/99 versions]</i> violation of any law, ordinance or regulation. If the property is subject to restrictive covenants, seller warrants that seller has not received any notice from any person or authority as to a breach of the covenants. Any notices received by seller will be provided to buyer immediately.

**COMPARISONS.** The MSBA form is more thorough in its content: the MAR form does not include disclosures concerning special taxing district proceedings or rezoning proceedings.

By requiring a Seller's Affidavit at closing (§ 23 of the MSBA form), these representations are reaffirmed at closing.

Drafting note: Any warranty or representation made in the Purchase Agreement should be added to the seller's affidavit given at closing. See the discussion of the seller's affidavit at [Part 23](#) of this article.

If the Buyer suspects that any of these notices might be forthcoming, a contingency clause should be added to the purchase agreement.

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From "OFFICIAL COMMENTS" of the Purchase Agreement Committee, Real Property Section, Hennepin County Bar Association, 1988: on Paragraph 11 - DISCLOSURE OF NOTICES:

This Purchase Agreement contains some new representations by the Seller as to violations of law or possible violations of restrictive covenants. These representations are included to call attention to those matters and to address and resolve the issues at the time the Purchase Agreement is signed.

These disclosures have been placed in a paragraph separate from those in Paragraph 10. This was done to avoid the effect of the one-year notice provision, which, with these particular disclosures, may prevent adequate redress to the Seller.

**12. TRUTH-IN-HOUSING.**

<p><b>MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT</b>, M.S.B.A Real Property <b>Form No. 1</b> (Rev. 1996; Rev. 1997; Rev. Aug. 1997)</p>	<p>Minnesota Association of Realtors® ["MAR"] <b>PURCHASE AGREEMENT</b>, Form No. MN:PA (8/96, 9/97, 9/98, 9/99, and 9/00 versions), published as Miller / Davis Form 1519A</p>
<p><b>12. TRUTH-IN-HOUSING.</b> Buyer acknowledges receipt of the Truth-in-Housing Disclosure Report or other inspection report if required by the municipality in which the real property is located.</p>	<p><i>[All versions: various line numbers...]</i>                  Buyer has received the inspection reports, if required by municipality.</p>

**COMPARISONS.** The Committee is not aware of any ordinance that requires this term to be included in the Purchase Agreement, but the Committee has seen several city ordinances which make it a seller’s misdemeanor for the buyer to sign a purchase agreement unless the dwelling has first been inspected by the city and unless the buyer has been given a copy of the city’s report. The MSBA form includes it to remind all concerned of this necessity.

The text of the MAR form does not alert the buyer to the possibility that a “truth-in-housing” inspection report is required. Whether lawyer or broker, this consideration should not be ignored by the drafter of the purchase agreement even if it means delaying the signing. This is a contract provision or disclosure which places the buyer in thoughtful consideration of the deal or of the property. And it is a contract provision, which, if ignored, may place the seller in a misdemeanor situation.

The lawyer representing either party should double check for compliance in those cities which have housing inspection ordinances.

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From "OFFICIAL COMMENTS" of the Purchase Agreement Committee, Real Property Section, Hennepin County Bar Association, 1988 on Paragraph 12 - TRUTH-IN-HOUSING

The Truth-In-Housing disclosure is not new, but printing it in the body of the new standard Purchase Agreement will alert all Buyers

that they may be entitled to such a report prior to the signing of the Purchase Agreement.

**13. POSSESSION.**

<b>MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT</b> , M.S.B.A Real Property <b>Form No. 1</b> (Rev. 1996; Rev. 1997; Rev. Aug. 1997)	Minnesota Association of Realtors® ["MAR"] <b>PURCHASE AGREEMENT</b> , Form No. MN:PA (8/96, 9/97, 9/98, 9/99, and 9/00 versions), published as Miller / Davis Form 1519A
<b>13. POSSESSION.</b> Seller shall deliver possession of the property not later than _____ closing. All interest, fuel oil, liquid petroleum gas, and all charges for city water, city sewer, electricity, and natural gas shall be prorated between the parties as of _____.	<i>[All versions: various line numbers...]</i> <b>POSSESSION:</b> Seller shall deliver possession of the property, not later than _____ after closing. All interest, homeowner association dues, rents, fuel oil, liquid petroleum gas and all charges for city water, city sewer, electricity, and natural gas shall be prorated between the parties as of date of closing.

**COMPARISONS.** Both forms are functionally similar here. The MAR form includes a reference to association dues. The MSBA approach to association issues is to place them in a separate addendum. No standard addendum has yet been developed by the Committee. A proposed addendum, including a provision to address association assessments, is shown as [Exhibit Q](#) to this article.

**Possession.** Does the Purchase Agreement disclose that Sellers are not in possession of the property? Do the Buyers know who is in possession?

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From "OFFICIAL COMMENTS" of the Purchase Agreement Committee, Real Property Section, Hennepin County Bar Association, 1988 on [Paragraph 13 - POSSESSION](#)

There are only a few small changes in the new language. Substituting the term "shall" before the delivery of possession is an affirmative mandate rather than merely a promise.

**14. EXAMINATION OF TITLE.**

<p><b>MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT</b>, M.S.B.A Real Property <b>Form No. 1</b> (Rev. 1996; Rev. 1997; Rev. Aug. 1997)</p>	<p>Minnesota Association of Realtors® ["MAR"] <b>PURCHASE AGREEMENT</b>, Form No. MN:PA (8/96, 9/97, 9/98, 9/99, and 9/00 versions), published as Miller / Davis Form 1519A</p>
<p><b>14. EXAMINATION OF TITLE.</b> To demonstrate that Seller's title is good and marketable of record, within a reasonable time after acceptance of this Purchase Agreement, Seller shall furnish Buyer with an Abstract of Title or a Registered Property Abstract certified to date including proper searches covering bankruptcies and state and federal judgments, federal court judgment liens in favor of the U.S., liens, and levied and pending special assessments. Buyer shall have ten (10) business days after receipt of the Abstract of Title or Registered Property Abstract either to have Buyer's lawyer examine the title and provide Seller with written objections or, at Buyer's own expense, to make an application for a Title Insurance Policy and notify Seller of the application. Buyer shall have ten (10) business days after receipt of the Commitment for Title Insurance to provide Seller with a copy of the Commitment and written objections. Buyer shall be deemed to have waived any title objections not made within the ten (10) day period above, except that this shall not operate as a waiver of Seller's covenant to deliver a statutory Warranty Deed, unless a Warranty Deed is not specified above. If Buyer obtains title insurance, Buyer is not waiving the right to obtain a good and marketable title of record from Seller.</p>	<p>[8/96 version: lines 64-73...] [9/97 version: lines 64-72...] <b>TITLE &amp; EXAMINATION:</b> Seller shall, at Seller's option, within a reasonable time after acceptance of this Agreement, provide evidence of title<sup>34</sup> in the form of either (1) a commitment for an owner's policy of title insurance in the amount of the purchase price on a current ALTA form issued by an insurer licensed to write title insurance in Minnesota; <b>or (2) an abstract of title or a registered property abstract certified to date [emphasis added].</b> Evidence of title shall include proper searches covering bankruptcies, state and federal judgments and liens, and levied and pending Special Assessments. Seller shall (1) pay the entire premium for such title insurance policy if no lender's policy is obtained, and only the additional cost of obtaining a simultaneously issued owner's policy if a lender's policy is obtained Buyer shall pay the premium for the lender's policy); or (2) pay all costs of providing the abstract. If Seller provides a commitment for an owner's policy of title insurance. Seller shall surrender any abstract in Seller's possession or control to Buyer at closing.</p>

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<sup>34</sup> This is another instance where there is confusion that a title insurance commitment is competent evidence of the title. The commitment is not an abstract of title. See the discussion on the next page.

<b>MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT, M.S.B.A Real Property Form No. 1</b> (Rev. 1996; Rev. 1997; Rev. Aug. 1997)	Minnesota Association of Realtors® ["MAR"] <b>PURCHASE AGREEMENT</b> , Form No. MN:PA (8/96, 9/97, 9/98, 9/99, and 9/00 versions), published as Miller / Davis Form 1519A
	<p><i>[Lines 65-79 in 9/98, 9/99 versions and lines 62-77 in 9/00 version.]</i></p> <p><b>TITLE AND EXAMINATION:</b> Within a reasonable time after acceptance of this Agreement, Seller shall provide evidence of title, which shall include proper searches covering bankruptcies, state and federal judgments and liens, and levied and pending Special Assessments to Buyer or Buyer's designated title service Provider, as follows:</p> <p><b>If property is abstract,</b> Seller shall provide: (1) a commitment for an owner's policy of title insurance on a current ALTA form issued by an insurer licensed to write title insurance in Minnesota. If the Seller chooses to provide an owner's policy of title insurance rather than update an abstract of title, Seller shall pay the entire premium, title examination fee and the costs of evidence of title for such title insurance policy if no lender's policy is obtained, or only the additional cost of obtaining a simultaneously issued owners policy if a lender's policy is obtained. (Buyer shall pay the premium and the title examination fee for the lender's policy); <b>or (2) an abstract of title certified to date</b> <i>[emphasis added]</i>. If Seller chooses to update an abstract, Seller shall pay for all abstracting fees. Seller shall surrender any abstract in Seller's possession or control to Buyer at closing.</p> <p><b>If property is Torrens,</b> Seller shall provide, at Buyer's option and request, either (1) a Registered Property Abstract (RPA) certified to date, or (2) a commitment for an owner's policy of title insurance on a current ALTA form issued by an insurer licensed to write title insurance in Minnesota. Seller shall be responsible to pay, under either option, only those costs necessary to prepare the RPA or commitment. Buyer shall, at buyer's option, pay for either the Attorney's Opinion or the title insurance premium and examination fee.</p>

**COMPARISONS.** There is an **extremely serious defect in the MAR language** here in all four versions of the MAR form: the seller has the option of not providing the abstract of title. Minnesota does not have (and should not have) any law to support the notion that a title insurance commitment is legally sufficient as a form of *title evidence*. A title insurance commitment may be a commercially acceptable form of *title examination* in transactional settings. The other commercially acceptable form of title examination is the tried-and-true lawyer's examination followed by the delivery of the lawyer's title opinion. All of Minnesota's case law on the question

of legally sufficient title evidence requires the production of an abstract of title for the property. There has been some confusion in the sales industry between title evidence and title examination.

The title insurance industry provides services which are well accepted by lawyers and by mortgage lenders. In many government-insured or government-regulated mortgage loan programs, title insurance is required for the lender's interest. Many multi-unit developments have been aided by the presence of title insurance. This discussion is not a criticism of the title insurance industry.

As the Official Comments below indicate, the failure of the MAR form to correctly distinguish between title evidence and title examination can have serious consequences for both seller and buyer. For a lawyer to allow either a seller-client or a buyer-client to use an unedited MAR purchase agreement form, without counseling the client on the value of the abstract, might have malpractice consequences for the lawyer. The lawyer may need to purchase an abstract of title for the client after the closing. The situation is compounded if, as has happened sometimes in the metropolitan area, the seller when he or she was the buyer may not have demanded or been given an abstract. Now, as seller, the abstract may need to be produced if the MSBA form is utilized. The lawyer should investigate this with a seller-client in the preparation of the agreement. When representing a buyer, the lawyer should strike the MAR language and substitute the MSBA language of paragraphs 14 and 15.

Einstein's writing on the time-space continuum has been analogized as a three-legged stool. The three legs are time, space, and motion. The stool as a whole cannot be understood in the absence of any one of the legs. To further complicate the understanding of the theory, each of the three legs is defined by using the other two legs. Time is defined as motion through space, and so forth. A three-legged stool analogy applies to a fundamental understanding of Minnesota's definition of "...a good and marketable title." A Warranty Deed, a marketable title, and the abstract of title are three concepts which cannot be understood in the absence of the others. Our entire body of title law embraces the abstract of title as the legally sufficient, preconveyance *evidence of marketable title*. The evidentiary quality of an abstract is so highly regarded in our law that it has been given special treatment in our statutes on evidence: a properly certified abstract may be admitted directly into evidence.<sup>35</sup> Our law embraces the Warranty Deed as the instrument whereby the marketable title is passed from seller to buyer.

If the purchase agreement requires the seller to deliver an Abstract of Title as proof of marketability, the buyer is not required to do additional searching outside of the interest disclosed by the Abstract of Title. This is the law:

"We are of the opinion that implicit in the requirement that the seller furnish an abstract of title is the representation that the abstract is proffered to demonstrate the marketability of the seller's title. The buyer, in reliance on that representation, is entitled to confine the title search to the Abstract of Title and need not examine further or elsewhere before raising objections to the title. We hold, therefore, that timely objection based solely on examination of the Abstract of Title invokes the seller's obligation to make title marketable within the

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<sup>35</sup>MINN. STAT. §600.19 allows properly certified abstracts directly into evidence as *prima facie* proof.



contractual time frame." *Lucas v. Independent School District No. 84*, 433 N.W.2d 94 (Minn. 1988).

This is actually a modern restatement of Minnesota law that is a century old. *Howe v. Coates*, 97 Minn. 385, 107 N.W. 397 (1906) and the cases cited therein (and its progeny). Delivery of the updated abstract is, then, fundamental to either the examination for a title opinion or the examination for the preparation of a title insurance commitment.

In light of the *Lucas* discussion immediately above and under the discussion in Paragraph 6 (Marketable Title) above, the Committee made the following changes to Paragraph 14 in 1997.

As the beginning clause of the first sentence, the following text has been added: "To demonstrate that seller's title is good and marketable of record, within a reasonable time {etc.}..."

As an addition to the paragraph, a new sentence, at the end: "If Buyer obtains title insurance, Buyer is not waiving the right to obtain a good and marketable title of record from Seller."

**U.S. Judgment Liens.** The MAR form does not include the requirement to include searches for federal court judgment liens in favor of the U.S. Title Standard No. 82 properly reflects this requirement (see the authorities cited there). The abstracters have changed their practices to include this additional search.

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From "OFFICIAL COMMENTS" of the Purchase Agreement Committee, Real Property Section, Hennepin County Bar Association, 1988, on Paragraph 14 - EXAMINATION OF TITLE:

A. The Seller is required to provide an Abstract of Title "within a reasonable time after acceptance of this agreement...". The Committee was unable to reach a consensus as to what a reasonable time is. We debated whether or not we should state a number of days as the time limit and drop the reference to a reasonable time. We finally decided that a reasonable time is a fact determination in each case. This language leaves the Seller with the ability to frustrate the transaction by withholding delivery of the Abstract of Title until shortly before the closing. The Committee members employed by title insurance companies stated that the time needed to prepare or continue an Abstract of Title or Registered Property Abstract will vary from county to county and with the time of year and local market activity. The stated reason for this is that the abstract department staff remains at a fairly constant level while the workload (influx of abstracts) follows the seasonal cycle of residential sales.

The Abstract of Title may be produced in 3 days or 30 days depending on the workload of the abstract and title company.

B. The Committee discussed the phrase "... certified to date...". The Committee recognizes the practicing

bar's preference for obtaining an Abstract of Title which has been certified no more than 30 days prior to the examination date. However, previously existing purchase agreement forms and earnest money contracts have all been uniform in requiring that the Abstract of Title be certified at least through the date of the purchase agreement. Hence, "... certified to date ..." has not been changed. Normally, the Abstract of Title will be certified for some date following the date of the purchase agreement. Including a special assessment search is a new requirement for the abstract certification.

C. The new purchase agreement form recognizes that a significant number of residential real estate transactions are closed without an examination of the Abstract of Title by an attorney. This form recognizes that the Buyer may prefer to obtain title insurance and this form gives the Buyer the option to do so and notify Seller that an application for title insurance has been made. The ten day examination period has been modified to include a 10 day period of time after receipt of a title insurance commitment. A minority of the Committee preferred that this paragraph give the Seller the option of providing a commitment for title insurance rather than providing an updated Abstract of Title. The majority of the

Committee, recognizing that Minnesota is a marketable title state rather than an insurable title state, indicated its strong preference for retaining the requirements that the Seller deliver an updated Abstract of Title to the Buyer. Upon delivery of the Abstract of Title to the Buyer, the form permits the Buyer the option of having his attorney examine the title or applying for title insurance.

- D. The latest revision of the Purchase Agreement adds a phrase at the end of the paragraph, "... except that this shall not operate as a waiver of Seller's covenant to deliver a statutory Warranty Deed unless a Warranty Deed is not specified above [at Paragraph 6]." This phrase was added to clarify the 10-day title examination period waivers: theoretically a late title objection can still be rendered, and the Seller required to address it and clear it. This is under the theory that if the Seller does *not* clear the objection, the Seller is then in *anticipatory repudiation*<sup>36</sup> of the statutory warranties of title. (Obviously, it is far better to state the title objections in a timely manner than to rely solely on this "remedy".)
- E. The Committee discussed the question of the Seller's covenant to convey a marketable title. This discussion occurred in light of the title insurance provision

discussed above. Minnesota's history for real estate transactions is founded on the concept of marketable title. "The marketable character of the title depends upon the record, and this is shown by the Abstract." *Howe v. Coates*, 97 Minn. 385, 107 N.W. 397 (1906). By giving the Buyer the option to obtain title insurance, the following questions remain unanswered in this draft of the purchase agreement:

Can a title insurance commitment be equated to an examination of the title? Since standard form title insurance commitments do not indicate that an examination of the title has been conducted and that a determination has been made that the title is marketable, does the Buyer waive the Seller's covenant to convey marketable title when the Buyer obtains title insurance instead of a title examination? Do the Seller's warranties of title in a Warranty Deed have any meaning if the Buyer is deemed to have waived Seller's breach of the covenant to deliver marketable title? If the Buyer chooses to obtain title insurance, does the Seller need to be protected by Obtaining a title Opinion to ensure that he is delivering a marketable title to the Buyer since the Buyer has determined only that he has an insurable title? Will the resolution of this issue be that the title insurance companies change the nature of their practice so that title insurance commitments are issued which positively indicate that "...an examination of the title has been conducted and that the title has been found to be good and marketable?" ... or would that be the unlawful practice of law by the title insurance companies?\* (MINN. STAT. §481.02 addresses the unauthorized practice of law.) [\*In Hennepin County, title insurance companies are permanently enjoined by District Court order from "...rendering title opinions..."]

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**15. TITLE CORRECTIONS AND REMEDIES.**

<p><b>MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT, M.S.B.A Real Property Form No. 1 (Rev. 1996; Rev. 1997; Rev. Aug. 1997)</b></p>	<p>Minnesota Association of Realtors® ["MAR"] <b>PURCHASE AGREEMENT</b>, Form No. MN:PA (8/96, 9/97, 9/98, 9/99, and 9/00 versions), published as Miller / Davis Form 1519A</p>
<p><b>15. TITLE CORRECTIONS AND REMEDIES.</b> Seller shall have 120 days from receipt of Buyer's written title objections to make title marketable. Upon receipt of Buyer's title objections, Seller shall, within ten (10) business days, notify Buyer of Seller's intention to make title marketable within the 120 day period. Liens or encumbrances for liquidated amounts which can be released by payment or escrow from proceeds of closing shall not delay the closing. Cure of the defects by Seller shall be reasonable, diligent, and prompt. Pending correction of title, all payments required herein and the closing shall be postponed.</p> <p>A. If notice is given and Seller makes title marketable, then upon presentation to Buyer and proposed lender of documentation establishing that title has been made marketable, and if not objected to in the same time and manner as the original title objections, the closing shall take place within ten (10) business days or on the scheduled closing date, whichever is later.</p> <p>B. If notice is given and Seller proceeds in good faith to make title marketable but the 120 day period expires without title being made marketable, Buyer may declare this Purchase Agreement void by notice to Seller, neither party shall be liable for damages hereunder to the other, and earnest money shall be refunded to Buyer.</p> <p>C. If Seller does not give notice of intention to make title marketable, or if notice is given but the 120 day period expires without title being made marketable due to Seller's failure to proceed in good faith, Buyer may seek, as permitted by law, one or more of the following:</p> <ol style="list-style-type: none"> <li>1. Proceed to closing without waiver or merger in the deed of the objections to title and without waiver of any remedies, and may:             <ol style="list-style-type: none"> <li>(a) Seek damages, costs, and reasonable lawyer's fees from Seller as permitted by law (damages under this subparagraph (a) shall be limited to the cost of curing objections to title, and consequential damages are excluded); or</li> <li>(b) Undertake proceedings to correct the objections to title;</li> </ol> </li> <li>2. Rescission of this Purchase Agreement by notice as provided herein, in which case the Purchase Agreement shall be null and void and all earnest money paid hereunder shall be refunded to Buyer;</li> <li>3. Damages from Seller together with costs and reasonable lawyer's fees, as permitted by law;</li> <li>4. Specific performance within six months after such right of action arises.</li> </ol> <p>D. If title is marketable, or is made marketable as provided herein, and Buyer defaults in any of the agreements herein, Seller may elect either of the following options, as permitted by law:</p> <ol style="list-style-type: none"> <li>1. Cancel this contract as provided by statute and retain all payments made hereunder as liquidated damages. The parties acknowledge their intention that any note given pursuant to this contract is a down payment note, and may be presented for payment notwithstanding cancellation;</li> <li>2. Seek specific performance within six months after such right of action arises, including costs and reasonable lawyer's fees, as permitted by law.</li> </ol> <p>E. If title is marketable, or is made marketable as provided herein, and Seller defaults in any of the agreements herein, Buyer may, as permitted by law:</p> <ol style="list-style-type: none"> <li>1. Seek damages from Seller including costs and reasonable lawyer's fees;</li> <li>2. Seek specific performance within six months after such right of action arises.</li> </ol>	<p><i>[All versions: various line numbers...]</i></p> <p>Seller shall use Seller's best efforts to provide marketable title by the date of closing. In the event Seller has not provided marketable title by the date of closing, Seller shall have an additional 30 days to make title marketable or, in the alternative, Buyer may waive title defects by written notice to the Seller. In addition to the 30 day extension, Buyer and Seller may by mutual agreement further extend the closing date. Lacking such extension, either party may declare this Purchase Agreement null and void; neither party shall be liable for damages hereunder to the other and earnest money shall be refunded to Buyer; Buyer and Seller shall immediately sign a cancellation of Purchase Agreement.</p> <p><i>[Note the complete absence of any provision requiring notice of title defects to be provided to the Seller in this version of the MAR form! The prior version of the MAR form contained some notice provisions, similar to the forms that MAR has produced for many years. This form is silent.]</i></p> <p><i>[All versions: various line numbers...]</i></p> <p><b>DEFAULT:</b> If Buyer defaults in any of the agreements herein, Seller may terminate this Purchase Agreement, and payments made hereunder may be retained by Seller as liquidated damages. If this Purchase agreement is not so terminated, Buyer or Seller may seek actual damages for breach of this Agreement or specific performance of this Agreement; and, as to specific performance, such action must be commenced within six months after such right of action arises.</p>

**COMPARISONS.** The **MAR form is inadequate** in its treatment of these issues. The absence of any provision in the MAR form for giving notice of title defects to Seller is an unacceptable omission. The MSBA provisions place responsiveness and responsibility into the parties' conduct

once a title problem has been disclosed. The MSBA remedies are fairly balanced between the seller and the buyer. The Official Comments are instructional.

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From "OFFICIAL COMMENTS" of the Purchase Agreement Committee, Real Property Section, Hennepin County Bar Association, 1988, on Paragraph 15 - TITLE CORRECTIONS AND REMEDIES:

Under previously used "standard" form purchase agreements, after title objections have been issued, the Buyer has been unable to compel the Seller to take any remedial action. In an attempt to make the Seller more responsive, the Seller is now required to make affirmation of the Seller's intention to make the title marketable within the stated period of time. If the Seller's affirmation is not given, the Buyer has the ability to terminate the transaction.

Where there are title objections, this purchase agreement recognizes five scenarios:

- a. The Seller gives the 10-day notice and proceeds to make the title marketable.
- b. The Seller gives the 10-day notice, proceeds in good faith to make the title marketable, but is unable to do so within the 120-day period of time.
- c. The Seller does not give the 10-day notice or Seller gives the 10-day notice but acts in bad faith in failing to clear the title during the 120-day period of time.
- d. Title was already marketable or is made marketable very quickly, and,
  - (1) Seller defaults, or,
  - (2) Buyer defaults.

Under each of these scenarios, there is a different set of remedies designed to make both parties more responsive to the transaction.

The other previously existing remedies for the Buyer are preserved in this draft of the purchase agreement. Those other remedies are specific performance and the right to terminate the transaction if the Seller fails to clear the title within 120 days from the date of the written title objections. The new remedy for the Buyer is the contractual ability to sue the Seller for damages and reasonable attorneys' fees.

The Seller's remedies for Buyer's breach have been debated long and hard by the Committee. The most contentious provision has been one which provided the Seller with actual damages for the Buyer's breach. This provision for actual damages was in addition to and optional from the provision for liquidated damages. The concept of liquidated damages is two-fold. First, it is an attempt to pre-measure the Seller's probable damages because actual damages are very difficult to determine in advance. Second, it is a prearrangement which is intended

to avoid litigation. By avoiding litigation, the Seller is thereby able to remarket the property without unnecessary delay.

After a protracted study of the issue of actual damages, the Committee has determined that courts generally disfavor providing the Seller with both a liquidated damages provision and an optional actual damages provision. The law in Minnesota with respect to Seller's actual damages in residential purchase agreements is in a state of flux. The Committee was unable to answer questions concerning elections of remedies; mitigation of damages and the duty to mitigate generally. How can a seller in Minnesota mitigate his damages (sell to a third party) without terminating or canceling the purchase agreement? What viable defense is there to a probable appellate court ruling that there is no difference between statutory cancellation and court-ordered termination? Against these questions, how do you reconcile the case of *Fabian v. Sather*, 316 N.W.2d 10 (1982), where the Seller's mitigation of damages by resale to a third party prevented the Seller from claiming anything more than the earnest money as liquidated damages? The other cases which are relevant to this consideration are as follows:

- Home Counselors, Inc. v. Folta*, 246 Minn. 481, 75 N.W.2d 417 (1956).  
*Costello v. Johnson*, 265 Minn. 204, 121 N.W.2d 70 (1963).  
*Frank v. Jansen*, 303 Minn. 86, 226 N.W.2d 739 (1975).  
*Real Estate Dynamics, Inc. v. Genzler*, 369 N.W.2d 22 (Minn. App. 1985).  
*Zirinsky v. Sheehan*, 413 F.2d 481 (8th Cir. 1969), *Certiorari* denied, 396 U.S. 1059, 90 S.Ct. 754, 24 L.Ed.2d 753 (1970).

Because this purchase agreement is designed strictly as a standard residential purchase agreement and is intended for the benefit of the general public, not for commercial or other special real estate transactions, the Committee feels that the provision for liquidated damages is generally a sufficient damage formula for the Seller. It is the Committee's opinion that an actual damages clause would be quite beneficial to real estate litigators but may be of little benefit to the residential Buyers and Sellers who need timely and orderly transactions. Obviously, Sellers and their counsel need to carefully consider the amount of the earnest money since it will continue to serve secondarily as the amount of the liquidated damages. This practice has not changed.

**16. NOTICES.**

<b>MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT</b> , M.S.B.A Real Property <b>Form No. 1</b> (Rev. 1996; Rev. 1997; Rev. Aug. 1997)	Minnesota Association of Realtors® ["MAR"] <b>PURCHASE AGREEMENT</b> , Form No. MN:PA (8/96, 9/97, 9/98, 9/99, and 9/00 versions), published as Miller / Davis Form 1519A
<b>16. NOTICES.</b> All notices required herein shall be in writing and delivered personally or mailed to the address as shown at Paragraph 1 above and, if mailed, are effective as of the date of mailing.	[No comparable provision.]

**COMPARISONS.** This is another basic contract term that should be included in any contract where each party will have executory tasks prior to the final contract event. The MAR form cannot be corrected simply by adding the MSBA language to the form because the MAR form does not identify the sellers at the top of the form nor does it include addresses for the parties. [The address of the property is not necessarily the seller's address.] This is another feature of the MAR form that inhibits communication between seller and buyer. (See the discussion of ¶1., of the MSBA form, above in [Part 1](#) of this article.)

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From "OFFICIAL COMMENTS" of the Purchase Agreement Committee, Real Property Section, Hennepin County Bar Association, 1988 on [Paragraph 16 - NOTICES](#)

This term is new and is needed to control notices between the parties. The Committee felt that to be fair and clear, all notices should be in writing, and, to be consistent with

Minnesota case law, should be effective as of the date of mailing or as of the date of personal delivery.

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**17. SUBDIVISION OF LAND.**

<b>MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT</b> , M.S.B.A Real Property <b>Form No. 1</b> (Rev. 1996; Rev. 1997; Rev. Aug. 1997)	Minnesota Association of Realtors® ["MAR"] <b>PURCHASE AGREEMENT</b> , Form No. MN:PA (8/96, 9/97, 9/98, 9/99, and 9/00 versions), published as Miller / Davis Form 1519A
<b>17. SUBDIVISION OF LAND.</b> If this sale constitutes or requires a subdivision of land owned by Seller, Seller shall pay all subdivision expenses and obtain all necessary governmental approvals. Seller warrants that the legal description of the real property to be conveyed has been or will be approved for recording as of the date of closing.	<i>[All versions: various line numbers...]</i> <b>SUBDIVISION OF LAND:</b> If this sale constitutes or requires a subdivision of land owned by Seller, Seller shall pay all subdivision expenses and obtain all necessary governmental approvals. Seller warrants the legal description of the real property to be conveyed has been or will be approved for recording as of the date of closing.

**COMPARISONS.** The two forms are identical for this issue. This is a reflection of the collaboration between the HCBA Purchase Agreement Committee and the MAR in 1985-88.

**Subdivision of Land.** Does the Purchase Agreement call for a transfer of less than all of the land shown on the captioned description on the Abstract of Title? Does this transaction contemplate a subdividing of the land?

**New Forms Available.** In June, 1997, three new purchase agreement forms, prepared by the MSBA Residential Real Estate Committee, all of which are concerned with vacant lot or vacant land transactions, were adopted by MSBA. There is more extensive coverage of subdivision issues in those forms. See the discussion in [Part 36](#) of this article for a description of these forms.

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From "OFFICIAL COMMENTS" of the Purchase Agreement Committee, Real Property Section, Hennepin County Bar Association, 1988, on Paragraph 17 - SUBDIVISION OF LAND:

This language is new [in 1988]. The Committee recognizes that residential purchases could entail subdivision of lands. In many municipalities, a deed to a metes-and-bounds description that has not

been approved as a subdivision is not recordable, and therefore could affect marketability. The responsibility should be upon the Seller to obtain subdivision approval at his expense.

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**18. MINNESOTA LAW GOVERNS.**

<b>MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT</b> , M.S.B.A Real Property <b>Form No. 1</b> (Rev. 1996; Rev. 1997; Rev. Aug. 1997)	Minnesota Association of Realtors® ["MAR"] <b>PURCHASE AGREEMENT</b> , Form No. MN:PA (8/96, 9/97, 9/98, 9/99, and 9/00 versions), published as Miller / Davis Form 1519A
<b>18. MINNESOTA LAW.</b> This contract shall be governed by the laws of the State of Minnesota.	[No comparable provision.]

**COMPARISONS.** This is another basic contract term. The district court has sole jurisdiction to hear matters involving the title to real property.<sup>37</sup> Presumably, all disputes involving Minnesota parties and Minnesota real property would be governed by Minnesota law. However, Minnesota's economy attracts a high number of families who relocate into Minnesota. Other states may have different meanings and different customs with respect to the interpretation of contract terms. For those relocation scenarios, this contract term may become important if there is a dispute as to the meaning of a contract term.

**Governing Law.** Presumably, this provision in the Purchase Agreement also means that the *Minnesota Title Standards* are applicable to the examination.

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From "OFFICIAL COMMENTS" of the Purchase Agreement Committee, Real Property Section, Hennepin County Bar Association, 1987, on Paragraph 18 - MINNESOTA LAW: "This contract shall be governed by the laws of the State of Minnesota." This provision is included to resolve a simple but fundamental contract question.

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<sup>37</sup>District Court jurisdiction for land title matters: MINN. STAT. §491A.01, Subd. 4(1), "The conciliation court does not have jurisdiction over the following actions...involving title to real estate, including actions to determine boundary lines..." SEE ALSO: MINN. STAT. §557.01, real estate actions generally; MINN. STAT. Chapter 558, partition actions; MINN. STAT. Chapter 559, adverse claims actions; MINN. STAT. §94.346, quiet title to state land; MINN. STAT. §93.055, quiet title to state mineral lands; MINN. STAT. §§284.08, 284.11, and 284.27, quiet title to tax forfeited land; and, Rule 70, Minn. Rules of Civil Procedure.

**19. WELL DISCLOSURE (REQUIRED BY STATUTE).**

<b>MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT</b> , M.S.B.A Real Property Form No. 1 (Rev. 1996; Rev. 1997; Rev. Aug. 1997)	Minnesota Association of Realtors® ["MAR"] <b>PURCHASE AGREEMENT</b> , Form No. MN:PA (8/96, 9/97, 9/98, 9/99, and 9/00 versions), published as Miller / Davis Form 1519A
<b>19. WELL DISCLOSURE.</b> Check one of the following: <input type="checkbox"/> Seller certifies that Seller does not know of any wells on the described real property. <input type="checkbox"/> Wells on the subject real property are disclosed by Seller on the attached Well Disclosure form.	<i>[All versions: various line numbers...]</i> Buyer has received the Well Disclosure Statement or a statement that no well exists on the property.  <i>[9/98, 9/99, at line 134, and 9/00 at line 135.]</i> <b>SELLER / BUYER AGREES TO PROVIDE WATER QUALITY TEST RESULTS IF REQUIRED BY GOVERNING AUTHORITY AND/OR LENDER.</b>

**COMPARISONS.** The MSBA form is more thorough than the MAR form for this disclosure. If there is no well, a simple statement to that effect will satisfy the disclosure law. The MAR form apparently requires the use of a separate MAR form for the negative disclosure statement.

**Well Disclosure Forms.** If there is a well on the property, then there are two disclosure forms that need to be used, one to accompany the purchase agreement<sup>38</sup> and one to be delivered at closing<sup>39</sup> for recording. See [Exhibits C and D](#).

**Water Quality.** The MAR form includes a provision for a water quality test. Some federal mortgage loan guaranty programs require a water quality test for first mortgages placed on rural homes where potable water comes from an on-site well.<sup>40</sup>

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This provision postdates the 1988 version of the form, so there are no "OFFICIAL COMMENTS" for this.

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<sup>38</sup>MINN. STAT. §103I.235 (1999) reads, in part: “**Real property sale; disclosure of location of wells.** Subdivision 1. Disclosure of wells to buyer. (a) **Before signing an agreement to sell or transfer real property, the seller must disclose** [emphasis added] in writing to the buyer information about the status and location of all known wells on the property, by delivering to the buyer either a statement by the seller that the seller does not know of any wells on the property, or a disclosure statement indicating the legal description and county, and a map drawn from available information showing the location of each well to the extent practicable. In the disclosure statement, the seller must indicate, for each well, whether the well is in use, not in use, or sealed.”

<sup>39</sup>MINN. STAT. §103I.235 (1999), Subdivision 1(b), reads, in part: “At the time of closing of the sale, the disclosure statement information, name and mailing address of the buyer, and the quarter, section, township, and range in which each well is located must be provided on a well disclosure certificate signed by the seller or a person authorized to act on behalf of the seller.”

<sup>40</sup>24 C.F.R. Parts 50, -51, and 200, generally.



**20. INDIVIDUAL ON-SITE SEWAGE TREATMENT SYSTEM DISCLOSURE (REQUIRED BY STATUTE).**

<p><b>MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT, M.S.B.A Real Property Form No. 1 (Rev. 1996; Rev. 1997; Rev. Aug. 1997)</b></p>	<p>Minnesota Association of Realtors® ["MAR"] <b>PURCHASE AGREEMENT</b>, Form No. MN:PA (8/96, 9/97, 9/98, 9/99, and 9/00 versions), published as Miller / Davis Form 1519A</p>
<p><b>20. SEWAGE TREATMENT SYSTEM DISCLOSURE.</b> [Check either A or B: ]</p> <p>___ A. Seller certifies that sewage generated at the property goes to a facility permitted by the Minnesota Pollution Control Agency (for example, a city or municipal sewer system).</p> <p>___ B. Seller certifies that sewage generated at the property does not go to a facility permitted by the Minnesota Pollution Control Agency and Seller's Disclosure of Individual Sewage Treatment System is attached (attach form).</p> <p>[Check either C or D: ]</p> <p>___ C. Seller does not know if there is an abandoned individual sewage treatment system on the property.</p> <p>___ D. Seller knows that there <del>is</del> <b>are</b> / <b>are no</b> abandoned individual sewage treatment systems on the property. If Seller discloses the existence of an abandoned individual sewage treatment system on the property, then Minnesota law requires that the location of the system be disclosed to Buyer with a map. <i>[Attach Seller's Disclosure of Individual Sewage Treatment System with map completed.]</i></p>	<p>[All versions: various line numbers...] Buyer has received...**, a septic system disclosure statement or a statement that no septic system exists on or serves the property, as required by Minnesota Statutes.</p> <p>[All versions: various line numbers...] SELLER / BUYER AGREES TO PROVIDE, IF REQUIRED BY THE TERMS OF THIS PURCHASE AGREEMENT OR BY GOVERNING AUTHORITY AND/OR LENDER, A LICENSED INSPECTOR'S SEPTIC SYSTEM INSPECTION REPORT OR NOTICE INDICATING IF THE SYSTEM COMPLIES WITH APPLICABLE REGULATIONS. NOTICE: A VALID CERTIFICATE OF COMPLIANCE FOR THE SYSTEM MAY SATISFY THIS OBLIGATION. NOTHING IN <i>LINES [various line numbers]</i> SHALL OBLIGATE SELLER TO UPGRADE, REPAIR OR REPLACE THE SEPTIC SYSTEM UNLESS OTHERWISE AGREED TO IN THIS PURCHASE AGREEMENT.</p>

**COMPARISONS.** The two forms are functionally different here. **The statutes require disclosure.** Both forms call attention to that need. But, the statute<sup>41</sup> was amended in 1997 to require a more thorough disclosure. The MSBA form complies with the new law.<sup>42</sup>

**No Standardized Form.** The Minnesota Pollution Control Agency has not yet developed a standardized form to be used for this disclosure. There are several forms currently in the

<sup>41</sup>1997 MINN. SESS. LAWS, Chapter 235, revised MINN. STAT. §115.55, Subdivision 6 (originally enacted in 1994 MINN. SESS. LAWS, Chapter 617).

<sup>42</sup>The disclosure law has its own penalties. Some local units of government have added to the penalties by blocking the recording of conveyancing instruments that were not accompanied by a disclosure certificate. The legislature has decided that the statutory penalties are enough: Minnesota Session Laws, 2000, CHAPTER 320 (S.F. No. 2510), amended MINN. STAT. §115.55, Subd. 7. (c) (Effective August 1, 2000) “[NEW OR REPLACEMENT SYSTEMS; LOCAL ORDINANCES.] A local unit of government may adopt and enforce ordinances or rules affecting new or replacement individual sewage treatment systems that are more restrictive than the agency's rules. A local unit of government may not adopt or enforce an ordinance or rule if its effect is to prevent or delay recording with the county recorder or registrar of titles of a deed or other instrument that is otherwise entitled to be recorded.” [The new language in the statute is underlined.]

marketplace. The form included here as [Exhibit E](#) is based upon the form developed by Lake County. The Residential Real Estate Committee modified it to incorporate provisions which are in compliance with the statutes.

Since this disclosure law became effective, the Committee has received reports that this disclosure law and other recent revisions to Minnesota's "water laws" are having an often unforeseen impact in "lake country." Many lake front homes have nonconforming septic systems because of new setback requirements that accompanied this disclosure law. Coupled with this are new regulatory concerns about flood plains, wetlands, and other forms of shorelands. To alert buyers to the possibility of nonconforming status, the Committee has prepared an Addendum to supplement the purchase agreement entitled ADDENDUM TO PURCHASE AGREEMENT: WETLANDS, SHORELANDS, AND FLOOD PLAIN DISCLOSURE. This form was adopted in 1997.

See [Part 22](#), below, for more discussion of the wetlands, shorelands, and flood plain issues. See [Part 34](#), below, for further discussion of nonconformities and the advisability of thorough preclosing investigations.

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This provision postdates the 1988 version of the form, so there are no "OFFICIAL COMMENTS" for this.

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**21. LEAD PAINT DISCLOSURE (REQUIRED BY FEDERAL REGULATIONS).**

<b>MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT</b> , M.S.B.A Real Property Form No. 1 (Rev. 1996; Rev. 1997; Rev. Aug. 1997)	Minnesota Association of Realtors® [ "MAR" ] <b>PURCHASE AGREEMENT</b> , published as Miller / Davis Form 1519A (8/96, 9/97, 9/98, 9/99, and 9/00)
<b>21. Lead Paint Disclosure.</b> Check one of the following: <input type="checkbox"/> Seller represents that the dwelling was constructed on the real property in 1978 or later. <input type="checkbox"/> Seller represents that the dwelling was constructed on the real property before 1978. (If such housing is located on the property, attached and made a part of this Purchase Agreement is "LEAD PAINT ADDENDUM FOR HOUSING CONSTRUCTED BEFORE 1978".)	[No comparable provision in the Purchase Agreement. MAR is presently covering this requirement with a separate addendum.]

**COMPARISONS.** Federal regulations require the disclosure of lead-based paint in housing built before 1978. This Purchase Agreement disclosure paragraph has been added to the form to call attention to the issue.

Under federal authority granted to them, "... *EPA and HUD are establishing the following requirements: (1) Sellers and lessors of most residential housing built before 1978 must disclose the presence of known lead-based paint and/or lead-based paint hazards in the housing; (2) sellers and lessors must provide purchasers and lessees with any available records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards; (3) sellers and lessors must provide purchasers and lessees with a federally approved lead hazard information pamphlet; (4) sellers must provide purchasers with a 10-day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards before the purchaser is obligated under any purchase contract; (5) sales and leasing contracts must include certain disclosure and acknowledgment language; and (6) agents must ensure compliance with these requirements.*" Federal Register: March 6, 1996 (Volume 61, Number 45), Pages 9063-9088.

**Addendum to Purchase Agreement.** The Residential Real Estate Committee has published a form for this issue, "**Lead Paint Addendum for Housing Constructed Before 1978,**" **M.S.B.A. Real Property Form No. 11 (1996)**, Adopted, August 1996. A copy of the form is attached as [Exhibit F](#).

A wealth of information about the U.S. Environmental Protection Agency's Residential Lead Program can be found at its web site: <http://www.epa.gov/lead/leadhaz.htm>. (If that link does not take you directly into the Lead Program, use <http://www.epa.gov> and follow the links in that site.)

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This provision postdates the 1988 version of the form, so there are no "OFFICIAL COMMENTS" for this.

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**22. WETLANDS, SHORELAND, AND FLOOD PLAIN CONCERNS.**

<p><b>MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT</b>, M.S.B.A Real Property <b>Form No. 1</b> (Rev. 1996; Rev. 1997; Rev. Aug. 1997)</p>	<p>Minnesota Association of Realtors® ["MAR"] <b>PURCHASE AGREEMENT</b>, Form No. MN:PA (8/96, 9/97, 9/98, 9/99, and 9/00 versions), published as Miller / Davis Form 1519A</p>
<p><b>22. WETLANDS, SHORELAND, AND FLOOD PLAIN CONCERNS.</b> Currently the law does not require Seller to disclose Seller's knowledge, if any, of the existence of wetlands, shoreland, or flood plain on or affecting the real property. If Buyer has not already investigated these concerns, Buyer might want to include Seller's disclosures regarding these concerns. <i>[Check the box if the following provision applies to this Purchase Agreement:]</i> <b>ADDENDUM TO PURCHASE AGREEMENT: WETLANDS, SHORELAND AND FLOOD PLAIN DISCLOSURE</b>, M.S.B.A. Real Property <b>Form No. 8</b> (1997), is included as an addendum to this Purchase Agreement.</p>	<p>[No comparable provision.]</p>

**COMPARISONS.** The MAR form does not cover this topic. The MSBA form calls attention to the these concerns and provides for a check box to include the lengthy Addendum (Form No. 8).

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This provision postdates the 1988 version of the form, so there are no "OFFICIAL COMMENTS" for this.

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**23. SELLER'S AFFIDAVIT REQUIRED AT CLOSING.**

<b>MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT</b> , M.S.B.A Real Property <b>Form No. 1</b> (Rev. 1996; Rev. 1997; Rev. Aug. 1997)	Minnesota Association of Realtors® ["MAR"] <b>PURCHASE AGREEMENT</b> , Form No. MN:PA (8/96, 9/97, 9/98, 9/99, and 9/00 versions), published as Miller / Davis Form 1519A
<b>23. SELLER'S AFFIDAVIT.</b> At closing, Seller shall supplement the warranties and representations in this Purchase Agreement by executing and delivering a Minnesota Uniform Conveyancing Blank [Form No. 116-M, 117-M, or 118-M] Affidavit of Seller.	[No comparable provision.]

**COMPARISONS.** The MAR form lacks this simple but essential provision.

There are many representations and warranties in both purchase agreement forms that need to be re-affirmed at the closing, under oath, in the seller's affidavit. All of those additional representations and warranties need to be added to the Uniform Conveyancing Blank Forms.

The 1994 revision of the MSBA purchase agreement form has been modified to include this new paragraph 23. This revision accomplishes two things:

1. It removes any argument at the closing that the Seller is not required to provide an Affidavit;
2. It restates, in affidavit form, the same important warranties and representation that are contained in the Purchase Agreement.

Drafting note: Examine the Purchase Agreement prior to closing. Any warranties or representations, included in the Purchase Agreement that are not part of the preprinted seller's affidavit, must be added to the affidavit. See the discussion concerning medical assistance liens and historical sites in [Part 9](#) of this article.

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This provision postdates the 1988 version of the form, so there are no "OFFICIAL COMMENTS" for this.

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**24. CLOSING.**

<b>MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT, M.S.B.A Real Property Form No. 1</b> (Rev. 1996; Rev. 1997; Rev. Aug. 1997)	Minnesota Association of Realtors® ["MAR"] <b>PURCHASE AGREEMENT</b> , Form No. MN:PA (8/96, 9/97, 9/98, 9/99, and 9/00 versions), published as Miller / Davis Form 1519A
<p><b>24. CLOSING.</b> Closing shall be at the office of Seller's lawyer, Buyer's title insurer, or at some other mutually agreeable location.</p> <p><i>[State other location:]</i> _____</p> <p>At closing, Seller and Buyer shall disclose their Social Security Numbers or Federal Tax Identification Numbers for the purposes of completing state and federal tax forms.</p>	<p><i>[No comparable provision in 8/96 and 9/97 versions.] [9/98, 9/99, and 9/00 versions:]</i></p> <p>The delivery of all papers and monies shall be made at the listing broker's office.</p> <p><i>[all versions, after signatures:]</i></p> <p>_____</p> <p>Social Security Number</p>

**COMPARISONS.** The MSBA form was revised in 1997 to include this long-overlooked but essential contract term. Stating the location of the closing is another one of those simple contract terms which, when included in the contract, removes another issue from contention.

**Social Security Numbers: Private Data.** The Social Security Numbers of the parties are private data. This data does not need to be disclosed to anyone other than the closer for the purposes of preparing tax forms incidental to the conveyance (presently the I.R.S. Form 1099-S and the Minnesota Certificate of Real Estate Value, Minn. Dept. Rev. Form PE-20). The Committee has chosen to avoid the unnecessary promulgation of private data unlike some Minnesota brokers (who use imaging software in their intranets).

The issue of who pays for the closing is discussed at [32.,J.](#), below.

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**25. ADDITIONAL TERMS.**

<b>MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT, M.S.B.A Real Property Form No. 1</b> (Rev. 1996; Rev. 1997; Rev. Aug. 1997)	Minnesota Association of Realtors® ["MAR"] <b>PURCHASE AGREEMENT</b> , Form No. MN:PA (8/96, 9/97, 9/98, 9/99, and 9/00 versions), published as Miller / Davis Form 1519A
<b>25. ADDITIONAL TERMS.</b> _____ _____	<i>[In the 8/96 and 9/97 versions, there was no comparable provision, but the MAR has a separate "blank line" addendum form that accomplishes the same purpose.] [In the 9/98, 9/99, and 9/00 versions, there is...]</i> OTHER: _____ _____

**COMPARISONS.** The MSBA form has space within the form to add an extra term or two without preparing a separate addendum.

**26. ADDENDA.**

<b>MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT, M.S.B.A Real Property Form No. 1</b> (Rev. 1996; Rev. 1997; Rev. Aug. 1997)	Minnesota Association of Realtors® ["MAR"] <b>PURCHASE AGREEMENT</b> , Form No. MN:PA (8/96, 9/97, 9/98, 9/99, and 9/00 versions), published as Miller / Davis Form 1519A
<b>26. ADDENDA.</b> Attached are _____ addenda which are made a part of this Purchase Agreement.	<i>[In the 8/96 and 9/97 versions, there was no comparable provision.] [In the 9/98, 9/99, and 9/00 versions, there is...]</i> Attached are other addenda which are made a part of this Purchase Agreement. (Enter total number of pages of this Purchase Agreement, including addenda, on line 2 of page 1.)

**COMPARISONS.** The MSBA form and the later versions of the MAR form contemplates that the drafter of the form will count the number of addenda that have been attached to the basic form. Some practitioners go one step further and list by name the various addenda that have been made a part of the contract. With 28., below, this provision helps third parties (and counsel) to determine the content of the contract. Even with these provisions, later amendments to the Purchase Agreement can lead to confusion. See the discussion at [Part 31.](#), below.

Make sure that all originals of the Purchase Agreement are identical and are signed and initialed identically. Make sure that all originals of the Purchase Agreement have identical addenda. See the discussion of [Contract Formation](#) in Part 31., of this article.

**27. TIME IS OF THE ESSENCE.**

<b>MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT</b> , M.S.B.A Real Property <b>Form No. 1</b> (Rev. 1996; Rev. 1997; Rev. Aug. 1997)	Minnesota Association of Realtors® ["MAR"] <b>PURCHASE AGREEMENT</b> , Form No. MN:PA (8/96, 9/97, 9/98, 9/99, and 9/00 versions), published as Miller / Davis Form 1519A
<b>27. TIME IS OF THE ESSENCE.</b> Time is of the essence for all provisions of this Purchase Agreement.	<i>[All versions: various line numbers...]</i> <b>TIME OF ESSENCE.</b> Time is of the essence in this purchase agreement.

**COMPARISONS.** The MSBA form formerly had this term at the very end of 15. Now this important contract term is in a separate paragraph.

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**28. MULTIPLE ORIGINALS.**

<b>MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT</b> , M.S.B.A Real Property <b>Form No. 1</b> (Rev. 1996; Rev. 1997; Rev. Aug. 1997)	Minnesota Association of Realtors® ["MAR"] <b>PURCHASE AGREEMENT</b> , Form No. MN:PA (8/96, 9/97, 9/98, 9/99, and 9/00 versions), published as Miller / Davis Form 1519A
<b>28. MULTIPLE ORIGINALS.</b> Seller and Buyer have signed <i>[number]</i> _____ originals of this Purchase Agreement.	<i>[No comparable provision.]</i>

**COMPARISONS.** Together with Part 26., this provision in the MSBA form is intended to assist third parties in determining the content of the agreement.

Make sure that all originals of the Purchase Agreement are identical and are signed and initialed identically. See the discussion of [Contract Formation](#) in Part 31., of this article.

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**29. LEGAL ADVICE CLAUSE.**

<p><b>MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT, M.S.B.A Real Property Form No. 1 (Rev. 1996; Rev. 1997; Rev. Aug. 1997)</b></p>	<p>Minnesota Association of Realtors® ["MAR"] <b>PURCHASE AGREEMENT</b>, Form No. MN:PA (8/96, 9/97, 9/98, 9/99, and 9/00 versions), published as Miller / Davis Form 1519A</p>
<p><i>[at the very top of the form...]</i> BEFORE YOU USE OR SIGN THIS CONTRACT, YOU SHOULD CONSULT WITH A LAWYER TO DETERMINE THAT THIS CONTRACT ADEQUATELY PROTECTS YOUR LEGAL RIGHTS. Minnesota State Bar Association disclaims any liability arising out of use of this form.</p> <p><i>[immediately before the signatures, in a highlighted box...]</i> <b>THIS IS A LEGALLY BINDING CONTRACT. BEFORE SIGNING, CONSULT A LAWYER.</b> Minnesota law permits licensed real estate brokers and sales agents to prepare purchase agreements. No recommendation or representation may be made by any real estate broker or sales agent as to the legal sufficiency, the legal effect, or the tax consequences of this contract. These are questions for your lawyer.</p>	<p><i>[at the very top of the form...]</i> This form approved by the Minnesota Association of Realtors®, which disclaims any liability arising out or use or misuse of this form.</p> <p><i>[after the signatures, all versions...]</i> THIS IS A LEGALLY BINDING CONTRACT BETWEEN BUYERS AND SELLERS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.</p>

**COMPARISONS.** The MSBA form begins and ends with the advisory to consult with a lawyer. The MAR form places its advisory at the very end of the printed form. The positioning of the advisory is much better in the MSBA form: the parties should read the purchase agreement and think about it before they sign.

From "OFFICIAL COMMENTS" of the Purchase Agreement Committee, Real Property Section, Hennepin County Bar Association, 1987, on the legal advice clause:

**THIS IS A LEGALLY BINDING CONTRACT.  
BEFORE SIGNING, CONSULT A LAWYER.**

The Purchase Agreement Committee thinks that the language of this boxed warning is a fair statement of the kind and quality of warning which needs to be stated for the benefit of both buyer and seller. The specific language following the boldface warning reads as follows:

MINNESOTA LAW PERMITS LICENSED REAL ESTATE BROKERS AND SALES AGENTS TO PREPARE PURCHASE AGREEMENTS. NO RECOMMENDATION OR REPRESENTATION IS MADE BY EITHER THE LISTING BROKER OR THE SELLING BROKER AS TO THE LEGAL SUFFICIENCY, THE LEGAL EFFECT, OR THE TAX CONSEQUENCES OF THIS CONTRACT. THESE ARE QUESTIONS FOR YOUR LAWYER.

This language makes specific reference to real estate brokers and

sales agents. The Committee has seen a number of customized brokerage forms which contain printed provisions which exculpate the real estate broker and sales agent. In some cases, there had been indemnification clauses requiring the buyer and seller to indemnify all real estate sales professionals involved in the event there is litigation between the buyer and the seller. The Committee is not so naive as to not recognize the motivation for such exculpatory clauses. However, those clauses ask the buyer and the seller to relinquish some very important rights *vis-a-vis* the real estate broker or the sales agent. From a public policy point of view, our Committee feels that this is improper.

This draft of the purchase agreement contains a disclaimer at the very top of the form which reads as follows:

BEFORE YOU USE OR SIGN THIS CONTRACT, YOU SHOULD CONSULT WITH AN ATTORNEY TO DETERMINE THAT THIS CONTRACT ADEQUATELY PROTECTS YOUR LEGAL RIGHTS. Hennepin County Bar Association disclaims any liability

arising out of the use of this form.

The disclaimer as to liability of the Bar Association is deemed to be proper. The Purchase Agreement Committee deems it improper for a particular attorney to include such a disclaimer in the representation of either a buyer or seller. In other words, it is improper for an attorney to remove himself from liability for the service which he provides to either the buyer or the seller. The same philosophy is being employed here to encourage the real estate sales professionals not to include specific exculpatory language in their purchase agreements. The real estate sales professional is an important party to the average residential real estate transaction. The function and the role of the real estate sales professional needs to be thoroughly understood by both the Bar Association and the real estate sales professionals' organizations.

In this draft of the purchase agreement, there is an underlying theme: we expect attorneys to function as attorneys and not as real estate sales professionals. We expect real estate sales professionals to act as sales professionals and not as attorneys. The rendering of legal advice is a function granted exclusively to those persons who have an attorney's license. The ability to act as a broker or sales person in real estate transactions is a function granted exclusively to those who hold state broker's or agent's licenses. Each professional group needs to understand and respect the functions of the other.

It is our belief, as a Bar Association Committee, that a legally "vigorous" standard form purchase agreement will make it easier for the real estate sales professionals to market residential properties. Here, the basic theme is that if all "significant and relevant terms and aspects of the transaction are addressed in the purchase agreement, a large number of presently existing problems in a typical transaction will be eliminated. It is our professional opinion as a Committee that there is simply too much conflict and too much civil litigation surrounding residential real estate transactions. In a sense, we are attempting to eliminate a portion of the real estate law practice. We suspect that the popularity of exculpatory clauses in customized brokerage purchase agreements is a result of increased litigation. It is our opinion that unnecessary conflict and litigation may be avoided if the purchase agreement adequately addresses each aspect of the transaction where conflict can be reasonably predicted

if the matter is not addressed.

If the professional organization for the real estate sales professionals choose to endorse a form, the Bar association has no problem with that endorsing association making the same kind of disclaimer that the Hennepin County Bar Association has made on this form. For example, it is not objectionable for an endorsed form to indicate that the Minnesota Association of Realtors® disclaims any liability arising out of use or misuse of this form.

**Finally, on the topic of the disclaimers and the warnings, MINNESOTA RULES, (formerly the Minnesota Code of Agency Regulations), as it affects real estate sales professionals, contains a specific prohibition for them: *they may not interfere with the ability of a buyer or seller to seek an attorney's advice in the course of the transaction.*** The real estate attorneys have all heard from too many people that a real estate sales person has advised them that they do not need to consult with an attorney. This is an unfortunate circumstance which should not be occurring. A general survey of real estate attorneys indicates that most of them believe that their early involvement in the transaction, especially before signing the purchase agreement, is always more beneficial than remedial involvement late in the course of the transaction. Stated another way, an ounce of legal prevention is worth a pound of cure. There are no real estate attorneys who have as their motive the desire to interfere with the real estate sales professional's ability to sell property. On the contrary, real estate attorneys are motivated to suggest changes or subtle corrections to the draft of a purchase agreement in order to ensure that the transaction goes smoothly. An attorney does not benefit at all from conducting his or her representation of the client in a manner which causes the transaction to fail.

It is this Committee's sincere hope that our work in the form of this purchase agreement and these official comments will be received well by the public and by the real estate sale professionals. We ask only that these materials be taken at face value and that no motive be implied other than that we have attempted to provide the public with a document that will enhance the residential real estate sales environment.

**30. SUCCESSOR CLAUSES AND ASSIGNMENT CLAUSES.** Neither form contains a successor/assignment clause nor calls attention to this concern. A broker or attorney drafting a purchase agreement needs to give consideration to both of these items when working with either a buyer or a seller.<sup>43</sup> Sample clauses for these concerns:

**RESTRICTION ON ASSIGNMENT.** Buyer may not sell, assign, or convey, or enter into an agreement to sell, assign, or convey Buyer's rights in this purchase agreement without the express written consent of Seller.

**RESTRICTION ON ASSIGNMENT.** Buyer may not sell, assign, or convey, or enter into an agreement to sell, assign, or convey Buyer's rights in this purchase agreement without the express written consent of Seller, except that Buyer's rights may be sold, assigned or conveyed to a new partnership in which Buyer is a general partner or to a corporation in which Buyer is a shareholder.

**RESTRICTION ON ASSIGNMENT / NO SUCCESSION IN INTEREST.** Neither party may sell, assign, or convey, or enter into an agreement to sell, assign, or convey that party's rights in this purchase agreement without the express written consent of the other party. Unless the express written consent is obtained, this agreement is not binding upon the assigns of Seller and Buyer. This agreement is not binding upon the heirs and successors of Seller or of Buyer.

**SELLER'S SUCCESSORS.** This agreement is binding upon the heirs, successors and assigns of Seller.

**BUYER'S SUCCESSORS.** This agreement is binding upon the heirs, successors and assigns of Buyer.

**PARTIES' SUCCESSORS.** This agreement is binding upon the heirs, successors and assigns of Seller and Buyer.

From the variety of scenarios, it is apparent that these issues need to be on the drafting checklist for every broker or lawyer who drafts purchase agreements.

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<sup>43</sup>Failure of the contract drafter to consider succession-in-interest through the death of one of the parties can have unpleasant consequences for the other party to the contract. *In re Estate of Severtson*, C7-97-1249, 1998 WL 88253 (Minn. App. 1998) (unpublished). A copy of the opinion may be obtained from the Unpublished Cases Archives for the Minnesota Court of Appeals at: <http://www.courts.state.mn.us/home>.

**31. ENTIRE AGREEMENT CLAUSE.**

MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT, M.S.B.A Real Property Form No. 1 (Rev. 1996; Rev. 1997; Rev. Aug. 1997)	Minnesota Association of Realtors® ["MAR"] PURCHASE AGREEMENT, Form No. MN:PA (8/96, 9/97, 9/98, 9/99, and 9/00 versions), published as Miller / Davis Form 1519A
[No comparable provision.]	[All versions: various line numbers...] <b>ENTIRE AGREEMENT.</b> This Purchase Agreement, any attached exhibits and any addenda or amendments signed by the parties, shall constitute the entire agreement between Seller and Buyer, and supersedes any other written or oral agreements between Seller and Buyer. This Purchase Agreement can be modified only in writing signed by Seller and Buyer.

**COMPARISONS.** The MSBA form lacks this provision not because it was not considered, but because it was considered and deemed to be superfluous and/or troublesome. The MAR provision includes a statement similar to the statute of frauds with respect to real property contracts.<sup>44</sup>

Any hornbook on contract law will recommend the inclusion of a clause like the MAR provision. But, the original HCBA Purchase Agreement Committee had two observations based on anecdotal reports from lawyers.

First, the typical Purchase Agreement is a “work in progress” from the day it is drafted to the closing day. It is not uncommon for a final amendment to the purchase agreement to be signed as the first document in the closing package. As contingencies are investigated and satisfied, new facts are disclosed which require on-going renegotiation of terms. If both parties are motivated toward a successful closing, they will carry the transaction on the basis of oral agreements, merging those agreements into the delivery of title at closing. Not all of these renegotiated terms actually receive formal treatment in a last day-of-closing amendment to the purchase agreement.

Second, MAR brokers and agents routinely disregard this contract term in the MAR form when operating in recognition of the “work in progress” status of the purchase agreement.

The present MSBA treatment of this issue is two-fold. First, all of the *addenda* to the purchase agreement are listed near the end of the form. Second, the Committee’s standing recommendation with respect to any later *amendment* document is that the amendment contain supersedure language to override similar terms in the original purchase agreement. In the event of a later dispute over the content of the complete purchase agreement, the fact finder will look to (1) the statute of

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<sup>44</sup>Statute of Frauds for real estate contracts: MINN. STAT. §513.05, specifically; and, MINN. STAT. §513.01(1), generally. §513.05 reads: **“Leases; contracts for sale of lands.** Every contract for the leasing for a longer period than one year or for the sale of any lands, or any interest in lands, shall be void unless the contract, or some note or memorandum thereof, expressing the consideration, is in writing and subscribed by the party by whom the lease or sale is to be made, or by the party’s lawful agent thereunto authorized in writing; and no such contract, when made by an agent, shall be entitled to record unless the authority of such agent be also recorded.”

frauds, (2) to all of the signed/initialed writings, and (3) to the conduct of the parties which might show acceptance of and reliance upon a modifying oral agreement.

The Committee has adopted this convention for identifying the attachments to the purchase agreement: an “addendum” is a supplemental attached form, prepared and initialed contemporaneously with the purchase agreement, and deemed to part of the original collection of “writings” that constitute the contract; an “amendment” is a supplemental attached form, changing or adding to the terms of the original agreement, and prepared and signed after the date of the original purchase agreement.

The supersedure language that is recommended for any *amendment* document can be something like the language shown in [Exhibit I](#).

The bottom line for lawyers is that it is far better to have all contract terms in writing and to commit amendments to writing as soon as they are needed.

**Contract Formation.** The issue of contract formation, that is, what writings, signatures<sup>45</sup>, and initials constitute a “complete contract” and a “meeting of the minds” remains problematic. It is very important to ensure that all terms of the contract are actually terms agreed upon by both parties. After the buyer has signed (thereby making the offer), any changes made to the purchase agreement by the seller or by the seller’s broker or agent must then be initialed by both parties: those changes stand as the seller’s counteroffer until accepted by the buyer. After both parties have signed, any changes made to the purchase agreement by either party or by the agent for either party must then be initialed by both parties or re-signed by both parties in order to have a fully formed contract. The mirror image rule of contract formation requires both parties to agree to all of the terms.<sup>46</sup>

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<sup>45</sup>With the adoption of the federal E-Sign law [Electronic Records in Global and National Commerce Act, S. 761(106th Congress, 2000) and the Uniform Electronic Transfer Act, attorneys are advised to use caution in expressing terms of agreement in any electronic communications (voice mail, answering machines, facsimile transmissions, and e-mail). The E-Sign law contains this definition: “(5) ELECTRONIC SIGNATURE- The term ‘electronic signature’ means an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.” Until the practice of real property law becomes acclimated to these new laws, it might be advisable to disclaim electronic transactions. One attorney on the committee had added this disclaimer to e-mail and fax transmissions: “Disclaimer Regarding Uniform Electronic Transactions Act (Minn. Stat. sections 325L.01--325L.19 [Minn. Sess. Laws 2000, Ch. 371]) [“UETA”]. If this communication concerns negotiation of a contract or agreement, UETA does not apply to this communication: contract formation in this matter shall occur only with manually-affixed original signatures on original documents.”

<sup>46</sup>Gresser v. Hotzler, 604 N.W.2d 379 (Minn. App. 2000), and cases cited therein.

**32. CLOSING COSTS.** None of the forms treat the issue of closing costs independently of the provisions where particular cost issues are resolved. Other than the discussion of “closing costs” contained in HUD regulations,<sup>47</sup> there does not seem to be any legal definition of “closing costs.” [A wealth of information is available on-line from HUD at <http://www.hud.gov/consum.html>.]

<b>MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT, M.S.B.A Real Property Form No. 1</b> (Rev. 1996; Rev. 1997; Rev. Aug. 1997)	Minnesota Association of Realtors® [“MAR”] <b>PURCHASE AGREEMENT</b> , Form No. MN:PA (9/98, 9/99, and 9/00 versions), published as Miller / Davis Form 1519A
[No comparable provision.]	<i>[Added to 9/98 &amp; 9/99 versions:]</i> All monetary sums are deemed to be United States currency for purposes of this agreement. <i>[Added to 9/99 version:]</i> Buyer or Seller may be required to pay certain closing costs which effectively reduce the proceeds from sale or increase the cash outlay at closing.

The MSBA form treats the following closing cost issues:

**A. Deed Preparation; Certificate of Real Estate Value.**

**6. DEED/MARKETABLE TITLE.** Upon performance by Buyer, Seller shall execute and deliver a \_  
\_\_\_\_ **Warranty Deed**,...

It is the Seller’s expense, implicit in this contract term, to pay for the preparation of the instrument whereby title is transferred to Buyer. In Minnesota, the deed must generally be accompanied by the Minnesota Department of Revenue’s Certificate of Real Estate

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<sup>47</sup>“Closing costs” as used herein means the charges for “settlement services,” as defined in: 12 USCA § 2602, Definitions. \*\*\* “ (3) the term "settlement services" includes any service provided in connection with a real estate settlement including, but not limited to, the following: title searches, title examinations, the provision of title certificates, title insurance, services rendered by an attorney, the preparation of documents, property surveys, the rendering of credit reports or appraisals, pest and fungus inspections, services rendered by a real estate agent or broker, the origination of a federally related mortgage loan (including, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of loans), and the handling of the processing, and closing or settlement;” \*\*\*

Other citations where closing costs are discussed: 12 USCA § 2603-2604. 24 CFR § 3500.2. RESPA Reg. X, 24 CFR Pt. 3500 App. C, 12 U.S.C.A. foll. § 2617; 12 USCA, 24 CFR Pt. 3500 App. C, APPENDIX C--SAMPLE FORM OF GOOD FAITH ESTIMATE.

Value [”CRV”].<sup>48</sup> Although signed by the Buyer, it is customary for the Seller to prepare the CRV.

## B. Taxes and Special Assessments.

### 7. REAL ESTATE TAXES AND SPECIAL ASSESSMENTS. [Text omitted.]

When properly completed, this section of the MSBA form should resolve almost all of the issues regarding taxes and special assessments. See the discussion of pending revisions to this section of the form in [Part 7](#) of this article.

## C. Truth-in-Housing Inspection Reports and Disclosures.

### 12. TRUTH-IN-HOUSING. [Text omitted.]

The cost of obtaining the inspection is paid by the Seller in all cities where the Committee has examined the local ordinances. Routinely, this cost is paid prior to the signing of the purchase agreement by Buyer. Consequently, this cost should not appear on the closing statement.<sup>49</sup> If it does appear, it will likely appear as “paid outside of closing” or “POC.”<sup>50</sup>

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<sup>48</sup>MINN. STAT. §272.115 (1999) reads, in part: “**Certificate of value; filing.** Subdivision 1. Requirement. Except as otherwise provided in subdivision 5, whenever any real estate is sold for a consideration in excess of \$1,000, whether by warranty deed, quitclaim deed, contract for deed or any other method of sale, the grantor, grantee or the legal agent of either shall file a certificate of value with the county auditor in the county in which the property is located when the deed or other document is presented for recording.”

MINN. STAT. §287.241, Subd. 2 (1999). “**Notice of certificate of value.** No deed or instrument providing for the transfer of title to real property that is subject to the tax as provided in section 287.21, and no executory contract for the sale of land, shall be recorded unless such deed or instrument is accompanied by a notice from the county auditor that a certificate of value was filed in the auditor’s office as provided in section 272.115.”

<sup>49</sup>“Settlement Statement” and “Closing Statement” are used interchangeably in Minnesota and are generally in reference to the HUD-1 Settlement Statement or similar transaction accounting forms.

<sup>50</sup>“POC” is a term of art discussed in: 12 USCA, 24 CFR Pt. 3500 App. A, APPENDIX A--INSTRUCTIONS FOR COMPLETING HUD-1 AND HUD-1A SETTLEMENT STATEMENTS; SAMPLE HUD 1 AND HUD 1A STATEMENTS. “The settlement agent shall complete the HUD-1 to itemize all charges imposed upon the Borrower and the Seller by the Lender and all sales commissions, whether to be paid at settlement or outside of settlement, and any other charges which either the Borrower or the Seller will pay for at settlement. Charges to be paid outside of settlement, including cases where a nonsettlement agent (i.e., attorneys, title companies, escrow agents, real estate agents or brokers) holds the Borrower’s deposit against the sales price (earnest money) and applies the entire deposit towards the charge for the settlement service it is rendering, shall be included on the HUD-1 but marked “P.O.C.” for “Paid Outside of Closing” (settlement) and shall not be included in computing totals. P.O.C. items should not be placed in the Borrower or Seller columns, but rather on the appropriate line next to the columns.”



**D. Prorations (Other Than Taxes).**

**13. POSSESSION.** Seller shall deliver possession of the property not later than \_\_\_\_\_ closing. All interest, fuel oil, liquid petroleum gas, and all charges for city water, city sewer, electricity, and natural gas shall be prorated between the parties as of \_\_\_\_\_.

This paragraph requires that meter readings be taken the day before or the day of closing and that final bills be obtained from the respective utilities. If the meter readings are not available, there should be a small escrow from Seller's proceeds. If the LP tank has gas remaining in it, Buyer should pay Seller for that gas.

**E. Production of Title Evidence.**

**14. EXAMINATION OF TITLE.** To demonstrate that Seller's title is good and marketable of record, within a reasonable time after acceptance of this Purchase Agreement, Seller shall furnish Buyer with an Abstract of Title or a Registered Property Abstract certified to date including proper searches covering bankruptcies and state and federal judgments, federal court judgment liens in favor of the U.S., liens, and levied and pending special assessments.

Implicit in this contract term is Seller's cost for producing the necessary evidence of title. This is well understood in Minnesota custom and practice. There is no legal substitute for the Abstract of Title (for abstract property) or for a Registered Property Abstract (for Torrens property). If Seller has lost the Abstract of Title, the parties can agree to consummate the transaction on the basis of an owner's title insurance policy. Seller should readily agree to contribute part of the cost of the title insurance in an amount roughly equal to the typical cost of updating the missing Abstract, perhaps with a cap such as, "...in an amount not to exceed \$250.00." See the lengthy discussion of this "title evidence" issue at [Part 14](#) of this article.

**F. Production of Documents Necessary to Deliver Good and Marketable Title.**

**6. DEED/MARKETABLE TITLE.** Upon performance by Buyer, Seller shall execute and deliver a \_\_\_\_\_ **Warranty Deed**, joined in by spouse, if any, conveying marketable title of record...[text omitted]  
**14. EXAMINATION OF TITLE.** To demonstrate that Seller's title is good and marketable of record...[text omitted]  
**15. TITLE CORRECTIONS AND REMEDIES.** Seller shall have 120 days from receipt of Buyer's written title objections to make title marketable. [Text omitted.]

These contract terms, when read together, make it abundantly clear that it is Seller's expense to pay for the preparation of and recording of documents necessary to demonstrate and deliver good and marketable title. All of these costs, if not paid prior to closing, should appear as Seller's expense on the settlement statement.



### G. Costs of Subdivision.

**17. SUBDIVISION OF LAND.** If this sale constitutes or requires a subdivision of land owned by Seller, Seller shall pay all subdivision expenses...[text omitted].

In order for the deed bearing the new description to be certified<sup>51</sup> by the local city or town clerk as an “approved subdivision of land,” all of the necessary costs will have been paid by Seller. Seller will then bring the certified deed to the closing. If there are any remaining cost items for the subdivision, they should appear as Seller’s expense on the settlement statement. The parties need to be prepared to pay all of the current property taxes on newly subdivided lands and the Seller’s residue parcel.<sup>52</sup>

### H. Well Disclosures.

**19. WELL DISCLOSURE.** *[Check one of the following: ]*  
 Seller certifies that Seller does not know of any wells on the real property.  
 Wells on the real property are disclosed by Seller on the attached Well Disclosure form.

The statute requires two forms: a Well Disclosure to accompany the purchase agreement; and, a Well Disclosure Certificate to accompany the deed or contract-for-deed. Implicit in the statute is that the preparation and delivery of these documents is Seller’s expense.

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<sup>51</sup>MINN. STAT. § 272.162 “**Restrictions on transfers of specific parts.**

Subdivision 1. Conditions restricting transfer. When a deed or other instrument conveying a parcel of land is presented to the county auditor for transfer or division under sections 272.12, 272.16, and 272.161, the auditor shall not transfer or divide the land or its net tax capacity in the official records and shall not certify the instrument as provided in section 272.12, if: (a) The land conveyed is less than a whole parcel of land as charged in the tax lists; (b) The part conveyed appears within the area of application of municipal subdivision regulations adopted and filed under section 462.36, subdivision 1; and (c) The part conveyed is part of or constitutes a subdivision as defined in section 462.352, subdivision 12.

Subd. 2. [Text omitted here.]

Subd. 3. Applicability of restrictions. This section does not apply to the exceptions set forth in section 272.12. This section applies only to land within municipalities which choose to be governed by its provisions. A municipality may choose to have this section apply to the property within its boundaries by filing a certified copy of a resolution of its governing body making that choice with the auditor and recorder of the county in which it is located.”

<sup>52</sup>MINN. STAT. § 272.121 (1999): “**Current tax on divided parcels.**

Subdivision 1. **Certification of payment.** Except as provided in subdivision 2, if a deed or other instrument conveys a parcel of land that is less than a whole parcel of land as described in the current tax list, the county auditor shall not transfer or divide the land in the auditor's official records, and the county recorder shall not file and record the instrument, unless the instrument of conveyance contains a certification by the county treasurer that the **taxes due in the current tax year for the whole parcel have been paid** [emphasis added]. This certification is in addition to the certification for delinquent tax required by section 272.12.

The statute indicates that the filing fee for the Certificate is Buyer's expense.<sup>53</sup> (Regardless of the statute, in the metropolitan area the fee for filing the Certificate is often paid by Seller.)

#### I. Seller's Affidavit.

**23. SELLER'S AFFIDAVIT.** At closing, Seller shall supplement the warranties and representations in this Purchase Agreement by executing and delivering a Minnesota Uniform Conveyancing Blank [Form No. 116-M, 117-M, or 118-M] Affidavit of Seller.

By this contract term, production of the affidavit is Seller's expense. If there is no obvious reason for recording the affidavit, Buyer has the option of holding the original in Buyer's records or recording the affidavit at Buyer's expense. However, if the affidavit contains statements that are necessary to resolve a minor title problem, then the recording of the affidavit should be Seller's expense for the same reasons discussed at F., above.

#### J. Closer's Fees.

**24. CLOSING.** Closing shall be at the office of Seller's lawyer, Buyer's title insurer, or at some other mutually agreeable location.

This contract term does not explicitly disclose who pays for the cost of the closers involved in preparing closing documents, conducting the closing, and recording the documents. As discussed above, Seller has the expense of preparing and delivering the title documents. Often that expense is incurred at the office of Seller's lawyer. The customary practice is for Seller to pay the *title closer's* fee if the closing is conducted at a title company. A "document preparation fee" might be included in the title closer's fee or it might be listed separately on the settlement statement.

The *loan closer's* fee is generated because of the Buyer's mortgage financing. It is the custom to charge the loan closer's fee to Buyer.

This analysis breaks down at the closing table when there is only one *closer* present at the table (although separate title closers and loan closers are not uncommon) and both a title closing fee and a loan closing fee appear on the settlement statement. If the same closer has prepared both parts of the closing, the fees are earned and should be allocated to Seller and Buyer.

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<sup>53</sup>MINN. STAT. §103I.235 (1999), Subdivision 1(i), reads, in part: "\*\*\* The county recorder or registrar of titles shall collect from the buyer [emphasis added] or the person seeking to record a deed or other instrument of conveyance, a fee of \$20 for receipt of a completed well disclosure certificate. \*\*\*"

Note: Minnesota law does not allow a closer to charge any fee for the closing if (1) the closer has failed to give advance notice<sup>54</sup> of the amount of the closing fee to be charged, or (2) the closing is conducted without a title insurance commitment or an attorney's title opinion.<sup>55</sup>

**K. Financing Terms.** Financing terms, usually contained in a supplement or addendum to the purchase agreement, will show a number of negotiated cost items. Examine the addendum to determine how to allocate the various expense items generated by the financing terms.

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<sup>54</sup>MINN. STAT. § 82.19 Subd. 6: “**Closing agents.** A real estate closing agent may not charge a fee for closing services to a borrower, and a borrower may not be required to pay such a fee at settlement, if the fee was not previously **disclosed in writing at least one business day before the settlement** [Emphasis added. *Compare to 5 day notice requirement in MINN. STAT. § 507.45.*]. This disclosure requirement will be considered satisfied if a disclosure is made or an estimate given under section 507.45.

Subd. 8. **Closing services.** No real estate broker, salesperson, or closing agent shall require a person to use any particular lender, licensed attorney, real estate broker, real estate salesperson, real estate closing agent, or title company in connection with a residential real estate closing.”

<sup>55</sup>MINN. STAT. § 507.45: “**Residential real estate closings.** Subdivision 1. By whom; fee authorized. Residential real estate closing services may be provided and a fee charged by a licensed attorney, real estate broker, real estate salesperson, and real estate closing agent. Subd. 2. Notice of closing agent's fee. No charge for closing services, except a charge disclosed under Regulation Z, Code of Federal Regulations, title 12, section 226, and except a charge for which an estimate has been given pursuant to the Federal Real Estate Settlement Procedures Act, and regulations thereunder, may be made by a closing agent unless the party to be charged is **informed of the charge in writing at least five business days before the closing** by or on behalf of the party charging for the closing services. Subd. 3. Requirements for real estate personnel. If the closing services are to be provided by a real estate broker, real estate salesperson, or real estate closing agent, the following regulations shall apply. (a) The written contract for closing services shall state in at least 10-point type that the real estate broker, real estate salesperson, or real estate closing agent has not and, under applicable state law, may not express opinions regarding the legal effect of the closing documents or of the closing itself. (b) **No closing fee may be charged if a closing is performed without either a mortgagee's or owner's title insurance commitment or a legal opinion regarding the status of title.** [Emphasis added.]

Subd. 4. Choice of closer; notice. (a) No real estate salesperson, broker, attorney, auctioneer, builder, title company, financial institution, or other person making a mortgage loan may require a person to use any particular licensed attorney, real estate broker, real estate salesperson, or real estate closing agent in connection with a residential real estate closing. (b) All listing agreements must include a notice informing sellers of their rights under this subdivision. The notice must require the seller to indicate in writing whether it is acceptable to the seller to have the licensee arrange for closing services or whether the seller wishes to arrange for others to conduct the closing. The notice must also include the disclosure of any controlled business arrangement, as the term is defined in United States Code, title 12, section 1602, between the licensee and the real estate closing agent through which the licensee proposes to arrange closing services.”

**L. Deed Tax.** The general amount of the deed tax is determined by statute.<sup>56</sup> In the metropolitan area, additional deed taxes are allowed for agricultural conservation,<sup>57</sup> for Ramsey County transfers,<sup>58</sup> and for Hennepin County transfers.<sup>59</sup> All of these taxes are paid by the Seller.<sup>60</sup> Payment of the deed tax is a prerequisite for recording the deed or other instrument of conveyance.<sup>61</sup>

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<sup>56</sup>MINN. STAT. §287.21 (1999): "**Imposition of tax; determination of tax.** Subdivision 1. **Determination of tax.** (a) A tax is imposed on each deed or instrument by which any real property in this state is granted, assigned, transferred, or otherwise conveyed. The tax applies against the net consideration. (b) The tax is determined in the following manner: (1) when transfers are made by instruments pursuant to mergers, consolidations, sales, or transfers of substantially all of the assets of the entities as defined in section 287.20, subdivision 9, pursuant to plans of reorganization, the tax is \$1.65; (2) when there is no consideration or when the consideration, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, is \$500 or less, the tax is \$1.65; or (3) when the consideration, exclusive of the value of any lien or encumbrance remaining at the time of sale, exceeds \$500, the tax is \$1.65 plus \$1.65 for each additional \$500 or fraction of that amount. (c) The tax is due at the time a taxable deed or instrument is presented for recording."

<sup>57</sup>MINN. STAT. §40A.152 (1999): "**County conservation fee; account.** Subdivision 1. Fee. A county that is a metropolitan county under section 473.121, subdivision 4, has allowed exclusive agricultural zones to be created under this chapter, or has elected to become an agricultural land preservation pilot county, shall impose an additional fee of \$5 per transaction on the recording or registration of a mortgage subject to the tax under section 287.05 and an additional \$5 on the recording or registration of a deed subject to the tax under section 287.21." [Balance of statute omitted here.]

<sup>58</sup>MINN. STAT. §383A.80 (1999): "**Ramsey county deed and mortgage tax.** Subdivision 1. Authority to impose; rate. (a) The governing body of Ramsey county may impose a mortgage registry and deed tax. (b) The rate of the mortgage registry tax equals one cent for each \$100 or fraction of the principal. (c) The rate of the deed tax equals five cents for each \$500 or fraction of the amount. Subd. 2. General law provisions apply. The taxes under this section apply to the same base and must be imposed, collected, administered, and enforced in the same manner as provided under chapter 287 for the state mortgage registry and deed taxes. All the provisions of chapter 287 apply to these taxes, except the rate is as specified in subdivision 1, the term "Ramsey county" must be substituted for "the state," and the revenue must be deposited as provided in subdivision 3. Subd. 3. Deposit of revenues. All revenues from the tax are for the use of the Ramsey county board of commissioners and must be deposited in the county's environmental response fund under section 383A.81. Subd. 4. Expiration. The authority to impose the tax under this section expires January 1, 2003."

<sup>59</sup>MINN. STAT. §383B.80 (1999): Hennepin County was accorded the same additional deed tax and mortgage tax that Ramsey County has (cited above).

<sup>60</sup>MINN. STAT. §287.24 (1999). "**Persons liable [for the Deed Tax].** Subdivision 1. **General rule.** Any person who grants, assigns, transfers, or conveys any real property by a deed or instrument subject to the tax imposed by section 287.21 shall be liable for such tax but no public official shall be liable for a tax with respect to any instrument executed by the official in connection with official duties."

<sup>61</sup>MINN. STAT. §287.241 (1999): "**Statement of tax due or exemption; recording or registering of documents.** Subdivision 1. **Statement of tax due or exemption.** No deed or instrument, taxable under the provisions of section 287.21, shall be recorded unless it contains the statement of the grantor or grantee, or any successor in interest, setting forth the amount of tax due under this chapter or that it is exempt from tax."

**M. Mortgage Registry Tax.** The mortgage registry tax is another document tax charged on debt instruments. The amount of the tax is determined by statute and is paid by the Buyer.<sup>62</sup> Ramsey and Hennepin Counties may charge an additional mortgage registry tax. See the notes for the discussion of deed taxes, above.

**N. Inspections.** Other than inspections required by truth-in-housing ordinances (discussed above), inspections by professional housing inspectors, engineers, or environmental scientists are costs which are determined by Buyer in the selection of those inspectors. These costs, unless otherwise negotiated in the agreement, are normally Buyer's expenses.

**O. A Paragraph to Resolve Closing Costs.** The Committee is considering the suggestion that a paragraph needs to be added to the purchase agreement form to resolve payment of the various closing costs. Although the lawyers, brokers, title companies,<sup>63</sup> and lenders are accustomed to certain allocations of costs, Seller and Buyer are probably unfamiliar with the laws and customs. If for no other reason than to remove the opportunity for argument at the closing table, a section could be added to the agreement to list and allocate the costs. That section might read as follows:

**CLOSING COSTS.** The costs of closing, if not determined by other provisions of this Agreement, shall be paid as follows.

**A. SELLER'S COSTS.** Seller shall pay the following at closing:

1. Document preparation costs, recording fees, and deed taxes for documents necessary to establish good and marketable title in Seller's name.
2. Document preparation costs for Seller's deed or contract-for-deed, Certificate of Real Estate Value, Seller's affidavit, Well Disclosure Certificate (if required), and any ancillary documents necessary to transfer good and marketable title by Seller's deed or contract-for-deed.
3. Deed tax on Seller's deed and, in the metropolitan area, the Agricultural Preservation deed tax charged under MINN. STAT. §40A.152.
4. Title closer's fee if separately itemized on the settlement statement. If Buyer is obtaining new mortgage financing and the closer's fee is not separated into a "title closing fee" and a "loan closing fee," then Seller shall pay one half of the closer's fee.
5. And also the following costs: \_\_\_\_\_

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<sup>62</sup>MINN. STAT. §287.035. "**Imposition of [mortgage registry] tax.** A tax of 23 cents is imposed upon each \$100, or fraction thereof, of the debt or portion of a debt that is secured by any recorded mortgage of real property located in this state. **The person liable for the tax is the mortgagee** [emphasis added]. The tax is not imposed on the lawful interest amounts that may accrue with respect to a debt." Universally, the mortgagee passes the tax obligation on to the mortgagor (buyer) as a cost of closing the loan.

<sup>63</sup>**First American Title Insurance Company Underwriting Library. Volume III: Real Estate Practices: A State-by-State and International Guide. Minnesota: Closing Costs and Payment Splits.** "The seller usually pays the real estate closing fee and abstracting costs. The buyer usually pays for the mortgage closing fee and for lender's and owner's title insurance policies. A Mortgage Registry Tax and a conservation fee is paid by the mortgagor, and a State Deed Tax and a conservation fee is paid by the seller." <http://ul.firstam.com>

**B. BUYER'S COSTS.** Buyer shall pay the following at closing:

1. Document preparation costs, recording fees, and mortgage registry taxes for documents necessary for Buyer's mortgage financing.
2. Document filing fee for a Well Disclosure Certificate, if applicable.
3. The Agricultural Preservation Document tax on Buyer's mortgage deed charged in the metropolitan area under MINN. STAT. §40A.152.
4. Loan closer's fee if separately itemized on the settlement statement. If Buyer is obtaining new mortgage financing and the closer's fee is not separated into a "title closing fee" and a "loan closing fee," then Buyer shall pay one half of the closer's fee.
5. And also the following costs: \_\_\_\_\_

**33. APPRAISAL.** As the prices for homes have increased, there has been an increasing desire on the part of Buyers to be assured that they are not paying too much for the property. Appraisals, separate from the appraisals required by lenders, frequently appear as a Buyer contingency. Since Minnesota began to regulate appraisers,<sup>64</sup> the cost of residential appraisals has increased. Buyers often bargain for an appraisal contingency. An example of an appraisal contingency provision is as follows:

**Contingency for Appraisal.** Buyer's obligation to close under this Purchase Agreement is contingent upon Buyer obtaining, at Buyer's expense, by *[Contingency Date]*\_\_\_\_\_ an appraisal of the property certified to Buyer as of a current date (no earlier than the date of this Purchase Agreement) prepared, dated and signed by a Minnesota licensed real estate appraiser, certifying an appraised value for the real property not less than the sale price stated above. Buyer shall promptly retain an appraiser but shall not disclose the stated selling price to the appraiser. If the appraiser certifies an appraised value that is less than the sale price stated above, Buyer may, at Buyer's option, deliver a copy of the appraisal to Seller and Seller shall then have two options: (1) reduce the selling price to the appraised value; or, (2) declare this agreement void, refund all earnest money to Buyer. If Buyer does not obtain an appraisal by the Contingency Date or if Buyer obtains an appraisal but does not disclose it to Seller by the Contingency Date, then this contingency shall be deemed waived by Buyer.

**34. ZONING CERTIFICATION.** Zoning certification has become an issue for residential and recreational properties through the last few years, driven by two unrelated trends. The first trend is in the cities. The cities are witnessing renewal and regentrification of older neighborhoods. That brings concerns for how older homes can be remodeled and renewed. The concerns over nonconforming structure, nonconforming use, nonconforming site plan/location, and nonconforming size, all come into play with the remodeling of an older home.

The second trend is the awakening by local units of government in "lake country" to the impact of environmental regulations, especially the state laws regulating on-site sewage treatment

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<sup>64</sup>MINN. STAT. Chapter 82B, generally; Section 82B.08, in particular. MINN. RULES Ch. 2808.

systems. The owners of lakefront properties are discovering that their plans for expansion or remodeling of the cabin are thwarted by new lakefront setbacks, nonconforming septic systems, nonconforming location of the cabin and so forth.

Buyers of older homes or of lakefront properties should be counseled to consider a preclosing contingency to determine if they will be permitted to do what they intend to do with the property. Brokers will regularly object to these provisions in the purchase agreement because of the additional time to obtain approvals (delaying the closing) or because of the perceived risk that the contingency cannot be met (causing the transaction to fail). But, it is generally in the Buyer's best interest to look before leaping. A contingency clause for this might be similar to the provisions contained in M.S.B.A. Real Property Form No. 30, (1997; Revised August, 1997.)

**Minnesota Vacant Lot Purchase Agreement -- Single Dwelling:**

**BUYER'S DEVELOPMENT EVALUATION.** This Purchase Agreement is contingent upon Buyer obtaining by *[date]* \_\_\_\_\_, all necessary approvals, architectural reviews, licenses, zoning, conditional use permits, variances, building permits, environmental permits, environmental approvals, and all other necessary permits, licenses and approvals (or has obtained reasonable assurances acceptable to Buyer, in its sole discretion, that such approvals will be available) for the intended development of *[briefly describe]*: remodeling / expansion of the existing dwelling unit and accessory buildings

Buyer shall promptly proceed to obtain such permits, licenses, approvals and/or assurances. Seller shall assist Buyer in applying for rezoning, necessary licenses, conditional use permits, variances, building permits, environmental permits, and all other necessary permits for the development of the property as Buyer may determine to be necessary, but at no cost to Seller.

This Purchase Agreement is also contingent upon Buyer determining by *[date]* \_\_\_\_\_ that the proposed development can be constructed on the property without the use of piling, extraordinary filling, or similar extraordinary land preparation steps which would make it financially impractical for Buyer's intended use. All tests and inspections shall be conducted in such a manner so as to prevent any damage to the property. Buyer shall promptly determine the soil conditions of the property and make the necessary calculations. Buyer shall promptly pay for all services rendered in conducting such tests and inspections and will not allow any mechanic's liens to attach to the property. Buyer shall indemnify Seller from all such costs, expenses and liens. Buyer and its authorized agents, shall have the limited right, from the date of this Purchase Agreement, to enter upon the property to make such surveys, measurements, soil tests, and other tests as Buyer deems necessary, but without expense to Seller.

Included within this contingency is Buyer's verification, at Buyer's expense, that utilities sufficient for the intended development can be provided to the property at costs which are reasonable for Buyer.

**35. OTHER ISSUES IN THE M.A.R. FORM.**

**A. Arbitration.** The MAR form contains clauses regarding the MAR's arbitration system. The MSBA supports alternative dispute resolution ["ADR"] mechanisms, but not the MAR's system. Obviously, the MSBA form should not make reference to the MAR system. With the incorporation of thoughtful, non-binding ADR mechanisms into the rules of civil procedure, it is

generally inadvisable to recommend a binding arbitration system to sellers and buyers. The lawyer representing either a seller or a buyer should advise the client not to select the MAR arbitration system without first counseling the client on the legal choices and the rights and remedies that are being lost by agreeing to MAR arbitration.

**B. Dual Agency.** A full examination of the problems with dual agency is beyond the scope of this paper. Suffice it to say that the current Minnesota statutory scheme on dual agency<sup>65</sup> does not work to protect the interest of the consumers. Most lawyers who have examined the subtle and largely unpublicized changes in the statutes recognize that the statutes result in a deception when viewed from the perspective of the consumer. Having made that recognition, the lawyer will likely advise the clients to never participate in dual agency transactions. The consumer is expecting an agent who can keep the consumer's confidential information and who can be relied upon for advice given in the context of undivided loyalty. But, the consumer does not receive such an agent in a dual agency setting. Worse, there is no mechanism in the new law to truly advise and alert the public, i.e., to provide the public with a genuine understanding that a dramatic loss of fiduciary obligation has taken place. Brokers were formerly able to say "trust me" and, under single agency, were worthy of the trust that accompanies the agent's fiduciary responsibility to the principal. The new statute allows the broker to obtain confidential information while in a position of fiduciary responsibility to one party and then, later, abandon the fiduciary responsibility in order to "represent" the interests of the other party. The lawyer representing either a seller or a buyer should advise the client not to participate in any dual agency transaction.

*[NOTE: In the 9/97 version of the MAR form, at lines 147-152, there is a new "Notice:"]*

<p><b>NOTICE</b> [Licensee]_____ of [Company]_____ is (circle one) Seller's Agent / Buyer's Agent / Dual Agent / Non-Agent</p> <p>[Licensee]_____ of [Company]_____ is (circle one) Seller's Agent / Buyer's Agent / Dual Agent / Non-Agent</p> <p><b>THIS NOTICE DOES NOT SATISFY MINNESOTA STATUTORY AGENCY DISCLOSURE REQUIREMENTS.</b></p>
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The purpose of this new "notice" is not clear. It continues to be carried in the 9/98, 9/99, and 9/00 versions of the MAR form.

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<sup>65</sup>MINN. STAT. Chapter 82, generally.



The 9/98, 9/99, and 9/00 versions of the MAR form also contain similar versions of this legally questionable<sup>66</sup> combination of contract terms and statutorily-required dual agency disclosure.

DUAL AGENCY REPRESENTATION	
<b>PLEASE CHECK ONE OF THE FOLLOWING SELECTIONS:</b>	
<input type="checkbox"/> DUAL AGENCY REPRESENTATION DOES NOT APPLY IN THIS TRANSACTION. Disregard lines 165-178.	
<input type="checkbox"/> DUAL AGENCY REPRESENTATION DOES APPLY IN THIS TRANSACTION. Complete the disclosure in lines 166-178.	
Broker represents both the Seller(s) and the Buyer(s) of the property involved in this transaction, which creates a dual agency. This means that Broker and its salespersons owe fiduciary duties to both Seller(s) and Buyer(s). Because the parties may have conflicting interests, Broker and its salespersons are prohibited from advocating exclusively for either party. Broker cannot act as a dual agent in this transaction without the consent of both Seller(s) and Buyer(s). Seller(s) and Buyer(s) acknowledge that:	
(1) confidential information communicated to Broker which regards price, terms, or motivation to buy or sell will remain confidential unless Seller(s) or Buyer(s) instructs Broker in writing to disclose this information. Other information will be shared;	
(2) Broker and its salespersons will not represent the interest of either party to the detriment of the other; and	
(3) within the limits of dual agency, Broker and its salespersons will work diligently to facilitate the mechanics of the sale.	
With the knowledge and understanding of the explanation above, Seller(s) and Buyer(s) authorize and instruct Broker and its salespersons to act as dual agents in this transaction.	
_____	_____
Seller	Buyer
_____	_____
Seller	Buyer
_____	_____
Date	Date

Although the box includes the statutory text, it also contains terms that precede the statutory text. This placement of terms that call for an informed decision prior to the text that explains the decisions to be made, plus the lack of meaningful information and genuine disclosure to the seller and buyer in this agreement, is a disservice to the consumers of real estate services. **The seller and buyer are not alerted that they need to consult with an attorney before allowing the broker or agent to reduce the level of services and responsibilities (or completely abandon the services and responsibilities) originally offered in the representation of their respective interests: fiduciary responsibility from agent to principal; confidentiality; and professional expertise.** The seller and buyer are not properly informed that a “dual agent” is no agent at all since an agent needs a principal to serve, and, that in dual agency, the agent will attempt to serve two masters.

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<sup>66</sup>This agreement is legally questionable because it does not appear to strictly comply with Minn. Stat. section 82.197 in that it includes the contract terms, “**PLEASE CHECK ONE OF THE FOLLOWING SELECTIONS:**  DUAL AGENCY REPRESENTATION DOES NOT APPLY IN THIS TRANSACTION. Disregard lines 165-178.  DUAL AGENCY REPRESENTATION DOES APPLY IN THIS TRANSACTION. Complete the disclosure in lines 166-178. within the boxed text. The 9/98 and 9/99 versions contained this contract term: “DUAL AGENCY REPRESENTATION DOES / DOES NOT APPLY IN THIS TRANSACTION. -----(strike one)----- ” within the boxed text. It appears to be incorrect to obtain the agreement of the parties to submit to dual agency with text that appears before the required statutory disclosure.

**C. Contingency Addendum.** The 9/98, 9/99, and 9/00 versions of the MAR form contain this term:

This Purchase Agreement **IS / IS NOT** subject to a Contingency Addendum for sale of Buyer's property. (If answer is **IS**, see attached addendum.)

**D. Cancellation of Earlier Purchase Agreement.** The 9/98, 9/99, and 9/00 versions of the MAR form contain this term:

This Purchase Agreement **IS / IS NOT** subject to cancellation of a previously written Purchase Agreement dated \_\_\_\_\_

It is a questionable practice to place consumers into “stacked” purchase agreements. By writing the second purchase agreement, contingent upon the failure of the first purchase agreement, the seller or the selling agent/broker can place pressure on the buyer in the first agreement to perform, usually at the cost of relinquishing buyer’s preclosing contingencies.

**E. “Final Acceptance Date.”** A vague term appeared in the 9/99 version of the MAR form and continues to be carried in the 9/00 version. This appears after the signatures near the end of the form:

**FINAL ACCEPTANCE DATE** \_\_\_\_\_

Without more text, this term is problematic. Is it a place for buyer to limit the amount of time accorded to seller to accept buyer’s offer? Or is this intended to be someone’s (the broker’s?) determination that the contract has been accepted on a particular date? Attorneys representing either seller or buyer should strike this term or revise it to make it certain and meaningful.

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### 36. OTHER FORMS.

**A. Other Purchase Agreement Forms for Sale or Resale.** In addition to the MSBA Form and the MAR Form, there are other purchase agreement forms available from legal forms publishers. Each one has different provisions for examination of title and different disclosures. The Committee has been provided with copies of out-of-state publications which contain supposedly “universal” purchase agreement terms. Every state’s property laws and conveyancing laws are unique to the state. The Committee has not seen any other form which works as well for Minnesota consumers as the MSBA form.

**B. Forms for Other Residential Real Estate Situations.** In 1997, the MSBA published the first editions of three vacant land purchase agreement forms:

**M.S.B.A. Real Property Form No. 30** (1997; Revised August, 1997.) **Minnesota Vacant Lot Purchase Agreement -- Single Dwelling.**

**M.S.B.A. Real Property Form No. 31** (1997; Rev. August, 1997.) **Minnesota Vacant Land Purchase Agreement -- Multiple Dwelling.**

**M.S.B.A. Real Property Form No. 32** (1997; Rev. August, 1997) **Minnesota Vacant Land Purchase Agreement -- Residential Development Tract.**

Although similar in the treatment of most issues, Form No. 30 is the most consumer-oriented and Form No. 32 is the least consumer-oriented of the these three forms. The detailed explanation of the purposes of these forms and the differences between them and Real Property Form No. 1 can be found in the supplemental materials as [Exhibit N](#).

The Committee is still engaged in the arduous task of creating a recommended New Construction Purchase Agreement. A copy of the most recent draft is not included in this article since it is still in the drafting stage. It can be loosely described as an amalgam of Real Property Forms Nos. 1, 30, and 91 (Construction Contract).

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### 37. AVOID TROUBLE: A CHECKLIST OF TERMS THAT NEED TO BE CHANGED IN THE M.A.R. FORM.

To best represent either a seller or buyer, the lawyer should utilize either Method A or Method B, below, when presented with an unsigned MAR purchase agreement form and the request to review it for the client.

**Method A.** Draft an addendum to the MAR purchase agreement which contains the MSBA approach to the issues as discussed in 1, 3, 4, 6(e), 7, 9, 10, 12, 14, 15, 16, 18, 20-24, and 26, above. The addendum should utilize the MSBA language and should indicate that the addendum supersedes the similar terms in the MAR form. An example of what this form might look like is included as [Exhibit J](#) to this article.

**Method B.** Discard the proposed MAR form and rewrite the transaction on the MSBA form.

**Under Either Method A or B.** Under “other terms,” augment the agreement for the successor and assignment issues at 30., above, and for any other issues that are not presently covered by the MSBA form.

#### **IV. THE FUTURE**

**The Future.** The Residential Real Estate Committee of the MSBA Real Property Council has several situational purchase agreement forms adopted, pending, or proposed. They are listed on [Exhibit G](#). The Committee has also adopted a number of ancillary forms, as well as a consumer oriented Listing Agreement.

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## LIST OF EXHIBITS FOLLOWING THE TEXT:

- A. Minnesota State Bar Association's **MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT**, M.S.B.A. Real Property **Form No. 1** (Revised 1997; Revised August, 1997).

To view the form, click here

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[FORM](#)

- B. Minnesota Association of Realtors® [“MAR”] **PURCHASE AGREEMENT, MN-PA (9/99)**. Earlier versions of this form not reprinted here. Discussion of various elements of the earlier versions can be found throughout the article.

To view the form, click here

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[FORM](#)

- C. **Well Disclosure Form to Accompany the Purchase Agreement**. **Not reprinted here in the Adobe® Web version**. This form may be ordered on-line from Miller / Davis Company at <http://www.millerdavis.com>.

- D. **Well Disclosure Certificate for Completion at Closing**. **Not reprinted here in the Adobe® Web version**. This form may be ordered on-line from Miller / Davis Company at <http://www.millerdavis.com>. Information about well disclosures in MINNESOTA STATUTES and in MINNESOTA RULES can be obtained from the State of Minnesota web site at: <http://www.revisor.leg.state.mn.us/>.

- E. **Sewer System Disclosure to Accompany the Purchase Agreement or to be used on a “transfer” that does not involve a Purchase Agreement**. This form is the M.S.B.A. Real Property **Form No. 14** (Pending 1997), **DISCLOSURE OF SEWAGE TREATMENT SYSTEM**.

To view the form, click here

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[FORM](#)

- F. **Lead Paint Disclosure Addendum to Accompany the Purchase Agreement**. **Not reprinted here in the Adobe® Web version**. This form may be ordered on-line from Miller / Davis Company at <http://www.millerdavis.com>.

- G. **Index of Current Real Property Forms published by Minnesota State Bar Association, Real Property Council, Residential Real Estate Committee**.

To view the Index, click here

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[View the index.](#)

H. A Form of "Warranty Bill of Sale." This form is the M.S.B.A. Real Property **Form No. 90** (1997), "**WARRANTY BILL OF SALE.**" **Not reprinted here in the Adobe® Web version.** This form may be ordered on-line from Miller / Davis Company at <http://www.millerdavis.com>. The form, with the pending revisions, is included in the Adobe® Web version.

To view the pending revisions to the form, click here (	<a href="#">FORM</a>
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I. A Form of "Amendment to Purchase Agreement."

To view the form, click here (	<a href="#">FORM</a>
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J. An example of a supplemental form to correct deficiencies in the M.A.R. form.

To view the form, click here (	<a href="#">FORM</a>
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K. **PROPOSAL FOR MODIFYING THE PURCHASE AGREEMENT: REAL PROPERTY TAXES AND SPECIAL ASSESSMENTS (Pending).**

To view the proposal, click here (	<a href="#">View the text</a>
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L. **PROPOSAL FOR MODIFYING THE PURCHASE AGREEMENT: PERSONAL PROPERTY AND FIXTURES (Pending).**

To view the text of this proposal, click here (	<a href="#">View the text</a>
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M. *Kleist v. Alwin*, an unpublished opinion appearing in Finance & Commerce, April 25, 1997, pp. 56-58 (Minn. Ct. App., Case No. C0-96-1986, WL 193781 )

To read the case, click here (	<a href="#">Read the case</a>
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N. Comparative Analysis of All Three Vacant Land Purchase Agreements (RPF Nos. 30-32) and the Minnesota Standard Residential Purchase Agreement (RPF No. 1).

To compare the forms, click here (	<a href="#">View the forms</a>
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O. (Proposed) **ADDENDUM TO PURCHASE AGREEMENT REGARDING COMMON INTEREST OWNERSHIP PROPERTY [PLANNED COMMUNITY]**

To view the form, click here (	<a href="#">FORM</a>
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P. (Proposed) **MINNESOTA COMMON INTEREST COMMUNITY RESALE DISCLOSURE CERTIFICATE**

To view the form, click here (	<a href="#">FORM</a>
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[Return to text of Article](#) where this list of exhibits was first mentioned.

Exhibit A

REFORMATTED FOR THIS ARTICLE.  
NORMALLY PRINTED ON 14 INCH PAPER

M.S.B.A. Real Property Form No. 1 (1994; Rev. 1996; Rev. 1997; Rev. August, 1997)  
Minnesota Standard Residential Purchase Agreement

PURCHASE AGREEMENT / PAGE 1

MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT

© Copyright 1996, 1997 by Minnesota State Bar Association, Minneapolis, Minnesota.

BEFORE YOU USE OR SIGN THIS CONTRACT, YOU SHOULD CONSULT WITH A LAWYER TO DETERMINE THAT THIS CONTRACT ADEQUATELY PROTECTS YOUR LEGAL RIGHTS. Minnesota State Bar Association disclaims any liability arising out of use of this form.

1 1. PARTIES. This Purchase Agreement is made on \_\_\_\_\_, by and between  
2 \_\_\_\_\_ [marital status] \_\_\_\_\_  
3 of [seller's address] \_\_\_\_\_, SELLER, and  
4 \_\_\_\_\_, as joint tenants [strike "joint tenants" if tenancy-in-  
5 common is intended] of [buyer's address] \_\_\_\_\_  
6 \_\_\_\_\_, BUYER.

7 2. OFFER/ACCEPTANCE. Buyer offers to purchase and Seller agrees to sell real property legally described as:  
8 \_\_\_\_\_  
9 \_\_\_\_\_  
10 \_\_\_\_\_  
11 \_\_\_\_\_  
12 [Property Tax Identification Number or Tax Parcel Number \_\_\_\_\_]  
13 located at \_\_\_\_\_, City of \_\_\_\_\_,  
14 County of \_\_\_\_\_, State of Minnesota, Zip Code \_\_\_\_\_.

15 3. ACCEPTANCE DEADLINE. The acceptance date of this Purchase Agreement is the date it is delivered by the last party signing to the other  
16 party. This offer to purchase, unless accepted sooner, shall be void at 11:59 A.M., on [date] \_\_\_\_\_, and in such event  
17 all earnest money shall be refunded to Buyer.

18 4. PERSONAL PROPERTY AND FIXTURES INCLUDED IN SALE. The following items of personal property and fixtures owned by Seller and  
19 currently located on the real property are included in this sale [Strike out items not included]: garden bulbs, plants, shrubs, trees, storm  
20 windows and inserts, storm doors, screens, awnings, window shades, blinds, curtain-traverse-drapery rods, attached lighting fixtures with bulbs,  
21 plumbing fixtures, sump pumps, water heaters, heating systems, heating stoves, fireplace inserts, fireplace doors and screens, built-in  
22 humidifiers, built-in air conditioning units, built-in electronic air filters, automatic garage door openers with controls, television antennas, water  
23 softeners, built-in dishwashers, garbage disposals, built-in trash compactors, built-in ovens and cooking stoves, hood-fans, intercoms, installed  
24 carpeting, work benches, security systems, and also the following property: \_\_\_\_\_  
25 \_\_\_\_\_  
26 \_\_\_\_\_

27 Upon delivery of the Deed, Seller shall also deliver a Warranty Bill of Sale for the above personal property. [Check the box if the following  
28 provision applies to this Purchase Agreement:] Seller shall use M.S.B.A. Real Property Form No. 90 (1997), Warranty Bill of Sale.

29 5. PRICE AND TERMS. The price for the real and personal property included in this sale is \_\_\_\_\_ Dollars (\$ \_\_\_\_\_),  
30 which Buyer shall pay as follows:  
31 \_\_\_\_\_

32 Earnest money of \$ \_\_\_\_\_ by [CASH, CHECK, NOTE - state which] \_\_\_\_\_ payable to  
33 [select one:]  
34 Seller, to be deposited and held by Seller (and may be commingled with Seller's other funds) pending closing,  
35 Seller's lawyer, to be deposited and held in the lawyer's trust account pending closing,  
36 Seller's broker, to be deposited or held by broker according to the requirements of Minnesota Statutes,  
37 Other [describe how the earnest money will be held] \_\_\_\_\_

38 receipt of which is hereby acknowledged and \$ \_\_\_\_\_ cash, on \_\_\_\_\_, the DATE OF CLOSING, and  
39 the balance of \$ \_\_\_\_\_ by financing as shown on the attached Financing Addendum.

EXHIBIT A

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**6. DEED/MARKETABLE TITLE.** Upon performance by Buyer, Seller shall execute and deliver a \_\_\_\_\_ **Warranty Deed**, joined in by spouse, if any, conveying marketable title of record, subject to:

- A. Building and zoning laws, ordinances, state and federal regulations;
- B. Restrictions relating to use or improvement of the real property without effective forfeiture provisions;
- C. Reservation of any mineral rights by the State of Minnesota;
- D. Utility and drainage easements which do not interfere with existing improvements;
- E. Exceptions to title which constitute encumbrances, restrictions, or easements which have been disclosed to Buyer and accepted by Buyer in this Purchase Agreement *[must be specified in writing]*: \_\_\_\_\_

**7. REAL ESTATE TAXES AND SPECIAL ASSESSMENTS.** Real estate taxes due and payable in and for the year of closing shall be prorated between Seller and Buyer on a calendar year basis to the actual Date of Closing, unless otherwise provided in this Purchase Agreement. If tax statements for such taxes are not available on the Date of Closing, the amount to be prorated shall be \_\_\_\_\_% of the prior year's taxes, and such estimated proration shall be ~~[Strike one]~~ **FULL AND FINAL BETWEEN SELLER AND BUYER / ADJUSTED UPON RECEIPT OF THE ACTUAL TAX STATEMENTS FOR SUCH YEAR** (in which case the party entitled to a credit as a result of the adjustment shall receive the amount of such credit from the other party within 30 days of issuance of the tax statements). Seller represents the taxes due and payable in the year(s) \_\_\_\_\_ will be **FULL, PART, NON** -homestead classification, unless Buyer changes the tax classification for taxes payable in the year following closing by taking possession of the real property as Buyer's homestead and filing a new homestead declaration within the time required by law. If the taxes due and payable in the year of closing are **PART** or **NON**-homestead classification, Seller shall pay to Buyer at closing \$ \_\_\_\_\_, in addition to Seller's prorated share of the taxes. If the taxes due and payable in the year following closing are **PART** or **NON**-homestead classification and the closing takes place after the date by which Buyer must take possession of the real property as Buyer's homestead to file for homestead tax status for taxes due and payable in such year, Seller shall pay to Buyer at closing \$ \_\_\_\_\_ as Seller's share of such taxes.

~~[Strike one:]~~ BUYER AND SELLER SHALL PRORATE AS OF THE DATE OF CLOSING / SELLER SHALL PAY ON DATE OF CLOSING all installments of special assessments certified for payment with the real estate taxes due and payable in the year of closing.

~~[Strike one:]~~ BUYER SHALL ASSUME / SELLER SHALL PAY ON DATE OF CLOSING all other special assessments levied as of the date of this Purchase Agreement.

~~[Strike one:]~~ BUYER SHALL ASSUME / SELLER SHALL PROVIDE FOR PAYMENT OF special assessments pending as of the date of this Purchase Agreement for improvements that have been ordered by the City Council or other governmental assessing authorities. (Seller's provision for payment shall be by payment into escrow of 12 times the estimated amount of the assessments.) As of the date of this Purchase Agreement, Seller represents that Seller has not received a Notice of Hearing of a new public improvement project from any governmental assessing authority, the costs of which project may be assessed against the real property. If a special assessment becomes pending **after** the date of this Purchase Agreement and **before** the Date of Closing, Buyer may, at Buyer's option:

- A. Assume payment of the pending special assessment without adjustment to the purchase price of the real property; or,
- B. Require Seller to pay the pending special assessment (or escrow for payment of same as provided above) and Buyer shall pay a commensurate increase in the purchase price of the real property, which increase shall be the same as the estimated amount of the assessment; or,
- C. Declare this Purchase Agreement void by notice to Seller, and earnest money shall be refunded to Buyer.

~~[Strike one:]~~ BUYER SHALL ASSUME / SELLER SHALL PAY ON DATE OF CLOSING any deferred real estate taxes (including "Green Acres" taxes under MINN. STAT. §273.111) or special assessments payment of which is required as a result of the closing of this sale. Buyer shall pay real estate taxes due and payable in the year following closing and thereafter and any unpaid special assessments payable therewith and thereafter, the payment of which is not otherwise provided herein. Seller makes no representation concerning the amount of future real estate taxes or of future special assessments.

**8. DAMAGES TO REAL PROPERTY.** If the real property is substantially damaged prior to closing, this Purchase Agreement shall terminate and the earnest money shall be refunded to Buyer. If the real property is damaged materially but less than substantially prior to closing, Buyer may rescind this Purchase Agreement by notice to Seller within 21 days after Seller notifies Buyer of such damage, during which 21-day period Buyer may inspect the real property, and in the event of such rescission, the earnest money shall be refunded to Buyer.

**9. SELLER'S BOUNDARY LINE, ACCESS, RESTRICTIONS AND LIEN WARRANTIES.** Seller warrants that buildings, if any, are entirely within the boundary lines of the real property. Seller warrants that there is a right of access to the real property from a public right of way. Seller warrants that there has been no labor or material furnished to the real property for which payment has not been made. Seller warrants that there are no present violations of any restrictions relating to the use or improvement of the real property. These warranties shall survive the delivery of the Deed or Contract for Deed.

**10. CONDITION OF PROPERTY.**

- A. Seller warrants that all appliances, fixtures, heating and air conditioning equipment, fireplaces (including mechanisms, dampers, flues, and doors), wiring, and plumbing used and located on the real property are in working order on the Date of Closing. Seller represents that the property has / has not had a wet basement or water in the basement. Seller discloses that the roof has / has not leaked. Seller warrants that the property: is / is not connected to: city sewer ~~[Strike one]~~ **-YES/NO**; city water **-YES/NO**; cable TV **-YES/NO**. Seller shall remove all debris and all personal property not included in this sale from the real property before possession date. Seller has not received any notice from any governmental authority as to the existence of any Dutch elm disease, oak wilt, or other disease of any trees on the real property.



114 B. Seller knows of no hazardous substances or petroleum products having been placed, stored, or released from or on the real property by  
115 any person in violation of any law, nor of any underground storage tanks having been located on the real property at any time, except  
116 as follows:  
117

118 \_\_\_\_\_  
119 \_\_\_\_\_  
120 \_\_\_\_\_  
121 \_\_\_\_\_  
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123 C. Seller's warranties and representations contained in this paragraph 10 shall survive the delivery of the Deed or Contract for Deed, provided  
124 that any notice of a defect or claim of breach of warranty must be in writing and any such notice with respect to matters referred to in  
125 A., above must be given by Buyer to Seller within one year of the Date of Closing or be deemed waived.  
126

127 D. Buyer shall have the right to have inspections of the property conducted prior to closing. Unless required by local ordinance or lending  
128 regulations, Seller does not plan to have the property inspected. Other than the representations made in this paragraph 10, the property  
129 is being sold "AS IS" with no express or implied representations or warranties by Seller as to physical conditions, quality of construction,  
130 workmanship, or fitness for any particular purpose. (This paragraph is not intended to waive or limit any provisions of MINN. STAT.,  
131 Chapter 327A.)  
132

133 **11. DISCLOSURE OF NOTICES.** Seller has not received any notice from any governmental authority as to violation of any law, ordinance or  
134 regulation affecting the real property. If the real property is subject to restrictive covenants, Seller has not received any notice from any person  
135 as to a breach of the covenants. Seller has not received any notice from any governmental authority concerning any eminent domain,  
136 condemnation, special taxing district, or rezoning proceedings.  
137

138 **12. TRUTH-IN-HOUSING.** Buyer acknowledges receipt of the Truth-in-Housing Disclosure Report or other inspection report if required by the  
139 municipality in which the real property is located.  
140

141 **13. POSSESSION.** Seller shall deliver possession of the property not later than \_\_\_\_\_ closing. All interest, fuel oil, liquid  
142 petroleum gas, and all charges for city water, city sewer, electricity, and natural gas shall be prorated between the parties as of \_\_\_\_\_  
143 \_\_\_\_\_.  
144

145 **14. EXAMINATION OF TITLE.** To demonstrate that Seller's title is good and marketable of record, within a reasonable time after acceptance  
146 of this Purchase Agreement, Seller shall furnish Buyer with an Abstract of Title or a Registered Property Abstract certified to date including  
147 proper searches covering bankruptcies and state and federal judgments, federal court judgment liens in favor of the U.S., liens, and levied and  
148 pending special assessments. Buyer shall have ten (10) business days after receipt of the Abstract of Title or Registered Property Abstract either  
149 to have Buyer's lawyer examine the title and provide Seller with written objections or, at Buyer's own expense, to make an application for a  
150 title insurance policy and notify Seller of the application. Buyer shall have ten (10) business days after receipt of the Commitment for Title  
151 Insurance to provide Seller with a copy of the Commitment and written objections. Buyer shall be deemed to have waived any title objections  
152 not made within the ten (10) day period above, except that this shall not operate as a waiver of Seller's covenant to deliver a statutory Warranty  
153 Deed, unless a Warranty Deed is not specified above. If Buyer obtains title insurance, Buyer is not waiving the right to obtain a good and  
154 marketable title of record from Seller.  
155

156 **15. TITLE CORRECTIONS AND REMEDIES.** Seller shall have 120 days from receipt of Buyer's written title objections to make title marketable.  
157 Upon receipt of Buyer's title objections, Seller shall, within ten (10) business days, notify Buyer of Seller's intention to make title marketable  
158 within the 120 day period. Liens or encumbrances for liquidated amounts which can be released by payment or escrow from proceeds of  
159 closing shall not delay the closing. Cure of the defects by Seller shall be reasonable, diligent, and prompt. Pending correction of title, all  
160 payments required herein and the closing shall be postponed.  
161

162 A. If notice is given and Seller makes title marketable, then upon presentation to Buyer and proposed lender of documentation establishing  
163 that title has been made marketable, and if not objected to in the same time and manner as the original title objections, the closing shall  
164 take place within ten (10) business days or on the scheduled closing date, whichever is later.  
165

166 B. If notice is given and Seller proceeds in good faith to make title marketable but the 120 day period expires without title being made  
167 marketable, Buyer may declare this Purchase Agreement void by notice to Seller, neither party shall be liable for damages hereunder to  
168 the other, and earnest money shall be refunded to Buyer.  
169

170 C. If Seller does not give notice of intention to make title marketable, or if notice is given but the 120 day period expires without title being  
171 made marketable due to Seller's failure to proceed in good faith, Buyer may seek, as permitted by law, one or more of the following:  
172

- 173 1. Proceed to closing without waiver or merger in the Deed of the objections to title and without waiver of any remedies, and may:
  - 174 (a) Seek damages, costs, and reasonable lawyer's fees from Seller as permitted by law (damages under this subparagraph (a) shall  
175 be limited to the cost of curing objections to title, and consequential damages are excluded); or
  - 176 (b) Undertake proceedings to correct the objections to title;
- 177 2. Rescission of this Purchase Agreement by notice as provided herein, in which case the Purchase Agreement shall be null and void  
178 and all earnest money paid shall be refunded to Buyer;
- 179 3. Damages from Seller together with costs and reasonable lawyer's fees, as permitted by law;
- 180 4. Specific performance within six months after such right of action arises.

181 D. If title is marketable, or is made marketable as provided herein, and Buyer defaults in any of the agreements herein, Seller may elect either  
182 of the following options, as permitted by law:  
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**EXHIBIT A**

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1. Cancel this contract as provided by statute and retain all payments made hereunder as liquidated damages. The parties acknowledge their intention that any note given pursuant to this contract is a down payment note, and may be presented for payment notwithstanding cancellation;
  2. Seek specific performance within six months after such right of action arises, including costs and reasonable lawyer's fees, as permitted by law.
- E. If title is marketable, or is made marketable as provided herein, and Seller defaults in any of the agreements herein, Buyer may, as permitted by law:
1. Seek damages from Seller including costs and reasonable lawyer's fees;
  2. Seek specific performance within six months after such right of action arises.

**16. NOTICES.** All notices required herein shall be in writing and delivered personally or mailed to the address as shown at Paragraph 1 above and, if mailed, are effective as of the date of mailing.

**17. SUBDIVISION OF LAND.** If this sale constitutes or requires a subdivision of land owned by Seller, Seller shall pay all subdivision expenses and obtain all necessary governmental approvals. Seller warrants that the legal description of the real property to be conveyed has been or will be approved for recording as of the Date of Closing.

**18. MINNESOTA LAW.** This contract shall be governed by the laws of the State of Minnesota.

**19. WELL DISCLOSURE.** *[Check one of the following: ]*  
 Seller certifies that Seller does not know of any wells on the real property.  
 Wells on the real property are disclosed by Seller on the attached Well Disclosure form.

**20. SEWAGE TREATMENT SYSTEM DISCLOSURE.**  
*[Check either A or B: ]*  
 **A.** Seller certifies that sewage generated at the property goes to a facility permitted by the Minnesota Pollution Control Agency (for example, a city or municipal sewer system).  
 **B.** Seller certifies that sewage generated at the property does not go to a facility permitted by the Minnesota Pollution Control Agency and Seller's Disclosure of Individual Sewage Treatment System is attached (attach form).

*[Check either C or D: ]*  
 **C.** Seller does not know if there is an abandoned individual sewage treatment system on the property.  
 **D.** Seller knows that there ~~is~~ *[strike one:]* **are / are no** abandoned individual sewage treatment systems on the property. If Seller discloses the existence of an abandoned individual sewage treatment system on the property, then Minnesota law requires that the location of the system be disclosed to Buyer with a map. *[Attach Seller's Disclosure of Individual Sewage Treatment System with map completed.]*

**21. LEAD PAINT DISCLOSURE.** *[Check one of the following: ]*  
 Seller represents that the dwelling was constructed on the real property in 1978 or later.  
 Seller represents that the dwelling was constructed on the real property before 1978. (If such housing is located on the real property, attached and made a part of this Purchase Agreement is "LEAD PAINT ADDENDUM FOR HOUSING CONSTRUCTED BEFORE 1978".)

**22. WETLANDS, SHORELAND, AND FLOOD PLAIN CONCERNS.** Currently the law does not require Seller to disclose Seller's knowledge, if any, of the existence of wetlands, shoreland, or flood plain on or affecting the real property. If Buyer has not already investigated these concerns, Buyer might want to include Seller's disclosures regarding these concerns. *[Check the box if the following provision applies to this Purchase Agreement:]* **ADDENDUM TO PURCHASE AGREEMENT: WETLANDS, SHORELAND AND FLOOD PLAIN DISCLOSURE, M.S.B.A. Real Property Form No. 8 (1997),** is included as an addendum to this Purchase Agreement.

**23. SELLER'S AFFIDAVIT.** At closing, Seller shall supplement the warranties and representations in this Purchase Agreement by executing and delivering a Minnesota Uniform Conveyancing Blank [Form No. 116-M, 117-M, or 118-M] Affidavit of Seller.

**24. CLOSING.** Closing shall be at the office of Seller's lawyer, Buyer's title insurer, or at some other mutually agreeable location.  
*[State other location:]* \_\_\_\_\_

At closing, Seller and Buyer shall disclose their Social Security Numbers or Federal Tax Identification Numbers for the purposes of completing state and federal tax forms.

**25. ADDITIONAL TERMS.** \_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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26. **ADDENDA.** Attached are \_\_\_\_\_ addenda which are made a part of this Purchase Agreement.

27. **TIME IS OF THE ESSENCE.** Time is of the essence for all provisions of this Purchase Agreement.

28. **MULTIPLE ORIGINALS.** Seller and Buyer have signed [number] \_\_\_\_\_ originals of this Purchase Agreement.

255  
256  
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**THIS IS A LEGALLY BINDING CONTRACT. BEFORE SIGNING, CONSULT A LAWYER.** Minnesota law permits licensed real estate brokers and sales agents to prepare purchase agreements. No recommendation or representation may be made by any real estate broker or sales agent as to the legal sufficiency, the legal effect, or the tax consequences of this contract. These are questions for your lawyer.

I agree to sell the property for the price and terms and conditions set forth above.

I agree to purchase the property for the price and terms and conditions set forth above.

SELLER: \_\_\_\_\_  
(date)

BUYER: \_\_\_\_\_  
(date)

SELLER: \_\_\_\_\_  
(date)

BUYER: \_\_\_\_\_  
(date)

\*\*\*\*\*

*This Purchase Agreement was prepared by:*

**Others who will assist Seller or Buyer with this transaction:**

<i>Lawyer for</i> _____	Telephone: _____	Facsimile: _____
<i>Listing Agent and Broker for this transaction are:</i>	Telephone: _____	Facsimile: _____
<i>Selling Agent and Broker for this transaction are:</i>	Telephone: _____	Facsimile: _____
<i>Buyer's or Lender's Title Insurer:</i>	Telephone: _____	Facsimile: _____

To return to the text where this Exhibit is first mentioned, click here (	<a href="#">TEXT</a>
To return to the List of Exhibits at the end of the article, click here (	<a href="#">EXHIBITS</a>
To order paper or software versions of this form from Miller/Davis Co. [as M/D Form No. 1300 ], click here (	<a href="http://www.millerdavis.com">http://www.millerdavis.com</a>

**EXHIBIT A**

**EXHIBIT A**

REFORMATTED FOR THIS ARTICLE.  
NORMALLY PRINTED ON 14 INCH PAPER

**Exhibit B.**

**Minnesota Association of Realtors® [“MAR”] PURCHASE AGREEMENT.**

**PURCHASE AGREEMENT**

This form approved by the Minnesota Association of REALTORS®, which disclaims any liability arising out of use or misuse of this form.  
© 2000, Minnesota Association of REALTORS®, Edina, MN

This form is also published by Miller / Davis Company, St. Paul, MN as Form 1519A (Rev. 9/00). The MAR form number is MN:PA (9/00).

- 1. Date \_\_\_\_\_
- 2. Page 1 of \_\_\_\_\_ Pages

3. RECEIVED OF \_\_\_\_\_

4. \_\_\_\_\_

5. the sum of \_\_\_\_\_ Dollars ( \$ \_\_\_\_\_ )

6. by **CHECK - CASH - NOTE** as earnest money to be deposited upon acceptance of Purchase Agreement by all parties, on or -----(strike out two)----

7. before the third business day after acceptance, in the trust account of listing broker but to be returned to Buyer if Purchase

8 Agreement is not accepted by Seller. Said earnest money is part payment for the purchase of the property located at:

9. Street Address: \_\_\_\_\_

10. City of \_\_\_\_\_, County of \_\_\_\_\_, State of Minnesota,

11. Legally described as: \_\_\_\_\_

12. \_\_\_\_\_

13. including the following property, if any, owned by Seller and used and located on said property: garden bulbs, plants, shrubs, and

14. trees; storm sash, storm doors, screens and awnings; window shades, blinds, traverse and curtain and drapery rods; attached lighting

15. fixtures and bulbs; plumbing fixtures, water heater, heating plants (with any burners, tanks, stokers and other equipment used in

16. connection therewith), built-in air conditioning equipment, electronic air filter, Water Softener / OWNED / RENTED / NONE built-in -----(circle one)----

17. humidifier and dehumidifier, liquid gas tank and controls (if the property of Seller), sump pump; attached television antenna, cable TV jacks and

18. wiring; BUILT-INS: dishwashers, garbage disposals, trash compactors, ovens, cook top stoves, microwave ovens, hood fans, intercom's;

19. ATTACHED: carpeting; mirrors; garage door openers and all controls; smoke detectors; fireplace screens, doors and heatilators; AND: the

20. following personal property: \_\_\_\_\_

21. \_\_\_\_\_

22. \_\_\_\_\_

23. all of which property Seller has this day agreed to sell to Buyer for sum of: ( \$ \_\_\_\_\_ )

24. \_\_\_\_\_ Dollars,

25. which Buyer agrees to pay in the following manner: Earnest money of \$ \_\_\_\_\_

26. and \$ \_\_\_\_\_ cash on \_\_\_\_\_ the date of closing, and

27. the balance of \$ \_\_\_\_\_ by financing in accordance with the attached addendum:

28. Conventional FHA/VA Assumption Contract for Deed Purchase Money Mortgage Other: \_\_\_\_\_  
------(circle all that apply)-----

**EXHIBIT B**

29. This Purchase Agreement **IS / IS NOT** subject to a Contingency Addendum for sale of Buyer's property. (If answer is **IS**, see attached addendum.)  
- (circle one) -
30. (If answer is **IS NOT**, the closing of Buyer's property, if any, may still affect Buyer's ability to obtain financing, if financing is applicable.)
31. This Purchase Agreement **IS / IS NOT** subject to cancellation of a previously written Purchase Agreement dated \_\_\_\_\_  
- (circle one) -
32. Buyer has been made aware of the availability of property inspections. Buyer elects / declines to have a property inspection performed at  
circle one -
33. Buyer's expense. This Purchase Agreement **IS / IS NOT** subject to an Inspection Addendum. (if answer is **IS**, see attached addendum.)  
-(circle one) -
34. **DEED/MARKETABLE TITLE:** Upon performance by Buyer, Seller shall deliver a Warranty Deed or Other \_\_\_\_\_ Deed
35. joined in by spouse, if any, conveying marketable title, subject to:
36. (A) Building and zoning laws, ordinances, state and federal regulations; (B) Restrictions relating to use or improvement of the
37. property without effective forfeiture provisions; (C) Reservation of any mineral rights by the State of Minnesota; (D) Utility and
38. drainage easements which do not interfere with existing improvements; (E) **Rights of tenants as follows** (unless specified, not
39. subject to tenancies): \_\_\_\_\_
40. (F) Others (Must be specified in writing): \_\_\_\_\_
41. **BUYER SHALL PAY / SELLER SHALL PAY** on date of closing any deferred real estate taxes (i.e. Green Acres, etc.) or special  
(circle one)
42. assessments, payment of which is required as a result of the closing of this sale.
43. **BUYER AND SELLER SHALL PRORATE AS OF THE DATE OF CLOSING / SELLER SHALL PAY ON DATE OF CLOSING** all installments  
(circle one)
44. of special assessments certified for payment with the real estate taxes due and payable in the year of closing.
45. **BUYER SHALL ASSUME / SELLER SHALL PAY** on date of closing all other special assessments levied as of the date of this Agreement.  
(circle one)
46. **BUYER SHALL ASSUME / SELLER SHALL PROVIDE FOR PAYMENT OF** special assessments pending as of the date of this Agreement  
(circle one)
47. for improvements that have been ordered by any assessing authorities. (Seller's provision for payment shall be by
48. payment into escrow of two (2) times the estimated amount of the assessments, or less as required by Buyer's lender.)
49. Buyer shall pay any unpaid assessments payable in the year following closing and thereafter, the payment of which is not otherwise
50. herein provided.
51. As of the date of this Agreement, Seller represents that Seller **HAS / HAS NOT** received a notice regarding any new improvement  
(circle one)
52. project from any assessing authorities, the costs of which project may be assessed against the property. Any such notice
53. received by Seller after the date of this Agreement and before closing will be provided to Buyer immediately. If notice of a pending
54. special assessment is issued after the date of this Agreement and on or before the date of closing, Buyer shall assume payment of
55. **ALL / NONE / OTHER:** \_\_\_\_\_ of any such special assessments, and Seller shall provide for  
------(circle one)----
56. payment on date of closing **ALL / NONE / OTHER:** \_\_\_\_\_ of any such special assessments. If such special  
------(circle one)----
57. assessments or escrow amounts for said special assessments as required by Buyer's lender shall exceed \$ \_\_\_\_\_,
58. then either party may agree in writing on or before the date of closing to assume, pay or provide for the payment of such
59. excess. In the absence of such agreement, either party may declare this Purchase Agreement null and void; the parties shall
60. immediately sign a cancellation of Purchase Agreement and all earnest money paid hereunder shall be refunded to Buyer.

MN:PA-1(9/00)

[ END OF PAGE 1 IN THE ORIGINAL 14-INCH FORM ]

PURCHASE AGREEMENT  
61. Page 2

62. **TITLE AND EXAMINATION:** Within a reasonable time after acceptance of this Agreement, Seller shall provide
66. evidence of title, which shall include proper searches covering bankruptcies, state and federal judgments and liens,
64. and levied and pending Special Assessments to Buyer or Buyer's designated title service Provider, as follows:
65. **If property is abstract**, Seller shall provide: (1) a commitment for an owner's policy of title insurance on a current
66. ALTA form issued by an insurer licensed to write title insurance in Minnesota. If the Seller chooses to provide an
67. owner's policy of title insurance rather than update an abstract of title, Seller shall pay the entire premium, title
68. examination fee and the costs of evidence of title for such title insurance policy if no lender's policy is obtained, or
69. only the additional cost of obtaining a simultaneously issued owners policy if a lender's policy is obtained. (Buyer
70. shall pay the premium and the title examination fee for the lender's policy); or (2) an abstract of title certified to date.
71. If Seller chooses to update an abstract, Seller shall pay for all abstracting fees. Seller shall surrender any abstract in

**EXHIBIT B**

72. Seller's possession or control to Buyer at closing.
73. **If property is Torrens**, Seller shall provide, at Buyer's option and request, either (1) a Registered Property Abstract  
74. (RPA) certified to date, or (2) a commitment for an owner's policy of title insurance on a current ALTA form issued by  
75. an insurer licensed to write title insurance in Minnesota. Seller shall be responsible to pay, under either option, only  
76. those costs necessary to prepare the RPA or commitment. Buyer shall, at buyer's option, pay for either the Attorney's  
77. Opinion or the title insurance premium and examination fee.
78. Seller shall use Seller's best efforts to provide marketable title by the date of closing. In the event Seller has not  
79. provided marketable title by the date of closing, Seller shall have an additional 30 days to make title marketable or, in  
80. the alternative. Buyer may waive title defects by written notice to the Seller. In addition to the 30 day extension,  
81. Buyer and Seller may by mutual agreement further extend the closing date. Lacking such extension, either party  
82. may declare this Purchase Agreement null and void; neither party shall be liable for damages hereunder to the other  
83. and earnest money shall be refunded to Buyer; Buyer and Seller shall immediately sign a cancellation of Purchase  
84. Agreement.
85. **SUBDIVISION OF LAND:** If this sale constitutes or requires a subdivision of land owned by Seller, Seller shall pay  
86. all subdivision expenses and obtain all necessary governmental approvals. Seller warrants the legal description of  
87. the real property to be conveyed has been or will be approved for recording as of the date of closing. Seller warrants  
88. that the buildings are or will be constructed entirely within the boundary lines of the property. Seller warrants  
89. that there is a right of access to the property from a public right of way. These warranties shall survive the delivery of  
90. the deed or contract for deed.
91. Seller warrants that prior to the closing, payment in full will have been made for all labor, materials, machinery,  
92. fixtures or tools furnished within the 1 20 days immediately preceding the closing in connection with construction,  
93. alteration or repair of any structure on or improvement to the property.
94. Seller warrants that Seller has not received any notice from any governmental authority as to condemnation  
95. proceedings, violation of any law, ordinance or regulation. If the property is subject to restrictive covenants, Seller  
96. warrants that Seller has not received any notice from any person or authority as to a breach of the covenants. Any  
97. such notices received by Seller will be provided to Buyer immediately.
98. Seller agrees to allow reasonable access to the property for performance of any surveys or inspections agreed to herein.
99. **RISK OF LOSS:** If there is any loss or damage to the property between the date hereof and the date of closing, for  
100.any reason including fire, vandalism, flood, earthquake or act of God, the risk of loss shall be on Seller. If the  
101.property is destroyed or substantially damaged before the closing date, this Purchase Agreement shall become null  
102.and void, at Buyer's option, and earnest money shall be refunded to Buyer; Buyer and Seller shall immediately sign a  
103.cancellation of Purchase Agreement.
104. **TIME OF ESSENCE:** Time is of the essence in this Purchase Agreement.
105. **ENTIRE AGREEMENT:** This Purchase Agreement, any attached exhibits and any addenda or amendments signed by the parties,  
106. shall constitute the entire agreement between Seller and Buyer, and supercedes any other written or oral agreements between  
107. Seller and Buyer. This Purchase Agreement can be modified only in writing signed by Seller and Buyer. All monetary sums are  
108. deemed to be United States currency for purposes of this agreement. Buyer or Seller may be required to pay certain closing  
109. costs which effectively reduce the proceeds from sale or increase the cash outlay at closing.
110. **ACCEPTANCE:** Buyer understands and agrees that this Purchase Agreement is subject to acceptance by Seller in writing. The  
111. delivery of all papers and monies shall be made at the listing broker's office.
112. **DEFAULT:** If Buyer defaults in any of the agreements herein, Seller may terminate this Purchase Agreement, and  
113. payments made hereunder may be retained by Seller as liquidated damages. If this Purchase Agreement is no so  
114. terminated, Buyer or Seller may seek actual damages for breach of this Agreement or specific performance of this  
115. Agreement; and, as to specific performance, such action must be commenced within six months after such right of  
116. action arises.

MN:PA-2(9/00)

[ END OF PAGE 2 IN THE ORIGINAL 14-INCH FORM ]

EXHIBIT B



Form 1519A 3 (Rev. 9/00) Miller/Davis Co., St. Paul, MN

**PURCHASE AGREEMENT**

117. Address \_\_\_\_\_  
118. Page 3 Date \_\_\_\_\_

119. Buyer shall pay, **PRORATED FROM DAY OF CLOSING** \_\_\_\_\_ **12THS, ALL, NONE** real estate taxes due and payable in the year \_\_\_\_\_.  
(strike two)
120. Seller shall pay, **PRORATED TO DAY OF CLOSING** \_\_\_\_\_ **12THS, ALL, NONE** real estate taxes due and payable in the year \_\_\_\_\_.  
(strike two)
121. If the closing date is changed, the real estate taxes paid shall, if prorated, be adjusted to the new closing date. Seller warrants taxes due and payable in the year \_\_\_\_\_ will be **FULL - PART - NON-** homestead classification. **If part or non-homestead classification is checked,**  
(strike two)
122. Seller agrees to pay Buyer at closing \$ \_\_\_\_\_  
123. toward the non-homestead real estate taxes. Buyer agrees to pay any remaining balance of non-homestead taxes when they become due and payable. Buyer shall pay real estate taxes due and payable in the year following closing and thereafter, the payment of which is not otherwise herein provided. No representations are made concerning the amount of subsequent real estate taxes.
124. **POSSESSION:** Seller shall deliver possession of the property not later than \_\_\_\_\_ after closing.
125. All interest, homeowner association dues, rents, fuel oil, liquid petroleum gas and all charges for city water, city sewer, electricity, and natural gas shall be prorated between the parties as of date of closing. Seller agrees to remove ALL DEBRIS AND ALL PERSONAL PROPERTY NOT INCLUDED HEREIN from the property by possession date.
126. **ENVIRONMENTAL CONCERNS:** To the best of the Seller's knowledge there are no hazardous substances, or underground storage tanks, except herein noted: \_\_\_\_\_
127. \_\_\_\_\_

134. SELLER WARRANTS THAT THE PROPERTY IS **DIRECTLY CONNECTED TO:** **CITY SEWER: YES NO/ CITY WATER: YES NO**  
(check one) (check one)
135. **SELLER / BUYER AGREES TO PROVIDE WATER QUALITY TEST RESULTS IF REQUIRED BY GOVERNING AUTHORITY AND/OR LENDER.**  
----(strike one)----
136. **SELLER / BUYER AGREES TO PROVIDE, IF REQUIRED BY THE TERMS OF THIS PURCHASE AGREEMENT OR BY GOVERNING AUTHORITY**  
----(strike one)----
137. **AND/OR LENDER, A LICENSED INSPECTOR'S SEPTIC SYSTEM INSPECTION REPORT OR NOTICE INDICATING IF THE SYSTEM COMPLIES WITH APPLICABLE REGULATIONS. NOTICE: A VALID CERTIFICATE OF COMPLIANCE FOR THE SYSTEM MAY SATISFY THIS OBLIGATION.**
138. **NOTHING IN LINES 135 TO 138 SHALL OBLIGATE SELLER TO UPGRADE, REPAIR OR REPLACE THE SEPTIC SYSTEM UNLESS OTHERWISE AGREED TO IN THIS PURCHASE AGREEMENT.**
139. **BUYER HAS RECEIVED THE WELL DISCLOSURE STATEMENT OR A STATEMENT THAT NO WELL EXISTS ON THE PROPERTY, AND A SEPTIC SYSTEM DISCLOSURE STATEMENT OR A STATEMENT THAT NO SEPTIC SYSTEM EXISTS ON OR SERVES THE PROPERTY, AS REQUIRED BY MINNESOTA STATUTES.**

144. SELLER WARRANTS THAT CENTRAL AIR CONDITIONING, HEATING, PLUMBING AND WIRING SYSTEMS USED AND LOCATED ON SAID PROPERTY WILL BE IN WORKING ORDER ON DATE OF CLOSING, EXCEPT AS NOTED IN THIS AGREEMENT.
145. **BUYER HAS THE RIGHT TO WALK-THROUGH REVIEW OF THE PROPERTY PRIOR TO CLOSING TO ESTABLISH THAT THE PROPERTY IS IN SUBSTANTIALLY THE SAME CONDITION AS OF THE DATE OF PURCHASE AGREEMENT. SELLER AGREES TO NOTIFY BUYER IMMEDIATELY IN WRITING OF ANY SUBSTANTIVE CHANGES FROM ANY PRIOR REPRESENTATIONS REGARDING THE PHYSICAL CONDITION OF THE PROPERTY.**
146. BUYER ACKNOWLEDGES THAT NO ORAL REPRESENTATIONS HAVE BEEN MADE REGARDING POSSIBLE PROBLEMS OF WATER IN BASEMENT, OR DAMAGE CAUSED BY WATER OR ICE BUILD-UP ON ROOF OF THE PROPERTY AND BUYER RELIES SOLELY IN THAT REGARD ON THE FOLLOWING STATEMENT BY SELLER:
147. SELLER **HAS / HAS NOT** HAD A WET BASEMENT AND **HAS / HAS NOT** HAD ROOF, WALL OR CEILING DAMAGE CAUSED BY WATER  
---(strike one)--- ---(strike one)---
148. OR ICE BUILD-UP. BUYER **HAS / HAS NOT** RECEIVED A SELLER'S PROPERTY DISCLOSURE STATEMENT.  
---(strike one)---
149. **BUYER HAS RECEIVED THE INSPECTION REPORTS, IF REQUIRED BY MUNICIPALITY.**

156. **NOTICE**  
157. \_\_\_\_\_  
(Licensee) Is Seller's Agent /Buyer's Agent/Dual Agent/Non-Agent





------(strike three)-----

158. \_\_\_\_\_  
(Company)

159. \_\_\_\_\_  
(Licensee)

Is Seller's Agent /Buyer's Agent/Dual Agent/Non-Agent  
------(strike three)-----

160. \_\_\_\_\_  
(Company)

161. **THIS NOTICE DOES NOT SATISFY MINNESOTA STATUTORY AGENCY DISCLOSURE REQUIREMENTS.**

162. **DUAL AGENCY REPRESENTATION**

163. **PLEASE CHECK ONE OF THE FOLLOWING SELECTIONS:**

164.  DUAL AGENCY REPRESENTATION **DOES NOT** APPLY IN THIS TRANSACTION. Disregard lines 165-178.

165.  DUAL AGENCY REPRESENTATION **DOES** APPLY IN THIS TRANSACTION. Complete the disclosure in lines 166-178.

166. Broker represents both the Seller(s) and the Buyer(s) of the property involved in this transaction, which creates a dual agency. This means that Broker and its salespersons owe fiduciary duties to both Seller(s) and Buyer(s). Because the parties may have conflicting interests, Broker and its salespersons are prohibited from advocating exclusively for either party. Broker cannot act as a dual agent in this transaction without the consent of both Seller(s) and Buyer(s). Seller(s) and Buyer(s) acknowledge that:

170. (1) confidential information communicated to Broker which regards price, terms, or motivation to buy or sell will remain confidential unless Seller(s) or Buyer(s) instructs Broker in writing to disclose this information. Other information will be shared;

172. (2) Broker and its salespersons will not represent the interest of either party to the detriment of the other; and

173. (3) within the limits of dual agency, Broker and its salespersons will work diligently to facilitate the mechanics of the sale.

174. With the knowledge and understanding of the explanation above, Seller(s) and Buyer(s) authorize and instruct Broker and its salespersons to act as dual agents in this transaction.

176. \_\_\_\_\_  
Seller Buyer

177. \_\_\_\_\_  
Seller Buyer

178. \_\_\_\_\_  
Date Date

MN:PA-3(9/00)

**[ END OF PAGE 3 IN THE ORIGINAL 14-INCH FORM ]**

Form 1519A 4 (Rev. 9/00) Miller/Davis Co., St. Paul, MN

**PURCHASE AGREEMENT**

179. Address \_\_\_\_\_

180. Page 4 Date \_\_\_\_\_

181. I ACKNOWLEDGE THAT I HAVE RECEIVED AND HAD THE OPPORTUNITY TO REVIEW THE ARBITRATION DISCLOSURE AND  
182. RESIDENTIAL REAL PROPERTY ARBITRATION AGREEMENT.

183. SELLER(S) \_\_\_\_\_ BUYER(S) \_\_\_\_\_

184. SELLER(S) \_\_\_\_\_ BUYER(S) \_\_\_\_\_

185. OTHER: \_\_\_\_\_

186. \_\_\_\_\_

**EXHIBIT B**

187. \_\_\_\_\_  
188. \_\_\_\_\_  
189. \_\_\_\_\_

190. Attached are other addenda which are made a part of this Purchase Agreement. (Enter total number of pages of this Purchase  
191. Agreement, including addenda, on line 2 of page 1.)

192. I, the owner of the property, accept this Agreement and I agree to purchase the property for the price and in accordance  
193. authorize the listing broker to withdraw said property from with the terms and conditions set forth above.  
194. the market, unless otherwise instructed in writing. I have reviewed all pages of this Purchase Agreement.  
195. I have reviewed all pages of pages of this Purchase Agreement.

196. X \_\_\_\_\_ X \_\_\_\_\_  
(Seller's Signature) (Date) (Buyer's Signature) (Date)

197. X \_\_\_\_\_ X \_\_\_\_\_  
(Seller's Printed Name) (Buyer's Printed Name)

198. X \_\_\_\_\_ X \_\_\_\_\_  
(Social Security Number - optional) (Marital Status) (Social Security Number - optional) (Marital Status)

199. X \_\_\_\_\_ X \_\_\_\_\_  
(Seller's Signature) (Date) (Buyer's Signature) (Date)

200. X \_\_\_\_\_ X \_\_\_\_\_  
(Seller's Printed Name) (Buyer's Printed Name)

201. X \_\_\_\_\_ X \_\_\_\_\_  
(Social Security Number - optional) (Marital Status) (Social Security Number - optional) (Marital Status)

202. FINAL ACCEPTANCE DATE \_\_\_\_\_

203. THIS IS A LEGALLY BINDING CONTRACT BETWEEN BUYERS AND SELLERS.  
204. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.

MN:PA-4 (9/00)

**[ END OF PAGE 4 IN THE ORIGINAL 14-INCH FORM ]**

To return to the text where this Exhibit is first mentioned, click here (	<a href="#">TEXT</a>
To return to the List of Exhibits at the end of the article, click here (	<a href="#">EXHIBITS</a>

**EXHIBIT B**

**Exhibit E.**  
**Sewer System Disclosure**

REFORMATTED FOR THIS ARTICLE.  
NORMALLY PRINTED ON 14 INCH PAPER

M.S.B.A. Real Property Form No. 14 (Adopted April, 1998)

DISCLOSURE OF SEWAGE TREATMENT SYSTEM

PAGE 1

**DISCLOSURE OF SEWAGE TREATMENT SYSTEM.** © Copyright 1997, 1998, by Minnesota State Bar Association, Minneapolis, Minnesota. [Use with "Minnesota Standard Residential Purchase Agreement," M.S.B.A. Real Property Form No. 1 (Rev. Aug. 1997); "Minnesota Vacant Lot Purchase Agreement -- Single Dwelling," M.S.B.A. Real Property Form No. 30 (Rev. Aug. 1997); "Minnesota Vacant Land Purchase Agreement -- Multiple Dwelling," M.S.B.A. Real Property Form No. 31 (Rev. Aug. 1997); or, "Minnesota Vacant Land Purchase Agreement -- Residential Development Tract," M.S.B.A. Real Property Form No. 32 (Rev. Aug. 1997).]

*[Complete this next paragraph if this form is used as an addendum to a Purchase Agreement:]*

This addendum is a continuation of the Purchase Agreement dated _____ _____ by and between _____ , as Sellers, and _____ , as Buyers, for property described below in Section A.
---

**The Disclosure Law.** Pursuant to MINNESOTA STATUTES §115.55, Subdivision 6, (1997 Minn. Sess. Laws, Chapter 235) on or after June 3, 1997, before signing an agreement to sell or to transfer real property, the seller or transferor must disclose in writing to the buyer or transferee information on how sewage generated at the property is managed. Unless the buyer/transferee and seller/transferor agree to the contrary in writing before the closing of the sale, a seller/transferor who fails to disclose the existence or known status of an individual sewage treatment system at the time of sale, and who knew or had reason to know of the existence or known status of the system is liable to the buyer/transferee for costs relating to bringing the system into compliance with the individual sewage treatment system rules and for reasonable attorney fees for collection of costs from the seller/transferor. An action under this subdivision must be commenced within two years after the date on which the buyer/transferee closed the purchase or transfer of the real property where the system is located.

**IF YOU DO NOT UNDERSTAND THIS LAW, CONSULT YOUR LAWYER.**

<b>A. PROPERTY DESCRIPTION.</b>
Property Identification Number (Tax Parcel No.):
Quarter:      Section:      Township:      Range:      County:
Legal Description: Lot _____, Block _____, (plat name) _____ (If metes-and-bounds description, attach legal description on separate sheet.)
Street Address:
<b>B. STATUTORY DISCLOSURE OF SEWAGE SYSTEM.</b>
<i>[Seller/Transferor must complete this section.]</i>

**EXHIBIT E**

**M.P.C.A. PERMITTED FACILITY:** *[check only one from 1, 2, and 3:]*

- 1. Seller/Transferor states that sewage generated at the property goes to a facility permitted by the Minnesota Pollution Control Agency (for example, the sewer lines on the property are connected to a municipal sewer system or public sewage treatment system).
- 2. Seller/Transferor states that sewage generated at the property does not go to a facility permitted by the Minnesota Pollution Control Agency.
- 3. Seller/Transferor states that no sewage is generated at the property.

**IN-USE INDIVIDUAL ON-SITE SEWAGE TREATMENT SYSTEM:**

*[Check either 4 or 5:]*

- 4. Seller/Transferor has no knowledge whether there is an individual sewage treatment system in use on the property.
- 5. Seller/Transferor knows that there ~~is~~ **are / are no** individual sewage treatment systems in use on the property. If Seller/Transferor discloses the existence of an individual sewage treatment system on the property, then Minnesota law requires that the location of the system be disclosed to Buyer/Transferee with a map. *[ Complete the map below in Section C.]*

**ABANDONED INDIVIDUAL ON-SITE SEWAGE TREATMENT SYSTEM:**

*[Check either 6 or 7:]*

- 6. Seller/Transferor has no knowledge whether there is an abandoned individual sewage treatment system on the property.
- 7. Seller/Transferor knows that there ~~is~~ **are / are no** abandoned individual sewage treatment systems on the property. If Seller/Transferor discloses the existence of an abandoned individual sewage treatment system on the property, then Minnesota law requires that the location of the system be disclosed to Buyer/Transferee with a map. *[ Complete the map below in Section C.]*

**C. INDIVIDUAL SEWAGE TREATMENT SYSTEMS (IN-USE OR ABANDONED) ON THE PROPERTY. Describe all in-use and abandoned systems on the property.**

- 1 For each sewage treatment system in use, state the type of System:
  - Septic Tank with:  standard drainfield  mound system drainfield
  - Sealed System (holding tank or contained cesspool)
  - Other (describe)  seepage tank  cesspool  dry well  leaching pit



**SUPPLEMENTAL DISCLOSURE REGARDING INDIVIDUAL ON-SITE SYSTEM.**

This supplemental disclosure asks for information that is not required as part of the statutory disclosure. Completion of this Supplement is voluntary.

<p><b>D. INFORMATION REGARDING PERFORMANCE AND USE.</b> Seller's answers to these questions might assist a state-licensed inspector in evaluating the performance of the individual on-site sewage treatment system. [See MINN. RULES, chapter 7080.]</p>	
1	<p>a. The property is <i>[check one]</i> ___ in full time residential use                  ___ in part-time, seasonal, or recreational use (lake cabin, etc.)</p> <p>b. What is the average <b>number of people</b> who have used the system during the past two years? _____</p>
2	How many <b>toilets</b> flush into the system? _____
3	Does a <b>dishwasher</b> empty into the system? <u>yes / no</u> If "yes," how many times per week? _____
4	Does a <b>garbage disposal</b> empty into the system? <u>yes / no</u> If "yes," how many times per week? _____
5	Does a <b>clothes washer</b> empty into the system? <u>yes / no</u> If "yes," how many loads of wash per week? _____
6	Are there any <b>other sources of water</b> which drain into the system? <u>yes / no</u> If "yes," describe:
7	Has the system <b>malfunctioned</b> while you have owned the property? <u>yes / no</u> If "yes," describe:
8	Describe the <b>work performed</b> on the system while you have owned the property, including routine maintenance and pumping:
<p><b>E. INFORMATION REGARDING LOCATION.</b> If Seller/Transferor is unable to provide answers to these questions, Buyer should obtain this information from other sources. Minnesota law and local ordinances restrict the ability to build or to rebuild improvements within flood plains, shorelands, and wetlands. You might also be restricted from using the property if the property does not have enough land area to install a new drainfield. These restrictions affect wells and individual on-site sewage treatment systems. If the individual on-site sewage treatment system fails, you might not be allowed to rebuild in its present location.</p>	
1	Is any part of the system, including all drainfields, located in a <b>Flood Plain</b> ? <u>yes / no / unknown</u>

2	Is any part of the system, including all drainfields, located in a <b>Shoreland Zone</b> ? <u>yes / no / unknown</u>
3	Is any part of the system, including all drainfields, located in or near a <b>wetland</b> or low lying area? <u>yes / no / unknown</u> If “yes,” describe:
4	Is the system, including all drainfields, located within the <b>property lines</b> ? <u>yes / no / unknown</u> If “no,” describe encroachment or easement:
5	Is the system, including all drainfields, located within the <b>setback lines</b> ? <u>yes / no / unknown</u> If “no,” describe encroachment:
<b>F. INFORMATION REGARDING GOVERNMENTAL NOTICES AND SELLER’S/TRANSFEROR’S KNOWLEDGE.</b>	
1	Have you received any <b>notices</b> regarding your system from any governmental unit? <u>yes / no</u> If “yes,” explain:
2	Do you know of any <b>defects</b> in the sewer system? <u>yes / no</u> If “yes,” describe:
3	Is there enough useable land area on the property to construct a new drainfield? <u>yes / no / unknown</u>

4	Do you have <b>any other information</b> about repairs or maintenance of the system that has not already been disclosed in this form? <u>yes / no</u> If “yes,” describe:
---	---

**G. SELLER’S/TRANSFEROR’S ADDRESS INFORMATION.**

Seller’s/Transferor’s name and address  
before sale or transfer:

Seller’s/Transferor’s address after  
sale or transfer:

**STATEMENT BY SELLER/TRANSFEROR:** To my knowledge, the information on this Supplemental Disclosure is true, accurate, and complete.

_____ Signature of Seller/Transferor	_____ Print Name of Seller/Transferor	_____ Date
_____ Signature of Seller/Transferor	_____ Print Name of Seller/Transferor	_____ Date

**ACKNOWLEDGMENT AND RECEIPT BY BUYER/TRANSFEE:** I have received this Supplemental Disclosure on [date] \_\_\_\_\_.

_____ Signature of Buyer/Transferee	_____ Signature of Buyer/Transferee
--	--

**EXHIBIT E**



To return to the text where this Exhibit is first mentioned, click here (	<a href="#"><u>TEXT</u></a>
To return to the List of Exhibits at the end of the article, click here (	<a href="#"><u>EXHIBITS</u></a>
To order paper or software versions of this form from Miller/Davis Co. [as M/D Form No. 1327 ], click here (	<a href="http://www.millerdavis.com"><u>http://www.millerdavis.com</u></a>

**EXHIBIT E**

**EXHIBIT E**

**Exhibit G**

**M.S.B.A., REAL PROPERTY SECTION, RESIDENTIAL REAL ESTATE COMMITTEE**

**Index of Current, Pending, and Proposed Real Property Forms as of November 18, 2000**

Name of Form	M.S.B.A. Designation	Status	Legal Printers		
			Miller / Davis Co. Form No.	Booth Documents & Publishers, Co., Form No.	Oswald Publishing Co. Form No.
<b>Forms 1-29, Residential Purchase Agreement Forms, Addenda, and Attachments:</b>					
Minnesota Standard Residential Purchase Agreement	M.S.B.A. Real Property Form No. <b>1</b> (1997)	Adopted 1988; Rev. 1994; Rev. Aug.1996; Rev. June, 1997; Rev. August, 1997.	1300 (Rev. 8/96)	262	BR-101
Financing Addendum for Conventional / Privately Insured Mortgage	M.S.B.A. Real Property Form No. <b>2</b> (1994)	Adopted 1994	1310 (9/94)	262A-CM	BR-102
Financing Addendum for FHA Insured Mortgage	M.S.B.A. Real Property Form No. <b>3</b> (1994; Rev. 1996)	Adopted 1994; Rev. 8/96	1311 (Rev. 8/96)	262A-FHA	BR-103
Financing Addendum for VA Insured Mortgage	M.S.B.A. Real Property Form No. <b>4</b> (1994)	Adopted 1994	1312 (9/94)	262A-VA	BR-104
Financing Addendum for Seller Mortgage	M.S.B.A. Real Property Form No. <b>5</b> (1994)	Adopted 1994	1313 (9/94)	262A-SM	BR-105
Financing Addendum for Contract for Deed	M.S.B.A. Real Property Form No. <b>6</b> (1994)	Adopted 1994	1314 (9/94)	262A-CD	BR-106
Financing Addendum for Assumption	M.S.B.A. Real Property Form No. <b>7</b> (1994)	Adopted 1994	1315 (9/94)	262A-Assume	BR-107
Addendum: Wetlands, Shoreland, and Flood Plain Disclosure	M.S.B.A. Real Property Form No. <b>8</b> (1997)	Adopted June, 1997	1321 (1997)	262A-Wetland	
Addendum for Contingent Sale or Purchase of Other Home(s)	M.S.B.A. Real Property Form No. <b>9</b> (1997)	Adopted June, 1997	1322 (1997)	262A-Cont.	

Name of Form	M.S.B.A. Designation	Status	Legal Printers		
			Miller / Davis Co. Form No.	Booth Documents & Publishers, Co., Form No.	Oswald Publishing Co. Form No.
Minnesota Standard Residential Purchase Agreement -- Rural Homestead	M.S.B.A. Real Property Form No. <b>10</b> ( _ )	Proposed	Unpublished subcommittee rough draft		
Lead Paint Addendum for Housing Constructed Before 1978	M.S.B.A. Real Property Form No. <b>11</b> (1996)	Adopted, August 1996	1317 (9/96)	262A-LPD	BR [pending]
Addendum to Purchase Agreement Regarding Common Interest Ownership Property (Planned Community)	M.S.B.A. Real Property Form No. <b>12</b> ( )	Proposed, 2000	Unpublished subcommittee rough draft		
Minnesota Standard Residential Purchase Agreement -- New Construction, Single Family Home	M.S.B.A. Real Property Form No. <b>13</b> ( )	Pending, 1997-2000	Unpublished draft		
Disclosure of Sewage Treatment System	M.S.B.A. Real Property Form No. <b>14</b> (1998)	Adopted April, 1998			
Seller's Disclosure of Condition of Property and Home Inspection Contingency	M.S.B.A. Real Property Form No. <b>15</b> ( )	Pending, 1997-2000	Unpublished draft		
Minnesota C.I.C. Resale Disclosure Certificate	M.S.B.A. Real Property Form No. <b>16</b> ( )	Pending, 2000			
[Reserved for other purchase agreement forms]	<b>Nos.17-29</b>	Reserved			

Name of Form	M.S.B.A. Designation	Status	Legal Printers		
			Miller / Davis Co. Form No.	Booth Documents & Publishers, Co., Form No.	Oswald Publishing Co. Form No.
<b>Forms 30-39, Vacant Lot / Land Purchase Agreements, Addenda, and Attachments:</b>					
Minnesota Vacant Lot Purchase Agreement -- Single Dwelling	M.S.B.A. Real Property Form No. <b>30</b> (1997)	Adopted June, 1997; Rev. August, 1997	1323 (8/97)	262-Single	
Minnesota Vacant Land Purchase Agreement -- Multiple [2-4] Dwelling	M.S.B.A. Real Property Form No. <b>31</b> (1997)	Adopted June, 1997; Rev. August, 1997	1324 (8/97)	262-Multiple	
Minnesota Vacant Land Purchase Agreement -- Residential Development Tract	M.S.B.A. Real Property Form No. <b>32</b> (1997)	Adopted June, 1997; Rev. August, 1997	1325 (8/97)	262-ResDevTr	
[Reserved for other agreement forms]	Nos. <b>33-39</b>	Reserved			
<b>Forms 40-49, Landlord / Tenant Forms (Residential Leases):</b>					
Minnesota Standard Residential Lease (House or Duplex)	M.S.B.A. Real Property Form No. <b>40</b> (2000 )	Pending	Unpublished draft.		
Minnesota Standard Residential Lease (Apartment)	M.S.B.A. Real Property Form No. <b>41</b> (2000 )	Adopted Sept., 2000	1328 (9/00)	265-3/4	
[Reserved for other landlord / tenant forms]	Nos. <b>42-49</b>	Reserved			
<b>Forms 50-59, Broker / Agent / Agency Forms:</b>					
Agency Relationships in Real Estate Transactions	M.S.B.A. Real Property Form No. <b>50</b> (1996)	Adopted June, 1996	1319 (10/96)	[pending]	
Listing Contract	M.S.B.A. Real Property Form No. <b>51</b> (1996)	Adopted June, 1996	1316 (10/96)	[pending]	

Name of Form	M.S.B.A. Designation	Status	Legal Printers		
			Miller / Davis Co. Form No.	Booth Documents & Publishers, Co., Form No.	Oswald Publishing Co. Form No.
Dual Agency Disclosure Addendum to Purchase Agreement	M.S.B.A. Real Property Form No. <b>52</b> (1996)	Adopted June, 1996	1318 (9/96)	[pending]	
[Reserved for other agency forms]	Nos. <b>53-59</b>	Reserved			
<b>Forms 60-69, Commercial Purchase Agreements:</b>					
Purchase Agreement -- Commercial / Industrial Land	M.S.B.A. Real Property Form No. <b>60</b> ( )	Proposed / unassigned project	Unpublished rough draft		
Purchase Agreement -- Commercial Building(s) / No Tenants	M.S.B.A. Real Property Form No. <b>61</b> ( )	Proposed / unassigned project	Unpublished rough draft		
Purchase Agreement -- Commercial Building(s) / With Tenants	M.S.B.A. Real Property Form No. <b>62</b> ( )	Proposed / unassigned project	Unpublished rough draft		
[Reserved for other forms]	Nos. <b>63-89</b>	Reserved			
<b>Forms 90-99, Miscellaneous</b>					
Bill of Sale, Warranty [For use with Form No. 1.]	M.S.B.A. Real Property Form No. <b>90</b> (1997 )	Adopted June, 1997	1326 (1997)	90	
Proposal and Contract for Building and Home Repair	M.S.B.A. Real Property Form No. <b>91</b> (1997)	Adopted May 1997; Rev. August, 1997	1320	91	

**Exhibit H**

M.S.B.A. Real Property Form No. 90 (June, 1997; revision pending, since August, 1997.)

DRAFT OF August 7, 1997

Warranty Bill of Sale (For use with "Minnesota Standard Residential Purchase Agreement," M.S.B.A. Real Property Form No. 1 (Rev. 1997))

**WARRANTY BILL OF SALE**

REFORMATTED FOR THIS ARTICLE.  
NORMALLY PRINTED ON 14 INCH PAPER

1 FOR VALUABLE CONSIDERATION, [Seller's name],  
2 [marital status] \_\_\_\_\_, Seller, sells ~~conveys~~ and transfers title to and possession to  
3 of certain the following personal property located at: [street address] \_\_\_\_\_

4 \_\_\_\_\_  
5 to [Buyer's name] \_\_\_\_\_, Buyer, ~~From the Purchase~~  
6 ~~Agreement.]~~ The following items of which personal property and fixtures owned by Seller, and currently located  
7 on the property are included in this sale is described as follows: \_\_\_\_\_

8 \_\_\_\_\_  
9 \_\_\_\_\_  
10 \_\_\_\_\_  
11 \_\_\_\_\_  
12 \_\_\_\_\_  
13 \_\_\_\_\_  
14 \_\_\_\_\_

15 \_\_\_\_\_  
16 subject to the lien of any security agreement assumed by Buyer; subject  
17 to any liens, encumbrances, adverse claims or other matters that Buyer has  
18 created, suffered or permitted to accrue; and, subject to the following liens, claims and  
19 encumbrances: \_\_\_\_\_

20 \_\_\_\_\_  
21 \_\_\_\_\_  
22 \_\_\_\_\_  
23 \_\_\_\_\_

24 Seller warrants that: Seller is the owner of the personal property described above; that the personal property  
25 is free from all liens, claims and encumbrances (except as listed above); and that Seller has the right to sell  
26 convey, and transfer title to and possession of the personal property to Buyer. Seller warrants and shall  
27 defend the sale of Buyer's title to the personal property to Buyer against any and all persons who claim  
28 any interest through Seller's interest in the personal property described above, subject only to the  
29 liens, claims and encumbrances listed above. Any cause of action for a breach of warranty  
30 of title as to the personal property must be commenced by Buyer within one  
31 year of the Date of Closing or be deemed waived. Minn. Stat. §326.2-725.

Date: \_\_\_\_\_

SELLER

DRAFT

**EXHIBIT H**

STATE OF MINNESOTA                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_)

The foregoing This instrument was acknowledged before me this on \_\_\_\_\_ day of \_\_\_\_\_, year\_\_\_\_, by \_\_\_\_\_, [marital status] \_\_\_\_\_, Seller.

Notarial Stamp or Seal (Or Other Title or Rank)

\_\_\_\_\_  
Signature of Person Taking Acknowledgment

[This draft will be submitted to the Real Property Council for approval as soon as the Committee finalizes its work on the fixtures/personal property text for the Purchase Agreement. Those pending revisions are the subject of [Exhibit L](#) in this article.]

To return to the text where this Exhibit is first mentioned, click here (	<a href="#">TEXT</a>
To return to the List of Exhibits at the end of the article, click here (	<a href="#">EXHIBITS</a>
To order paper or software versions of the current version of this form from Miller/Davis Co. [as M/D Form No. 1326 ], click here (	<a href="http://www.millerdavis.com">http://www.millerdavis.com</a>

**Exhibit I.**

PURCHASE AGREEMENT AMENDMENT / PAGE 112

Form No. \_\_\_\_

**PURCHASE AGREEMENT AMENDMENT.**

[Compatible with M.S.B.A. Real Property Forms 1, 30, 31, and 32.]

REFORMATTED FOR THIS ARTICLE.  
NORMALLY PRINTED ON 14 INCH PAPER

1 This Amendment is dated: \_\_\_\_\_.  
2 This document amends the terms of that certain Purchase Agreement by and between  
3 \_\_\_\_\_, as Seller, and,  
4 \_\_\_\_\_, as Buyer,  
5 Dated \_\_\_\_\_, for the sale of the property at \_\_\_\_\_  
6 \_\_\_\_\_, and legally described as:  
7  
8  
9  
10  
11

12 The terms and provisions contained herein are hereby incorporated into and made a part of the purchase  
13 agreement, and in the event of any conflict between the terms and provisions hereof and the terms and  
14 provisions of the original purchase agreement, the provisions herein contained shall control.  
15

16 **The following terms are amended:**  
17  
18  
19  
20  
21  
22  
23  
24  
25  
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28  
29

30 With this Amendment, the Purchase Agreement now consist of the following: The Purchase Agreement, consisting  
31 of \_\_\_\_ pages; *[list all addenda, supplements, and amendments]*  
32 \_\_\_\_\_  
33 \_\_\_\_\_  
34  
35

36 All of the other terms, conditions, and covenants of the Purchase Agreement remain unaffected by this  
37 Amendment.

**Buyers:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Real Estate Agents / Brokers:**

**EXHIBIT I**



**Sellers:**

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**Real Estate Agents / Brokers:**

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To return to the text where this Exhibit is first mentioned, click here (	<a href="#"><u>TEXT</u></a>
To return to the List of Exhibits at the end of the article, click here (	<a href="#"><u>EXHIBITS</u></a>
This form is not an approved M.S.B.A form. It is not available from Miller/Davis Co.	

**Exhibit J**

M.S.B.A. Real Property Form No. MAR-Supp  
Minnesota Standard Residential Purchase Agreement

(Pending, July 2000)  
PURCHASE AGREEMENT CORRECTIVE SUPPLEMENT / PAGE 1

**M.S.B.A. CORRECTIVE SUPPLEMENT TO RESIDENTIAL PURCHASE AGREEMENT PUBLISHED BY THE MINNESOTA ASSOCIATION OF REALTORS® AS FORM NO. MN:PA (9/00 VERSION)**

BEFORE YOU USE OR SIGN THIS CONTRACT, YOU SHOULD CONSULT WITH A LAWYER TO DETERMINE THAT THIS CONTRACT ADEQUATELY PROTECTS YOUR LEGAL RIGHTS. Minnesota State Bar Association disclaims any liability arising out of use of this form.

REFORMATTED FOR THIS ARTICLE.  
NORMALLY PRINTED ON 14 INCH PAPER

**This document supplements and in some parts replaces the terms of that certain Purchase Agreement published by the Minnesota Association of Realtors® as Form No. MN:PA (9/00 version) to which this Supplement is attached. The terms and provisions contained herein are hereby incorporated into and made a part of the purchase agreement, and in the event of any conflict between the terms and provisions hereof and the terms and provisions of the Form No. MN:PA to which it is attached, the provisions herein contained shall control.**

The following terms are supplemented, amended, or replaced:

**A. Add the following regarding identity of Sellers, Sellers' marital status, and Buyer's title preference:**

**PARTIES.** This Purchase Agreement is made on \_\_\_\_\_, by and between \_\_\_\_\_ *[marital status]* \_\_\_\_\_ of *[seller's address]* \_\_\_\_\_, SELLER, and \_\_\_\_\_, as joint tenants *[strike "joint tenants" if tenancy-in-common is intended]* of *[buyer's address]* \_\_\_\_\_, BUYER.

**B. Add the following regarding Buyer's deadline for Seller's acceptance of Buyer's offer:**

**ACCEPTANCE DEADLINE.** The acceptance date of this Purchase Agreement is the date it is delivered by the last party signing to the other party. This offer to purchase, unless accepted sooner, shall be void at 11:59 A.M., on *[date]* \_\_\_\_\_, and in such event all earnest money shall be refunded to Buyer.

**C. Add the following regarding transfer of title to Sellers' personal property:**

Upon delivery of the Deed, Seller shall also deliver a Warranty Bill of Sale for the above personal property. *[Check the box if the following provision applies to this Purchase Agreement:]*  Seller shall use M.S.B.A. Real Property Form No. 90 (1997), Warranty Bill of Sale.

**EXHIBIT J**

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**D. Delete lines 5-8 and 25-28 of MN:PA and substitute the following regarding price and terms and regarding disposition of the earnest money pending closing:**

**PRICE AND TERMS.** The price for the real and personal property included in this sale is \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), which Buyer shall pay as follows:

Earnest money of \$ \_\_\_\_\_ by [CASH, CHECK, NOTE - state which] \_\_\_\_\_ payable to [select one:]

- Seller, to be deposited and held by Seller (and may be commingled with Seller's other funds) pending closing,
- Seller's lawyer, to be deposited and held in the lawyer's trust account pending closing,
- Seller's broker, to be deposited or held by broker according to the requirements of Minnesota Statutes,
- Other [describe how the earnest money will be held] \_\_\_\_\_,

receipt of which is hereby acknowledged and \$ \_\_\_\_\_ cash, on \_\_\_\_\_, the DATE OF CLOSING, and the balance of \$ \_\_\_\_\_ by financing as shown on the **attached Financing Addendum**.

**E. Add the following regarding exceptions to title to the Deed/Marketable Title provisions of MN:PA ( at lines 34-40):**

Exceptions to title which constitute encumbrances, restrictions, or easements which have been disclosed to Buyer and accepted by Buyer in this Purchase Agreement *[must be specified in writing]*: \_\_\_\_\_

39 **F. Delete all provisions of MN:PA regarding taxes and special assessments, and substitute the**  
40 **following text:**

41  
42  
43 **REAL ESTATE TAXES AND SPECIAL ASSESSMENTS.** Real estate taxes due and payable in and for the year of closing shall be  
44 prorated between Seller and Buyer on a calendar year basis to the actual Date of Closing, unless otherwise provided in this Purchase  
45 Agreement. If tax statements for such taxes are not available on the Date of Closing, the amount to be prorated shall be \_\_\_\_\_  
46 % of the prior year's taxes, and such estimated proration shall be ~~[strike one]~~ **FULL AND FINAL BETWEEN SELLER AND BUYER /**  
47 **ADJUSTED UPON RECEIPT OF THE ACTUAL TAX STATEMENTS FOR SUCH YEAR** (in which case the party entitled to a credit as a  
48 result of the adjustment shall receive the amount of such credit from the other party within 30 days of issuance of the tax statements).  
49 Seller represents the taxes due and payable in the year(s) \_\_\_\_\_ will be **FULL, PART, NON**-homestead classification,  
50 unless Buyer changes the tax classification for taxes payable in the year following closing by taking possession of the real property as  
51 Buyer's homestead and filing a new homestead declaration within the time required by law. If the taxes due and payable in the year of  
52 closing are **PART** or **NON**-homestead classification, Seller shall pay to Buyer at closing \$ \_\_\_\_\_, in addition to Seller's  
53 prorated share of the taxes. If the taxes due and payable in the year following closing are **PART** or **NON**-homestead classification and  
54 the closing takes place after the date by which Buyer must take possession of the real property as Buyer's homestead to file for  
55 homestead tax status for taxes due and payable in such year, Seller shall pay to Buyer at closing \$ \_\_\_\_\_ as Seller's share of  
56 such taxes.  
57  
58 ~~[Strike one:]~~ BUYER AND SELLER SHALL PRORATE AS OF THE DATE OF CLOSING / SELLER SHALL PAY ON DATE OF CLOSING all  
59 installments of special assessments certified for payment with the real estate taxes due and payable in the year of closing.  
60 ~~[Strike one:]~~ BUYER SHALL ASSUME / SELLER SHALL PAY ON DATE OF CLOSING all other special assessments levied as of the date  
61 of this Purchase Agreement.  
62 ~~[Strike one:]~~ BUYER SHALL ASSUME / SELLER SHALL PROVIDE FOR PAYMENT OF special assessments pending as of the date of this  
63 Purchase Agreement for improvements that have been ordered by the City Council or other governmental assessing authorities.  
64 (Seller's provision for payment shall be by payment into escrow of 12 times the estimated amount of the assessments.) As of the date  
65 of this Purchase Agreement, Seller represents that Seller has not received a Notice of Hearing of a new public improvement project from  
66 any governmental assessing authority, the costs of which project may be assessed against the real property. If a special assessment  
67 becomes pending **after** the date of this Purchase Agreement and **before** the Date of Closing, Buyer may, at Buyer's option:  
68 A. Assume payment of the pending special assessment without adjustment to the purchase price of the real property; or,  
69 B. Require Seller to pay the pending special assessment (or escrow for payment of same as provided above) and Buyer shall pay a  
70 commensurate increase in the purchase price of the real property, which increase shall be the same as the estimated amount of  
71 the assessment; or,  
72 C. Declare this Purchase Agreement void by notice to Seller, and earnest money shall be refunded to Buyer.  
73 ~~[Strike one:]~~ BUYER SHALL ASSUME / SELLER SHALL PAY ON DATE OF CLOSING any deferred real estate taxes (including "Green  
74 Acres" taxes under MINN. STAT. §273.111) or special assessments payment of which is required as a result of the closing of this sale.  
75 Buyer shall pay real estate taxes due and payable in the year following closing and thereafter and any unpaid special assessments  
76 payable therewith and thereafter, the payment of which is not otherwise provided herein. Seller makes no representation concerning  
77 the amount of future real estate taxes or of future special assessments.  
78

79 **G. Delete lines 91-97 of MN:PA and substitute the following:**

80  
81 **SELLER'S BOUNDARY LINE, ACCESS, RESTRICTIONS AND LIEN WARRANTIES.** Seller warrants that buildings, if any, are entirely  
82 within the boundary lines of the real property. Seller warrants that there is a right of access to the real property from a public right of  
83 way. Seller warrants that there has been no labor or material furnished to the real property for which payment has not been made.  
84 Seller warrants that there are no present violations of any restrictions relating to the use or improvement of the real property. These  
85 warranties shall survive the delivery of the Deed or Contract for Deed.  
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**H. Delete lines 98, 134-143, and 144-155 of MN:PA and substitute the following:**

**CONDITION OF PROPERTY.**

A. Seller warrants that all appliances, fixtures, heating and air conditioning equipment, fireplaces (including mechanisms, dampers, flues, and doors), wiring, and plumbing used and located on the real property are in working order on the Date of Closing. Seller represents that the property has / has not had a wet basement or water in the basement. Seller discloses that the roof has / has not leaked. Seller warrants that the property: is / is not connected to: city sewer *[strike one]* -YES/NO; city water -YES/NO; cable TV -YES/NO. Seller shall remove all debris and all personal property not included in this sale from the real property before possession date. Seller has not received any notice from any governmental authority as to the existence of any Dutch elm disease, oak wilt, or other disease of any trees on the real property.

B. Seller knows of no hazardous substances or petroleum products having been placed, stored, or released from or on the real property by any person in violation of any law, nor of any underground storage tanks having been located on the real property at any time, except as follows:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

C. Seller's warranties and representations contained in this paragraph 10 shall survive the delivery of the Deed or Contract for Deed, provided that any notice of a defect or claim of breach of warranty must be in writing and any such notice with respect to matters referred to in A., above must be given by Buyer to Seller within one year of the Date of Closing or be deemed waived.

D. Buyer shall have the right to have inspections of the property conducted prior to closing. Unless required by local ordinance or lending regulations, Seller does not plan to have the property inspected. Other than the representations made in this paragraph 10, the property is being sold "**AS IS**" with no express or implied representations or warranties by Seller as to physical conditions, quality of construction, workmanship, or fitness for any particular purpose. (This paragraph is not intended to waive or limit any provisions of MINN. STAT., Chapter 327A.)

**I. Add the following regarding municipal truth in housing disclosures:**

**TRUTH-IN-HOUSING.** Buyer acknowledges receipt of the Truth-in-Housing Disclosure Report or other inspection report if required by the municipality in which the real property is located.

**J. Delete all provisions of MN:PA regarding examination of title and title evidence (abstract and registered property abstract), and substitute the following text:**

**EXAMINATION OF TITLE.** To demonstrate that Seller's title is good and marketable of record, within a reasonable time after acceptance of this Purchase Agreement, Seller shall furnish Buyer with an Abstract of Title or a Registered Property Abstract certified to date including proper searches covering bankruptcies and state and federal judgments, federal court judgment liens in favor of the U.S., liens, and levied and pending special assessments. Buyer shall have ten (10) business days after receipt of the Abstract of Title or Registered Property Abstract either to have Buyer's lawyer examine the title and provide Seller with written objections or, at Buyer's own expense, to make an application for a title insurance policy and notify Seller of the application. Buyer shall have ten (10) business days after receipt of the Commitment for Title Insurance to provide Seller with a copy of the Commitment and written objections. Buyer shall be deemed to have waived any title objections not made within the ten (10) day period above, except that this shall not operate as a waiver of Seller's covenant to deliver a statutory Warranty Deed, unless a Warranty Deed is not specified above. If Buyer obtains title insurance, Buyer is not waiving the right to obtain a good and marketable title of record from Seller.

142 **K. Delete all provisions of MN:PA regarding title corrections and remedies and substitute the**  
143 **following text:**

145 **TITLE CORRECTIONS AND REMEDIES.** Seller shall have 120 days from receipt of Buyer's written title objections to make title  
146 marketable. Upon receipt of Buyer's title objections, Seller shall, within ten (10) business days, notify Buyer of Seller's intention to  
147 make title marketable within the 120 day period. Liens or encumbrances for liquidated amounts which can be released by payment or  
148 escrow from proceeds of closing shall not delay the closing. Cure of the defects by Seller shall be reasonable, diligent, and prompt.  
149 Pending correction of title, all payments required herein and the closing shall be postponed.

150 A. If notice is given and Seller makes title marketable, then upon presentation to Buyer and proposed lender of documentation  
151 establishing that title has been made marketable, and if not objected to in the same time and manner as the original title  
152 objections, the closing shall take place within ten (10) business days or on the scheduled closing date, whichever is later.

153 B. If notice is given and Seller proceeds in good faith to make title marketable but the 120 day period expires without title being  
154 made marketable, Buyer may declare this Purchase Agreement void by notice to Seller, neither party shall be liable for damages  
155 hereunder to the other, and earnest money shall be refunded to Buyer.

156 C. If Seller does not give notice of intention to make title marketable, or if notice is given but the 120 day period expires without title  
157 being made marketable due to Seller's failure to proceed in good faith, Buyer may seek, as permitted by law, one or more of the  
158 following:

159 1. Proceed to closing without waiver or merger in the Deed of the objections to title and without waiver of any remedies, and  
160 may:  
161 (a) Seek damages, costs, and reasonable lawyer's fees from Seller as permitted by law (damages under this subparagraph (a)  
162 shall be limited to the cost of curing objections to title, and consequential damages are excluded); or  
163 (b) Undertake proceedings to correct the objections to title;

164 2. Rescission of this Purchase Agreement by notice as provided herein, in which case the Purchase Agreement shall be null and  
165 void and all earnest money paid shall be refunded to Buyer;

166 3. Damages from Seller together with costs and reasonable lawyer's fees, as permitted by law;

167 4. Specific performance within six months after such right of action arises.

168 D. If title is marketable, or is made marketable as provided herein, and Buyer defaults in any of the agreements herein, Seller may  
169 elect either of the following options, as permitted by law:

170 1. Cancel this contract as provided by statute and retain all payments made hereunder as liquidated damages. The parties  
171 acknowledge their intention that any note given pursuant to this contract is a down payment note, and may be presented for  
172 payment notwithstanding cancellation;

173 2. Seek specific performance within six months after such right of action arises, including costs and reasonable lawyer's fees, as  
174 permitted by law.

175 E. If title is marketable, or is made marketable as provided herein, and Seller defaults in any of the agreements herein, Buyer may, as  
176 permitted by law:

177 1. Seek damages from Seller including costs and reasonable lawyer's fees;

178 2. Seek specific performance within six months after such right of action arises.

179

180  
181 **L. Add the following regarding municipal truth in housing disclosures:**

183 **NOTICES.** All notices required herein shall be in writing and delivered personally or mailed to the address as shown at Paragraph 1  
184 above and, if mailed, are effective as of the date of mailing.  
185

186  
187 **M. Add the following regarding governing law:**

189 **MINNESOTA LAW.** This contract shall be governed by the laws of the State of Minnesota.  
190

191 **N. Delete all provisions of MN:PA regarding sewage treatment systems (lines 137-143), and**  
192 **substitute the following text:**

**SEWAGE TREATMENT SYSTEM DISCLOSURE.**

*[Check either A or B: ]*

- A.** Seller certifies that sewage generated at the property goes to a facility permitted by the Minnesota Pollution Control Agency (for example, a city or municipal sewer system).
- B.** Seller certifies that sewage generated at the property does not go to a facility permitted by the Minnesota Pollution Control Agency and Seller's Disclosure of Individual Sewage Treatment System is attached (attach form).

*[Check either C or D: ]*

- C.** Seller does not know if there is an abandoned individual sewage treatment system on the property.
- D.** Seller knows that there *[strike one:]* **are / are no** abandoned individual sewage treatment systems on the property. If Seller discloses the existence of an abandoned individual sewage treatment system on the property, then Minnesota law requires that the location of the system be disclosed to Buyer with a map. *[Attach Seller's Disclosure of Individual Sewage Treatment System with map completed.]*

**O. Add the following:**

**LEAD PAINT DISCLOSURE.** *[Check one of the following: ]*

- Seller represents that the dwelling was constructed on the real property in 1978 or later.
- Seller represents that the dwelling was constructed on the real property before 1978. (If such housing is located on the real property, attached and made a part of this Purchase Agreement is "LEAD PAINT ADDENDUM FOR HOUSING CONSTRUCTED BEFORE 1978".)

**WETLANDS, SHORELAND, AND FLOOD PLAIN CONCERNS.** Currently the law does not require Seller to disclose Seller's knowledge, if any, of the existence of wetlands, shoreland, or flood plain on or affecting the real property. If Buyer has not already investigated these concerns, Buyer might want to include Seller's disclosures regarding these concerns. *[Check the box if the following provision applies to this Purchase Agreement:]* **ADDENDUM TO PURCHASE AGREEMENT: WETLANDS, SHORELAND AND FLOOD PLAIN DISCLOSURE**, M.S.B.A. Real Property Form No. 8 (1997), is included as an addendum to this Purchase Agreement.

**SELLER'S AFFIDAVIT.** At closing, Seller shall supplement the warranties and representations in this Purchase Agreement by executing and delivering a Minnesota Uniform Conveyancing Blank [Form No. 116-M, 117-M, or 118-M] Affidavit of Seller.

**CLOSING.** Closing shall be at the office of Seller's lawyer, Buyer's title insurer, or at some other mutually agreeable location.

*[State other location:]* \_\_\_\_\_

At closing, Seller and Buyer shall disclose their Social Security Numbers or Federal Tax Identification Numbers for the purposes of completing state and federal tax forms. **IF YOU HAVE ALREADY WRITTEN YOUR SOCIAL SECURITY NUMBER ON FORM NO. MN:PA, YOU MAY OBLITERATE IT. YOU DO NOT NEED TO DISCLOSE THIS PRIVATE DATA IN YOUR PURCHASE AGREEMENT, BUT YOU WILL NEED TO DISCLOSE IT AT CLOSING FOR THE PURPOSES OF COMPLETING THE NECESSARY TAX FORMS.**

**ADDENDA.** Attached are \_\_\_\_\_ addenda which are made a part of this Purchase Agreement. With this Supplement, the Purchase Agreement now consist of the following: The Purchase Agreement, consisting of \_\_\_ pages; this Supplement consisting of x pages; and *[list all addenda, supplements, and amendments]*

**MULTIPLE ORIGINALS.** Seller and Buyer have signed *[number]* \_\_\_\_\_ originals of this Purchase Agreement.

**THIS IS A LEGALLY BINDING CONTRACT. BEFORE SIGNING, CONSULT A LAWYER.** Minnesota law permits licensed real estate brokers and sales agents to prepare purchase agreements. No recommendation or representation may be made by any real estate broker or sales agent as to the legal sufficiency, the legal effect, or the tax consequences of this contract. These are questions for your lawyer.

I agree to sell the property for the price and terms and conditions set forth above.

I agree to purchase the property for the price and terms and conditions set forth above.

SELLER: \_\_\_\_\_  
(date)

BUYER: \_\_\_\_\_  
(date)

SELLER: \_\_\_\_\_  
(date)

BUYER: \_\_\_\_\_  
(date)

To return to the text where this Exhibit is first mentioned, click here (	<a href="#"><u>TEXT</u></a>
To return to the List of Exhibits at the end of the article, click here (	<a href="#"><u>EXHIBITS</u></a>
This form is not an approved M.S.B.A form. It is not available from Miller/Davis Co.	



**Exhibit K.**

**PROPOSAL FOR MODIFYING THE PURCHASE AGREEMENT:  
REAL PROPERTY TAXES AND SPECIAL ASSESSMENTS**

This proposal addresses the need for better distinctions between the various classes of special assessments and real property taxes. This proposal has been developed at the suggestion of Joe Mullery. Changes from the current form are highlighted.

M.S.B.A. **Real Property Form No. 1** (1994; Rev. 1996; Rev. 1997; Rev. August, 1997)  
Minnesota Standard Residential Purchase Agreement

PURCHASE AGREEMENT / PAGE 121

**MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT**

© Copyright 1996, 1997 by Minnesota State Bar Association, Minneapolis, Minnesota.

BEFORE YOU USE OR SIGN THIS CONTRACT, YOU SHOULD CONSULT WITH A LAWYER TO DETERMINE THAT THIS CONTRACT ADEQUATELY PROTECTS YOUR LEGAL RIGHTS. Minnesota State Bar Association disclaims any liability arising out of use of this form.

[ Other parts of this form are not reprinted here. ]

November 18, 1998, draft of changes for RPF 1 and 30-32, ¶7.

[ \MinnResPA2000\_final.wpd ]

New text is shown in underlined Courier typeface.

Text to be deleted is shown with ~~Strikeout~~. Text is printed larger than in RPF No. 1.

59 **7. REAL ESTATE TAXES AND SPECIAL ASSESSMENTS.**

60 **A. Current Year Taxes.** Real estate taxes due and payable in and for the year of closing shall be

61 [select one:]

62 Prorated between Seller and Buyer on a calendar year basis to the actual date of closing, adjusted

63 on the settlement statement at closing, and unless otherwise provided in this

64 Purchase Agreement, shall be paid at closing

65 Paid by Buyer at closing

66 Paid by Seller at closing

67 Assumed by Buyer.

68 **B. Tax Statements.** If tax statements for such taxes are not available on the Date of Closing, the

69 amount to be prorated shall be \_\_\_\_\_% of the prior year's taxes, and such estimated proration shall be

70 ~~[strike one]~~ **FULL AND FINAL BETWEEN SELLER AND BUYER / ADJUSTED UPON RECEIPT OF THE ACTUAL**

71 **TAX STATEMENTS FOR SUCH YEAR** (in which case the party entitled to a credit as a result of the adjustment

72 shall receive the amount of such credit from the other party within 30 days of issuance of the tax statements).

73

74 **C. Homestead Classification.** Seller represents the taxes due and payable in the year(s) \_\_\_\_

75 \_\_\_\_\_ will be **FULL, PART, NON** -homestead classification, unless Buyer changes the tax classification for

76 taxes payable in the year following closing by taking possession of the real property as Buyer's homestead and

77 filing a new homestead declaration within the time required by law. If the taxes due and payable in the year

78 of closing are **PART** or **NON**-homestead classification, Seller shall pay to Buyer at closing \$\_\_\_\_\_, in

79 addition to Seller's prorated share of the taxes. If the taxes due and payable in the year following closing are

80 **PART** or **NON**-homestead classification and the closing takes place after the date by which Buyer must take

**EXHIBIT K**

81 possession of the real property as Buyer's homestead to file for homestead tax status for taxes due and  
82 payable in such year, Seller shall pay to Buyer at closing \$\_\_\_\_\_ as Seller's share of such taxes.

83 **D. Deferred Real Estate Taxes. *Select one:***

84 BUYER SHALL PAY AT CLOSING

85 BUYER SHALL ASSUME PAYMENT, WHEN DUE, OF

86 SELLER SHALL PAY ON DATE OF CLOSING OR PROVIDE FOR PAYMENT OF

87 any deferred real estate taxes (including "Green Acres" taxes under MINN. STAT. §273.111) ~~or special~~  
88 ~~assessments~~ payment of which is required as a result of the closing of this sale and/or the  
89 recording/filing of the deed or contract-for-deed. (Seller's provision  
90 for payment shall be by payment into escrow of 1½ times the estimated  
91 payoff amount of the deferred taxes.)

92 **E. Valuation Exclusions from Assessed Value.** Seller warrants and  
93 represents that the property [strike one:] does / does not have an  
94 exclusion from estimated market value for certain home improvements  
95 pursuant to Minnesota Statutes section 273.11, Subd. 16 (1997). Such  
96 exclusion expires on the sale of the property and will cause the  
97 assessed value of the property to increase for property tax purposes.  
98 The increase in assessed value will cause the property taxes to increase  
99 and might make the property unaffordable for Buyer. If Seller  
100 represents that the property does not have an exclusion and an exclusion  
101 is discovered prior to closing, Buyer may, at Buyer's option:\_\_\_

102 (1) Assume payment of the increased property taxes without adjustment  
103 to the purchase price of the real property;

104 (2) Require that the price of the property be reduced by the estimated  
105 increase in property taxes over the three calendar years following  
106 the year of closing (Such estimated increase shall be obtained from  
107 the county assessor or city assessor.); or.

108 (3) Declare this Purchase Agreement void by notice to Seller, and the  
109 earnest money shall be refunded to Buyer.

110  
111 If the exclusion is not discovered until after closing, Seller shall be  
112 liable to Buyer for five times the difference between the real estate  
113 taxes due and payable in the year of closing and the estimated increase in  
114 real estate taxes based on the reassessed value provided that any notice  
115 of a claim of breach of warranty must be in writing and must be given by  
116 Buyer to Seller within one year of the Date of Closing or be deemed  
117 waived.

118 **F. Certified Special Assessments.** All installments of special assessments certified for  
119 payment with the real estate taxes due and payable in the year of closing shall be / *Select one:*

120 Prorated between Seller and Buyer on a calendar year basis to the  
121 actual date of closing, adjusted on the settlement statement at  
122 closing, and unless otherwise provided in this Purchase Agreement,  
123 shall be paid at closing

124 Paid by Buyer at closing

125 Paid by Seller at closing

126 Assumed by Buyer.

127

128 **G. Pending Special Assessments.** *[Strike one:]* BUYER SHALL ASSUME PAYMENT OF  
129 / SELLER SHALL PROVIDE FOR PAYMENT OF special assessments pending as of the date of this  
130 Purchase Agreement for improvements that have been ordered by the City Council or other governmental  
131 assessing authorities. (Seller's provision for payment shall be by payment into escrow of 12 times the  
132 estimated amount of the assessments.) As of the date of this Purchase Agreement, Seller represents that  
133 Seller has not received a Notice of Hearing of a new public improvement project from any governmental  
134 assessing authority, the costs of which project may be assessed against the real property. If a special  
135 assessment becomes pending **after** the date of this Purchase Agreement and **before** the Date of Closing,  
136 Buyer may, at Buyer's option:

- 137 (1) Assume payment of the pending special assessment without adjustment to the purchase price of  
138 the real property; or,  
139 (2) Require Seller to pay the pending special assessment (or escrow for payment of same as provided  
140 above) and Buyer shall pay a commensurate increase in the purchase price of the real property,  
141 which increase shall be the same as the estimated amount of the assessment; or,  
142 (3) Declare this Purchase Agreement void by notice to Seller, and the earnest money shall be refunded  
143 to Buyer.

144 **H. Deferred Special Assessments.** *[Strike one:]* BUYER SHALL PAY AT CLOSING/  
145 BUYER SHALL ASSUME PAYMENT, WHEN DUE, OF / SELLER SHALL PAY ON DATE OF CLOSING OR  
146 PROVIDE FOR PAYMENT OF ~~any deferred real estate taxes (including "Green Acres" taxes under MINN.~~  
147 ~~STAT. §273.111) or~~ special assessments payment of which is required as a result of the closing of this sale  
148 and/or the recording/filing of the deed or contract-for-deed. (Seller's  
149 provision for payment shall be by payment into escrow of 1½ times the  
150 estimated payoff amount of the deferred special assessments.)

151 **I. All Other Levied Special Assessments.** *[Strike one:]* BUYER SHALL ASSUME  
152 PAYMENT OF / SELLER SHALL PAY ON DATE OF CLOSING all other special assessments levied as of the  
153 date of this Purchase Agreement, except deferred special assessments (covered at  
154 ¶H., above).

155 **J. Taxes and Special Assessments in the Year Following Closing.** Buyer  
156 shall pay real estate taxes due and payable in the year following closing and thereafter and any unpaid special  
157 assessments payable therewith and thereafter, the payment of which is not otherwise provided herein. Seller  
158 makes no representation concerning the amount of future real estate taxes or of future special assessments.

To return to the text where this Exhibit is first mentioned, click here (	<a href="#">TEXT</a>
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**Exhibit L**  
**PROPOSAL FOR MODIFYING THE PURCHASE AGREEMENT:**  
**PERSONAL PROPERTY AND FIXTURES**

This proposal addresses the need for better distinctions between personal property and fixtures. These changes are proposed only for Parts 4., and 10., of Real Property Form No. 1. Forms 30-32 are not included in this proposal. New text is shown in underlined Courier typeface. Text to be deleted is shown with ~~Strikeout~~.

---

**4. FIXTURES AND PERSONAL PROPERTY AND FIXTURES INCLUDED IN SALE.** For the purposes of this Purchase Agreement, "Fixtures" are items that are embedded in the land or attached to the building(s) and cannot be removed without damage to the real property. The method by which the fixture is "attached" could be screws, nails, adhesives, or any other mechanical connection which shows Seller's intent to make the item a permanent part of the real estate. Examples of fixtures are doors and cabinets. "Personal property" includes items that are not attached to the building(s) or embedded in the land and that are removable without damage to the real property. Examples of personal property are free-standing (not "built in") appliances and furniture. Buyer and Seller should consider carefully the fixtures and personal property to be included in the sale. For example, a mirror attached to a wall by screws or nails is a fixture, while a mirror hung from a nail or picture hanger is personal property.

**A. PROPERTY INCLUDED IN THE SALE.** Title to fixtures passes to Buyer with the deed. All ~~The following~~ items of personal property and fixtures ~~owned by Seller and~~ currently located on or attached to or embedded in the real property and not excluded at B., below, are **included** in this sale such as ~~Strike-out items not included~~: garden bulbs, plants, shrubs, trees, landscaping, storm windows and inserts, storm doors and inserts, screens, awnings, window shades, blinds, curtain-traverse-drapery rods, ~~mirrors, door mirrors, cabinets, counter tops, doors, door hardware, mantels, woodwork,~~ attached lighting fixtures with bulbs, electrical wiring, electric outlets, electric switches, electric outlet plates and switch plates, all plumbing and piping, plumbing fixtures, sump pumps, water heaters, heating systems, heating stoves, fireplace inserts, fireplace doors and screens, built-in humidifiers, built-in air conditioning units, built-in electronic air filters, automatic garage door openers with controls, television antennas, satellite dishes, water softeners, built-in dishwashers, garbage disposals, built-in trash compactors, built-in ovens and cooking stoves, hood-fans, intercoms, installed carpeting, built-in work benches, security systems, fences, retaining walls, kennels, gates, survey monuments, culverts, sheds, gazebos, trellises, underground irrigation systems, weathervanes, lightning rods, flagpoles, light poles and lights, outdoor statuary, pumps, mail boxes, mail box posts, and newspaper boxes. ~~and also the following property~~

**B. FIXTURES EXCLUDED FROM THE SALE.** The following fixtures, currently attached to the real property, are **excluded** from this sale and will be removed by Seller prior to closing:

Any damage to the real property that occurs in Seller's removal of these fixtures will be repaired by Seller prior to closing. The following fixtures will be replaced by Seller:

**C. PERSONAL PROPERTY INCLUDED IN THE SALE.** Title to personal property passes to Buyer by a bill of sale. Any personal property to be included in the sale must be listed here. The following items of personal property owned by Seller and currently located on the real property are included in this sale:

[Select only one of the following:]

**EXHIBIT L**

⊖ Buyer will accept the property "as is" in its condition at the time of closing.

⊖ Seller warrants that these items of personal property will be in working order on the day of closing.

For the purposes of this Purchase Agreement (this paragraph 4., and 10.,A., below), "in working order" means that the item functions for the purpose that it is intended to perform, that it is not in violation of any public codes or regulations (although it may be nonconforming under current law), that it does not presently need repairs or service, that it is not missing any essential parts, and that its only imperfections are "cosmetic" or signs of "wear and tear" associated with a product of its age. Seller's warranties and representations contained in this paragraph 4.C., shall survive the delivery of the Deed or Contract for Deed and any Bill of Sale for personal property. Any notice of a defect or claim of breach of warranty as to "in working order" must be in writing and must be given by Buyer to Seller within 30 days of the Date of Possession or be deemed waived. Any cause of action for a breach of warranty of title as to the personal property must be commenced by Buyer within one year of the Date of Closing or be deemed waived. Minn. Stat. §326.2-725.

Upon delivery of the Deed, Seller shall also deliver a Warranty Bill of Sale containing warranties of title for the above personal property. ~~(Check the box if the following provision applies to this Purchase Agreement.)~~ Seller shall use M.S.B.A. Real Property Form No. 90 (1997, Rev. 1998), Warranty Bill of Sale or a similar form containing the following warranties of title: "Seller warrants that: Seller is the owner of the personal property described above; the personal property is free from all liens, claims and encumbrances (except as listed above); and that Seller has the right to sell and transfer title to and possession of the personal property to Buyer. Seller warrants and shall defend Buyer's title to the personal property against any and all persons who claim any interest through Seller's interest in the personal property described above, subject only to the liens, claims and encumbrances listed above." These warranties are not intended to change or limit the warranties of Minn. Stat. section 336.2-312 or to alter the remedies available to Buyer under Minn. Stat. sections 325F.068 -.070.

At closing or prior to closing, Seller shall provide for payment of, satisfaction of, or release of any existing liens, claims, or encumbrances on the personal property or fixtures, except for the following encumbrances which Buyer accepts or assumes [list here]:

\*\*\*\*\*

**10. CONDITION OF THE REAL PROPERTY.**

- A. Seller warrants that all ~~appliances,~~ fixtures, heating and air conditioning equipment, fireplaces (including mechanisms, dampers, flues, and doors), wiring, and plumbing used and located on the real property ~~are~~ will be in working order on the Date of Closing. (See 4.,C., above, for definition of "in working order.") Seller represents that the property has / has not had a wet basement or water in the basement. Seller discloses that the roof has / has not leaked. Seller warrants that the property: is / is not ~~is~~ connected to: city sewer ~~[strike one]~~ -YES / NO; city water -YES / NO; cable TV -YES/NO. Seller shall remove all debris, ~~trash, rubbish, garbage, rubble,~~ and yard waste from the land before the possession date. Seller shall remove all trash, garbage, and miscellaneous discarded materials from the buildings, and shall leave the buildings in "broom clean" condition before the possession date. and Seller shall remove all personal property not included in this sale from the real property before possession date. Seller has not received any notice from any governmental authority as to the existence of any Dutch elm disease, oak wilt, or other disease of any trees on the real property.
- B. Seller knows of no hazardous substances or petroleum products having been placed, stored, or released from or on the real property by any person in violation of any law, nor of any underground storage tanks having been located on the real property at any time, except as follows:

**EXHIBIT L**

- 
- 
- C. Seller's warranties and representations contained in this paragraph 10 shall survive the delivery of the Deed or Contract for Deed. ~~provided that~~ Any notice of a defect or claim of breach of warranty must be in writing and any such notice with respect to matters referred to in A., above must be given by Buyer to Seller within one year of the Date of Closing or be deemed waived.
- D. Buyer shall have the right to have inspections of the property conducted prior to closing. Unless required by local ordinance or lending regulations, Seller does not plan to have the property inspected. Other than the warranties and representations made in this paragraph 10, the real property and fixtures included in the sale are ~~is~~ being sold "AS IS" with no express or implied representations or warranties by Seller as to physical conditions, quality of construction, workmanship, or fitness for any particular purpose. (This paragraph is not intended to waive or limit any provisions of MINN. STAT., Chapter 327A.)

To return to the text where this Exhibit is first mentioned, click here (	<a href="#"><b>TEXT</b></a>
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**Exhibit M**

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (1996).

part.

STATE OF MINNESOTA  
IN COURT OF APPEALS

C0-96-1986

Thomas R. Kleist, et al.,  
Respondents,

vs.

L. John Alwin, et al.,  
Appellants.

Filed April 22, 1997

Affirmed in part and reversed in part

Norton, Judge  
Hennepin County District Court  
File No. CT-95-11262

John M. Koneck, Fredrikson & Byron, P.A., 1100 International Centre, 900 Second Avenue South, Minneapolis, MN 55402 (for Respondents)

Karl L. Cambronne, Becky L. Erickson, Chestnut & Brooks, P.A., 3700 Piper Jaffray Tower, 222, South Ninth Street, Minneapolis, MN 55402 (for Appellants)

Considered and decided by Norton, Presiding Judge, Peterson, Judge, and Mulally, Judge.[\*]

UNPUBLISHED OPINION

NORTON, Judge

Appellants argue that the trial court erred by concluding that the disclosure statement created a warranty covering defective fireplaces in this residential home sale. Respondents challenge the trial court's rejection of their negligent misrepresentation claim and exclusion of evidence regarding appellants' use of the fireplaces.

The trial court erred by construing the Alwins' disclosure statement as a warranty. The trial court did not abuse its discretion by excluding evidence regarding the use of the fireplaces and properly rejected appellants' negligent misrepresentation claim. We affirm in part and reverse in

FACTS

Respondents Thomas R. and Deborah J. Kleist purchased a home containing two fireplaces from appellants L. John and Joyce B. Alwin. After the Kleists moved into the house, but before using the fireplaces, they hired a chimney sweep to clean the chimneys. The chimney sweep reported several cracks in the fireplaces' flue. To recover the costs of repairing the fireplaces, the Kleists sued the Alwins for breach of contract, breach of warranty, and fraudulent or negligent misrepresentation.

Following a bench trial, the court ruled that the Alwins breached a warranty contained in the disclosure statement because the fireplaces were not in reasonable working order. The court ruled that there was no fraud or negligent misrepresentation because the fireplace problems were a latent defect nondiscoverable by either party and awarded the Kleists the cost of repair plus court costs.

DECISION

1. Breach of Warranty.

The Alwins argue that the trial court erred by concluding that the disclosure statement contained a warranty covering the fireplaces. "The construction and effect of a contract are questions of law for the court \* \* \* ." Turner v. Alpha Phi Sorority House, 276 N.W.2d 63, 66 (Minn. 1979). When reviewing a trial court's decision on a purely legal issue, this court is not bound by and need not give deference to the trial court's decision. Frost-Benco Elec. Ass'n v. Minnesota Pub. Utils. Comm'n, 358 N.W.2d 639, 642 (Minn. 1984).

The trial court construed the disclosure statement as a warranty because the language provided that the fireplace and fireplace mechanisms would be "in working order and shall be at the time of closing." The trial court interpreted the phrase "working order" to mean reasonable working order, meaning free of defects such as cracks. The court acknowledged that the disclosure statement said it was not a warranty of any kind, but said that a reference in the disclosure statement to the purchase agreement overrode this disclaimer language. The court then read the Alwins' disclosure statement as an addendum to the purchase agreement.

The Kleists allege that the trial court properly read the purchase agreement and disclosure statement together



because they were executed at the same time, by the same parties, relating to the same transaction. See *Farrell v. Johnson*, 442 N.W.2d 805, 806-07 (Minn. App. 1989) (holding that sales agreement and closing agreement, which were executed at same time and related to same transaction, must be considered together since they are one contract or instrument in the eyes of the law). Although the purchase agreement and disclosure statement both pertain to the condition of the home, they do not both relate to the actual contract of sale and, therefore, should not be read together.

Moreover, the trial court erred by reading the disclosure statement and purchase agreement as one contract because the disclosure statement states that it is not part of a contract or a warranty. By its language, the purchase agreement consists of "any attached exhibits and any addenda or amendments"; the disclosure statement is neither an enumerated part of the contract nor is it labeled as an addendum. The Alwins correctly observe that the purchase agreement provides that the entire contract is six pages long: the three-page original purchase agreement plus three one-page documents labeled as addenda.

Furthermore, the disclosure statement is ambiguous because in one section it states, "This disclosure is not a warranty of any kind by the Seller(s)," while in another it states that fireplaces "are in working order and shall be at time of closing." When a document is reasonably susceptible of more than one meaning, an ambiguity exists, and courts may consider extrinsic evidence of intent to interpret the contract. *Blattner v. Forster*, 322 N.W.2d 319, 321 (Minn. 1982). The court should avoid interpretation of a contract that renders a provision meaningless and, to that end, must construe the contract as a whole and attempt to harmonize all clauses. *Chergosky v. Crosstown Bell, Inc.*, 463 N.W.2d 522, 525-26 (Minn. 1990).

The Kleists contend that the disclosure statement's provision that the fireplaces "are in working order and shall be at time of closing" must be construed as a warranty or it is meaningless. We disagree. The purpose of the disclosure statement is to provide buyers with information to use when "deciding whether and on what terms to purchase the subject property." Moreover, the plain language of the disclosure statement provides only that the fireplace will be in working order at the time of closing based on the sellers' knowledge. In this case, the trial court found as a matter of law that the Alwins had no knowledge of the fireplace defects. Indeed, the Alwins burned a fire in the fireplace approximately one month before they moved out. That fact shows that, to the best of the Alwins' knowledge, the fireplaces were working on

the date of closing.

The disclosure statement specifies that it "is not intended to be a part of any contract between the Buyer and Seller." The disclosure statement expressly provides that it is not a substitute for any warranty that the parties may wish to obtain. If the disclosure statement is read as a warranty, then these provisions are meaningless. *Chergosky*, 463 N.W.2d at 525-26 (court must harmonize different portions of contract and give all provisions meaning). To construe the disclosure statement as a warranty under these circumstances would violate the principle that the court should avoid absurd and unjust results. See *American Warehousing & Distrib., Inc. v. Michael Ede Management, Inc.*, 414 N.W.2d 554, 557 (Minn. App. 1987) (court should interpret contract to avoid absurd results and harmonize all provisions whenever possible). Therefore, the trial court's conclusion that the disclosure statement created a warranty is erroneous.

The Kleists argue that even if the disclosure statement does not create a warranty for the fireplaces, the purchase agreement's heating system warranty covers the fireplaces. The trial court found that the purchase agreement's warranty statement that all "appliances, heating, air conditioning, wiring and plumbing systems used and located on said property will be in working order on the date of closing, except as noted on the attached addendum," did not include fireplaces. We review the trial court's construction of this warranty de novo. *Turner*, 276 N.W.2d at 66. The purchase agreement "heating \* \* \* systems" warranty is unambiguous because it is not reasonably susceptible to more than one meaning. *Blattner*, 322 N.W.2d at 321. It refers only to a "system" that is used for "heating." In determining what heating means in this agreement, we must give the word its plain and ordinary meaning. *Employers Mut. Liab. Ins. Co. v. Eagles Lodge*, 282 Minn. 477, 479, 165 N.W.2d 554, 556 (1969). The plain and ordinary meaning of the word "heater" is an "apparatus that heats or provides heat." *American Heritage Dictionary* 835 (3d ed. 1992). An example of a heating apparatus might be a "boiler" defined as "[a]n enclosed vessel in which water is heated and circulated, either as hot water or as steam, for heating or power." *Id.* at 212. Another example of a possible heating apparatus is a "furnace" defined as "[a]n enclosure in which energy in a nonthermal form is converted to heat." *Id.* at 736. A "fireplace," however, is not defined in terms of providing heat, but rather is defined as "[a]n open recess for holding a fire at the base of a chimney; a hearth." *Id.* at 685. The plain meaning of the word "fireplace" demonstrates that it is mainly an ornamental appendage of the home, not a heating system. Consequently, the Alwins did not breach the "heating \* \*



\* system" warranty due to the defective fireplaces.

## 2. Exclusion of Evidence.

The Kleists argue that, because the purchase agreement is ambiguous as to whether fireplaces are included within the heating warranty of the purchase agreement, the trial court incorrectly excluded extrinsic evidence regarding the Alwins' use of the fireplace for heating their home. The decision to admit or exclude evidence rests within the broad discretion of the trial court; we will not disturb its ruling unless it is based on an erroneous view of the law or constitutes an abuse of discretion. *Uselman v. Uselman*, 464 N.W.2d 130, 138 (Minn. 1990). The trial court did not allow testimony regarding the Alwins' use of the fireplaces for heating because the trial court found that the "heating \* \* \* systems" warranty in the purchase agreement unambiguously excluded fireplaces. As discussed above, we agree that the purchase agreement warranty unambiguously excluded all apparatuses, including fireplaces, whose function is not for heating. We may not interpret an unambiguous contract, but must discover its meaning from its plain language. *Metropolitan Sports Facilities Comm'n v. General Mills, Inc.*, 470 N.W.2d 118, 123 (Minn. 1991). Therefore, the trial court did not abuse its discretion by refusing to permit testimony regarding the use of fireplaces.

## 3. Negligent Misrepresentation.

The Kleists allege that the trial court erroneously rejected their misrepresentation claim. The trial court found that the Alwins had no knowledge of the fireplace defect and that the defect was not discoverable by either party. Although the trial court's focus on the Alwins' knowledge of the defect was the wrong legal standard under which to dismiss a negligent misrepresentation claim, the evidence supports the dismissal of the claim on the proper legal

ground.

To recover under a theory of negligent misrepresentation, the plaintiff must prove that the representor failed to exercise reasonable care or competence in communicating the pertinent information. *Florenzano v. Olson*, 387 N.W.2d 168, 174 (Minn. 1986). The Kleists allege that the Alwins failed to exercise reasonable care or competence when communicating that the fireplaces were in working order because: 1) Mr. Alwin cleaned his own fireplace and had extensive experience with other fireplaces and woodburning appliances; 2) Mr. Alwin should have seen the cracked flue; 3) as a fireplace expert, Mr. Alwin should have known of the danger that this defect presented; and 4) the metal screen on top of the chimney made the discovery of the defect harder to find.

This evidence does not show that the Alwins failed to exercise reasonable care or competence in communicating the information regarding the fireplace to the Kleists. Contrary to the Kleists' assertion, Mr. Alwin was not established as a fireplace expert. Moreover, his familiarity with the cleaning of fireplaces does not establish that he failed to exercise reasonable care in informing the Kleists that the fireplaces were in working order. Indeed, the trial court found the fireplace defects were latent and nondiscoverable. This evidence does not show that the Alwins failed to exercise reasonable care in reporting the fireplaces' condition. Therefore, the trial court properly dismissed respondents' negligent misrepresentation claim.

Affirmed in part and reversed in part.

[ ]\* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

To return to the text where this Case is first mentioned, click here (	<a href="#">TEXT</a>
To return to the List of Exhibits at the end of the article, click here (	<a href="#">EXHIBITS</a>

**EXHIBIT M**

**Exhibit N**

This exhibit uses **Real Property Form No. 30** as the outline for discussion of the differences and similarities between Forms 1, 30, 31 and 32. All four forms are identical in text and structure except where there is a note (boxed and shaded like this paragraph). The two other vacant land forms that are included in this discussion are:

**MINNESOTA VACANT LAND PURCHASE AGREEMENT -- MULTIPLE [2-4] DWELLING**, M.S.B.A. Real Property Form No. **31** (1997; Rev. 8/97); and,

**MINNESOTA VACANT LAND PURCHASE AGREEMENT -- DEVELOPMENT TRACT**, M.S.B.A. Real Property Form No. **32** (1997; Rev. 8/97).

General Comparisons of the Four Forms				
Comparison Topics	<b>MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT</b> , M.S.B.A. Real Property Form No. 1 (1996; Rev. 1997; Rev. 8/97)	<b>MINNESOTA VACANT LOT PURCHASE AGREEMENT -- SINGLE DWELLING</b> , M.S.B.A. Real Property Form No. 30 (1997; Rev. 8/97)	<b>MINNESOTA VACANT LAND PURCHASE AGREEMENT -- MULTIPLE [2-4] DWELLING</b> , M.S.B.A. Real Property Form No. 31 (1997; Rev. 8/97)	<b>MINNESOTA VACANT LAND PURCHASE AGREEMENT -- DEVELOPMENT TRACT</b> , M.S.B.A. Real Property Form No. 32 (1997; Rev. 8/97)
General Comments:	Intended for any residential transaction except new construction and except M.C.I.O.A. new construction property. [A new construction purchase agreement form is in the final drafting stages as of 11/20/00.] This form can be used for M.C.I.O.A. resales if a C.I.C. addendum is attached. An example is shown at <a href="#">Exhibit O</a> of this article.	Intended for use by either a consumer-buyer or a builder-buyer.	Intended for use by a builder-buyer.	Intended for use by a land developer.

General Comparisons of the Four Forms				
Comparison Topics	MINNESOTA STANDARD RESIDENTIAL PURCHASE AGREEMENT, M.S.B.A. Real Property Form No. 1 (1996; Rev. 1997; Rev. 8/97)	MINNESOTA VACANT LOT PURCHASE AGREEMENT -- SINGLE DWELLING, M.S.B.A. Real Property Form No. 30 (1997); Rev. 8/97	MINNESOTA VACANT LAND PURCHASE AGREEMENT -- MULTIPLE [2-4] DWELLING, M.S.B.A. Real Property Form No. 31 (1997; Rev. 8/97)	MINNESOTA VACANT LAND PURCHASE AGREEMENT -- DEVELOPMENT TRACT, M.S.B.A. Real Property Form No. 32 (1997; Rev. 8/97)
The form's "balance:"	Intended to be very evenly balanced between seller and buyer.	Intended to be very evenly balanced between seller and buyer.	Intended to have almost the same balance as Form No. 30.	Intended to have a "commercial" balance.
[NOTE: All of the numbered paragraphs in these four forms are the same except as noted below.]	The portion of the committee's mission statement devoted to our forms work reads something like this: "One purpose of this Committee is to prepare transactional forms for use by the bar and by the public. The forms should raise all of the commonly-encountered issues and present solutions to those issues. The solutions presented should either be fairly balanced between the interests of the Seller and the Buyer or should be alternative solutions, the selection of which will be negotiated between the Seller and the Buyer."	With these forms being published by the legal forms printers, there is a concern that a consumer-buyer will purchase the form and proceed without representation by a lawyer. For this reason, this form is as "consumer oriented" as Form No. 1.	This form presumes that the buyer will be held to a more commercial standard than the consumer in Form No. 30. But, there are a number of "small" builders who proceed without representation and who could benefit from a form which is somewhat consumer-oriented.	This form presumes that the developer-buyer is "in the business." There are more burdens placed upon the buyer in this form.

M.S.B.A. Real Property Form No. 30 (1997; Revised August, 1997.)  
Minnesota Vacant Lot Purchase Agreement -- Single Dwelling

PURCHASE AGREEMENT / PAGE 1

## MINNESOTA VACANT LOT PURCHASE AGREEMENT -- SINGLE DWELLING

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REFORMATTED FOR THIS ARTICLE.

BEFORE YOU USE OR SIGN THIS CONTRACT, YOU SHOULD CONSULT WITH A LAWYER TO DETERMINE IF THIS CONTRACT ADEQUATELY PROTECTS YOUR LEGAL RIGHTS. Minnesota State Bar Association disclaims any liability arising out of use of this form.

- 59 1. **PARTIES.** This Purchase Agreement is made on \_\_\_\_\_, by and between  
60 \_\_\_\_\_, [marital status] \_\_\_\_\_,  
61 of [seller's address] \_\_\_\_\_, SELLER, and  
62 \_\_\_\_\_, as joint tenants [strike "joint tenants" if tenancy-in-common is intended]  
63 of [buyer's address] \_\_\_\_\_, BUYER.  
64
- 65 2. **OFFER/ACCEPTANCE.** Buyer offers to purchase and Seller agrees to sell real property legally described as  
66 \_\_\_\_\_  
67 \_\_\_\_\_  
68 \_\_\_\_\_  
69 \_\_\_\_\_

**EXHIBIT N**

[Property Tax Identification Number or Tax Parcel Number \_\_\_\_\_]

located at \_\_\_\_\_, City of \_\_\_\_\_,  
County of \_\_\_\_\_, State of Minnesota, Zip Code \_\_\_\_\_.

**3. ACCEPTANCE DEADLINE.** The acceptance date of this Purchase Agreement is the date it is delivered by the last party signing to the other party. This offer to purchase, unless accepted sooner, shall be void at 11:59 A.M., [date] \_\_\_\_\_, and in such event all earnest money shall be refunded to Buyer.

**4. PERSONAL PROPERTY AND FIXTURES INCLUDED IN SALE.** The following items of personal property and fixtures owned by Seller and currently located on the property are included in this sale [Strike out items not included]: garden bulbs, plants, shrubs, trees, fences, gates, culverts, survey monuments, and also the following property: \_\_\_\_\_

Upon delivery of the Deed, Seller shall also deliver a Warranty Bill of Sale for the above personal property. [Check the box if the following provision applies to this Purchase Agreement:] Seller shall use M.S.B.A. Real Property Form No. 90 (1997), Warranty Bill of Sale.

¶4. is identical in Forms 30-32, but different from Form 1. In Form 1, it reads:  
**4. PERSONAL PROPERTY AND FIXTURES INCLUDED IN SALE.** The following items of personal property and fixtures owned by Seller and currently located on the real property are included in this sale [Strike out items not included]: garden bulbs, plants, shrubs, trees, storm windows and inserts, storm doors, screens, awnings, window shades, blinds, curtain-traverse-drapery rods, attached lighting fixtures with bulbs, plumbing fixtures, sump pumps, water heaters, heating systems, heating stoves, fireplace inserts, fireplace doors and screens, built-in humidifiers, built-in air conditioning units, built-in electronic air filters, automatic garage door openers with controls, television antennas, water softeners, built-in dishwashers, garbage disposals, built-in trash compactors, built-in ovens and cooking stoves, hood-fans, intercoms, installed carpeting, work benches, security systems, and also the following property: \_\_\_\_\_

Upon delivery of the Deed, Seller shall also deliver a Warranty Bill of Sale for the above personal property. [Check the box if the following provision applies to this Purchase Agreement:] Seller shall use M.S.B.A. Real Property Form No. 90 (1997), Warranty Bill of Sale.

**5. PRICE AND TERMS.** The price for the real and personal property included in this sale is \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), which Buyer shall pay as follows:

Earnest money of \$ \_\_\_\_\_ by [CASH, CHECK, NOTE - state which] \_\_\_\_\_ payable to [select one:]  
Seller, to be deposited and held by Seller (and may be commingled with Seller's other funds) pending closing,  
Seller's lawyer, to be deposited and held in the lawyer's trust account pending closing,  
Seller's broker, to be deposited or held by broker according to the requirements of Minnesota Statutes,  
Other [describe how the earnest money will be held] \_\_\_\_\_,

receipt of which is hereby acknowledged and \$ \_\_\_\_\_ cash, on \_\_\_\_\_, the DATE OF CLOSING, and the balance of \$ \_\_\_\_\_ by financing as shown on the attached Financing Addendum.

119 **6. DEED/MARKETABLE TITLE.** Upon performance by Buyer, Seller shall execute and deliver a \_\_\_\_\_ Warranty Deed, joined in by  
120 spouse, if any, conveying marketable title of record, subject to:  
121 A. Building and zoning laws, ordinances, state and federal regulations;  
122 B. Exceptions to title which constitute encumbrances, restrictions, or easements which have been disclosed to Buyer and accepted  
123 by Buyer in this Purchase Agreement (must be specified in writing.): \_\_\_\_\_  
124

125 ¶6. Subparagraphs *B, C, and D* from Form 1 are omitted in Forms 30-32. They may have a direct impact on buyer's  
126 development plans. The omitted text from Form 1 reads as follows:

- 127 B. Restrictions relating to use or improvement of the property without effective forfeiture provisions;  
128 C. Reservation of any mineral rights by the State of Minnesota;  
129 D. Utility and drainage easements which do not interfere with existing improvements;

130  
131 **7. REAL ESTATE TAXES AND SPECIAL ASSESSMENTS.** Real estate taxes due and payable in and for the year of closing shall be  
132 prorated between Seller and Buyer on a calendar year basis to the actual Date of Closing, unless otherwise provided in this Purchase  
133 Agreement. If tax statements for such taxes are not available on the Date of Closing, the amount to be prorated shall be \_\_\_\_\_% of  
134 the prior year's taxes, and such estimated proration shall be ~~strike one~~ FULL AND FINAL BETWEEN SELLER AND BUYER / ADJUSTED  
135 UPON RECEIPT OF THE ACTUAL TAX STATEMENTS FOR SUCH YEAR (in which case the party entitled to a credit as a result of the  
136 adjustment shall receive the amount of such credit from the other party within 30 days of issuance of the tax statements). Seller  
137 represents the taxes due and payable in the year(s)

138 \_\_\_\_\_ will be ~~strike one~~ *FULL, PART, NON-* \_\_\_\_\_-homestead classification, unless Buyer changes the tax classification for taxes payable  
139 in the year following closing by taking possession of the property as Buyer's homestead and filing a new homestead declaration within  
140 the time required by law. If the taxes due and payable in the year of closing are **PART** or **NON**-homestead classification, Seller shall pay  
141 to Buyer at closing \$ \_\_\_\_\_, in addition to Seller's prorated share of the taxes. If the taxes due and payable in the year following  
142 closing are **PART** or **NON**-homestead classification and the closing takes place after the date by which Buyer must take possession of  
143 the property as Buyer's homestead to file for homestead tax status for taxes due and payable in such year, Seller shall pay to Buyer at  
144 closing  
145 \$ \_\_\_\_\_ as Seller's share of such taxes.  
146

147 ~~Strike out one:~~ BUYER AND SELLER SHALL PRORATE AS OF THE DATE OF CLOSING / SELLER SHALL PAY on Date of Closing all  
148 installments of special assessments certified for payment with the real estate taxes due and payable in the year of closing.

149 ~~Strike out one:~~ BUYER SHALL ASSUME / SELLER SHALL PAY ON DATE OF CLOSING all other special assessments levied as of the  
150 date of this Purchase Agreement.

151 ~~Strike out one:~~ BUYER SHALL ASSUME / SELLER SHALL PROVIDE FOR PAYMENT OF special assessments pending as of the date  
152 of this Purchase Agreement for improvements that have been ordered by the City Council or other governmental assessing authorities.  
153 (Seller's provision for payment shall be by payment into escrow of 12 times the estimated amount of the assessments.) As of the date  
154 of this Purchase Agreement, Seller represents that Seller has not received a Notice of Hearing of a new public improvement project from  
155 any governmental assessing authority, the costs of which project may be assessed against the property. If a special assessment becomes  
156 pending after the date of this Purchase Agreement and before the Date of Closing, Buyer may, at Buyer's option:

- 157 A. Assume payment of the pending special assessment without adjustment to the purchase price of the property; or,  
158 B. Require Seller to pay the pending special assessment (or escrow for payment of same as provided above) and Buyer shall pay a  
159 commensurate increase in the purchase price of the property, which increase shall be the same as the estimated amount of the  
160 assessment; or,  
161 C. Declare this Purchase Agreement null and void by notice to Seller, and earnest money shall be refunded to Buyer.

162 ~~Strike out one:~~ BUYER SHALL ASSUME / SELLER SHALL PAY ON DATE OF CLOSING any deferred real estate taxes (including "Green  
163 Acres" taxes under MINN. STAT. §273.111) or special assessments payment of which is required as a result of the closing of this sale.  
164

165 Buyer shall pay real estate taxes due and payable in the year following closing and thereafter and any unpaid special assessments payable  
166 therewith and thereafter, the payment of which is not otherwise provided herein. Seller makes no representation concerning the amount  
167 of future real estate taxes or of future special assessments.  
168

169 **8. DAMAGES TO REAL PROPERTY.** If the real property is substantially damaged prior to closing, this Purchase Agreement shall terminate  
170 and the earnest money shall be refunded to Buyer. If the real property is damaged materially but less than substantially prior to closing,  
171 Buyer may rescind this Purchase Agreement by notice to Seller within twenty-one (21) days after Seller notifies Buyer of such damage,  
172 during which 21-day period Buyer may inspect the real property, and in the event of such rescission, the earnest money shall be refunded  
173 to Buyer.  
174

175 **9. SELLER'S BOUNDARY LINE, ACCESS, RESTRICTIONS AND LIEN WARRANTIES.** Seller warrants that buildings on adjoining real  
176 property, if any, are entirely outside of the boundary lines of the property. Seller warrants that there is a right of access to the real  
177 property from a public right of way. Seller warrants that there has been no labor or material furnished to the property for which payment  
178 has not been made. Seller warrants that there are no present violations of any restrictions relating to the use or improvement of the  
179 property. These warranties shall survive the delivery of the Deed or Contract for Deed.  
180

181 **10. CONDITION OF PROPERTY.**

**EXHIBIT N**

182 A. Seller shall remove all debris and all personal property not included in this sale from the property before possession date. Seller  
183 has not received any notice from any governmental authority as to the existence of any Dutch elm disease, oak wilt, or other  
184 disease of any trees on the property.  
185

186 B. Seller knows of no hazardous substances or petroleum products having been placed, stored, or released from or on the property  
187 by any person in violation of any law, nor of any underground storage tanks having been located on the property at any time, except  
188 as follows:  
189

190 \_\_\_\_\_  
191 \_\_\_\_\_  
192 \_\_\_\_\_  
193 \_\_\_\_\_

194  
195 Notwithstanding Buyer's environmental investigations of the property (see ¶22.C., below), Seller warrants and represents to Buyer  
196 that there have been no acts or occurrences upon the property that have caused or could cause hazardous substances or petroleum  
197 products to be released or discharged into the subsoil or ground water of the property or other property in the area. Seller  
198 represents and warrants to Buyer that the property is free of hazardous substances and is not subject to any "superfund" type liens  
199 or claims by governmental regulatory agencies or third parties arising from the release or threatened release of hazardous substances  
200 in, on, or about the property. Seller shall indemnify and hold Buyer harmless from any and all claims, causes of action, damages,  
201 losses, or costs (including lawyer's fees) relating to hazardous substances or petroleum products in the subsoil or ground water of  
202 the property or other property in the area which arise from or are caused by acts or occurrences upon the property prior to Buyer  
203 taking possession. These warranties and indemnifications shall survive the delivery of the Deed or Contract for Deed.  
204

205 C. Seller knows of no wetlands, flood plain, or shoreland on or affecting the property, except as follows: \_\_\_\_\_  
206

207 *[Check the box if the following provision applies to this Purchase Agreement:]* **ADDENDUM TO PURCHASE AGREEMENT:**  
208 **WETLANDS, SHORELAND AND FLOOD PLAIN DISCLOSURE**, M.S.B.A. Real Property **Form No. 8** (1997), is included as an  
209 addendum to this Purchase Agreement.  
210

211 D. Seller's warranties and representations contained in this paragraph 10., shall survive the delivery of the Deed or Contract for Deed,  
212 provided that any notice of a defect or claim of breach of warranty must be in writing. Any such notice with respect to matters  
213 referred to in A., above must be given by Buyer to Seller within one year of the Date of Closing or be deemed waived.  
214

215 E. Buyer shall have the right to have inspections of the property conducted prior to closing. Unless required by local ordinance or  
216 lending regulations, Seller does not plan to have the property inspected. Other than the representations made in this paragraph 10.,  
217 and in paragraph 22., the property is being sold "AS IS" with no express or implied representations or warranties by Seller as to  
218 physical conditions or fitness for any particular purpose.  
219

220 F. For Seller's representations regarding the presence and location of utilities, if any, see ¶22.,D., below.  
221

¶10. There are a number of difference between the forms in this paragraph. In Forms 30-32, Subparagraph A has been modified to delete representations about the condition of the house. Subparagraph B is extensively modified. A new subparagraph C is a representation about the presence of wetlands. Subparagraph E is a modified version of Form No. 1's Sub. D: reference is added to new paragraph 22. Subparagraph is F., is new for Forms 30 and 31, but is not included in Form 32. In Form 1, the paragraph reads as follows:

**10. CONDITION OF PROPERTY.**

- A. Seller warrants that all appliances, fixtures, heating and air conditioning equipment, fireplaces (including mechanisms, dampers, flues, and doors), wiring, and plumbing used and located on the real property are in working order on the Date of Closing. Seller represents that the property has / has not had a wet basement or water in the basement. Seller discloses that the roof has / has not leaked. Seller warrants that the property: is / is not connected to: city sewer [*strike one*] -**YES/NO**; city water -**YES/NO**; cable TV -**YES/NO**. Seller shall remove all debris and all personal property not included in this sale from the real property before possession date. Seller has not received any notice from any governmental authority as to the existence of any Dutch elm disease, oak wilt, or other disease of any trees on the real property.
- B. Seller knows of no hazardous substances or petroleum products having been placed, stored, or released from or on the real property by any person in violation of any law, nor of any underground storage tanks having been located on the real property at any time, except as follows: \_\_\_\_\_
- C. Seller's warranties and representations contained in this paragraph 10 shall survive the delivery of the Deed or Contract for Deed, provided that any notice of a defect or claim of breach of warranty must be in writing and any such notice with respect to matters referred to in A., above must be given by Buyer to Seller within one year of the Date of Closing or be deemed waived.
- D. Buyer shall have the right to have inspections of the property conducted prior to closing. Unless required by local ordinance or lending regulations, Seller does not plan to have the property inspected. Other than the representations made in this paragraph 10, the property is being sold "**AS IS**" with no express or implied representations or warranties by Seller as to physical conditions, quality of construction, workmanship, or fitness for any particular purpose. (This paragraph is not intended to waive or limit any provisions of MINN. STAT., Chapter 327A.)

**11. DISCLOSURE OF NOTICES.** Seller has not received any notice from any governmental authority as to violation of any law, ordinance or regulation. If the property is subject to restrictive covenants, Seller has not received any notice from any person as to a breach of the covenants. Seller has not received any notice from any governmental authority concerning any eminent domain, condemnation, special taxing district, or rezoning proceedings.

**12. ACCESS PRIOR TO CLOSING.** By this Purchase Agreement, Buyer does not acquire any right of possession of the property nor does Buyer acquire any right of entry, license, or easement. Seller will consent to a case-by-case right of entry for Buyer and/or Buyer's agents, surveyors, engineers, and site evaluators for testing, measuring, and evaluating purposes provided that the following conditions are met:

- A. There shall be no crop or tree damage.
- B. There shall be no excavating or earth-moving and no tree removal.
- C. Buyer's independent contractors (surveyors, engineers, and site evaluators, etc.) shall, prior to entry on the land, deliver to Seller proof of independent contract with Buyer and a waiver of lien rights in a form satisfactory to Seller.

Buyer shall indemnify and hold Seller harmless from any and all liens, claims, liabilities or charges incurred or caused by Buyer's contracts with surveyors, engineers, and site evaluators, which indemnity shall include any lawyer's fees, costs or disbursements incurred by Seller in any defense thereof.

¶12. This paragraph is the same in Forms 30-32. This is a complete replacement of Paragraph 12 in Form 1, dealing with Truth in Housing:

**12. TRUTH-IN-HOUSING.** Buyer acknowledges receipt of the Truth-in-Housing Disclosure Report or other inspection report if required by the municipality in which the real property is located.

**13. POSSESSION.** Seller shall deliver possession of the property not later than \_\_\_\_\_ closing.

¶13. This paragraph is the same in Forms 30-32, but is shorter than the same paragraph in Form 1.

**13. POSSESSION.** Seller shall deliver possession of the property not later than \_\_\_\_\_ closing. All interest, fuel oil, liquid petroleum gas, and all charges for city water, city sewer, electricity, and natural gas shall be prorated between the parties as of \_\_\_\_\_.

**14. EXAMINATION OF TITLE.** To demonstrate that seller's title is good and marketable of record, within a reasonable time after acceptance of this Purchase Agreement, Seller shall furnish Buyer with an Abstract of Title or a Registered Property Abstract certified to date including proper searches covering bankruptcies and state and federal judgments, federal court judgment liens in favor of the U.S.,



282 liens, and levied and pending special assessments. Buyer shall have ten (10) business days after receipt of the Abstract of Title or  
283 Registered Property Abstract either to have Buyer's lawyer examine the title and provide Seller with written objections or, at Buyer's own  
284 expense, to make an application for a title insurance policy and notify Seller of the application. Buyer shall have ten (10) business days  
285 after receipt of the Commitment for Title Insurance to provide Seller with a copy of the Commitment and written objections. Buyer shall  
286 be deemed to have waived any title objections not made within the applicable ten (10) day period above, except that this shall not operate  
287 as a waiver of Seller's covenant to deliver a statutory Warranty Deed, unless a Warranty Deed is not specified above. If Buyer obtains  
288 title insurance, Buyer is not waiving the right to obtain a good and marketable title of record from Seller.  
289

290 **15. TITLE CORRECTIONS AND REMEDIES.** Seller shall have 120 days from receipt of Buyer's written title objections to make title  
291 marketable. Upon receipt of Buyer's title objections, Seller shall, within ten (10) business days, notify Buyer of Seller's intention to make  
292 title marketable within the 120 day period. Liens or encumbrances for liquidated amounts which can be released by payment or escrow  
293 from proceeds of closing shall not delay the closing. Cure of the defects by Seller shall be reasonable, diligent, and prompt. Pending  
294 correction of title, all payments required herein and the closing shall be postponed.

- 295 A. If notice is given and Seller makes title marketable, then upon presentation to Buyer and proposed lender of documentation  
296 establishing that title has been made marketable, and if not objected to in the same time and manner as the original title objections,  
297 the closing shall take place within ten (10) business days or on the scheduled closing date, whichever is later.
- 298 B. If notice is given and Seller proceeds in good faith to make title marketable but the 120 days period expires without title being made  
299 marketable, Buyer may declare this Purchase Agreement null and void by notice to Seller, neither party shall be liable for damages  
300 hereunder to the other, and earnest money shall be refunded to Buyer.
- 301 C. If Seller does not give notice of intention to make title marketable, or if notice is given but the 120 day period expires without title  
302 being made marketable due to Seller's failure to proceed in good faith, Buyer may seek, as permitted by law, any one or more of  
303 the following:
- 304 1. Proceed to closing without waiver or merger in the Deed of the objections to title and without waiver of any remedies, and may:  
305 (a) Seek damages, costs, and reasonable lawyer's fees from Seller as permitted by law (damages under this subparagraph (a)  
306 shall be limited to the cost of curing objections to title, and consequential damages are excluded); or,  
307 (b) Undertake proceedings to correct the objections to title;
  - 308 2. Rescission of this Purchase Agreement by notice as provided herein, in which case the Purchase Agreement shall be null and  
309 void and all earnest money paid shall be refunded to Buyer;
  - 310 3. Damages from Seller including costs and reasonable lawyer's fees, as permitted by law;
  - 311 4. Specific performance within six months after such right of action arises.
- 312 D. If title is marketable, or is made marketable as provided herein, and Buyer defaults in any of the agreements herein, Seller may elect  
313 either of the following options, as permitted by law:
- 314 1. Cancel this contract as provided by statute and retain all payments made hereunder as liquidated damages. The parties  
315 acknowledge their intention that any note given pursuant to this contract is a down payment note, and may be presented for  
316 payment notwithstanding cancellation;
  - 317 2. Seek specific performance within six months after such right of action arises, including costs and reasonable lawyer's fees, as  
318 permitted by law.
- 319 E. If title is marketable, or is made marketable as provided herein, and Seller defaults in any of the agreements herein, Buyer may, as  
320 permitted by law:
- 321 1. Seek damages from Seller including costs and reasonable lawyer's fees;
  - 322 2. Seek specific performance within six months after such right of action arises.
- 323

324 **16. NOTICES.** All notices required herein shall be in writing and delivered personally or mailed to the address as shown at Paragraph  
325 1., above and if mailed, are effective as of the date of mailing.  
326

327 **17. SUBDIVISION OF LAND.** If the legal description in this Purchase Agreement is a new description requiring a subdivision of land  
328 owned by Seller, Seller shall pay all subdivision expenses and obtain all necessary governmental approvals. Seller warrants that the legal  
329 description of the real property to be conveyed has been or will be approved for recording as of the Date of Closing. Seller warrants that  
330 all subdivision charges for the property, payable to the governmental unit having jurisdiction, have been paid in full, including, but not  
331 limited to, subdivision fees, park dedication fees, road and utilities dedication fees, and fees charged for roads, boulevards, trees, and  
332 landscaping. Seller warrants that there are no deferred subdivision charges affecting the property. Seller warrants that there are no  
333 restrictions on the availability of building permits because of Seller's subdivision of the land. Seller warrants that Seller has complied with  
334 all applicable subdivision regulations. Seller warrants that there are no encumbrances affecting the property in any development  
335 agreement that Seller may have with the municipality.

336 Seller's warranties and representations contained in this paragraph 17., shall survive the delivery of the Deed or Contract for Deed,  
337 provided that any notice of a defect or claim of breach of warranty must be in writing and any such notice with respect to matters  
338 referred to above must be given by Buyer to Seller within one year of the Date of Closing or be deemed waived.  
339

340 ¶17. This paragraph is different in all four forms. It is one of the distinguishing features between Forms 30-32. In Form  
341 1, the subdivision burden is entirely on Seller:

342 [Form 1] **17. SUBDIVISION OF LAND.** If this sale constitutes or requires a subdivision of land owned by Seller, Seller shall pay all  
343 subdivision expenses and obtain all necessary governmental approvals. Seller warrants that the legal description of the real property  
344 to be conveyed has been or will be approved for recording as of the Date of Closing.



346 In Form 30, the subdivision burden is entirely on Seller and there are representations and warranties not found in Form No.  
347 1. See the text of Form 30, above in this Exhibit.

348  
349 In Form 31, the subdivision burden is negotiable. It can either be on Seller as in Form No. 30 or it can be entirely on  
350 Buyer.

351 **[Form 31] 17. SUBDIVISION OF LAND.** If this sale constitutes or requires a subdivision of land owned by Seller, *[select either A., or*  
352 *B., below]*

353  A. Seller shall pay all subdivision expenses and obtain all necessary governmental approvals. Seller warrants that the legal  
354 description of the real property to be conveyed has been or will be approved for recording as of the Date of Closing.  
355 Seller warrants that all subdivision charges for the subject property, payable to the governmental unit having jurisdiction,  
356 will be paid in full on the Date of Closing, including, but not limited to, subdivision fees, park dedication fees, road and  
357 utilities dedication fees, and fees charged for roads, boulevards, trees, and landscaping. Seller warrants that there will be no  
358 deferred subdivision charges affecting the property. Seller warrants that there will be no restrictions on the availability  
359 of building permits because of Seller's subdivision of the land. Seller warrants that Seller will comply with all of the  
360 applicable subdivision regulations. Seller warrants that there will be no encumbrances affecting the subject property in  
361 any development agreement that Seller may have with the municipality.

362 Seller's warranties and representations contained in this paragraph 17., shall survive the delivery of the Deed or  
363 Contract for Deed, provided that any notice of a defect or claim of breach of warranty must be in writing and any such  
364 notice with respect to matters referred to above must be given by Buyer to Seller within one year of the Date of Closing  
365 or be deemed waived.

366  B. Buyer shall pay all subdivision expenses and obtain all necessary governmental approvals. Seller makes no warranties  
367 or representations that the legal description of the real property to be conveyed has been or will be approved for recording  
368 as of the Date of Closing.

369  
370  
371 In Form 32, the subdivision burden is entirely on Buyer.

372 **[Form 32] 17. SUBDIVISION OF LAND.** If the legal description in this Purchase Agreement is a new description requiring a subdivision  
373 of land owned by Seller, Buyer shall pay all subdivision expenses and obtain all necessary governmental approvals. Seller makes no  
374 warranties or representations that the legal description of the real property to be conveyed has been or will be approved for recording  
375 as of the Date of Closing. **NOTE:** Unless the following costs and charges have been assessed against the property prior to the date  
376 of this Purchase Agreement by the governmental unit having jurisdiction (and therefore already covered by the provisions for payment  
377 of special assessments), Buyer shall assume the payment of municipal charges for development on, construction on, or improvement  
378 of the subject property related to access fees, connection fees and "hook up" fees for connections to sewer, water, and other utilities.

379  
380  
381 **18. MINNESOTA LAW.** This contract shall be governed by the laws of the State of Minnesota.

382  
383 **19. WELL DISCLOSURE.** *[Check one of the following: ]*

- 384  Seller certifies that Seller does not know of any wells on the property.  
385  Wells on the property are disclosed by Seller on the attached Well Disclosure form.

386  
387 **20. SEWAGE TREATMENT SYSTEM DISCLOSURE.**

388 *[Check either A or B: ]*

- 389  A. Seller certifies that sewage generated at the property goes to a facility permitted by the Minnesota Pollution Control Agency  
390 (for example, a city or municipal sewer system).  
391  B. Seller certifies that sewage generated at the property does not go to a facility permitted by the Minnesota Pollution Control  
392 Agency and Seller's Disclosure of Individual Sewage Treatment System is attached (attach form).

393 *[Check either C or D: ]*

- 394  C. Seller does not know if there is an abandoned individual sewage treatment system on the property.  
395  D. Seller knows that there ~~is~~ **are** no abandoned individual sewage treatment systems on the property. If Seller  
396 discloses the existence of an abandoned individual sewage treatment system on the property, then Minnesota law requires  
397 that the location of the system be disclosed to Buyer with a map. *[Attach Seller's Disclosure of Individual Sewage Treatment*  
398 *System with map completed.]*

399  
400 **21. SELLER'S AFFIDAVIT.** At closing, Seller shall supplement the warranties and representations in this Purchase Agreement by  
401 executing and delivering a Minnesota Uniform Conveyancing Blank [Form No. 116-M, 117-M, or 118-M] Affidavit of Seller.

402  
403 ¶21. This is the same text as Paragraph 23 in Form 1.

404  
**EXHIBIT N**

¶21. LEAD PAINT DISCLOSURE. This disclosure (not reprinted here) is required to be included in Form 1, but is unnecessary for Forms 30-32.

22. CONTINGENCIES. This Purchase Agreement is subject to the following contingencies which must be performed or occur before the Date of Closing of this transaction or such other date specified herein ["performance date"].

A. BUYER'S DEVELOPMENT EVALUATION. This Purchase Agreement is contingent upon Buyer obtaining by [date] \_\_\_\_\_, all necessary approvals, architectural reviews, licenses, zoning, conditional use permits, variances, building permits, environmental permits, environmental approvals, and all other necessary permits, licenses and approvals (or has obtained reasonable assurances acceptable to Buyer, in its sole discretion, that such approvals will be available) for the intended development of [briefly describe]:

Buyer shall promptly proceed to obtain such permits, licenses, approvals and/or assurances. Seller shall assist Buyer in applying for rezoning, necessary licenses, conditional use permits, variances, building permits, environmental permits, and all other necessary permits for the development of the property as Buyer may determine to be necessary, but at no cost to Seller.

This Purchase Agreement is also contingent upon Buyer determining by [date] \_\_\_\_\_ that the proposed development can be constructed on the property without the use of piling, extraordinary filling, or similar extraordinary land preparation steps which would make it financially impractical for Buyer's intended use. All tests and inspections shall be conducted in such a manner so as to prevent any damage to the property. Buyer shall promptly determine the soil conditions of the property and make the necessary calculations. Buyer shall promptly pay for all services rendered in conducting such tests and inspections and will not allow any mechanic's liens to attach to the property. Buyer shall indemnify Seller from all such costs, expenses and liens. Buyer and its authorized agents, shall have the limited right (pursuant to Paragraph 12., above) from the date of this Purchase Agreement, to enter upon the property to make such surveys, measurements, soil tests, and other tests as Buyer deems necessary, but without expense to Seller.

B. SURVEY. Buyer's obligation to close under this Purchase Agreement is contingent upon Buyer obtaining, at Buyer's expense, by [date] \_\_\_\_\_ a survey of the property certified to Buyer as of a current date (no earlier than the date of this Purchase Agreement) evidencing conditions satisfactory to Buyer and containing certifications meeting the following minimum standards:

- (a) Prepared, dated and signed by a Minnesota Registered Land Surveyor with his or her seal affixed.
- (b) Includes legal description properly identifying the property described in this Purchase Agreement.
- (c) Locates all platted and unplatted property lines and lot lines.
- (d) Locates all streets adjacent to the property.
- (e) Locates all curb cuts, driveways and fences.
- (f) Locates all easements described in the plat, if any, and in the record title of the property.
- (g) Locates all visible utility lines that service the property and improvements (sewer, water, gas, electric and telephone).
- (h) Locates any building setback lines.
- (i) Locates all encroachments or makes a positive statement that there are no encroachments.
- (j) Locates all improvements on the property.
- (k) Shows all descriptions, angles, and other calls contained in the legal description.

Buyer shall promptly retain a surveyor. If the survey reveals boundary or title problems, Buyer shall promptly deliver a copy of the survey to Seller. If the survey has been delivered to Buyer after Buyer's date for stating title objections, Buyer shall have an additional ten (10) days from the date of receiving the survey in which to state additional title objections. If the boundary or title problems prevent this transaction from closing, Seller shall reimburse Buyer for all expenses of survey and Buyer shall assign all rights in and to the survey to Seller.

C. ENVIRONMENTAL ASSESSMENT. This Purchase Agreement is contingent upon Buyer obtaining, at Buyer's expense, a Phase I Environmental Assessment of the property by [date] \_\_\_\_\_, sufficient to meet the diligence requirements of federal and state law, certified to Buyer as of a current date (no earlier than the date of this Purchase Agreement) evidencing conditions satisfactory to Buyer. Buyer shall promptly retain a qualified environmental scientist to conduct the environmental assessment. If the environmental assessment reveals environmental conditions which are in violation of the law, Buyer shall promptly deliver a copy of the report to Seller. If the environmental conditions are not remedied by Seller, thereby preventing this transaction from closing, Seller shall reimburse Buyer for all expenses of the environmental assessment and Buyer shall assign all rights in and to the environmental assessment to Seller.

D. UTILITIES: SELLER'S UTILITIES REPRESENTATIONS AND BUYER'S CONTINGENCY. Seller represents that: [Seller: select one answer for each utility; if you are uncertain, select "might not be."]

- # city sewer:  is  is not  might not be available to the property through a service stub at the public right-of-way frontage line;
- # city water:  is  is not  might not be available to the property through a service stub at the public right-of-way frontage line;
- # electricity:  is  is not  might not be available to the property through a service stub at the public right-of-way frontage line;
- # natural gas:  is  is not  might not be available to the property through a service stub at the public right-of-way frontage line;
- # telephone:  is  is not  might not be available to the property through a service stub at the public right-of-way frontage line.

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[CHECK EITHER (1) OR (2):]

(1) **Buyer is Not Relying on Seller's Representations.** The price offered by Buyer in this Purchase Agreement does not reflect any reliance upon any representations made by Seller as to the location or availability of utilities. Buyer's obligation to close under this Purchase Agreement is contingent upon Buyer obtaining, at Buyer's expense, verification that utilities can be provided to the property at costs which are reasonable for Buyer. This contingency shall be satisfied by *[date]* \_\_\_\_\_ or be deemed waived. **NOTE:** Unless the following costs and charges have been assessed against the property prior to the date of this Purchase Agreement by the governmental unit having jurisdiction (and therefore already covered by the provisions for payment of special assessments), Buyer shall assume the payment of municipal charges for development on, construction on, or improvement of the property related to access fees, connection fees and "hook up" fees for connections to sewer, water, and other utilities.

(2) **Buyer is Relying on Seller's Affirmative Representations.** The price offered by Buyer in this Purchase Agreement reflects that Buyer is relying upon Seller's affirmative representations that the utilities are available as indicated by Seller above. Buyer's obligation to close under this Purchase Agreement is contingent upon Buyer verifying, at Buyer's expense, without disturbing any soil, that utilities are available as represented by Seller. Buyer's good faith investigation to satisfy this contingency is limited to : (i) physical inspection of the property; (ii) inspection of available, local public records; or, (iii) utilization of Gopher State One Call [Metro 612-454-0002; Outstate 1-800-252-1166]. Buyer's investigation shall be completed by *[date]* \_\_\_\_\_ or this contingency shall be deemed waived.

**Buyer's Investigation.** *[check the following conditional statements that apply to this Purchase Agreement:]*

- If Buyer's investigation shows that the utilities are not available as represented above by Seller; or,
- if the utilities are not in the locations as represented above by Seller; or,
- if the utilities cannot be located without disturbing the soil;

and if Buyer chooses not to waive this contingency, then Buyer shall notify Seller of these circumstances, and, prior to closing, Seller shall, at Seller's option: *[strike out any of the following that are not appropriate]*

- (a) Excavate to verify the existence and location of the utilities as represented above, and, if necessary, obtain installation of any missing utilities; or,
- (b) Notify Buyer in writing that Seller will reduce the selling price of the property by the estimated cost of installing the missing utilities to the property line; or,
- (c) Notify Buyer in writing that Seller will escrow at closing, for one year following the Date of Closing, 125% of the estimated cost of installing the missing utilities to the property line if they cannot be located by Buyer's excavation after closing; or,
- (d) Accept this circumstance as a failed contingency and reimburse Buyer for all expenses incurred by Buyer pursuant to this Purchase Agreement, including but not limited to all expenses incurred in attempting to satisfy any of Buyer's contingencies.

If any of the contingencies has not been satisfied or waived by Buyer on or before the respective performance dates, this Purchase Agreement may be terminated at Buyer's option, which option must be exercised by notice to Seller within five days after the respective performance date, but not later than one day before the Date of Closing, and the earnest money shall be promptly refunded to Buyer upon Buyer's exercise of the option to declare this Purchase Agreement null and void. Both Buyer and Seller shall cooperate and make all reasonable efforts to attempt to remove the contingencies by the respective performance dates.

¶ 22. This text does not appear in Form 1. It is unique to Forms 30-32. This is a lengthy section designed to alert the Buyer to prudent investigations and to elicit responsible representations from the Seller. In Form 32, the text is not entirely the same as Forms No. 30 and No. 31: subparagraph D is much shorter and contemplates no reliance on Seller's representations about utilities.

**[Form 32] D. UTILITIES.** The price offered by Buyer in this Purchase Agreement does not reflect any reliance upon any representations made by Seller as to the location or availability of utilities. Buyer's obligation to close under this Purchase Agreement is contingent upon Buyer obtaining, at Buyer's expense, verification that utilities can be provided to the property at costs which are reasonable for Buyer. This contingency shall be satisfied by *[date]* \_\_\_\_\_ or be deemed waived. **NOTE:** Unless the following costs and charges have been assessed against the property prior to the date of this Purchase Agreement by the governmental unit having jurisdiction (and therefore already covered by the provisions for payment of special assessments), Buyer shall assume the payment of municipal charges for development on, construction on, or improvement of the subject property related to access fees, connection fees and "hook up" fees for connections to sewer, water, and other utilities.

23. **CLOSING.** Closing shall be at the office of Seller's lawyer, Buyer's title insurer, or at some other mutually agreeable location.

**EXHIBIT N**

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[State other location:] \_\_\_\_\_

At closing, Seller and Buyer shall disclose their Social Security Numbers or Federal Tax Identification Numbers for the purposes of completing state and federal tax forms.

¶23. This is the same as Paragraph 24 in Form 1.

24. ADDITIONAL TERMS. \_\_\_\_\_  
\_\_\_\_\_  
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25. ADDENDA. Attached are \_\_\_\_\_ addenda which are made a part of this Purchase Agreement.

26. TIME IS OF THE ESSENCE. Time is of the essence for all provisions of this Purchase Agreement.

¶26. This is the same text as Paragraph 27 in Form 1.

27. MULTIPLE ORIGINALS. Seller and Buyer have signed [number] \_\_\_\_\_ originals of this Purchase Agreement.

¶27. This is the same text as Paragraph 26 in Form 1.

**THIS IS A LEGALLY BINDING CONTRACT. BEFORE SIGNING, CONSULT A LAWYER.** Minnesota law permits licensed real estate brokers and sales agents to prepare purchase agreements. No recommendation or representation may be made by any real estate broker or sales agent as to the legal sufficiency, the legal effect, or the tax consequences of this contract. These are questions for your lawyer.

I agree to sell the property for the price and terms and conditions set forth above.

I agree to purchase the property for the price and terms and conditions set forth above.

SELLER: \_\_\_\_\_  
(date)

BUYER: \_\_\_\_\_  
(date)

SELLER: \_\_\_\_\_  
(date)

BUYER: \_\_\_\_\_  
(date)

\*\*\*\*\*

This Purchase Agreement was prepared by:

**EXHIBIT N**

*Others who will assist Seller or Buyer with this transaction:*

<i>Lawyer for</i> _____	Telephone:	Facsimile:
<i>Listing Agent and Broker for this transaction are:</i>	Telephone:	Facsimile:
<i>Selling Agent and Broker for this transaction are:</i>	Telephone:	Facsimile:
<i>Buyer's or Lender's Title Insurer:</i>	Telephone:	Facsimile:

To return to the text where this Exhibit is first mentioned, click here (	<a href="#"><u>TEXT</u></a>
To return to the List of Exhibits at the end of the article, click here (	<a href="#"><u>EXHIBITS</u></a>
To order paper or software versions of these forms from Miller/Davis Co. RPF No. 30 is M/D Form No. 1323 RPF No. 31 is M/D Form No. 1324 RPF No. 32 is M/D Form No. 1325 click here (	<a href="http://www.millerdavis.com"><u>http://www.millerdavis.com</u></a>

**Exhibit O**

M.S.B.A. Real Property Form No. 12 (Pending, November, 2000)

Addendum to Purchase Agreement Regarding Common Interest Ownership Property

ADDENDUM / PAGE 1

**ADDENDUM TO PURCHASE AGREEMENT REGARDING COMMON INTEREST OWNERSHIP PROPERTY [PLANNED COMMUNITY]**

59 This Addendum is a continuation of the Purchase Agreement dated \_\_\_\_\_ by and between \_\_\_\_  
60 \_\_\_\_\_ as Seller, and  
61 \_\_\_\_\_, as Buyer, for property located at:  
62 \_\_\_\_\_ and legally described as  
63 \_\_\_\_\_  
64 \_\_\_\_\_

65 **A. DELIVERY OF DISCLOSURE DOCUMENTS.** Buyer acknowledges that, in addition to purchasing real property, Buyer is also buying a  
66 membership in a homeowners' association (a nonprofit corporation). The homeowners' association is a type of private, local government with  
67 its own rules, regulations and taxes. The homeowners' association is governed by its declarations, articles of incorporation, and bylaws. The  
68 homeowners' association is funded through annual and special assessments levied against the property by the homeowners' association. In  
69 Part B., below, Buyer acknowledges receipt of a copy of the declaration, the bylaws, the rules and regulations of the association and a  
70 certificate containing the information required by Minn. Stat. § 515B.4-102.

71 **B. BUYER'S 10 DAY DISAPPROVAL PERIOD.** Buyer is allowed a 10 day review period of the Disclosure Statement provided by Seller.  
72 Paragraphs 1., and 2., below concern Buyer's first receipt of a Disclosure Statement. Paragraph 3., concerns later receipt of an amendment  
73 or change to the Disclosure Statement.

74 **1. Disclosure Received With Purchase Agreement or Within 10 Days Before Purchase Agreement.** If Buyer has received the Disclosure on  
75 the same day as the date that Buyer signed the Purchase Agreement, or, if Buyer has received the Disclosure within 10 days before the date  
76 that Buyer signed the Purchase Agreement, then Buyer shall have 10 days from the date of buyer's actual receipt of the above documents  
77 within which to disapprove such documents and to cancel the Purchase Agreement without penalty. Such disapproval of the Disclosure  
78 documents shall be given to seller in writing by the end of such period or else such disapproval shall be deemed to have been waived. The  
79 buyer's election to rescind the purchase agreement as provided herein may be done by hand delivering notice thereof to the seller or his agent  
80 or by mailing notice thereof by postage prepaid United States Mail to the seller or his agent. In the event buyer timely notifies seller of buyer's  
81 disapproval of such documents, this agreement shall terminate and become null and void upon seller's receipt of such notice, the earnest  
82 money paid hereunder shall be promptly refunded to buyer, and neither buyer nor seller shall have further liability hereunder.

83 *Buyer's Receipt of Disclosure Received With Purchase Agreement or Within 10 Days*  
84 *Before Purchase Agreement:*

The undersigned Buyer(s) acknowledge receipt of the Disclosure on	
[date actually received]	
Today's Date:	Today's Date:
Buyer's Signature:	Buyer's Signature:

**DRAFT**  
Not Yet Approved

**EXHIBIT O**

89 **2. Disclosure Received by Buyer More than 10 Days Before Signing of Purchase Agreement.** If Buyer has received the Disclosure more than  
 90 10 days before the date that Buyer signed the Purchase Agreement, then Buyer **cannot cancel the Purchase Agreement** for a later disapproval  
 91 of the Disclosure document.

92 *Buyer's Receipt of Disclosure More than 10 Days Before Signing of Purchase Agreement:*

The undersigned Buyer(s) acknowledge receipt of the Disclosure on	
[date actually received]	
Today's Date:	Today's Date:
Buyer's Signature:	Buyer's Signature:

97 **3. Changes to Disclosure Statement Received After This Purchase Agreement.** Seller is obligated to provide Buyer with any changes to the  
 98 Disclosure Statement which occur after Buyer's first receipt of the Disclosure Statement. Buyer shall have 10 days from the date of buyer's  
 99 actual receipt of the changes or amendments to the Disclosure Statement within which to determine if the changes materially and adversely  
 100 affect the Buyer. "If an amendment to the disclosure statement materially and adversely affects a purchaser, then the purchaser shall have  
 101 10 days after delivery of the amendment to cancel the Purchase Agreement in accordance with this section." MINN. STAT. §515B.4-106(b).  
 102 If Seller delivers an amendment to the Disclosure Statement to Buyer, Buyer will be required to sign the Receipt in the box immediately below  
 103 on Seller's copies of this Addendum or to sign a similar substitute receipt.

104 *Buyer's Receipt of an Amendment to the Disclosure:*

The undersigned Buyer(s) acknowledge receipt of an amendment to the	
Disclosure, concerning: _____	
on [date actually received]	
Today's Date:	Today's Date:
Buyer's Signature:	Buyer's Signature:

110 **4. Association Assessments.** Seller shall pay at closing any delinquent association assessments. Seller and buyer shall prorate at closing the  
 111 then-current month's installment of association assessments. All assessments paid by Seller to the association prior to the actual date of closing  
 112 are the association's funds, whether paid for current association assessments, capital spending assessments, or reserves, and are not part of  
 113 the current assessments to be prorated between Seller and Buyer.

DRAFT  
 Not Yet Approved

To return to the text where this Exhibit is first mentioned, click here (	<a href="#"><u>TEXT</u></a>
To return to the List of Exhibits at the end of the article, click here (	<a href="#"><u>EXHIBITS</u></a>
This form is not an approved M.S.B.A form. It is not available from Miller/Davis Co.	

EXHIBIT O

**Exhibit P**

REFORMATTED FOR THIS ARTICLE.  
NORMALLY PRINTED ON 14 INCH PAPER

M.S.B.A. Real Property Form No. 16 (Pending, November, 2000)  
Minnesota Common Interest Community Resale Disclosure Certificate

DISCLOSURE CERTIFICATE / PAGE 1

**MINNESOTA COMMON INTEREST COMMUNITY  
RESALE DISCLOSURE CERTIFICATE**

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If properly completed, this Disclosure will comply with the requirements of MINN. STAT. section 515B.4-107 (MINN. SESS. LAWS 2000, Ch.450 section 5).

1 Name of Common Interest Community: \_\_\_\_\_  
2 Name of Association: \_\_\_\_\_  
3 Address of Association: \_\_\_\_\_  
4 \_\_\_\_\_  
5 Unit Number(s) (including principal unit and any garage, storage, or other auxiliary unit(s)): \_\_\_\_\_  
6 \_\_\_\_\_  
7 \_\_\_\_\_

8 The following information is furnished by the association named above according Minnesota Statutes, section 515B.4-107.

9  
10 1. There is no right of first refusal or other restraint on the free alienability of the above unit(s) contained in the declaration, bylaws, rules  
11 and regulations, or any amendment to them, except as follows: \_\_\_\_\_  
12 \_\_\_\_\_  
13 \_\_\_\_\_  
14 \_\_\_\_\_

15 2. The following periodic installments of common expense assessments and special assessments are payable with respect to the above unit(s):  
16  
17 a. Annual assessment installments: \$ \_\_\_\_\_ Due: \_\_\_\_\_  
18  
19 b. Special assessment installments: \$ \_\_\_\_\_ Due: \_\_\_\_\_  
20  
21 c. Unpaid assessments, fines, or other charges: (1) Annual\$ \_\_\_\_\_  
22 (2) Special\$ \_\_\_\_\_  
23 (3) Fines\$ \_\_\_\_\_  
24 (4) Other Charges\$ \_\_\_\_\_  
25

**DRAFT**  
Not Yet Approved, But  
Contains Only Statutory Text

26 d. The association has/has not (*strike one*) approved a plan for levying certain common expense assessments against fewer than all the  
27 units according to Minnesota Statutes, section 515B.3-115, subsection (e). If a plan is approved, a description of the plan is attached  
28 to this certificate.  
29

30 3. In addition to the amounts due under paragraph 2, the following additional fees or charges other than assessments are payable by unit  
31 owners (include late payment charges, user fees, etc.): \_\_\_\_\_  
32 \_\_\_\_\_  
33 \_\_\_\_\_  
34

35 4. There are no extraordinary expenditures approved by the association, and not yet assessed, for the current and two succeeding fiscal  
36 years, except as follows: \_\_\_\_\_  
37 \_\_\_\_\_  
38 \_\_\_\_\_  
39

40 5. The association has reserved the following amounts for maintenance, repair, or replacement:  
41 \_\_\_\_\_  
42 \_\_\_\_\_  
43 \_\_\_\_\_  
44

45 6. The following documents are furnished with this certificate according to statute:  
46 a. The most recent regularly prepared balance sheet and income and expense statement of the association.  
47 b. The current budget of the association.

**EXHIBIT P**

48  
49 7. There are no unsatisfied judgments against the association, except as follows (identify creditor and amount):  
50 \_\_\_\_\_  
51 \_\_\_\_\_  
52

53 8. There are no pending lawsuits to which the association is a party, except as follows (identify and summarize status):



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9. Description of insurance coverages:  
a. The association provides the following insurance coverage for the benefit of unit owners (Reference may be made to applicable sections of the declaration or bylaws; however, any additional coverages should be described in this space):

b. The following described fixtures, decorating items, or construction items within the unit referred to in Minnesota Statutes, section 515B.3-113, subsection (b), are insured by the association (check as applicable):

- |  |   |
|--|---|
| <input type="checkbox"/> Ceiling or wall finishing materials                   | <input type="checkbox"/> Built-in appliances  |
| <input type="checkbox"/> Floor coverings                                       | <input type="checkbox"/> Improvements and betterments as originally constructed           |
| <input type="checkbox"/> Cabinetry   | <input type="checkbox"/> Additional improvements and betterments installed by unit owners |
| <input type="checkbox"/> Finished millwork                                     |   |
| <input type="checkbox"/> Electrical or plumbing fixtures serving a single unit |   |

10. The board of directors of the association has not notified the unit owner (i) that any alterations or improvements to the limited common elements assigned to it violate any provision of the declaration; or (ii) that the unit is in violation of any governmental statute, ordinance, code, or regulation, except as follows: \_\_\_\_\_

11. The remaining term of any leasehold estate affecting the common interest community and the premises governing any extension or renewal of it are as follows: \_\_\_\_\_

12. In addition to the above, the following matters affecting the unit or the unit owner's obligations with respect to the unit are deemed material: \_\_\_\_\_

I hereby certify that the foregoing information and statements are true and correct as of:

\_\_\_\_\_  
(Date)

By: \_\_\_\_\_

Title: \_\_\_\_\_  
(Association Representative)

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

Phone Number: \_\_\_\_\_

\*\*\*\*\*

**RECEIPT**

In addition to the foregoing information furnished by the association, the unit owner is obligated to furnish to the purchaser before execution of any purchase agreement for a unit or otherwise before conveyance, copies of the following documents relating to the association or to the master association (as applicable): the declaration (other than any common interest community plat), articles of incorporation, bylaws, rules and regulations (if any), and any amendments to these documents. Receipt of the foregoing documents, and the resale disclosure certificate, is acknowledged by the undersigned buyer(s).

Date: \_\_\_\_\_

\_\_\_\_\_  
(Buyer)

\_\_\_\_\_  
(Buyer)

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**EXHIBIT P**

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