

RESIDENTIAL BUY-SELL AGREEMENT

Bob Brooks School of Real Estate and Insurance, Inc.

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Bob Brooks, Director/CEO

Brent P. Lancaster, President

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Bob Brooks School of Real Estate and Insurance, Inc.

6721 Pecue Lane

Baton Rouge, Louisiana 70817

(225) 752-2920 Toll Free (800) 448-5693 Fax (225) 752-6815

www.BobBrooksSchool.com

Lesson One

Learning Objectives

- ◆ To provide the scope and use of the new statewide residential purchase agreement form
- ◆ Understand the details within the property description section of the residential purchase agreement form.
- ◆ Recognize the differences that exist in the finance section of the new residential purchase agreement and the form licensees currently use.

STATEWIDE PURCHASE AGREEMENT FORM

A. INTRODUCTION

The Law requiring the Statewide Purchase Agreement Form

In 2006, the Legislature passed Act 333 which provides that real estate licensees in the State of Louisiana shall use the Statewide Purchase Agreement Form (the “Statewide Purchase Agreement Form”) prescribed by the Louisiana Real Estate Commission (“LREC”) in making their offer to purchase or sell residential real property. The statute provides:

- A. A licensee representing either the buyer or seller of residential real property shall complete the Purchase Agreement Form prescribed by the Louisiana Real Estate Commission in making an offer to purchase or sell residential real property. No person shall alter the Purchase Agreement Form; however, addendums or amendments to the Purchase Agreement Form may be utilized.
- B. The promulgation of this form shall be conducted in accordance with the Administrative Procedure Act no later than July 1, 2007.
- C. (1) As used in this Section, the term "Purchase Agreement Form" shall mean a document in a form prescribed by the Louisiana Real Estate Commission as a written agreement for the sale or purchase of residential real property.
(2) As used in this Section, the term "residential real property" means real property consisting of one or not more than four residential dwelling units, which are buildings or structures each of which are occupied or intended for occupancy as single family residences.

The purpose of the law was to assist real estate licensees, many of whom now have clientele statewide, with a uniform starting contract to begin their negotiations. The Statewide Purchase Agreement Form is not intended to mandate the terms of sale but to assist licensees with a central beginning contract.

This form may be annually revised by the LREC. The LREC revised the form on October, 2008. The revised Statewide Purchase Agreement Form is required to be used by all licensees as a starting contract for offers to purchase or sell residential real property beginning in January, 2009.

B. EXPLANATION TO STATEWIDE PURCHASE AGREEMENT FORM

The Statewide Purchase Agreement Form promulgated by the Louisiana Real Estate Commission is titled the “Louisiana Residential Agreement to Buy or Sell”. This form is reproduced in the previous link. Changes made to the form by the LREC which are effective January, 2009 are shaded.

1. Box at Top of First Page of Statewide Purchase Agreement Form

No substantive changes were made to this section.

The information box at the top of the Statewide Purchase Agreement Form provides blanks for information on the listing firm and selling firm. This information is intended to assist the agents in transmitting the offer and tracking delivery of the offer. If the designated agent for the Buyer and Seller is the same person, the dual agency box contained in the middle of this informational box should be selected. The blank for “Received By” formerly contained in the information block has been eliminated.

2. Date

No changes were made to this section.

Line 3 – This blank is for the date is the date the offer is made by the Buyer or Seller.

3. Property Description

No changes were made to this section.

Line 5 – This line is the offer by the Buyer or Seller to buy or sell the Property described on the following lines of the Statewide Purchase Agreement Form.

Line 6 – This blank should be completed with the municipal or street address of the Property to be sold if available. For example, the municipal address of the Property to be sold might be 142 Green Street.

Line 7 – These blanks are for the city, the zip code and parish of the Property to be sold if available.

Line 8 – This blank is provided to include the legal description of the Property to be sold if available. The legal description can also be attached as an addendum to the Statewide Purchase Agreement Form.

Line 10 – The approximate measurement of the land and grounds of the Property to be sold should be included on this blank if available. If this information is not available terms such “as per survey” or “not available” may be included.

Lines 11 – 17 – These lines describe the additional property being sold with the land. The necessity to further list the specifics of property being sold originally derived from the *Willis-Knighton Medical Center vs. Caddo-Shreveport Sales & Use Tax Commission*, 2005 WL 737 481 (La. 2005) decision whereby the Louisiana Supreme Court called into question what had long been considered in the industry to comprise the component parts of real property. This listing of specific items also provides an opportunity to discuss with Buyers and Sellers exactly what items will remain with the Property being sold and which items will be taken by the Sellers upon their departure from the Property. The items listed on Lines 11 through 18 are intended to be component parts of the Property being sold.

Lines 17 – 19 – This sentence provides the Property being sold will include standing timber (timber that has not already been cut), unharvested crops and ungathered fruits of the trees on the Property unless this term is changed on an addendum to the Statewide Purchase Agreement Form or unless these crops or timber has previously been sold by the Seller.

Lines 20 - 22 – This blank provides a place to list movable items which will remain with the Property but are not considered part of the Sales Price and therefore have no value per the sale. Movable items that might be left with the Property at no value regarding the Sales Price for example, include an item such as a refrigerator.

Lines 23 - 26 – This definition provides that the Property being sold shall include all of the above referenced Property per Lines 5 through 24 collectively referred to as the “Property” elsewhere in the Statewide Purchase Agreement Form.

Lines 27 - 29 – This blank is to include items excluded from the Property to be sold such that if a Seller is not selling window coverings for example, the Seller could say in this portion of the Statewide Purchase Agreement Form, “window coverings are excluded from the Property sold”.

4. Mineral Rights

This section was rewritten from the original form.

Lines 31 through 33 - This section addresses the mineral rights to the land which may or may not be transferred as part of the transaction. The checkbox should be selected and the blank in Line 33 completed. The text provides the Seller may own mineral rights and the Seller is conveying these rights to the Buyer without warranty of title to the minerals. This means the Seller is transferring the mineral rights he may have but is not warranting or guaranteeing to the Buyer that there are any mineral rights which he may be able to convey to the Buyer. The percentage provided in the blank is the percent of the mineral rights the Seller is transferring. This could be 100% IF THE Seller is retaining the minerals. The Seller could be conveying 0% of the minerals if he is transferring all of the mineral interest he may have. This blank could also be filled in with any other percentage from 0 to 100. For example, if the Seller is conveying 50% and retaining 50% of the minerals he would put 50 in the blank.

This line further provides the Seller shall waive any right to use the surface of the property being sold for any reserved mineral activity or use. This means the Seller is agreeing that any drilling or production of minerals shall not be on the surface of the Property being sold. For example, the mineral production could be by directional drilling off the Property.

5. Price

This section has been relocated to the first page of the form. There are no substantive changes.

Lines 35 - 37 – This paragraph provides a blank to fill in the offered Sales Price for the Property both alphabetically and numerically. The paragraph further provides the Property will be sold subject to title and zoning restrictions, servitudes of record, and law or ordinances affecting the Property. This amount in the blank on Lines 36 – 37 is called the “Sales Price” through the remainder of the Statewide Purchase Agreement Form.

6. Act of Sale

This Section was moved to the first page of the Agreement so that the closing date would appear on the first page

Lines 39 – 40 – These lines provide that the Act of Sale will be signed before a settlement agent or notary public. This notary or settlement agent will be selected by the Buyer. A blank is provided in Line 40 for the date of the closing.

Lines 40 – 42 - Provides that the Buyer must provide good funds as required by Louisiana law LA:R.S. 22:2092.2 “good funds” at the closing. Good funds include:

- (a) Cash.
- (b) Wire transfers unconditionally received by the title insurer or the title insurance agent or the depository of the insurer or agent.
- (c) A depository check, including a certified check, cashier's check, or teller's check as defined by the Expedited Funds Availability Act, 12 U.S.C. 4001 et seq.
- (d) A personal check or other item which has been presented for payment and for which funds have been unconditionally collected by the title insurer or the title insurance agent.
- (e) Credit transfers through the Automated Clearing House which have been deemed available by the depository institution receiving the credit. The credit shall conform to the operating rules established by the National Automated Clearing House Association.
- (f) Checks unconditionally issued by mortgage lenders which are subject to periodic audit by the Department of Housing and Urban Development or the secretary of Veterans Affairs, and which are drawn on financial institutions insured by the Federal Deposit Insurance Corporation.
- (g) A check or checks, drawn on the trust account or sales escrow account of the real estate broker licensed under R.S. 37:1430 et seq., in an amount up to the amount of the then current guarantee provided by the Real Estate Recovery Fund as established in R.S. 37:1463.
- (h) A personal or commercial check or checks in an aggregate amount not exceeding two thousand five hundred dollars per closing if settlement agent making the deposit has reasonable and prudent grounds to believe that the deposit will be irrevocably credited to the settlement agent's trust or escrow account.
- (i) Checks unconditionally issued by credit unions chartered by applicable state or federal statute.
- (j) Checks unconditionally issued by municipalities or political subdivisions of the state of Louisiana
- (k) Checks drawn on the escrow accounts of title insurers of title agents when the title insurance agent issuing the check shall have certified by affidavit the following
 - (i) That funds drawn at the time of the real estate closing and settlement are from an escrow account as defined by R.S. 22:2092.2(6).
 - (ii) That the funds disbursed are from those funds received by the title insurance agent at the time of the real estate closing and settlement and were in one of the forms enumerated in Paragraph B(3) of this Subsection.

Lines 41 - 42 – These lines provide any change in the date for the closing that is set forth on Line 40 must be mutually agreed upon in writing by the Buyer and the Seller.

Line 43 – This line provides that any security deposits and the keys are to be transferred to the Buyer on the date of the Act of Sale. The reference to lease assignment was deleted and is addressed in lines 205-207.

7. Occupancy

This section was moved to the second page of the Agreement. No substantive changes were made to this section.

Lines 44 - 45 – These lines provides a blank for inserting the date and time the Buyer is granted occupancy of the Property. Occupancy will be granted at Act of Sale unless a different date is provided in this blank. The term “possession” was relocated in this section.

8. Contingency for Sale of Buyer’s Other Property

No changes were made to this section.

Line 47 - This checkbox should be selected if the sale of the Property is contingent or conditioned upon the sale of another piece of property by the Buyer. If this checkbox is selected, a contingency clause addendum which sets forth the specific terms upon which the Buyer’s current property will be sold should be attached.

Lines 48 – 50 – On Line 48, a second checkbox is provided which should be selected if the sale of the Property is not contingent upon the Buyer’s sale of another piece of property.

9. All Cash Sale

No changes were made to this section.

Line 52 – This checkbox should be selected if the sale of the Property will be for all cash. This means the Buyer is not obtaining financing to fund the Sales Price with the Property being acquired used as collateral for the loan. The Buyer warrants that he has cash readily available to fund the Sales Price.