

Purchase and Sale Agreement for Massachusetts Real Estate

If premises are residential property constructed prior to 1978 buyer must sign lead paint "Property Transfer Notification Certification" prior to signing Purchase and Sale Agreement.

SECTION 1 -- INFORMATION AND DEFINITIONS

1.1 DATE OF THIS AGREEMENT: _____

1.2 PREMISES: _____

City or Town: _____ Land Area: _____

Street Address: _____

Legal Description (lot number and plan reference): _____

Seller's Title Reference: Book _____ Page _____

or (if registered) Certificate of Title No. _____

Assessor's Map Reference: (if available) _____

(Attach a copy of deed, certificate of title or plan if available)

1.3 SELLER: _____

Address (include street and mailing address, if different): _____

Phone: _____ Social Security Number(s): _____

Record Owner, if different from Seller: _____

Seller's Attorney: _____ Phone: _____

Address: _____

1.4 BUYER: _____

Address: _____

Phone: _____

Social Security Number(s): _____

Buyer's Attorney: _____

Phone: _____

Address: _____

1.5 PURCHASE PRICE: \$ _____
Paid as follows: Deposit paid this date: (to be held by Escrow Agent) \$ _____
Additional deposit, if any, to be paid on _____ \$ _____
Balance of Purchase Price due on Closing Date _____ \$ _____

NOTE: If any of the Balance is to be paid by a private note from Buyer to Seller, state that amount here and attach details of such note and the related mortgage: \$ _____

1.6 ESCROW AGENT: _____
Address: _____

Deposits to be held in: (check one)
 non-interest bearing account
 insured interest bearing bank account
 other interest bearing account

1.7 CLOSING: _____
DATE: _____ TIME: _____
PLACE: _____

or office of the attorney for Buyer or Buyer's lender if Buyer gives Seller five (5) days notice of such change in location.

1.8 INCLUDED ITEMS: the following items are included in the sale of the Premises in addition to those generally listed below in Paragraph 2.2 of this Agreement: _____

1.9 EXCLUDED ITEMS: The following items are excluded from the sale and will be removed by Seller prior to the Time of Closing: _____

1.10 TITLE: The Seller's deed will be a quitclaim deed unless otherwise specified here: _____



1.11 OTHER MATTERS: In addition to the matters set forth in Paragraph 2.4 of this Agreement, the Premises shall be conveyed subject to the following matters (include here subdivision restrictions, rights of way over the Premises, etc. agreed to by Buyer):

(1.11 continued) _____

and together with the benefit of the following matters: _____

1.12 SELLER'S FIRE AND EXTENDED COVERAGE INSURANCE : \$ _____

1.13 ITEMS TO BE APPORTIONED AS OF DATE OF CLOSING:

- _____ Current real estate taxes
- _____ Fuel value
- _____ Water rates
- _____ Sewer use charges
- _____ Collected rents
- _____ Uncollected rents if and when collected by either party
- _____ Other: _____

1.14 BUYER'S MORTGAGE CONTINGENCY: (as described in Paragraph 2.23 of this Agreement):

Mortgage Contingency Amount: _____

Date: _____

1.15 BUYER' S HOME INSPECTION CONTINGENCY DATE: (as described in Paragraph 2.24 of this Agreement) _____

1.16 BROKER: _____

Commission Due: \$ _____

Address: _____

Phone: _____

CO-BROKER (If any): _____

Commission Due: \$ _____

Address: _____

Phone: _____

1.17 WARRANTIES

The following representations and warranties are made by Seller as of the Date of this Agreement and also as of the time of the delivery of the deed (modify as appropriate)

- a. Seller owns the personal property described in Paragraphs 1.8 and 2.2 free of any lien or encumbrance;
- b. To the best of Seller's knowledge and belief there is not now and has never been in the Premises any urea formaldehyde foam insulation (UFFI), or asbestos, or lead paint or unsafe concentrations of radon gas or underground storage tanks, but Seller has not tested for UFFI, asbestos, lead paint or radon gas;
- c. All appliances being transferred and the electrical, heating, hot water and air conditioning systems located on the Premises are in satisfactory operating condition;
- d. The septic system serving the Premises is in good working order and is located entirely within the Premises and no portion of any septic system serving any other property is located within the Premises;
- e. The well serving the Premises is in good working order and is located entirely within the Premises; and
- f. Any building on the Premises is situated entirely within the boundaries thereof.
- g. Other (including representations by Broker): _____

UNLESS OTHERWISE NOTED, THE FOLLOWING PROVISIONS SHALL APPLY:

SECTION 2 -- GENERAL PROVISIONS

2.1 Seller agrees to sell and Buyer agrees to buy the Premises upon the terms hereinafter set forth.

2.2 Included in the premises to be sold, unless excluded by Paragraph 1.9, are {the buildings, structures and improvements now thereon, the fixtures and attached personal property used in connection therewith including, if any, chandeliers, electric and other lighting fixtures, stair carpets and wall to wall carpeting, Venetian blinds, window shades, curtain rods, screens, screen doors, storm windows and doors, awnings, shutters, furnaces, heaters, heating equipment, stoves, ranges, oil and gas burners, hot water heaters, plumbing and bathroom fixtures, mantelpieces, outside television antennae, satellite dishes, fences, gates, trees, shrubs, plants, ventilators, garbage disposers, dishwashers, washing machines, dryers, burglar and fire alarm systems, and if built in, cabinets, shelving, bookcases and air conditioning equipment.}

Seller shall at the closing deliver to Buyer all existing keys to the premises, garage door openers and all security codes.

2.3 The deed and other documents required by this Agreement are to be delivered and the balance of the Purchase Price paid at the Date and Time of Closing and at the Place of Closing. Unless the Closing takes place at the appropriate Registry of Deeds, all documents and funds are to be delivered in escrow subject to prompt rundown of title and recording, which term shall include registration in the case of registered land. Unless otherwise agreed, Seller's attorney may disburse the funds if no report has been received by 5:00 p.m. of the next business day following the date of the delivery of the deed that the documents have not been recorded, due to some problem beyond the recording attorney's control.

2.4 The Premises shall be conveyed on the Date and Time of Closing at the Place of Closing by a good and sufficient deed (accompanied by a Certificate of Title if this is registered) running to Buyer (or Buyer's Nominee) conveying a good an clear record and marketable title thereto free from all encumbrances except those listed in Paragraph 1.11 and the following:

- a. Real Estate Taxes assessed or to be assessed on the Premises to the extent that such taxes then are not yet due and payable.
- b. Betterment assessments, if any, which are not a recorded lien on the Premises as of the Date of this Agreement.
- c. Federal, state and local laws, ordinances, by-laws and rules regulating the use of land, particularly environmental, building, zoning, health, rent control and condominium conversion laws, if any, applicable as of the Date of this Agreement, provided that at the Date and Time of closing the Premises may be used as of right for single family residential use;
- d. Existing rights, if any, in party or partition walls; and
- e. Utility easements in the adjoining ways.

2.5 Buyer may require the conveyance to be made to another person, persons or entity (“Nominee”), upon notification in writing delivered to Seller at least five days prior to the Date of Closing.

2.6 Simultaneously with the delivery of the deed, Seller shall execute and deliver:

- a. Smoke Detector Certificate of Compliance;
- b. Affidavits and indemnities with respect to parties in possession and mechanic’s liens to induce Buyer’s title insurance company to issue lender’s and owner’s policies of title insurance without exception for those matters;
- c. A bill of sale for all personal property included as part of the sale, if requested by the Buyer.
- d. In the case of new construction a Certificate of Occupancy and an assignment of any and all builder’s, seller’s or manufacturer’s warranties on the Premises or on any appliances or other property included in the sale.
- e. FNMA Vendor's affidavit FNMA 1009;
- f. An affidavit, satisfying the requirements of Section 1445 of the Internal Revenue Code and regulations issued thereunder, which states, under penalty of perjury, the Seller’s United States taxpayer identification number, that the Seller is not a foreign person, and the Seller’s address (the “1445 Affidavit”);
- g. Internal Revenue Service Form W-8 of Form W-9, as applicable, with Seller’s tax identification number, and an affidavit furnishing the information required for the filing of Form 1099S with the Internal Revenue Services and stating Seller is not subject to back-up withholding;
- h. Any plan not previously recorded, referred to in the deed, such plan to be recordable.

2.7 THE BALANCE OF THE PURCHASE PRICE SHALL BE PAID BY BUYER UPON DELIVERY OF THE DEED BY A CERTIFIED CHECK, TREASURER’S CHECK, CASHIER’S CHECK (IN EACH CASE DRAWN ON A MASSACHUSETTS BANK OR CREDIT UNION) OR BY FEDERAL FUNDS WIRE TRANSFER. IT IS BUYER’S OBLIGATION TO INSURE THAT BUYER’S LENDER FURNISHES FUNDS IN COMPLIANCE WITH THIS PARAGRAPH.

2.8 The deposits (which term shall include all interest earned, if any) made hereunder shall be held in escrow, subject to the terms of this Agreement and shall be duly accounted for at the time for performance of this Agreement. The deposits may not be released from escrow without the assent of both Buyer and Seller. The recording of the deed to the Premises shall constitute such assent. In the event of any disagreement the Escrow Agent may retain the deposits pending written instructions by both the Seller and Buyer, or by a court of competent jurisdiction. So long as Escrow Agent served in good faith, Buyer and Seller each agree to hold harmless Escrow Agent from damages, losses or expenses, arising out of this Agreement or any action or failure to act, including reasonable attorney’s fees, related thereto.

Buyer and Seller acknowledge that the Escrow Agent may be counsel to one of the parties and agree that Escrow Agent may continue to act as such counsel notwithstanding any dispute or litigation arising with respect to the deposits or Escrow Agent’s duties.

If interest is to be earned on the deposits: Escrow Agent shall not be obliged to deposit the deposits in any interest-bearing account until receipt from the Buyer of an IRS Form W-8 or W-9 setting for the Buyer's taxpayer identification number. Interest on the deposits shall be reported for income tax purposes in all events as being for the account of Buyer, and shall be paid to Buyer in all events, including those events in which the deposits are paid to Seller pursuant to this Agreement.

2.9 If the real estate tax rate is not set at the Time of closing, the apportionment of real estate taxes shall be made on the basis of the tax assessed for the most recent preceding year, with a readjustment at the request of either party, when the amount of the current year’s tax is set. If the amount of the tax is reduced by abatement, the rebate, less the reasonable cost of obtaining it, shall be apportioned between the parties.

2.10 Full possession of the Premises free of all tenants and occupants shall be delivered at the Date and Time of Closing. The Premises then shall (a) not be in violation of any of the matters in Paragraph 2.4c or of the provisions of any matter or instrument referred to in Paragraph 1.11; (b) be free of encroachments burdening the Premises and of improvements which encroach on adjoining property, including buildings, septic system, well and driveway; and, (c) have sufficient legal access to a public way. From the Date of Agreement to the Closing, Seller shall maintain Seller’s Fire and Extended Coverage Insurance and shall do all work to the Premises as is normally undertaken by an owner but shall not be required to repair damage caused by reasonable use or wear.

At the Date and Time of Closing, the Premises shall be in the same condition as they now are (reasonable use or wear excepted) and broom clean and free of trash, debris and personal property not included in the sale.

2.11 Seller may, if Seller so desires, at the Closing, use all or part of the Purchase Price to clear the title of any encumbrances or interests provided at all instruments necessary for this purpose are recorded by and at the expense of Seller simultaneously with the deed or at such later time as shall be reasonably acceptable to Buyer, and provided further, with respect to discharges of mortgages from insurance companies, banks and credit unions, such discharges may be recorded within a reasonable time after the recording of the deed.

2.12 If Seller is unable to convey title or deliver possession of the Premises as required hereunder or the Premises do not comply with the requirements of Paragraph 2.10, upon notice by either party, prior to the Date of Closing, this Agreement shall be automatically extended for 30 days (or if Buyer's mortgage commitment sooner expires, to a date one business day before the expiration of such commitment). Seller shall remove all mortgages, attachments and other encumbrances incurred or assumed by Seller which secure the payment of money, provided the total amount thereof does not exceed the Purchase Price, and Seller shall use reasonable efforts to remove other defects in title, or to deliver possession as provided herein, or to make the Premises conform to the provisions hereof.

At the end of the extended period, if all such defects have not been removed, or the Seller is unable to deliver possession, or the Premises do not conform with the requirements of this Agreement, Buyer may elect to terminate this Agreement and to receive back all deposits, upon receipt of which all obligations of the parties hereto shall cease.

At the original or extended time for performance, Buyer may elect to proceed with the Closing upon payment of the full Purchase Price reduced by an amount sufficient to remove all mortgages, attachments and other encumbrances which secure the payment of money which have not been removed by Seller but otherwise without deduction. In the event that the reason the Premises do not conform is damage to the Premises caused by fire or other casualty insured against, and Seller has not restored the Premises to their former condition and Buyer elects to proceed, Seller shall assign all insurance proceeds to Buyer and the Purchase Price shall be reduced by:

- a. the net amount of any insurance proceeds which a mortgagee has applied to the mortgage debt,
- b. less any amounts reasonably expended by Seller for partial renovation.
- c. the amount of any insurance proceeds received by Seller; and
- d. any deductible amount under Seller's insurance policy.

2.13 All offers and agreements made prior to this Agreement are hereby discharged and all further obligations of the parties are contained only in this Agreement. The acceptance of a deed by Buyer (or Buyer's Nominee) shall be a full performance and shall discharge every agreement and obligation herein except any agreements which by their terms are to be performed after the Closing. All representations and warranties herein shall survive the delivery of the deed. Buyer has not relied upon the representations or warranties of either Seller or Broker except as specifically set forth in Paragraph 1.17.

2.14 If Buyer shall fail to fulfill Buyer's part of this Agreement, all deposits made hereunder shall be forfeited and become the property of Seller as liquidated damages, which shall constitute Seller's sole remedy at law or in equity for Buyer's default under this Agreement. Both parties specifically consent to the deposits as the acceptable measure of Seller's damages regardless of the amount of any subsequent sales price which Seller may receive for the Premises.

2.15 Buyer's designating a Nominee to take title to the Premises shall not relieve Buyer of any obligation hereunder. Any note, mortgage or other document to be delivered from Buyer to Seller shall be executed by and be the personal obligation of Buyer, or be unconditionally guaranteed by Buyer, unless otherwise specified herein.

2.16 It is agreed by all the parties hereto that the Broker's Commission is to be paid to the Broker by Seller and that such payment shall be made only after title has passed the Seller has received the full Purchase Price hereunder, and not otherwise.

2.17 Buyer warrants and represents that Buyer has dealt with no other broker or agent with respect to this transaction or these Premises other than the Broker and agrees to indemnify and hold Seller harmless from all claims for brokerage or commission on account of this sale by any person, other than the broker, provided:

- a. Seller gives Buyer prompt notice of the claim;
- b. Buyer is afforded an opportunity to defend against the claim;
- c. The claimant produces evidence that claimant dealt with Buyer with respect to the Premises; and,

- d. The claimant obtains a judgment against Seller for a brokerage commission. Seller agrees to indemnify and hold Buyer harmless from all claims for brokerage or commission on account of this transaction or these Premises by any person, including the Broker, provided Buyer has not dealt with any other broker or agent with respect to this transaction.

2.18 If a party hereto is a corporation, no shareholder, or if a party hereto is a trust, no trustee or beneficiary of the trust, shall be personally liable for any obligation, express or implied, hereunder. If Seller or Buyer discloses in this Agreement that either of them is acting in a representative or fiduciary capacity, only the principal or estate represented shall be bound. If more than one person is named herein as Buyer or Seller their obligations hereunder are joint and several.

2.19 TIME IS OF THE ESSENCE OF ALL PROVISIONS OF THIS AGREEMENT.

2.20 This Agreement is to be construed as a Massachusetts contract.

2.21 Any matter or practice arising under or relating to this Agreement which is the subject of a Title Standard or a Practice Standard of the Massachusetts Conveyancers Association shall be governed by said Standard to the extent applicable.

2.22 Except as provided in Paragraphs 2.23 and 2.24 all notices required or permitted to be given hereunder shall be in writing and delivered in hand, or sent by Federal Express or other recognized overnight delivery service, or mailed postage prepaid, by registered or certified mail, addressed to Buyer or Seller at the appropriate address as specified in Paragraphs 1.3 and 1.4 or to such other address as shall be designated by written notice given to the other party. Any such notice shall be deemed given when so delivered in hand or, if sent by Federal Express or other recognized overnight delivery service, on the next business day after deposit with said delivery service, or, if so mailed, five (5) business days after deposit with the U.S. Postal Service.

2.23 (This Paragraph is applicable only if the Buyer's Mortgage Contingency Amount and Date have been specified in Paragraph 1.14.)

The Buyer's obligations under this Agreement are contingent upon Buyer's receipt prior to 5:00 p.m. on the Mortgage Contingency Date of a written commitment letter at prevailing rates and terms (at the time of issuance of such letter) from a conventional mortgage lender for a mortgage loan equal to the Mortgage Contingency Amount to be used by Buyer in purchasing the Premises. Should the Buyer be unable to obtain such a commitment letter despite diligent efforts, Buyer may cancel this Agreement by written notice received by the Seller no later than 5:00 p.m. on the day after Mortgage Contingency Date, whereupon all obligations of the parties under this Agreement shall cease and Buyer's deposits shall be promptly returned in full. Buyer's failure to give such notice shall be a waiver of the Buyer's right to cancel under this Paragraph.}

2.24 (This Paragraph is applicable only if the Buyer's Home Inspection Contingency Date has been specified in Paragraph 1.15.)

The Buyer's obligations hereunder are contingent upon Buyer's receipt, prior to 5:00p.m. on the Home Inspection Contingency Date, of written home inspection reports on the Premises satisfactory to Buyer. Such reports may, at Buyer's option, include inspections for structural and mechanical matters, pests, including wood-boring insects, lead paint, asbestos, UFFI, radon gas other hazardous substances, underground tanks, septic system and well water. Should the results of any such test be unsatisfactory to Buyer, Buyer may cancel this Agreement by written notice received by the Seller no later than 5:00 p.m. on the day after the Home Inspection Contingency Date, whereupon all obligations of the parties shall cease and Buyer's deposits shall be promptly returned in full. Buyer's failure to give such notice shall be a waiver of Buyer's right to cancel under this Paragraph.

2.25 The Riders listed below and attached to this Agreement are incorporated herein by reference:

Executed under seal by the Parties hereto as of the date of this Agreement.

WHEN EXECUTED, THIS WILL BE A BINDING CONTRACT, AN ATTORNEY SHOULD BE CONSULTED BEFORE SIGNING.

Buyer

Seller

Buyer

Seller

Broker

Broker

EXTENSION

DATE: _____

The time for the performance of the foregoing Agreement is extended until ____ o'clock __m. on the _____ day of _____, 20____ and the mortgage contingency date is extended to ____ o'clock __m. on the _____ day of _____, 20____ time still being of the essence of this Agreement, as extended.

This extension, executed in multiple counterparts, is intended to take effect as a sealed instrument.

Buyer

Seller

Buyer

Seller

Broker

Broker

Adopted 1991

REBA Form No. 21

