

RE89R14 -

PURCHASE AND SALE AGREEMENT IN RESIDENTIAL TRANSACTIONS

This course provides a comprehensive overview of all of the customary clauses that may typically be included in the Purchase and Sale Agreement (“P & S”) for residential transactions. The P & S may include any additional clauses as agreed upon between the parties. It is important to recognize many clauses may be worded to benefit either Buyer or Seller.

1. P & S Fundamentals

- a. What is purpose of P & S?
- b. Binding nature of P & S
- c. Differences between residential and condominium P & S
- d. Who prepares P & S?

2. Parties

- a. Buyer and Seller clearly identified
- b. “. . . or their nominee”

3. Description of Property

- a. Clearly defined legal address and common address

4. Buildings, Structures, Improvements and Fixtures

- a. What is included in sale?
- b. What is not included in sale?
- c. Personal property
- d. Leased equipment
- e. Appliances, light fixtures, window treatment, etc.

5. Title Deed

- a. Type of deed
- b. Opportunity for buyer to review deed
- c. Provisions of existing building and zoning laws
- d. Taxes for current year
- e. Liens for municipal betterments
- f. Easements, restrictions and reservations of record

6. Plans

- a. If deed refers to a plan
- b. Plat of survey by Seller or Buyer

7. Registered Title

- a. If title is registered proper form for Certificate of Title

8. Purchase Price

- a. Total agreed purchase price
- b. Amount of previous deposit
- c. Amount to be paid upon signing P & S
- d. Balance to be paid at closing
- e. Money at closing in good funds

9. Time For Performance and Delivery of Deed

- a. Date and time closing
- b. Closing venue
- c. Time is of the essence

10. Possession and Condition of Premises

- a. Possession at closing
- b. Free of tenants
- c. Condition of premises
- d. No violations of building and zoning code
- e. Pre-closing inspection

11. Extension to Perfect Title or Make Seller Premises Conform

- a. Extension of time if Seller unable to provide title or make conveyance or deliver possession

12. Failure to Perfect Title or Make Premises Conform

- a. If Seller unable to provide title, make conveyance or deliver possession
- b. Inability of Seller to apply insurance proceeds

13. Buyer's Election to Accept Title

- a. Buyer shall have election to accept such title as the Seller can deliver
- b. If premises damaged by fire or casualty

14. Acceptance of Deed

- a. Full performance and discharge
- b. Warranties may survive closing

15. Use of Money to Clear Title

- a. Use of closing proceeds to clear title

16. Insurance

- a. Insurance coverage during period of Buyer's equitable title

17. Adjustments

- a. Adjustments to be added or subtracted from closing proceeds:
 - i. Water and sewer use charges
 - ii. Operating expenses (if any)
 - iii. Taxes
 - iv. Rents

18. Adjustment of Unassessed and Abated Taxes

- a. Adjustment of real estate taxes not known at date of conveyance

19. Broker(s)

- a. Recital of Broker(s) commission
- b. Identification of Broker(s)
- c. Amount of commission
- d. Who pays commission (generally Seller)
- e. When commission is earned, due and payable

20. Broker(s) Warranty

- a. Warranty Broker(s) are currently duly licensed by Massachusetts
- b. Warranty of no other Broker(s)

21. Broker as Party

- a. Broker as party to P & S

22. Deposit

- a. Holder of deposit escrow
- b. Interest or non-interest bearing
- c. Payment of deposit by escrow agent
- d. Disposition in event of dispute between Buyer and Seller

23. Buyer's Default

- a. Liquidated damages
- b. Other seller remedies

24. Warranties and Representations

- a. Buyer acknowledges no warranties beyond P & S

25. Lead Paint Acknowledgments

- a. Buyer acknowledges Lead Paint Law
- b. Buyer acknowledges receipt of Property Transfer Notification and Certification
- c. Responsibility for lead paint inspection, if any

26. Smoke and Carbon Monoxide Detectors

- a. Seller's responsibility to deliver certificate of approved smoke and carbon monoxide detectors in conformity with applicable law at closing

27. Land Bank Fee, Boston Redevelopment Authority (BRA) Resale Payment or Other

- a. In applicable districts identify amount of obligation and who is responsible for payment

28. Septic

- a. Acknowledgement when septic inspection due
- b. What if septic system fails inspection?
- c. Septic inspection following closing
- d. Who is responsible for costs?

29. Home Inspection

- a. Time period
- b. Obligations of parties
- c. Can home inspection nullify the agreement?

30. Facsimile and Electronic Signatures

- a. Acknowledgement electronic signatures are acceptable

31. Authority for Extensions

- a. Identification and authority of attorney or attorney-in-fact to agree to extensions of contract time frame

32. Construction of Agreement

- a. Signed counterparts are acceptable
- b. Binding contract
- c. Two or more persons joint and several liability
- d. Captions not part of agreement

33. Massachusetts Real Estate Bar Association Standards

- a. Contract governed by title standards or practices of the Massachusetts Real Estate Bar Association to extent applicable

34. Quality of Title

- a. All buildings, structures and improvements located within boundary lines
- b. No encroachments
- c. Premises abut a public way
- d. Title to the premises insurable by title insurance company at normal premium

35. Broom Clean Condition

- a. Broom clean condition at closing
- b. Delivery of keys
- c. Warranty to survive closing

36. UST

- a. No underground storage tanks

37. Delivery of Other Documents

- a. Seller agrees to provide Buyer any documents reasonably requested by Buyer's counsel, title insurance company, or any lender granting mortgage financing including, but not limited to, the following:
 - i. Certificate of non-foreign status as contemplated by Section 1445(b)(2) of the Internal Revenue Code, as amended
 - ii. Internal Revenue Code 1099 Forms and W-9 Forms
 - iii. Affidavits regarding mechanics' and materialmen's liens and parties in possession sufficient to eliminate any title insurance exceptions for these matters

38. Access to Premises

- a. Terms of periodic access to premises by Buyer or agent of Buyer

39. Notices

- a. Process for notices related to P & S
 - i. Parties to receive notices
 - ii. Method of delivery
 - iii. Time for delivery

40. Contingencies

- a. Parties may agree to contingencies
 - i. Home inspection
 - ii. Lead paint inspection
 - iii. Zoning requirements
 - iv. Financing
 - v. Other

41. Signatures

- a. Buyer
- b. Seller
- c. Brokerage office policy

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Statutes and Regulations

M.G.L. c. 184, § 17A

Teaching Aids

Instructor should provide samples of an actual standard purchase and sale agreement