



# OREGON SELLER ADVISORY

Oregon real estate licensees provide valuable services to property owners who wish to sell their property. A licensed real estate professional can provide a variety of services to sellers in addition to listing the property and placing it in a multiple listing service. These services include helping the seller understand their legal obligations, including required disclosures, establishing a fair price, marketing the property, negotiating the sale and helping the seller with contract performance. A real estate licensee is not, however, qualified to discover defects, evaluate the physical condition of property, give legal advice or provide other services beyond the scope of their real estate license.

This Advisory is designed to assist home sellers in meeting their obligations as a seller of real property in Oregon. Common issues that arise in Oregon real property transactions are summarized in this Advisory. In addition to understanding these common issues, the seller should tell the licensee with whom they are working about any special concerns or issues regarding the condition of the property, state of the title or other problems that may surface during the transaction.

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# **LISTING PROPERTY FOR SALE**

## **Listing Agreements**

Oregon law requires that an agreement authorizing or employing a broker to sell real estate for a compensation or commission be in writing. Such agreements are called “listing agreements.” A listing agreement is simply a written contract between the seller and their broker. The contract will contain the authorizations the broker needs to place the property in a multiple listing service, advertise and otherwise market and sell the property on the seller’s behalf.

Listing agreements contain important terms regarding how the property will be marketed, the asking price for the property, the obligations of both broker and seller, the duration of the listing, the broker’s compensation and other terms and conditions. Many listing agreements contain what are called “liquidated damages” clauses. Such clauses should be read carefully as they establish the damages that may be due the broker if the seller terminates the listing agreement without cause. Most listing agreements have a provision that determines how any forfeited earnest money will be distributed between seller and broker. Sellers should carefully read the listing agreement and go over its terms with their broker before signing.

## **Multiple Listing Services**

A multiple listing service, called an “MLS,” provides information to real estate professionals who subscribe to the service about properties that are for sale in the area. Filing a listing with the MLS exposes the property to active real estate professionals in the local area. As such, it is a powerful marketing tool. The MLS is also a way for listing brokers to offer compensation to other brokers who may know of a suitable buyer. This cooperative feature of the MLS allows the listing brokers share part of their commission with buyer’s agent. It is the ability to attract buyers through their agents that makes the MLS such an effective marketing tool.

MLS data and remarks are a form of advertising and as such must be accurate and truthful. Seller should therefore review MLS data and remarks for accuracy and bring any discrepancies or concerns to the attention of their agent. If personal property such as refrigerators, other appliances, furniture, tools, implements or accessories is listed as “included” in the MLS data, they become part of what is being offered for sale. It is like advertising that a car being sold includes floor mats. Once such items are advertised as “included,” the seller cannot unilaterally change their mind even if the items are not specifically listing in the contract for sale without risk of legal liability.

## **Seller Costs and Expenses**

Selling real property involves a certain amount of expense. The seller’s exact costs and expenses depend on the property being sold and the terms of the transaction. Sellers should anticipate these expenses and plan for them at the time they list property for sale. Although accounting, financial consulting and tax advice are beyond the scope of a real estate licensee’s expertise, the seller’s real estate agent can help the seller estimate some of the costs and expenses that will be associated with the sale.

Seller costs and expenses include everything from moving expenses to the mortgage pay-off. Certain transaction costs, called “closing costs” are typically paid by the seller. These include title insurance, escrow fees, legal fees, recording fees and the like. Most real estate contracts have provisions for seller-paid repairs that are identified during the buyer’s inspection of the property. Depending on the market and other factors, the seller may agree to pay some of the buyer’s closing costs. Such payments from seller to buyer are called “seller concessions.” Typically, the seller will pay any sales commissions agreed to in the listing agreement at the time of closing.

## **Taxes and Tax Withholding on Real Property Conveyances**

The sale of real property can generate tax liability at the local, state and federal level. Although unusual in Oregon, some local jurisdictions may charge a transfer tax when real property is sold. Sellers should check with their agent or their local government tax office. Tax liability issues are beyond the expertise of a real estate licensee. Information on federal taxes can be found at: <http://www.irs.gov/publications/p523/index.html>. General information about Oregon personal income taxes can be found at: <https://secure.dor.state.or.us/piti/index.cfm>

Income from conveyance of real property located in Oregon by non-residents is subject to income tax withholding at the time of sale. Certain “authorized agents” (typically escrow companies) must withhold the tax and remit it to the Oregon Department of Revenue. There are a number of exceptions to the withholding requirement. Some exceptions require the seller to sign an exempt status statement under penalty of perjury. Others require the advice of a tax professional, review of Oregon statutes and the Internal Revenue Code. Such review and advice is beyond the expertise of an Oregon real estate licensee. Complete information about Oregon’s tax withholding law and copies of required forms can be found at: <http://www.oregon.gov/DOR/PERTAX/docs/2008Forms/101-183-08.pdf>

## **PROPERTY CONDITION, INVESTIGATION & DISCLOSURE**

### **Seller’s Common Law Disclosure Duties**

Under Oregon law a seller must disclose to the buyer any material defects known to the seller that would not be readily apparent to a buyer. Oregon civil law also imposes on all parties to a contract a duty of good faith and fair dealing. This contractual duty prohibits deceit, fraud or design to mislead in the formation and performance of contracts. Taken together, these legal obligations require certain disclosures to purchasers when selling real property in Oregon.

A seller in Oregon cannot remain silent if they know of some hidden defect that affects the value or desirability of the property. Such defects are considered “material” and must be disclosed. The “defect” may be in the condition of the property or its title or use or, in some cases, even surrounding conditions or future use. The key is that the defect must be known to the seller,

affect the value or desirability of the property and not be readily apparent to a buyer. Failure to disclose such defects can result in lawsuits for damages or to rescind the sale.

Given the consequences, any doubt about disclosure of potential defects should be resolved in favor of disclosure. For instance, if the roof leaked last winter and was repaired it would be wise to disclose the leak and repair in a sale taking place the following summer. That way, if the repair proves inadequate during the next rainy season, there will be no question that the sellers misled the buyer by “hiding” the leak and repairs. At the same time, a problem fixed years ago that has caused no further problems would not need to be disclosed. Where the line is drawn in a specific instance is a matter sellers should discuss with their real estate agent.

Real estate licensees are not property inspectors or legal experts. They can, however, assist sellers in understanding and meeting their disclosure duties. All real estate licensees in Oregon have an obligation of honesty and fair dealing to all parties to a real estate transaction. Licensees therefore cannot be party to any attempt to deceive or mislead a buyer. Under Oregon law, withholding material information from an agent with the intent that the agent innocently misrepresents the property to another is considered a form of fraud.

### **Seller’s Property Disclosure Statement**

In Oregon, most sellers of residential property are required to fill-out, sign and deliver to prospective purchasers a statutory property disclosure form. The form, which covers everything from title status to dwelling systems and fixtures, is set-out in ORS 105.464. Because the form is statutory, it cannot be changed or modified. All questions on the statutory form must be answered based on the actual knowledge of the seller at the time an offer is made on the property.

A copy of the statutory disclosure form can be found online at:

<http://www.leg.state.or.us/ors/105.html> Unless the seller qualifies for one of the narrow exclusions contained in the statute, or the buyer is not purchasing the property for his immediate family to live in, the completed disclosure form must be delivered to every buyer who makes a written offer on the property. If the seller fails to comply with the statute, the buyer is entitled to revoke their offer at anytime prior to actually closing the sale. If the seller does deliver the disclosure statement, the buyer’s ability to revoke is limited to five business days after delivery.

The exclusions available under the statute are listed on the first page of the disclosure form. They include the first sale of a dwelling never occupied, sales by financial institutions, sales by court appointed receivers, trustees, personal representatives and the like and sales by government agencies. All other sellers of residential real property being sold as a residence for the buyer or their immediate family must answer the two and half pages of questions the legislature has determined are relevant in the purchase of residential property.

The disclosure statement questions may be answered “yes,” “no,” “unknown” or in limited circumstance “NA.” Answering “unknown” to avoid disclosure of known information can be considered a form of fraud. A number of questions, if answered “yes,” require that an explanation or copy of a report or other document to be attached to the disclosure statement.

Because the disclosure statement must be filled out by the seller based on the seller's actual knowledge at the time of disclosure, real estate licensees cannot fill out the form for the seller or influence the seller's answers in any way. Real estate licensees are, however, required to make the seller aware of the seller's disclosure duties under the statute.

### **Professional Home Inspections**

Most real estate licensees in Oregon advise the buyers they represent that obtaining a professional home inspection is the single most important thing a buyer can do for their protection. Most buyers take the advice to heart. Sellers therefore should anticipate one or more professional home inspections will be conducted by inspectors hired by potential purchasers. The resulting inspection reports will provide the buyer with detailed information about the home's physical condition, its systems and fixtures and usually note any potential future problems.

Real estate contracts in common use in Oregon contain inspection contingencies that allow the buyer to withdraw from the transaction based on the content of the inspection report. These contingencies are typically what are called "buyer satisfaction" contingencies. That means the buyer can withdraw if they are dissatisfied with the overall condition of the property as revealed in the report and do not need to pin-point specific material defects. Buyers may, however, identify specific issues and ask the seller to make repairs at the seller's expense. In some cases, particularly under government backed VA or FHA programs, the buyer's lender may require certain repairs as a condition of the loan. Although the seller is not required to make such repairs, failure to agree on repairs can lead to the buyer withdrawing from the transaction.

Should a transaction fail because of an inspection report, the seller will usually have the contractual right to demand a copy of the inspection report the buyer is relying upon. It is a good idea for the seller to demand the report so there will be no question that the seller deliberately turned a blind eye to potential problems. Under the seller's property disclosure statute, any professional inspection done within three years of the date of the disclosure must be disclosed. The disclosure is one of those that require additional explanation or documentation. This provides the seller with a vehicle for disclosing the deal fail and the inspection report to eliminate any later claim the seller tried to hide the true condition of the property from the next buyer.

In anticipation of selling the property, some sellers will have a professional inspection done and any required repairs made prior to marketing the property. If the seller decides to hire an inspector, they should carefully review the inspector's proposal to determine the scope of the inspection. Some home inspectors may not inspect heating and cooling systems, the roof or other systems or components. A home inspection should be done by a home inspector or contractor licensed by the Oregon Construction Contractors Board (CCB). Inspector requirements and standards of practice for inspectors are available on-line at: <http://ccbed.ccb.state.or.us/WebPDF/CCB/Publications/hi-s-sop.pdf>. If the seller does have an inspection done, they should not allow a potential buyer to rely on the seller's inspection. All buyers should be advised to contract and pay for their own inspection.

Inspection of property is beyond the scope of expertise of a real estate licensee, but real estate licensees can provide sellers with a list of local inspectors. Licensees ordinarily will not recommend a specific inspector. Before hiring an inspector, the seller should check with the CCB to determine the inspector's current license status and whether there are any past or pending claims against the inspector. This can be done by visiting: [https://ccbed.ccb.state.or.us/ccb\\_frames/consumer\\_info/ccb\\_index.htm](https://ccbed.ccb.state.or.us/ccb_frames/consumer_info/ccb_index.htm)

### **Defective Products and Materials**

Some materials used in home construction have been subject to a recall, class action suit, settlement or litigation. These materials include modern engineered construction materials used for siding, roofing, insulation or other building purposes. It is critical that a seller carefully review any notices, settlements or other information they may have received regarding such materials. The seller's property disclosure statement contains several questions about such materials.

Homes may also contain products in their systems or fixtures that are, or have been, subject to a recall, class action suit, settlement or litigation. Plumbing, heating and electrical systems, among others, may contain such products. It is critical that a seller carefully review any notices, settlements or other information they may have received regarding such materials. If there is any doubt about systems or fixtures, the seller should arrange for a suitable inspection. A real estate licensee can often help the seller find an inspector with the proper knowledge and credentials, but inspection of property for such products is beyond the scope of a real estate licensee's expertise.

### **Repairs and Remodels**

If repairs or remodeling have been done on the property, the seller will want to make certain the work was properly done and permitted. Buyers will often ask the seller for any invoices or other documentation for obvious repairs or remodels. Sellers should therefore anticipate questions about any recent repairs or remodels and be ready to demonstrate they were done properly with the required permits.

A real estate licensee can help the seller assess the need to demonstrate building code compliance, but do not themselves have the training or expertise to evaluate building code compliance issues. Information about building permits can be found at: <http://www.permitsprotect.info/> If uncertain about permits, sellers should check with their city or county building department. County websites can be found by visiting: <http://www.aocweb.org/aoc/AboutOregonCounties/CountyLinks/tabid/72/Default.aspx> for cities: <http://www.orcities.org/CityResources/CityInformation/tabid/846/Default.aspx>

If repairs or remodels have been completed very recently, the seller should make sure no construction liens have been or will be filed against the property. Construction valued at \$50,000 or more done within three months of a sale may trigger additional requirements under the Homebuyer Protection Act. A complete explanation of the Act and its requirements for

sellers is available from the Construction Contractors Board at:  
<https://ccbed.ccb.state.or.us/WebPDF/CCB/Publications/HPAform.pdf>

If any repairs are required during the transaction, the seller should make sure a licensed construction contractor is doing the repairs. Information about individual contractors is available at: [https://ccbed.ccb.state.or.us/ccb\\_frames/consumer\\_info/ccb\\_index.htm](https://ccbed.ccb.state.or.us/ccb_frames/consumer_info/ccb_index.htm) After the repairs have been done, the seller should consider having a re-inspection done to assure the repairs were done properly. Such re-inspections are often made a term of the sale contract when repairs are made during a transaction.

### **Homebuyer Protection Act**

The Homebuyer Protection Act of 2003 requires sellers of certain new and recently remodeled or renovated residential property to provide buyers with protection from unrecorded construction liens. Information about construction liens is available at:

[http://www.oregon.gov/CCB/publications.shtml#Consumer\\_Publications](http://www.oregon.gov/CCB/publications.shtml#Consumer_Publications) If the buyer is entitled to protection under the Homebuyer Protection Act, the seller must choose one of six statutory protections and provide you with a Notice of Compliance form indicating the protection chosen.

A copy of the Notice form and explanation of the Act is available at:

<https://ccbed.ccb.state.or.us/WebPDF/CCB/Publications/HPAform.pdf>

Real estate licensees are not trained or experienced in construction lien law. If a Notice of Compliance form is part of the transaction, or either party is uncertain about their rights or obligations under the Act, they should seek the advice of an attorney. Real estate licensees cannot interpret legal documents or give legal advice.

### **Sewer and Septic Systems**

Whether the property is connected to a city sewer, septic system or other on-site wastewater treatment system is important information. The condition of such systems can be highly material in a real estate transaction. Real estate licensees are not licensed to do plumbing or septic inspections. If the property has a septic system or other on-site wastewater treatment system, the seller should consider inspection by a licensed septic system installer or other on-site wastewater treatment system professional prior to marketing the property. Information about on-site wastewater treatment systems, and licensed installers, can be found on the website for the Oregon Department of Environmental Quality (DEQ) at:

<http://www.deq.state.or.us/wq/onsite/onsite.htm>.

Specific information about septic systems and other on-site wastewater treatment systems is usually available from the county. Buyers will often check with the county as part of their due diligence when purchasing property with an on-site wastewater treatment system. Sellers can avoid potential transaction problems by checking permitting and system status with the county prior to marketing. County websites can be found by at:

<http://www.aocweb.org/aoc/AboutOregonCounties/CountyLinks/tabid/72/Default.aspx>



## **Wells**

If domestic water for the property is supplied by a private well, the seller is required by state law to test the well for total coliform bacteria and nitrates. Sellers may also want to have the well tested for contaminants other than bacteria and nitrates. Proper procedures need to be used when testing domestic wells. More information on this state law requirement can be found at <http://www.dhs.state.or.us/publichealth/dwp/dwtfaq.cfm>.

Oregon also requires that all private wells not already registered with the state be registered at the time the property is transferred. Real estate forms in use in Oregon often delegate to the buyer the responsibility for registering the well. For information on the state well registration program, visit: [http://egov.oregon.gov/OWRD/GW/well\\_id.shtml](http://egov.oregon.gov/OWRD/GW/well_id.shtml).

## **Well Flow Tests**

If domestic water is supplied by a private well, the seller will want to make certain the well provides adequate water for domestic needs. It is strongly recommended that a well flow test be conducted prior to marketing of any property that depends on a well for domestic water. Careful attention should be paid to disclosures or representations about wells. The seller should not allow the buyer to rely on a test done for the seller. The buyer should be advised to contract and pay for their own well flow test.

Sellers should review any well records they may have as buyers will usually ask to see such records. Interested sellers can obtain more information about well logs at: [http://apps2.wrd.state.or.us/apps/gw/well\\_log/Default.aspx](http://apps2.wrd.state.or.us/apps/gw/well_log/Default.aspx). While real estate licensees are not trained and do not have the expertise to test wells, they should be able to direct the seller to the appropriate well professionals. Disclosures and disclaimers regarding domestic wells are common in real estate transactions and should be reviewed with the seller's agent as part of contract negotiations.

## **Underground Oil Storage Tanks**

Sellers should be aware of potential problems associated with underground oil storage tanks. Such tanks can cause serious problems if they have leaked oil. Underground oil tank leaks can create serious potential liability for sellers even if they do not know of the leak. Oil storage tanks, including home heating oil tanks, are closely regulated in Oregon. An explanation of Oregon laws concerning home heating oil tanks can be found at: <http://www.deq.state.or.us/lq/tanks/index.htm>

A seller who knows or suspects that property has an underground storage tank should take appropriate steps to protect his own interests, including seeking information from the Department of Environmental Quality (DEQ) and, if necessary, consulting with an environmental hazards specialist or attorney. **SELLERS ARE ADVISED TO HIRE APPROPRIATELY TRAINED ENVIRONMENTAL PROFESSIONALS TO INSPECT THE PROPERTY IF AN UNDERGROUD OIL STORAGE TANK IS FOUND OR SUSPECTED.**

Oil storage tank inspection, decommissioning and cleanup requires a special license from DEQ. A list of licensed providers can be found at <http://www.deq.state.or.us/lq/tanks/index.htm> Inspection, decommissioning and cleanup of oil tanks can take time. Sellers who are aware of the existence of a tank should, therefore, begin the process early to avoid transaction delays Real estate licensees are not trained or licensed to provide advice or services regarding underground oil storage tanks, but can assist the seller in finding the proper professionals.

## **Environmental Hazards**

Environmental hazards include everything from expansive soils to landslides to forest fires, tsunamis, floods and earthquakes. Environmental hazards can also include indoor air quality (e.g., radon or carbon monoxide) and hazardous materials, like asbestos. Environmental hazards known to the seller must be disclosed to all buyers. Sellers in doubt about such hazards should check with the county in which the property is located. Oregon counties can be located at: <http://www.aocweb.org/Cnty-links-frm.htm>.

Wildfire is a concern in some areas of Oregon. Information about the risk of wildfire is available from the Oregon Department of Forestry at: <http://www.oregon.gov/ODF/FIRE/fire.shtml> Some homeowners are subject to special rules under the State's "Forestland-Urban Interface Classification." Owners of property within the classification should complete a "Property Evaluation and Self-Certification" to avoid potential future liability. Forestland-Urban Interface status must be disclosed on the Seller's Property Disclosure form. Information about the Forestland-Urban Interface and on the evaluation and certification program is available at: <http://www.oregon.gov/ODF/FIRE/SB360/sb360.shtml> Real estate licensees do not the expertise to advise homeowners on fire protection requirements but can often direct owners to the appropriate professionals

If flood status is an issue because of insurance restrictions, claims or past history, the seller should bring the matter to the attention of their agent and be prepared to make the appropriate disclosure to buyers. Flood plain maps and information are available at: <http://www.fema.gov/business/nfip/sfhdfm.shtml>. Real estate licensees do not have the expertise to assess flood potential but can often direct sellers to the appropriate local authorities.

If environmental issues have been a problem in the area, or the seller has any notice of potential problem with air quality, ground or water contamination or other problems with the area or property, the seller should bring the matter to the attention of their agent and carefully consider disclosure obligations to potential buyers. If in doubt about potential hazards, the seller should visit the Environmental Protection Agency (EPA) website at: [www.epa.gov/iaq/iaqinfo.html](http://www.epa.gov/iaq/iaqinfo.html).

Information about specific contaminated sites that have been reported to the government can be found at: <http://www.epa.gov/superfund/sites/> and, for sites specific to Oregon: <http://www.dhs.state.or.us/publichealth/superfund/sites.cfm>. Real estate licensees are not trained and do not have the expertise to discover and evaluate environmental hazards. Sellers, therefore, are advised to hire appropriately trained environmental professionals to inspect the property and its systems or fixtures for environmental hazards if there is any question regarding environmental hazards.

## **Woodstoves**

The Oregon Department of Environmental Quality (DEQ) has developed a statewide woodstove program to promote the use of cleaner-burning woodstoves and to help homeowners with woodstoves burn wood more efficiently and with less pollution. Under Oregon law, no person may sell, offer to sell or advertise to sell a used, non-certified woodstove. Non-certified woodstoves (including fireplace inserts) are older models (mostly pre-1985) that have not been certified by the DEQ or the federal Environmental Protection Agency to meet cleaner-burning smoke emission standards.

Individual communities in Oregon may have additional rules governing the sale of or use of woodstoves and fireplaces. The seller should ask their agent for assistance or check with appropriate local government agencies. County websites can be found by visiting: <http://www.aocweb.org/aoc/AboutOregonCounties/CountyLinks/tabid/72/Default.aspx> and cities at: <http://www.orcities.org/CityResources/CityInformation/tabid/846/Default.aspx> General information about woodstove regulation in Oregon is available at: <http://www.deq.state.or.us/aq/burning/woodstoves/101.htm>

Inspection of fireplaces and woodstoves requires special training and expertise. Although a real estate licensee may be able to help you find a local woodstove professional, they cannot themselves inspect or evaluate a woodstove.

## **Mold**

Molds are one of a variety of biological contaminants which can be present in human structures, including in residential housing. Mildew is perhaps the most common and best known of the molds. Less well known, and far less common, are certain molds identified as possible contributors to illness, particularly in people with allergies. Serious mold problems usually involve property with defective siding, poor construction, water penetration problems, improper ventilation or leaking plumbing.

In a few cases, these problems have led to the growth of molds which caused medical conditions in some people. Sellers who have any knowledge or notice of molds in their property should arrange for inspection by a qualified professional. Information on moisture intrusion and mold problems associated with human structures can be found at: <http://www.epa.gov/iaq/molds/moldresources.html>.

Inspection, discovery and evaluation of specific water intrusion or mold problems requires extremely specialized training and is well beyond the scope of a real estate licensee's expertise. Sellers are, therefore, advised to hire appropriately trained professionals to inspect the property if the seller is concerned about the possibility of harmful molds. Any mold condition, whether believed harmful or not, should be disclosed to your agent and any potential buyer.

## **Smoke Alarms**

In Oregon, no person may sell a dwelling unless there is installed in the dwelling unit an approved smoke detector or smoke alarm installed in accordance with the rules of the State Fire Marshall. Because of this state law requirement, most residential real estate sale forms contain a representation by the seller that, at the earlier of possession or closing date, the dwelling will have an operating smoke detector as required by law. Sellers should anticipate the smoke alarm requirement and make sure their property is properly equipped prior to marketing the property.

Battery operated ionization smoke alarms sold or used in Oregon must have a 10-year battery and a “hush” mechanism which allows a person to temporarily disengage the alarm. All dwellings must have the proper type, number and placement of alarms as required by the building codes at the time the dwelling was constructed but not less than one alarm adjacent to each sleeping area and at least one alarm on each level of the dwelling. (Additional rules apply to rented property.) Information about smoke alarm and detector requirements in Oregon can found on the State Fire Marshall’s web site at:

[http://www.sfm.state.or.us/Comm\\_Ed/FireSafety/Smoke%20Alarm/smoke.htm](http://www.sfm.state.or.us/Comm_Ed/FireSafety/Smoke%20Alarm/smoke.htm) .

Real estate licensees are not trained in building code or fire code compliance. If there is any doubt about whether a smoke alarm or detector system complies with building and fire code requirements, a licensed home inspector, or the home alarm or detector company, should be contacted. Your real estate agent may be able to assist you in finding the right code compliance professional.

## **Deaths, Crimes and External Conditions**

In Oregon, certain conditions on or near real property that may be of concern to buyers are considered not to be “material” by state law. Ordinarily, “material facts” must be disclosed by the seller or the seller’s agent. However, because state law declares certain facts to be not material, sellers are not held responsible for disclosing them as might otherwise be the case.

Facts that would be subject to disclosure but for the statute include the fact that the property was the site of a death, crime, political activity, religious activity, or any other act or occurrence that does not adversely affect the physical condition of, or title to, real property, including that a convicted sex offender resides in the area. Although the seller is not required to disclose such facts, they may elect to- for instance disclosing a pedophile living next door to buyers with small children. Under Oregon law, neither the seller nor their agent is allowed to disclose that an owner or occupant of the real property has or had human immunodeficiency virus or acquired immune deficiency syndrome.

## **Neighborhoods**

Neighborhoods change over time. Some of these changes can affect the value or desirability of property. Building permits, zoning applications and other planning actions are a matter of public record and notice. Any notice of planning actions in the area, or even knowledge of future plans

by neighbors or the government, the seller should be discussed with their real estate agent to determine what if any disclosure should be made to buyers.

Information about planning departments can be found on the county or city website:

<http://www.aocweb.org/Cnty-links-frm.htm> city information is available at:

<http://www.orcities.org/CityResources/CityInformation/tabid/846/Default.aspx>. State road building projects information is available from the Oregon Department of Transportation at: <http://www.oregon.gov/ODOT/HighwayRegions.shtml>.

Location within a school district can be an important attribute of a neighborhood. School boundaries, however, are subject to change. If location within a particular school district is going to be advertised to attract buyers or justify the asking price, the seller should investigate the boundaries and the likelihood of change by contacting the school district directly. Oregon law provides a “just compensation” right for some Oregon property owners if a public entity enacts or enforces a land use regulation has the effect of reducing the value of the property. Seller who believe the value of their property is affected by Oregon’s property compensation laws are advised to seek the counsel of appraisers, attorneys or other land use professionals.

## **DOCUMENT INSPECTION AND SELLER INVESTIGATION**

### **Information Generally**

Information from third parties regarding real estate and real property transaction is not usually verified by real estate licensees. It is the responsibility of the seller to read the documents the seller is depending on in answering questions about the property. Interpretation of many documents involved in a real property transaction requires the practice of law and is beyond the scope of a real estate licensee’s expertise. **SELLERS UNCERTAIN ABOUT THE LEGAL EFFECT OF TRANSACTION DOCUMENTS SHOULD CONSULT AN ATTORNEY.**

### **Real Estate Sale Form (Sale Agreement)**

A contract for the sale of real property must be in writing to be enforceable in Oregon. **A VERBAL OFFER OR ACCEPTANCE SHOULD NOT BE MADE OR RELIED UPON.** Contracts for the sale of property are often called “earnest money” or “sale agreements.” They are legally binding contracts. Sellers should seek competent legal advice before signing any contract they do not fully understand.

Sale agreements usually include provisions concerning who will hold the earnest money and under what conditions it may be refunded to the buyer or forfeited to the seller. Sellers should carefully review these provisions in any proposed transaction. The amount of earnest money pledged and the conditions under which it may be refunded or forfeited are important matters that should be carefully negotiated between the buyer and the seller.

Most sale agreements are written using a standard form. In Oregon, most licensees use a form developed specifically for Oregon real property transactions. Many of these forms contain dispute resolution provisions that require mediation or arbitration of disputes. Arbitration and mediation clauses can affect legal rights, including the right to a judicial determination of a claim and the right to appeal.

Sellers are responsible for selecting the terms and conditions of their agreement. Real estate licensees can give sellers important marketing, business and negotiating advice. Real estate licensees can assist in preparation of the sale documents only pursuant to the client's instructions. Real estate licensees are not attorneys and are prohibited by law from giving legal advice. To obtain a referral for a real estate attorney, visit the Oregon State Bar at <http://www.osbar.org/public/legalhelp.html> or contact them by phone at 503-684-3763 (Portland metro) or 800-452-7636 (greater Oregon).

## **Financing**

The buyer's ability to finance the property is an important contingency in most residential transactions. Buyers must act in good faith and use best efforts to obtain a loan if the sale is contingent upon obtaining a loan. Buyers often seek pre-approval from a lender prior to writing an offer. Seller's often demand such letters as part of the transaction process. Sellers should discuss the use of pre-approval letters, including such common forms as the Oregon Residential Loan Application Status Report, with their agent. A copy of the Oregon Residential Loan Application Status Report form can be found at: <http://www.oregonrealtors.org/>

A pre-approval letter should state that the lender has reviewed the buyer's credit report, income requirement and cash to close. The lender then pre-approves the buyer for the loan, subject to an acceptable appraisal of the property. The appraiser will normally work for the lender, not the seller. Appraiser certification and licensure can be checked at: [http://www.oregonaclb.org/index.php?option=com\\_content&task=view&id=20&Itemid=112](http://www.oregonaclb.org/index.php?option=com_content&task=view&id=20&Itemid=112).

Once the appraisal has been received, the loan underwriter authorizes final loan approval. Most residential sale agreement forms contain a provision that allows the buyer to cancel the transaction if the property appraises for less than the purchase price. Only when the appraisal and underwriting process is completed will an actual loan be secured.

The entire financing process normally takes approximately 30-45 days. If the seller anticipates a "short sale" where the asking or accepted price is insufficient to cover the seller's total indebtedness, the time necessary to arrange financing may be greatly increased. If the seller is asked to finance any part of the transaction, the buyer's financial status will become material to the transaction. A real estate licensee cannot hide material information from any party to a real estate transaction and should not be asked to do so by the seller or buyer.

## **Title Report**

Most real estate transactions are contingent on the buyer's approval of the preliminary title report and any conditions, covenants and restrictions (CC&Rs) attached to the property. The seller will be required to obtain, and pay for, a report and provide it to the buyer. The report, produced by a title insurance company, contains important information that should be reviewed by the seller, if possible, prior to marketing.

In particular, a title report will list certain "exceptions" to the policy the title company will issue for the property. Exceptions can make the seller's title undesirable or even unmarketable. Title exceptions should therefore be carefully reviewed. General information about title issues can be found at: <http://www.titlelawannotated.com>. Questions about the title report and associated documents can be directed to the title or escrow officer issuing the report or to the seller's attorney. Review of title reports for legal deficiencies involves the practice of law and is beyond the expertise of a real estate licensee.

## **Homeowners' Association Documents, Covenants, Conditions and Restrictions**

Covenants, conditions and restrictions, called "CC&Rs," are formally recorded private limitations on the right to use real property. Often, but not always, CC&Rs are enforced by a homeowners' association. Review of the CC&Rs is typically part of a real estate sale. Although real estate licensees are familiar with common CC&R provisions, determining the legal effect of specific provisions is considered the practice of law in Oregon and, therefore, beyond the expertise of a real estate licensee.

Homeowners' association rules and regulations can significantly impact a buyer's plans for the property and therefore affect price or desirability. Planned communities and condominiums are very likely to have detailed homeowners' association governing documents, mandatory fees and ongoing homeowner obligations. Governing documents, fees and homeowner obligations should be reviewed by the seller prior to marketing so that any potential issues may be identified. For more information on homeowners' associations and CC&Rs, visit <http://www.realtor.com/BASICS/condos/ccr.asp>.

## **Homeowners' Insurance**

The insurance claims history for a home may affect the cost of homeowners' insurance, or even its insurability. Most insurance companies use a database service called the Comprehensive Loss Underwriting Exchange (CLUE) to track claims made. Depending on the content of the CLUE report, and the insurance company's policy, home insurance may prove more difficult to get than expected.

Sellers who have made claims on their homeowner's insurance (especially for flooding or water intrusion) may want to check their Clue Report prior to marketing the property to make certain buyers will not have difficulty obtaining insurance. Homeowners can obtain a copy of the report for their property online at: <http://www.choicetrust.com>. More information on homeowners insurance in Oregon can be found at: <http://www.insuranceoregon.org/>.



## **Lead-Based Paint Disclosure Form**

Residential property built before 1978 (called “target” housing) is subject to the Residential Lead-Based Paint Disclosure Program administered by the Environmental Protection Agency (EPA) and the Department of Housing and Urban Development (HUD). The Act requires sellers of target housing to provide the buyer with a lead-based paint disclosure and the pamphlet entitled Protect Your Family From Lead in Your Home. Information about the requirements and samples of the forms can be found at: <http://www.hud.gov/offices/lead/disclosurerule/index.cfm>

Owners of homes built before 1978 should anticipate and discuss with their agents their obligations under the disclosure statute. It is the seller’s responsibility under federal to see to it the buyer receives the disclosure and pamphlet. Sellers of pre-1978 housing should ask their real estate licensee about lead-based paint disclosures. Information about lead paint and companies certified and licensed to conduct lead-based paint testing or perform abatement, can be found at the Department of Human Resources at: <http://www.dhs.state.or.us/publichealth/leadpaint/index.cfm>

### **Additional Information**

Oregon Real Estate Agency: <http://www.rea.state.or.us/>

Oregon State Government: <http://www.oregon.gov/>

Association of Oregon Counties: <http://www.aocweb.org>

League of Oregon Cities: <http://www.orcities.org>

Oregon Association of REALTORS®: <http://www.oregonrealtros.org>