



Michael Shepard
Board Legal Counsel

Michael McDonagh
MAR Legal Counsel



Legal Luncheon
August 17, 2016
Country Club of Pittsfield

Maureen McFarland, 2016 President

- Call to Order
- Recognize Guest Speakers
- Review Meeting Agenda

Mike McDonagh: General Real Estate Legal Overview

- Chapter 93A Disclosure Issues
- Environmental Hazard Disclosure for Surrounding Areas
- Reasonable Disclosure of Changing, Publicly Known Issues (PCB cleanup, dumps, pipelines)
- Seller's Description of Property
- Legal Ramifications of a Coming Soon Listings
- Proper Handling of Multiple Offers
- Federal legal issues update

Mike Shepard: Contact & Forms Overview of Changes

- Exclusive Right to Sell Changes
- Purchase & Sale Agreement Changes
- Frequently asked Questions about the P&S
- Importance of the Contact Worksheet

Sandy Carroll, CEO: FAQ Overview

- FlexMLS System Disclosures
- FAQ about Recent Changes
- Right to Farm Disclosures
- Best Practices for Listing Input

**STANDARD BERKSHIRE COUNTY MULTIPLE LISTING SERVICE
EXCLUSIVE RIGHT TO SELL CONTRACT**

MLS #

1. PARTIES. Seller(s) Name(s) _____ ("SELLER")
Mailing Address: _____
Broker / Corporation: _____ ("BROKER")
Property Address: _____ ("Property")

2. LISTING TERMS: SELLER hereby gives and grants to BROKER, a member of Multiple Listing Service (MLS) of the Berkshire County Board of REALTORS®, Inc., the exclusive right to list and sell the above mentioned Property for the period to begin on the date of the SELLER signature and end on ___ / ___ / ___, unless extended in writing by all parties involved. The list price for the Property shall be \$ _____ or at such other price, terms and considerations to which SELLER may agree.

3. LICENSEE-CONSUMER RELATIONSHIP: SELLER acknowledges that they have been provided with a completed copy of the 'Massachusetts Mandatory Licensee-Consumer Relationship Disclosure' form. SELLER further acknowledges that the BROKER represents the SELLER as a Seller's Agent. SELLER may authorize additional representation by real estate agents of other firms by completing a Subagency Consent addendum. If the BROKER represents a buyer who is interested in the Property, the BROKER may: **Serve as a Disclosed Dual Agent** / **Appoint Designated Agent(s)**. The applicable 'Consent Addendum' attached is incorporated herein by reference.

SELLER acknowledges that it shall not constitute a violation of any duty owed to SELLER by the BROKER, or by any agent associated with the BROKER, to advise a prospective buyer of the availability of a competing property or to assist a buyer with the purchase of another property.

4. BROKER'S DUTIES:

- a) **LISTING DATA:** BROKER shall prepare a detailed property description, advertise and market the Property as BROKER shall deem appropriate.
- b) **MLS:** BROKER shall submit the Listing Data to the MLS within two (2) business days from the SELLER's signature and offer of compensation for the procurement of a buyer to cooperating MLS brokers.
- c) **EFFORTS:** BROKER shall use best efforts to secure a purchaser for the Property.
- d) **FAIR HOUSING:** BROKER shall market the Property in compliance with all Massachusetts and Federal fair housing laws and present the Property equally and without regard to any person's race, sex, age, marital status, religious creed, color, national origin, physical or mental handicap, family status, ancestry, genetic information, veteran status, gender identity, use of public assistance or any other protected class.

5. COMMISSION: If within the term of this Agreement or any extension, the Property is sold or the BROKER procures a buyer who is ready, willing and able to buy at a price and on the terms set forth herein or on such other price and terms as the SELLER may agree, the BROKER shall be due a professional fee for services rendered of ___% of the purchase price. Said fee shall be based on a Purchase and Sale Agreement purchase price less any closing cost credits paid by SELLER to Buyer, if any. [as defined in section 7 'Settlement Charges' on the (HUD-1)]. Fees shall be paid at the time of closing and may be deducted from the amounts held by BROKER as escrow agent. From the total % of professional fees shown above, BROKER will offer the following compensation to cooperating MLS brokers: Buyer agents: ___%, Facilitators: ___%. Other offers of cooperation and/or compensation outlined in par 13.

6. SELLER'S DUTIES:

- a) **ACCESS:** SELLER hereby agrees to permit the BROKER access to the Property to photograph, video, install a lawn sign and to show the Property within and without, at reasonable times.
- b) **INQUIRIES:** SELLER agrees to direct all inquiries to the BROKER and shall not list the Property with any other BROKER during the period this contract is in force. Seller represents that at the present time, no other BROKER has a listing of the Property, no other BROKER has been requested or authorized to sell and any previous listing agreement has expired or been terminated.
- c) **DISCLOSURES:** SELLER agrees to complete, sign and return all legally required disclosures within two (2) business days of signing this agreement. SELLER authorizes BROKER to disclose to prospective buyers all information about the Property provided to the BROKER by the seller, all of which the SELLER represents to be



accurate. SELLER acknowledges that the BROKER must disclose to any prospective purchaser or include in published listing data, all information which the BROKER may obtain or discover regarding the Property as required by law.

- d) **USE OF LISTING DATA:** SELLER grants BROKER non-exclusive, royalty free, license to use all photographs, images, videos, drawings, written narratives, pricing information, and any copyrightable elements relating to the Property, ("Listing Data") provided by the SELLER for marketing efforts. SELLER represents ownership of any Listing Data provided to the BROKER and agrees to indemnify and hold BROKER harmless from any and all claims arising from use of the Listing Data. SELLER acknowledges that any Listing Data created by BROKER is owned by the BROKER and SELLER has no right, title or interest in any such content and cannot be used by a third party without the BROKER's written consent. Listing Data may be used for the marketing of the property in the multiple listing service and publicly displayed and reproduced by means of newspaper, television, internet and other media outlets as deemed appropriate by the BROKER. SELLER **does** / **does not** consent to allow BROKER to include the physical property address in advertising and marketing representations.

7. PROPERTY REPRESENTATIONS:

- a) **LEAD LAW:** For premises built before 1978, SELLER agrees to complete the "Department of Public Health Property Transfer Notification" certification regarding Federal and Massachusetts lead laws and regulations. SELLER acknowledges that the Massachusetts Code of Regulations 40 CMR 745.113(a) mandates that all prospective purchasers be provided this notification form prior to signing a purchase and sale agreement or a lease with an option to purchase. Prospective purchasers have a legal right to a minimum of 10 days to have a lead inspection or risk assessment if desired, except in cases of foreclosure sales. SELLER acknowledges that failure to meet these requirements may result in civil penalties up to \$10,000, possible criminal sanctions, and liability for resulting damages.
- b) **RIGHT TO FARM:** SELLER acknowledges that the property **is** / **is not** located in a community that has adopted a Right to Farm bylaw and will comply with any disclosure notification requirements as may be required prior to the sale, purchase, exchange or occupancy of such real property.
- c) **BETTERMENT ASSESSMENTS:** SELLER represents that the property **is** / **is not** subject to a betterment assessment. If the property is subject to a betterment assessment, the SELLER agrees to pay the total outstanding betterment assessment at the closing unless the Buyer agrees to purchase the property subject to, and assumes the payment of the betterment assessment.
- d) **PERMITS:** SELLER agrees to obtain all necessary permits required by Massachusetts General Law 148 Sections 26F and F1/2 prior to the time of sale or transfer, including approved Smoke and Carbon Monoxide permits and wood, gas, coal, pellet stove or outdoor wood burning furnace permit(s), if applicable.
- e) **SEWAGE DISPOSAL / TITLE 5:** The SELLER represents that the Property **is** / **is not** connected to a municipal sewer system. If the Property is served by a septic or other private waste disposal system, SELLER represents that said system is located entirely within the boundaries of the Property, to the best of their knowledge. The SELLER acknowledges their ultimate responsibility to make certain that the system complies with Title 5, pursuant to the State Environmental Code (310 CMR 15.301).
- f) **ENCUMBRANCES:** The SELLER represents that the sale of the property **is** / **is not** subject to buyer assumption of third party contractual obligation(s), such as equipment rental agreements.

8. OFFERS:

- a) **WRITTEN OFFERS:** BROKER shall submit for the SELLER's consideration all written offers. SELLER agrees that once he/she has entered into a Purchase and Sale Agreement with a buyer and during the pendency of said agreement, BROKER shall have no obligation to continue to market or show the Property.
- b) **PROSPECT NOTICE:** SELLER authorizes the BROKER to disclose to prospective buyers whether an offer has been submitted on the Property and whether an offer is from a buyer introduced to the Property by the listing agent, by another licensee associated with the BROKER, or by a cooperating broker. Disclosure of the price and other terms of any offer shall remain confidential until closing, unless authorized by the SELLER in writing.
- c) **DEPOSIT MONIES:** The BROKER is authorized to accept an earnest money deposit on the SELLER's behalf. SELLER authorizes the BROKER to deduct the commission at the closing from the initial deposit or any subsequent deposit. This contract shall be deemed an order for the payment of such commission by any person in possession of such deposit(s). In the event the Buyer defaults and the SELLER is entitled to retain said deposit, the BROKER shall be entitled to retain one-half (1/2) of the Seller's retained damages, up to an amount not exceeding the full brokerage fee due, in payment of services, advertising, and other expenses.

9. **PROTECTION PERIOD:** If the Property is sold, rented, transferred or exchanged by SELLER within _____ days after the expiration of this contract (the "Protection Period") to any person or entity to whom the Property had been presented



or shown during the term of this contract, by any person or entity whatsoever, SELLER agrees to pay the BROKER the same commission as if such sale had been made during the term of the contract. SELLER shall not be obligated, however, to pay such compensation, if a valid listing agreement is entered into during the term of the Protection Period with another licensed real estate BROKER and a sale, rental, transfer or exchange of the Property is made during the term of the Protection Period, unless SELLER has entered a written Right of First Refusal or Option Agreement as defined in Paragraph 11 and the property is sold to said Party, in which case SELLER shall compensate the BROKER as provided in Paragraph 11.

10. RETAINER: To defray the out-of-pocket costs incurred by BROKER in preparing a brochure, advertising and other marketing activities, SELLER agrees to pay BROKER a non-refundable marketing payment of _____. If BROKER becomes entitled to any brokerage fee under this contract, the non-refundable marketing payment will be credited against such brokerage fee, to a maximum of one-half percent credit of total commission percentage.

11. OPTIONS/LEASES: If SELLER grants a right of first refusal or option to purchase the Property, SELLER shall pay BROKER ____% of the sale price upon the sale of the Property. If SELLER executes a lease of the Property, SELLER shall pay BROKER annually, in advance, ____% of the total annual rental payments to be collected by SELLER, each year, for a period not to exceed ____ years.

12. BINDING CONTRACT: This contract shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, executors, personal representatives, legatees, successors, and assigns (collectively "successors"); provided, however, that BROKER shall not assign this contract without SELLER'S prior written consent. SELLER(s) represent possession of 100% ownership right, title and interest in the Property.

- a) **EXTENSIONS:** In the event this Contract is renewed or extended, all of the terms and conditions applicable during the initial term of the contract shall apply with equal force and effect during such renewal or extension, except as otherwise agreed in writing.
- b) **MODIFICATION:** No modification, amendment or deletion affecting this contract shall be effective unless in writing and signed by all parties.
- c) **COLLECTION OF FEES:** If SELLER breaches this contract and suit is brought by BROKER to recover fees and a judgment is awarded in favor of BROKER, BROKER shall be entitled to recover from SELLER all expenses, including reasonable attorneys' fees, incurred as a result of SELLER'S breach. SELLER and BROKER agree that any dispute or claim arising out of or relating to this Agreement shall be submitted to mediation in accordance with the Rules and Procedures of the Homesellers / Homebuyers Dispute Resolution System ("DRS").
- d) **WITHDRAWAL FROM THE MARKET:** In the event SELLER withdraws the Property from the market, SELLER agrees to give BROKER immediate written notice of such withdrawal. With such notice, SELLER agrees to pay BROKER ____% of the listed price to defray BROKER effort and marketing costs associated with subject listing. Furthermore, the SELLER acknowledges that withdrawing the property from the market does not constitute a termination of this contract and all provisions shall continue for the duration of the contract as set forth in paragraph 2, including the agreement by SELLER to pay the BROKER the commission stated in paragraph 5 if the SELLER signs an agreement for the sale of the Property prior to the expiration period of this contract, which includes the Protection Period as described in paragraph 9.
- e) **COUNTERPARTS:** This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission, e-mail delivery of a ".pdf" format data file, or through a secure electronic signature service, such signatures shall create a valid and binding obligation of the party(s) executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or electronic signature page were an original thereof.

13. ADDITIONAL TERMS: See attached addendum(s), incorporated here by reference.

14. THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, SEEK LEGAL COUNSEL. SELLER has read this Contract and hereby acknowledges receipt of a copy of same.

_____ SELLER:	_____ DATE	_____ AUTHORIZED BROKER	_____ DATE
_____ SELLER:	_____ DATE	_____ For: BROKERAGE NAME	



STANDARD BERKSHIRE COUNTY MULTIPLE LISTING SERVICE PURCHASE AND SALE AGREEMENT

▶ **1. PARTIES:**

	SELLER(S)	BUYER(S)
Name(s)	_____	_____
	_____	_____
Address	_____	_____
	_____	_____

▶ **2. DESCRIPTION:** Subject to the terms and conditions hereinafter set forth, the SELLER agrees to sell and the BUYER agrees to buy SELLER's real property located at _____ as more particularly described in a deed dated _____ and recorded in the _____ Registry of Deeds in Book _____, Page _____, or Land Court Certificate # _____ Assessor's Map # _____ Section # _____ Lot # _____ (the "Property").

▶ **3. PURCHASE PRICE:** For the Property, BUYER shall pay the "Purchase Price" sum of\$ _____ of which an initial deposit has been paid on this day in the amount of\$ _____ and on _____ date, an additional deposit in the amount of\$ _____ will be paid, resulting in a balance to be paid in the amount of\$ _____ in cash, wired funds, or by certified / bank check at the Closing.

3.1 Escrow: All deposits are to be held by the Listing Broker _____ ("Escrow Agent") in a non-interest bearing escrow account, unless otherwise specified herein.

▶ **4. CLOSING DATE:** The Deed is to be delivered and the Purchase Price paid on _____ at 2:00 p.m. (the "Closing Date") at the appropriate Registry of Deeds or such other location within the county in which the Property is located, as specified by the BUYER.

▶ **5. CONTINGENCY TERMS:** The following terms and dates apply to paragraphs 6, 7, 8, and 9 as the case may be:

- 5.1 Mortgage: Amt: _____ Rate: _____ Type: Fixed Variable Pts: _____ Yrs: _____
- 5.2 Mortgage and/or Insurance Application Date: _____
- 5.3 Mortgage Contingency Date: _____
- 5.4 Insurance Contingency Date: _____
- 5.5 Inspection Contingency Date: _____
- 5.6 Septic System Inspection Date: (if applicable) _____

6. MORTGAGE CONTINGENCY The BUYER's obligations hereunder are contingent upon the BUYER's obtaining a written commitment letter from a conventional mortgage lender for a loan consistent with the contingency term used. Should the BUYER be unable to obtain such a commitment letter despite diligent efforts, BUYER may cancel this Agreement by submitting a written cancellation notice and a copy of the mortgage denial letter to the Listing Broker or Seller's Attorney, no later than 5:00 p.m. on the applicable Contingency Date indicated in paragraph 5, 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 (a) give such written notice or (b) make a good faith mortgage application by the Mortgage Application Date shall be a waiver of the BUYER's right to cancel under this Paragraph.

7. INSURANCE CONTINGENCY: The BUYER's obligations hereunder are contingent upon the BUYER's satisfaction with the insurability of the property. BUYER should consult with their lender and/or insurance carrier to determine the insurance coverage required for the Property and the premiums for such insurance coverage. BUYER's mortgage lender will require the purchase of flood insurance if they determine the property is located in Special Flood Hazard Area (SFHA). Past coverage or premiums paid by the SELLER are not an indication of the BUYER's insurance obligations for the property. The requirements and cost of homeowner and flood insurance depend on a combination of, including but not limited to, property attributes, risk ratings, applicant's credit rating and policy limits and must be individually determined by the insurance carrier. Should the BUYER be unable to obtain a satisfactory insurance binder despite diligent efforts, BUYER may cancel this Agreement by submitting a written cancellation notice and a copy of proof of insurance application to the Listing Broker or Seller's Attorney,



no later than 5:00 p.m. on the Insurance Contingency Date indicated in paragraph 5, 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 (a) give such written notice or (b) make a good faith insurance application by the Insurance Application Date shall be a waiver of the BUYER's right to cancel under this Paragraph.

8. INSPECTION CONTINGENCY: The BUYER and BUYER's consultants shall have the right of access to the Property for the purpose of conducting a home inspection, at reasonable times, upon twenty-four (24) hours advance notice to the SELLER's Agent. Inspections may, at BUYER's option and expense, include but are not limited to: inspections for structural and mechanical matters, pests, including wood-boring insects, lead paint, mold, asbestos, radon gas, other hazardous substances, underground tanks, septic system, well water, wetlands and environmental conditions. Should BUYER receive an unsatisfactory inspection, BUYER may cancel this Agreement by written notice received by the Listing Broker or Seller's Attorney no later than 5:00 p.m. on the 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. In consideration of BUYER's right to inspect and terminate, BUYER acknowledge that by accepting the deed BUYER accepts the condition of the Premises and releases the SELLER, SELLER's Agency and BUYER's Agents, from any and all liability relating to any defects in the Premises including, without limitation, water seepage from any source.

▶ **9. SEWAGE DISPOSAL / SEPTIC SYSTEM:** SELLER represents that the Property is served by a municipal sewer system / septic system / other system as outlined in par 36. If a septic system is present, the SELLER represents that it is / is not located entirely within the boundaries of the Property, to the best of their knowledge. Further, on or before the Septic System Inspection Date as defined in paragraph 5.6, the SELLER shall provide the BUYER with a Septic System Inspection Report (the "Report") issued less than two (2) years prior to the time of the indicated closing date or less than three (3) years if accompanied by system pumping records that show at least annual pumping during that time. Should the Report indicate that the system is a "failed system" as defined by Title 5 of the State Environmental Code (310 CMR 15.301), the BUYER may, within three (3) days of receipt of Report, cancel this Agreement, and all deposits shall be returned to the BUYER.

▶ **10. WATER:** SELLER represents that the property is serviced by a municipal water system / private water company / well / other as outlined in par 36. If a well is present, SELLER represents that it is / is not located entirely within the boundaries of the Property and does / does not contain defects known to SELLER. BUYER acknowledges that the local Board of Health may adopt regulations that establish criteria for private well siting, construction, water quality and quantity.

▶ **11. POSSESSION:** Full possession free of all / subject to existing tenants and occupants shall be delivered at the Closing Date. The Property shall be free of encroachments burdening the Property and of improvements that encroach on adjoining Property, including but not limited to buildings, septic systems, well and driveway, and has sufficient legal access to a public way.

▶ **12. SURVEY:** SELLER represents that new / no new boundaries are being created by the sale of the Property. If new boundaries are being created, SELLER shall deliver to BUYER at the Closing a survey of the Property, in recordable form. The SELLER shall pay for the preparation and recording of the survey, unless otherwise provided herein.

13. FIXTURES: Included in this sale as part of the Property, unless expressly excluded, are the usual fixtures owned by the SELLER and used in connection therewith including but not limited to, if any, furnaces, heaters, oil and gas burners and fixtures appurtenant thereto, built-in ranges, dishwashers and disposals, hot water heaters (if not rented), mantels, electric and other lighting fixtures, chandeliers, venetian blinds and window shades, attached mirrors, automatic door openers (with remote controls), installed air conditioners, wall brackets and hangers, built-in bookcases and shelving, all installed stair carpeting and wall to wall carpeting, drapery rods, curtain rods, plumbing and electrical covers, screens, screen doors, storm and other detached windows and doors, blinds, awnings, bathroom fixtures, towel bars, medicine cabinets, radio and television antennas, satellite dishes, fences, gates, hardy shrubs, and fire and security systems.

- Additional Appliances Included: _____
- Fixtures Excluded: _____



- SELLER represents the following items are rented: Propane Tank / Hot Water Heater / Water Treatment System / Security System / Solar Panels / Other as outlined in par 36. BUYER does / does not agree to assume the rental agreements

14. ADJUSTMENTS: Current real estate taxes, water rates, sewer use charges and fuel are to be apportioned as of the Closing Date. Rents are to be apportioned only for the month in which the closing occurs and only when collected by either party. Unpaid rents due SELLER from months prior to the month of the Closing Date, shall be the responsibility of the SELLER to collect. If the real estate tax rate is not set as of the Closing Date, 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 rate 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. SELLER or SELLER's attorney shall transmit to Buyer's Attorney, at least ten (10) days prior to the closing date, all mortgage and lien payoffs, municipal apportionments, state conveyance tax, and any other expenses required to be disclosed on the Closing Disclosure. Failure to transmit the expenses defined herein shall constitute SELLER's acceptance of Buyer's Attorney's calculations, performed using all reasonable and obtainable information. Such calculation shall be final and binding upon the parties.

- ▶ **15. BETTERMENT ASSESSMENTS:** SELLER represents that the Property is / is not subject to a betterment assessment. If the Property is subject to a betterment assessment, the SELLER agrees to pay the total outstanding betterment assessment at the closing / BUYER agrees to purchase the Property subject to, and assumes the payment of the betterment assessment.

- ▶ **16. TITLE:** The Property shall be conveyed by a good and sufficient quitclaim deed unless otherwise specified herein (accompanied by a Certificate of Title, if registered), conveying a good, clear record, marketable and insurable title, free of all encumbrances and exceptions, except:
 - a) Real Estate Taxes assessed or to be assessed on the Property to the extent that such taxes then are not yet due and payable.
 - b) 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 as of the Closing Date, the Property may be used as of right for single family residential use or, if the Property is/is not a single family residence, the Property may be used as of right for _____
 - c) Existing rights, if any, in party or partition walls; and
 - d) Utility easements in the adjoining ways.

17. USE OF PROCEEDS TO CLEAR TITLE: To enable SELLER to make conveyance as herein provided, the SELLER may at the time of delivery of the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests. Upon request, SELLER shall promptly provide BUYER's Attorney with written payoff instructions from all of SELLER's mortgagees. Said payoff instruction shall be in accordance with Massachusetts General Laws Chapter 183, Section 1, et seq. At closing, BUYER's Attorney shall transmit all of SELLER's payoffs to said mortgagees, and BUYER's Attorney shall be responsible to promptly secure and record the discharges of said mortgages. BUYER's attorney shall be compensated by the SELLER the customary fee associated with securing the discharge or discharges. SELLER shall pay the cost of discharge(s), and SELLER shall reimburse BUYER's Attorney the cost (if any) of overnight mail charges.

18. EXTENSION: If, after a reasonable and diligent effort, SELLER is unable to deliver title as defined in paragraph 15 or convey title of the Property as required hereunder, upon notice by either party, prior to the Closing Date, 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 and diligent efforts to remove other defects in title, or to deliver possession as provided herein, or to make the Property 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 Property does not conform to 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.



19. STANDARDS: Any title matter or practice arising under or relating to this Agreement which is the subject of a Title Standard or a Practice Standard of The Real Estate Bar Association for Massachusetts shall be governed by said Standard to the extent applicable.

20. LEAD LAW. Pursuant to 40 CMR 745.113(a), for premises built before 1978, BUYER acknowledges receipt of the "Department of Public Health Property Transfer Notification" attached to this agreement, regarding the Lead Law. BUYER acknowledges verbal notification of the possible presence of lead hazards and the provisions of the Federal and Massachusetts Lead Laws and regulations, including a ten (10) day right to inspect for dangerous levels of lead. Occupancy of premises containing dangerous levels of lead by a child under six years of age is prohibited, subject to exceptions permitted by law. BUYER further acknowledges that neither the SELLER nor any real estate agent has made any representation, express or implied, regarding the absence of lead paint or compliance with any lead law, except as set forth in writing. BUYER assumes full responsibility for compliance with all laws relating to lead paint removal, if required by law, and related matters (in particular, without limitation, Mass. G.L., c.111, 197), and BUYER assumes full responsibility for all tests, lead paint removal and other costs of compliance. Should BUYER receive an unsatisfactory inspection, BUYER may cancel this Agreement by written notice received by the Listing Broker or Seller's Attorney no later than 5:00 p.m. on the Inspection Contingency Date or twelve (12) days after execution of this agreement, whichever is later, whereupon all obligations of the parties shall cease and BUYER's deposits shall be promptly returned in full.

▶ **21. STORAGE TANKS:** BUYER acknowledges that the Massachusetts Board of Fire Prevention has issued regulations found in [527 CMR 9.00] that govern the maintenance, repair, and removal of storage tanks used to contain fuel. The SELLER hereby discloses that to the best of SELLER's knowledge, there are underground oil / underground propane / aboveground oil / aboveground propane / other as outlined in par 36 / no storage tank(s) within the boundaries of the Property. Further, the SELLER discloses that any underground tanks have / have not been used within the past six (6) months and/or any aboveground tanks have / have not been used within the past twenty-four (24) months exclusively for the storage of fuel for consumption of the Property and to the best of the SELLER'S knowledge there has been no release or leakage of oil from such tank(s).

22. CONDITION OF PROPERTY AT CLOSING: Upon delivery of the Deed, the Property and all appliances therein and utilities serving the same shall be in their present condition, reasonable use and wear of same excepted. The Property is to be left broom clean and all personal property and rubbish removed. With respect thereto, BUYER shall have the right to walk-through the Property within twenty-four hours prior to the closing and if the sale is completed subsequent to said walk-through or if the walk-through is waived by BUYER, the foregoing condition of the Property shall, as between the BUYER and SELLER and their representatives (if applicable), be conclusively presumed to be acceptable to BUYER regardless of condition.

23. NOMINEE: 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. The appointment of a Nominee shall not relieve BUYER of any obligation hereunder. Any Note or mortgage or other document to be delivered from BUYER to SELLER shall be executed by or unconditionally guaranteed by BUYER, unless otherwise specified herein.

24. CLOSING: Simultaneously with the delivery of the deed, SELLER shall execute and deliver:

- a) Smoke & Carbon Monoxide Detector Certificate of Compliance;
- b) Wood, Gas, Coal or Pellet Stove and/or Outdoor Wood Burning Furnace permit(s), where applicable
- c) 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;
- d) A bill of sale for all personal property included as part of the sale, if requested by the BUYER.
- e) A Certificate of Occupancy for any structure that requires it, and in the case of new construction an assignment of any and all builder's, SELLERS, or manufacturer's warranties on the Property or on any appliances or other property included in the sale.
- f) FNMA Vendor's affidavit FNMA 1099;
- g) An affidavit, satisfying the requirements of Section 1445 of the Internal Revenue Code and regulation 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");



h) Internal Revenue Service Form W-8 or 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 Service and stating SELLER is not subject to back-up withholding.

25. RISK OF LOSS-INSURANCE AND DAMAGE PRIOR TO CLOSING: Prior to the delivery of the Deed, the risk of loss shall be on the SELLER. SELLER shall continue to carry the fire and extended coverage insurance presently maintained on the buildings on the Property.

26. ACCEPTANCE OF DEED: Acceptance of the deed by BUYER 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. THE BUYER FURTHER ACKNOWLEDGES THAT THE BUYER IS PURCHASING THE PROPERTY 'AS IS' and BUYER has not relied upon any statements or representations, oral or written, regarding the condition or value, present or future, of the Property made either by the SELLER or the SELLERs Agents, which are not otherwise contained in this Agreement and that the SELLER's Agents are acting exclusively upon behalf of the SELLER. All oral or written representations between the parties are merged herein. BUYER further acknowledges it is the BUYER'S responsibility prior to closing to obtain any and all governmental permits for any intended use of the Property including, but not limited to, health or environmental department, planning or zoning board approvals. SELLER and SELLER'S representative(s) make no representations as to the adequacy of the Property being conveyed for BUYER'S intended purposes, disclosed or undisclosed.

27. MERGER: The parties agree that this Agreement contains all of the terms and conditions of this transaction. It is mutually agreed that any oral or prior written representation made by either party prior to the execution of this Agreement is null and void. This Agreement shall be construed as a legal contract under seal and is binding upon the parties, and their respective heirs, successors, and assigns.

28. SURVIVAL: Notwithstanding any presumptions to the contrary, all covenants, conditions, and representations contained in this Agreement, which by their nature, implicitly or explicitly, involve performance in any particular manner after the Closing and delivery of the deed, or which cannot be ascertained to have been fully performed until after the Closing and delivery of the deed, shall survive the Closing.

29. TERMINATION: In the event the BUYER terminates this Contract in accordance with the provisions herein relating to "Mortgage / Insurance Contingency," "Risk of Loss Insurance," "Inspection Contingency," "Septic System Inspection", default by SELLER, or the failure of any contingency shown under special conditions, the Escrow Agent shall forthwith refund such deposit money together with accrued interest thereon (if applicable) to the BUYER.

▶ **30. BUYER'S DEFAULT:** If the BUYER defaults, BUYER shall be liable to the SELLER in the amount of _____ of the purchase price, as liquidated damages, which shall be SELLER's exclusive remedy in law or in equity. The deposits shall be applied to the payment of said liquidated damages.

31. RELEASE OF DEPOSITS: 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 Property shall constitute such assent. In the event of any disagreement, the Escrow Agent shall 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 agrees 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 or fiduciary to one of the parties and agree that Escrow Agent may continue to act as such counsel or fiduciary notwithstanding any dispute or litigation arising with respect to the deposits or Escrow Agent's duties.

32. AGREEMENT TO MEDIATE DISPUTE OR CLAIMS: Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement, or the brokerage services provided in relation to this Agreement shall be submitted to mediation in accordance with the Rules and Procedures of the Homesellers / Homebuyers Dispute Resolution System ("DRS"). Disputes and claims shall specifically include, without limitation, representations made by the SELLER, the BUYER, or the Broker(s) in connection with the sale, purchase, finance, condition, or other aspect of the Property to which this Agreement pertains, including without limitation, allegations of concealment, misrepresentation, negligence and / or fraud. If the parties reach a settlement, they shall both sign a settlement agreement. If the parties cannot reach a mutually agreeable settlement, they may arbitrate or litigate the dispute



without regard to the mediation procedure. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies shall not constitute a waiver of the right to mediate under this paragraph, nor shall such filing constitute a breach of the duty to mediate. The provisions of this paragraph shall survive the closing.

334. GOVERNING LAW: This Agreement is to be governed by the laws of the Commonwealth of Massachusetts.

345. DISCLOSURES: BUYER and SELLER acknowledge that they have been provided with a completed copy of the 'Mandatory Licensee-Consumer Relationship' form, as mandated by the Massachusetts Board of Registration of Real Estate Brokers and Salespersons. BUYER acknowledges receipt of: Lead Paint Property Transfer Notification Certification (for residences built before 1978); Home Inspectors Facts for Consumers brochure, prepared by the Office of Consumer Affairs. Right to Farm disclosure (if applicable). The BUYER acknowledges that there are no warranties or representations on which BUYER relies in making this Offer, except those previously made in writing.

▶ **35. SPECIAL CONDITIONS / ADDENDA:** See attached addendum(s), incorporated here by reference.

▶ **36. TERMINATION OF OFFER:** This offer is subject to SELLER(s) execution and delivery of this agreement to BUYER by (time) _____ a.m. / p.m. and (date) _____, after which time this offer is void and terminated, and deposit paid by BUYER shall be returned.

37. TIME: Time is of the essence of all provisions of this agreement, unless otherwise specified elsewhere in this agreement. Any reference to "days" shall mean calendar days and is not intended to mean only business days.

38. COUNTERPARTS: This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission, e-mail delivery of a ".pdf" format data file, or through a secure electronic signature service, such signatures shall create a valid and binding obligation of the party(s) executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or electronic signature page were an original thereof.

39. THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, SEEK LEGAL COUNSEL: Executed under seal by the Parties hereto as of the latter of all dates set forth below, and incorporating all provisions on pages 1 through 6, together with referenced additions, if any.

▶ _____
SELLER: _____ DATE _____ BUYER: _____ DATE _____

SELLER: _____ DATE _____ BUYER: _____ DATE _____

SELLER's Attorney's Name BUYER's Attorney's Name



**STANDARD BERKSHIRE COUNTY MULTIPLE LISTING SERVICE
PURCHASE AND SALE AGREEMENT
CONTACT WORK SHEET for LENDERS and ATTORNEYS**

Please provide to cooperating agents, the mortgage lender and closing attorneys with a copy of the Purchase and Sale (or as soon thereafter when information is known) to ensure timely processing.

- For informational purposes only -

1. PARTIES:	SELLER(S)	BUYER(S)
Name(s)	_____	_____
E-mail	_____	_____
Preferred Phone	() _____	() _____

2. ADDRESS: _____

3. MORTGAGE LENDER:

Company Name	_____	E-mail	_____
Mortgage Broker	_____	Preferred Phone ()	_____

4. AGENTS:	SELLER(S)	BUYER(S)
Brokerage	_____	_____
Broker of Record	_____	_____
RE License #*	_____	_____
Address:	_____	_____

** Note: An LLC or Corp shall have a brokerage RE license #. All others shall indicate the broker of record's #.*

Agent Name	_____	_____
RE License #	_____	_____
E-mail	_____	_____
Preferred Phone	() _____	() _____

5. ATTORNEY:	SELLER(S)	BUYER(S)**
Counsel	_____	_____
Law Firm	_____	_____
Paralegal	_____	_____
E-mail	_____	_____
Preferred Phone	() _____	() _____

***Note: Buyers should verify Approved Attorney List with Mortgage Lender*



**STANDARD BERKSHIRE COUNTY MULTIPLE LISTING SERVICE
BUYER'S WAIVER OF A PROFESSIONAL HOME INSPECTION**

► **1. PARTIES:** Buyer(s) Name(s) _____ ("BUYER")
Mailing Address: _____
Broker / Corporation _____ ("BROKER")

2. MASSACHUSETTS HOME INSPECTOR REGULATIONS.

As of May 2001, professional home inspectors are required to be licensed in the Commonwealth of Massachusetts. The Board of Registration of Home Inspectors establishes rules and regulations to ensure the integrity and competence of licensees.

BUYERS are strongly encouraged to engage a professional, licensed home inspector to examine the premises for which they are seeking to purchase.

► **3. BUYER ACKNOWLEDGMENT**

I (We) acknowledge that _____ (Name of Licensee) has provided a copy of the 'Home Inspector Facts for Consumers' brochure as required by Massachusetts law and advised the use of professional home inspector(s). With full knowledge of the benefits, I (we) have elected not to engage the services of a professional home inspector on the purchase of _____ property.

Signature of Buyer

Printed Name

Today's Date

Signature of Buyer

Printed Name

Today's Date



Closing Cost Credits



What are legally defined 'Closing Cost Credits'?

A buyer and seller may agree when negotiating the purchase price of a home that the seller will give the buyer a closing cost credit -- that is, money to pay for closing expenses allowed by the lender. This agreement is typically written in special conditions of a purchase and sale agreement or in a separate, signed addendum. The agreement either states the credit is "up-to" a certain amount or that the credit amount may be reduced depending on policy of the lender. **The allowable credit categories are shown at right.**

What are the benefits?

In some instances, a seller's agreement to pay closing cost credits is the only way an otherwise qualified buyer can purchase. Buyers who rely on financing may have only enough available cash to cover the down payment, which ranges from 3.5% for FHA loans to 20% with conventional financing. A seller contemplating paying a buyer's costs simply negotiates the sale price with this credit in mind.

Restrictions / Surplus Possibility

A lender will generally allow a credit for up to 3% of the purchase price for a home, but this varies by the type of loan and the mortgage company policy. The credit may ONLY be applied toward legitimate closing costs [defined in Settlement Charges] and if a buyer runs out of allowed closing costs, the lender will not allow further credits to be applied, regardless of what is written into the purchase agreement.

What is the downside?

If a buyer increases their offer to offset a closing cost credit, but did not verify that (1) the lender will allow the entire credit or (2) that the costs will be approximately that amount, they will lose the difference. Buyers should always ask their lender about the expected and approved closing costs during the mortgage application period.

Example: During negotiations, a buyer and seller agree that an acceptable purchase price is \$100,000. The buyer, knowing they do not have more cash than the down payment, offers a purchase price of \$103,000 with a note in the special conditions that the seller will pay "up to 3%" in closing cost credits. If the buyer only has \$2,300 in approved closing costs, the seller will only pay \$2,300 for those legitimate costs, and the purchase price will NOT be lowered. The buyer will lose the \$700 difference.

Appraisal Considerations

If the Buyer inflates the purchase price beyond the value of the home in the eyes of the lender to offset the credit, the mortgage will be denied. The home's value, determined by the appraisal, must meet or exceed the amount of the total purchase price, including credits.

The Housing and Urban Development (HUD) Defined Settlement Charges

Items Payable in Connection with Loan

Origination charge
Credit or charge (points) for the interest rate
Adjusted origination charges
Appraisal fee
Credit report
Tax service
Flood certification

Items Required by Lender to be Paid in Advance

Daily interest charges
Mortgage insurance premium
Homeowner's insurance

Reserves Deposited with Lender

Initial deposit for your escrow account
Homeowner's insurance
Mortgage insurance
Property Taxes

Title Charges

Title services and lender's title insurance
Settlement or closing fee
Owner's title insurance
Lender's title insurance
Lender's title policy limit
Owner's title policy limit
Agent's portion total title insurance premium
Underwriter's portion total title insur. premium

Government Recording and Transfer Charges

Government recording charges
Deed, Mortgage, Release
Transfer taxes
City/County tax/stamps Deed, Mortgage
State tax/stamps Deed, Mortgage



Flood Insurance Disclosure



Due to the location of this property, a mortgage lender **MAY** require buyers to purchase flood insurance in connection with the purchase of this property.

Things you should know:

- The National Flood Insurance Program (NFIP) provides insurability for all primary and secondary homes located in a special flood hazard area (SFHA).
- The insurance premiums are based on the risk of flooding in the area where the property is located as well as the age and type of home.
- All mortgage lenders and insurance companies can get a determination immediately as to whether or not a property is located in a special flood hazard area by obtaining a flood certificate from the National Flood Insurance Program.
- The Standard Berkshire County Board of REALTORS® Purchase and Sale Agreement contains a provision allowing all buyers to obtain satisfaction with the insurability of the Property. If a buyer is unable to obtain a satisfactory insurance binder despite diligent efforts, a buyer can cancel the agreement without penalty.
- The mortgage lender will review the Flood Certificate from NFIP to determine if flood insurance is required as a condition of mortgage. Your insurance agent can also advise on this matter.
- The NFIP recently underwent substantial changes to eliminate all federal subsidies in flood insurance premiums by October 2014. Without subsidies, some insurance premiums will rise by a substantial amount.
- As a result, Buyers cannot rely on the premiums paid in the past for flood insurance on this property as an indication of the premiums that will apply after purchase.
- If a property requires flood insurance, buyers will need to work with their insurance provider and submit an Elevation Certificate in order to apply for flood insurance and obtain a quote.

It is critical for Buyers to consult with their insurance agent for a better understanding of flood insurance coverage, the premiums that are likely to be required to purchase such insurance and any available information about how those premiums may increase in the future.



Flood Insurance Disclosure



Advice for Sellers: When first listing your home....

- Speak to your current insurance company representative to determine if your property is located in a **special flood hazard area** by obtaining a flood certificate from the National Flood Insurance Program.
- Be prepared to share any knowledge of flood elevations or determinations that you have direct knowledge of with interested buyers. Buyers will have to obtain property insurance acceptable to mortgage lenders, and any assistance you can offer initially may help get your home closed faster.
- If your property is located in a special flood hazard area, make sure you disclose this to potential buyers so that they have the **time to obtain proper premium** quotes for insurance on the property.
- To assist any potential buyers in purchasing your home, consider obtaining an **Elevation Certificate** and find out about variances. This will enable buyers under contract to speed the process in getting their final premium rate determined more quickly. These can cost between \$600 - \$800.

Advice for Buyers: When putting an offer in on a home....

- Review the MLS listing sheet and then also speak to your insurance company representative or mortgage lender to determine if the property is located in a **special flood hazard area** by obtaining a flood certificate from the National Flood Insurance Program.
- If the property is located in a special flood hazard area, make sure you have a conversation with your REALTOR® to potentially extend the insurance contingency date in the Purchase and Sale Agreement so that you will have the time to determine how much the flood insurance premiums will cost.
- Work with your insurance agent to obtain an **Elevation Certificate** and find out about variances so that you can apply for insurance and obtain a final premium rate. These can cost between \$600 - \$800.

Disclosure Requirements:

A real estate agent should disclose to prospective purchasers if they know when a property is located in a special flood hazard area. Further, addressing it immediately is the best way to prevent avoidable delays in getting a home sold.

Buyer agents should carefully counsel their clients to use the insurance contingency time identified in the Purchase and Sale Agreement to speak to their insurance carrier about the property and the potential need for flood insurance. While this requirement will immediately evident when a buyer applies for a home loan, cash or unconventional financing may not reveal this issue without this extra step. All buyers should obtain a Flood Certificate and speak with carriers of flood insurance to understand the insurability of the property, regardless of financing type.

More information:

<http://www.fema.gov/national-flood-insurance-program/flood-insurance-reform-act-2012>

<http://www.fema.gov/floodplain-management/flood-insurance-rate-map-firm>

<http://www.fema.gov/national-flood-insurance-program>

<http://www.floodsmart.gov>



**STANDARD BERKSHIRE COUNTY MULTIPLE LISTING SERVICE
FLOOD INSURANCE NOTICE**

The mortgage lender for a buyer/owner may require that the buyer purchase and annually renew flood insurance in connection with the buyer's purchase and ownership of a property. Some buyers who purchase without mortgage financing may also wish to purchase flood insurance.

The National Flood Insurance Program (NFIP) provides for the availability of flood insurance, but also sets flood insurance policy premiums based on the risk of flooding in the area where a property is located. Due to amendments to federal law governing the NFIP and changes in flood maps, the premium may have increased over the premium previously charged for flood insurance for a particular property. As a result, a buyer should not rely on the premium paid previously for flood insurance on a particular property as an indication of the premium that will apply when the buyer purchases.

When considering a purchase, the Buyer should consult with one or more carriers of flood insurance for information about flood insurance availability and terms, the premium that is likely to be charged for such insurance and information about how those premiums may increase in the future. Additional information may also be available from a real estate attorney.

ACKNOWLEDGMENT OF RECEIPT

Signature of Consumer [Buyer or Seller]

Printed Name

Today's Date

Signature of Consumer [Buyer or Seller]

Printed Name

Today's Date

The Notice is not required pursuant to any Massachusetts statute, regulation or standard. Real estate brokers/salespersons do not have the duty to investigate the availability or cost of flood insurance on behalf of a buyer or seller. The Buyer has the duty to exercise due diligence for the Buyer's protection, including investigation of any information of importance to the Buyer.

