UNIT 3

# Parties, Property, and the Money

## LEARNING OBJECTIVES

*When you have completed this unit, you will be able to accomplish the following.*

- List the information required to complete contract forms.
- Fill out paragraphs 1 through 3 of the One to Four Family Residential Contract and be able to identify the provisions within them.
- Identify which items should be in included in the Non-Realty Items Addendum.
- Fill out the financing addenda: Third Party Financing Addendum, Loan Assumption Addendum, Seller Financing Addendum, Addendum for Release of Liability on Assumed Loan and/or Restoration of Seller's VA Entitlement.

## KEY TERMS

assumption
community property
legal description
non-realty items
parties
release of liability
seller financing
third party financing

## OVERVIEW

Unfortunately, many license holders fail to take the time to carefully read and understand the content of many of the promulgated forms before attempting to use them to capture the wishes of the party or **parties** whom they represent. This unit identifies the most common information needed to complete the TREC-promulgated forms. In addition, starting with this unit, we will examine the One to Four Family Residential Contract (Resale), which is the most frequently used of the TREC-promulgated forms.

## INFORMATION NEEDED TO COMPLETE CONTRACT FORMS

The various paragraphs of the contract forms might be thought of as the building blocks of a solid transaction. The parties can choose the size and shape of the blocks to be used to build their transaction. Some of the blocks will need to be modified to create the transaction desired by the principals. The knowledgeable license holder will help the parties identify the alternatives available to them and then let the parties choose the details of their transaction. The following checklist will enable the license holders to guide the parties in the selection of the appropriate contract form for their situation and the needed addenda to clearly define the details of the transaction.

To complete paragraph 1

Name(s) of Seller(s) as on deed or owner's title policy including marital status

Name(s) of Buyer(s) as Buyers wish to take title; include marital status

To complete paragraph 2

Legal description including:

Lot number _____; Block number _____;

Section number _____;

Subdivision name _____

County _____; City _____

Address _____; Zip code _____

Excluded fixtures and accessories _____
_____

To complete paragraph 3

Cash down payment $ _____

Amount of loans $ _____

Sales price $_____

To complete paragraph 4

Is the real estate license holder a party to the transaction?

Is the real estate license holder acting on behalf of a spouse, parent, child, or business entity in which the license holder owns more than 10%?

Is the real estate license holder a trustee for a trust where the beneficiary is the license holder's spouse, parent, or child?

Disclose if applicable

To complete paragraph 5

Earnest money amount $_____

Additional earnest money and date of deposit if any _____

Escrow officer _____

Address _____

To complete paragraph 6

Who will pay for title policy? _____

What company will issue the title policy? _____

Survey: New or existing _____ Who will pay? _____ Who will furnish? _____

Number of days to furnish? _____

Possible reasons for objections _____

How many days for Buyer to raise title objections? _____

Is property subject to mandatory membership in an HOA? _____

To complete paragraph 7

Has Buyer received Seller's disclosure notice? _____

If not, how many days for Seller to furnish? _____

Was house built prior to 1978? _____

Do you need to use the Lead Addendum? _____

Are there specific repairs required by the Buyer? _____
_____

How much does the Buyer want the seller to contribute to the price of a residential service contract? $_____

To complete paragraphs 9 and 10

By what date will closing hopefully take place? _____

When will possession occur? _____

If possession is before or after closing, define the terms of the temporary tenancy on the appropriate TREC temporary lease. _____
_____

To complete paragraph 11

Are there any business details not addressed in other parts of the contract?

_____

To complete paragraph 12

The seller must pay all of the seller expenses plus any amount agreed to pay for buyer in paragraph 12.

How much will Seller contribute toward Buyer's Expenses? $ _____

To complete paragraph 21

Buyer Seller

Address: _____ _____

Phone numbers: _____ _____

Fax number: _____ _____

Email address: _____ _____

To complete paragraph 22

What addenda will need to be added to the agreement? _____
_____

To complete paragraph 23

How much is the option fee? _____

How many days is the option period being purchased? _____

Will the option fee be credited to the Sales Price at closing? _____

To complete paragraph 24

Buyer's Attorney Seller's Attorney

Name: _____ _____

Phone numbers: _____ _____

Fax number: _____ _____

E-mail address: _____ _____

# ELEMENTS OF THE ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE)

## The Heading

Before we look at the three Ps (parties, property, and price), take a moment to examine the beginning of the form, its title, and its statement of intended use (*see* Figure 3.1.) The forms may also carry a notice of purposes for which the form was not designed.

The heading of this form indicates the following:

- Its intended use (the title)
- It is for resale, not new construction
- It is only for one to four family properties

- It is not for use with condominiums
- It is promulgated (we must use it)

The date in the upper right corner is the date that TREC approved and promulgated the form. License holders must be aware of the date and verify they are using the current form. Using an old form is a violation of the TRELA.

**FIGURE 3.1:** One to Four Family Residential Contract Heading

TREC
TEXAS REAL ESTATE COMMISSION

PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)
**ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE)**
NOTICE: Not For Use For Condominium Transactions

2-12-18

EQUAL HOUSING OPPORTUNITY

## Parties

The promise in Paragraph 1 is known as the consideration in the contract.

License holders must carefully fill in the names of the parties in paragraph 1 (Parties). If the sellers can provide the listing agent copies of their original documents (Title Policy, Deed, Deed of Trust, etc.) from their purchase, the agent can use those documents to verify proper (legal) names for the seller. The buyers have to provide identification at the time of closing.

Because Texas is a **community property** state, the license holder will need to furnish marital status. The following are acceptable ways to identify the parties:

Unmarried

- NAME, an unmarried person
- Note: Widows and widowers are unmarried persons
- Example: Sue Smith, an unmarried person

Married (When spouse is not joining in the conveyance)

- NAME, as separate property
- Example: Steve Swan, as separate property

Married (Community property)

- NAME and [husband/wife] NAME
- Example: Jim Johnson and wife Susan Johnson

Unmarried persons buying together

- NAME and NAME, as tenants in common
- Note: When parties wish to create rights of survivorship or fractional interests are involved, the parties should be advised to seek the advice of a competent real estate attorney before proceeding to prepare an offer to purchase.
- Example: Sue Smith and John Jones, as tenants in common

Executor or Administrator of an Estate

- Executor's or administrator's NAME, executor (administrator) of the estate of (decedent's NAME), deceased
- Example: Tom Harold, Executor of the estate of Ron Harold, deceased

General partnership

- Business NAME, a Texas partnership, or
- Business NAME, a Texas partnership composed of NAME, NAME, and NAME

Limited partnership

- Business NAME, a Texas limited partnership, NAME, as general partner acting for and on behalf of the partnership

Corporation

- Company NAME, a Texas* corporation
- *or the name of the state in which the corporation is chartered
- Note: A corporate resolution, issued by the board of directors, grants the authority to and identifies the officers who can sign on behalf of the corporation. A license holder should request a copy of the corporate resolution prior to the execution of any written agreements. It is to be retained in the transaction file.

Texas Limited Liability Company

- Company NAME, a Texas limited liability company
- Company NAME, LLC

Nonprofit

- NAME, NAME, and NAME, trustees for and on behalf of (corporate name)

## Property

The property specifics are discussed in paragraph 2 (Property). Paragraph 2A is the **legal description**, and 2B and 2C describe items to remain with the property unless specifically excluded in 2D.

Obtaining the correct legal description is essential to having a valid contract. The Statute of Frauds requires that any agreement affecting the title to real estate have a valid legal description.

If the property is located within a city, it will probably have a legal description that is part of a recorded plat. For example, Lot 12, Block 15, Greenwich Subdivision, City of Carrollton, County of Dallas. The street address and ZIP code are added for convenience and are required by the TREC form.

If the property is not within a city, use ***Unincorporated*** or ***None*** on the form for City.

If the property has a metes-and-bounds legal description, put N/A in the blanks for lot and block, and add an attachment to the contract with the description. The attachment can be made by copying the legal description in the seller's deed or title policy, for example. Do not use an address or what you "think" is the correct legal description with the intention to fill in

the complete description later, and do not rely on the legal description used in the MLS or other listing service. With the availability of electronic property records, you can pull the legal description from public records fairly quickly and, as noted, can use the one from the deed by which the seller took title, or the one on the seller's title policy. It is a good idea to ask the seller if there have been any changes in ownership since the property was acquired (names added or dropped, name changes) as well as if there have been any changes in the description since the property was purchased. This is especially true when dealing with a larger tract where a parcel or two might have been sold off, or perhaps an easement created, or a correction deed recorded.

The agent must be very aware of all of the items listed in paragraphs 2B Improvements and 2C Accessories. The TAR Listing Agreement uses this same list of items that stay with the property. The listing agent will need to determine if the seller really intends to leave all of these items. Any item that will not remain needs to be listed under paragraph 2D Exclusions. If there are no exclusions, enter ***N/A*** or ***None*** in the space provided for the purpose of listing any exclusions in paragraph 2D. Any reservation for oil, gas, or other minerals, water, timber, or other interests is addressed in an addendum.

It is important to verify that both buyers and sellers carefully read and understand what does and does not stay with the property at closing, because this is no place for assumptions and guesswork. A clear understanding of the form, in addition to fostering realistic expectations, creates the atmosphere for happy buyers and sellers after closing. The best time to address with the sellers which accessories are included or excluded in the sale is at the listing appointment.



## Non-Realty Items

If the parties insist upon adding some additional items of personal property (**non-realty items**) that are to stay with the property (that are not already listed in 2B or 2C), attach TREC's Non-Realty Items Addendum to the contract.

In the rush to complete a contract, buyers, sellers, and their agents might make some assumptions about what is or is not included in the sale. What about an item of furniture that has been made to appear built into a wall by surrounding it with a frame? Is that a fixture that would be included as part of the sale, or an item of personal property that the sellers will be taking with them? How about the huge snowblower in the garage? If it is to be included, is there a title to the vehicle or will the seller be transferring via a bill of sale? Same question might apply to the huge riding mower that the buyer will need to maintain the 2.5-acre lot.

The point here is to remember to have a complete and detailed list of everything the buyer intends to be included in the sale or of the items the seller believes are not included in the sale. Confirm these items with your client, then be certain they are appropriately dealt with in the contract or an addendum (i.e., Non-Realty Items Addendum). For example, if the riding mower is to be transferred by a title (like a car or truck), there is no harm including the mower on the Non-Realty Items Addendum and stating that transfer will be by title rather than bill of sale.

Clearly describing what is and is not included, wherever the discussion may appear, will prevent confusion, hard feelings and perhaps even a failed transaction.

**WHAT NEEDS TO BE FILLED OUT?**

The parties to a sale have agreed that the purchaser will get to keep the free standing bookcase in the living room. The seller is asking the buyer for the nominal fee of $25 to pay for the bookcase and buyer is in agreement. Is this covered under 2B? 2C? If not, how should this situation be handled?

Answer: A free-standing bookcase is not covered under 2B or 2C. Complete the Non-Realty Items Addendum, being as specific as you can about the bookcase and shelf. Complete paragraph 22 of the One to Four Family Residential Contract (check Other and then put Non-Realty Items Addendum in the blank).

## Sales Price

Paragraph 3A is the down payment, 3B is the total of all loans, and 3C is the sales price.

Paragraph 3 (Sales Price) is one of the easiest to complete correctly. Enter the sales price in 3C.

If this is an all cash offer, 3A and 3C will be the same amount. 3B will be -0-.

If the buyer is obtaining financing for a portion of the sales price, the total of all the financing will be entered in paragraph 3B. Note that 3B excludes any loan funding fee or mortgage insurance premium.

**EXAMPLE**

The buyer is assuming a first lien note with an outstanding balance of $283,400, taking a home improvement loan with a balance of $21,680, and asking the Seller to carry back a note for $80,000. To get the correct number to enter in 3B, add $283,400 + $21,680 + $80,000 for a total of $385,080. To get the correct number to put in 3A, simply subtract 3B from 3C.

Paragraph 3B discloses the type of financing being used.

Paragraph 3B (Sum of all financing) gives three different financing possibilities: (1) Third Party Financing, (2) Assumption, and (3) Seller Financing. Each of these requires a different addendum to be attached to the contract.

## Third Party Financing

**Third party financing**, paragraph 3B, is any type of new financing that is done by anyone that is a third party (not the seller or the buyer).

If the buyer is obtaining two loans, such as an 80% first lien mortgage and a 20% second lien, the two will be added together for paragraph 3B. Keeping the first lien mortgage at or below 80% saves the buyer the cost of private mortgage insurance.

## Assumption

Paragraph 3B of the One to Four Family Residential Contract (Sales Price) also provides for the possibility of the buyer's **assumption** of the seller's existing loan. If that is the case, check Loan Assumption Addendum in 3B and attach the Loan Assumption Addendum.

### Seller Financing

The final option in paragraph 3B of the One to Four Family Residential Contract is **Seller Financing**. If Seller Financing is being used, either alone or in conjunction with an Assumption or Third Party Financing, check Seller Financing Addendum in 3C and attach the Seller Financing Addendum.

## THE FINANCING ADDENDA

### Third Party Financing Addendum

The first page of the Third Party Financing Addendum clarifies that the buyer will be applying for the financing promptly and will provide the lender with the documentation needed to make a loan decision.

Paragraphs 1A through 1F describe the third party financing. Notice that 1A(2) (Conventional Financing) provides for a second lien, if being used.

The terms described here must be available. For example, it would make no sense to cap the interest rate at 3.5% when nothing is available at less than 4%. Interest is a not-to-exceed figure, so with the buyer's permission, you can allow a little room for change here.

If this is a fixed-rate mortgage, interest will be the same for the entire term of the loan. Therefore, the statement will be "interest not to exceed ___% per annum for the first 30 years of the loan" if the loan has a 30-year term. If it is an adjustable-rate mortgage that will adjust in one year, it will be "per annum for the first year of the loan." Any adjustment caps or lifetime caps for an adjustable-rate mortgage will need to be described in Special Provisions, paragraph 11 of the contract.

Having the various programs listed here (e.g., Texas Veterans Loan) is a good reminder of the programs that are available. Good agents will learn about each program and ensure they have a lender on their team who can help the buyer with any of them. Buyer's circumstances dictate which program is best for them.

Paragraph 2 of the Third Party Financing Addendum describes buyer approval and property approval. Both approvals are needed to have full loan approval.

Paragraph 2A gives the buyers the right to terminate and receive an earnest money refund if the lender says they do not meet the buyer requirements and if it is within the number of days agreed to by the parties. The buyers must terminate within that certain number of days or they will lose their right to terminate under this addendum, and there will no longer be any financing contingency on this contract. If the loan fails after this date because of the buyer, the buyer will be in default.

Paragraph 2B describes the property approval. Notice that property approval can take up to the closing date. It is not limited to the time for buyer approval. If the property does not meet the lender's requirements, the buyer may terminate.

Paragraph 2C states that "time is of the essence for **this paragraph**."

Paragraph 3 describes the vendor's (seller's) lien that will be on the property. The seller has a lien until the seller is paid in full.

Paragraph 4 is language required by FHA and VA. They want to ensure that the buyer is not obligated to purchase the property if the appraisal is not enough for the lender to make the

loan described here. If the property is not approved by the lender (appraisal, insurability, and lender-required repairs), the buyer has the option to terminate and receive his earnest money back. If the buyer elects to go forward with a smaller loan amount, he will be paying the difference in the cash down payment. Another option is that the seller may be willing to reduce the sales price to the appraised value.

Under new legislation, the lender may require real estate agents to have written authority from the buyer to review the loan documents or closing statement. Paragraph 5 gives the agent the written authorization.

## Loan Programs Listed on the Third Party Financing Addendum

### *Conventional and Government-Backed Loans*

Mortgages can be defined as either government-backed or conventional. Government agencies like the Federal Housing Administration (FHA) and the Department of Veterans Affairs (VA) insure home loans, which are made by private lenders. This insurance is paid for by fees collected from mortgage borrowers. The U.S. Department of Agriculture (USDA) loans money to lower-income borrowers through its Direct Housing Program. It also guarantees loans made by private lenders through its Guaranteed Housing Loans program. This backing is paid for by borrowers. Mortgage loans that are not guaranteed or insured by the government are called conventional loans. Some conventional loans are insured by private mortgage insurance and paid for by borrowers.

### *Texas Veterans Loans*

The State of Texas honors Texas veterans in a very unique way. Funds are set aside to help Texas veterans buy a home at interest rates below the market rates. Even if veterans have used their VA benefit, they might still be able to qualify for this unique program. There are several advantages of a VA loan, including

- lower fixed rates,
- lower closing costs,
- easier approval process,
- lower payments, and
- no mortgage insurance.

Although the program does not offer refinancing, the other available benefits can be an extremely helpful way for veterans to finance a home. Veterans with a VA service-connected disability rating of 30% or greater qualify for a discounted interest rate.

### *FHA Loans*

FHA loans are popular with mortgage borrowers because of lower down payment requirements and less stringent lending standards. Simply stated, an FHA loan is a mortgage insured by the Federal Housing Administration, a government agency within the U.S. Department of Housing and Urban Development. Borrowers with FHA loans pay for mortgage insurance, which protects the lender from a loss if the borrower defaults on the loan.

### VA Loans

A VA loan is a mortgage loan in the United States guaranteed by the VA. The loan may be issued by qualified lenders. The VA loan was designed to offer long-term financing to eligible American veterans or their surviving spouses (provided they do not remarry).

### USDA Loans

Texas USDA mortgage loans, often referred to as Rural Development or RD loans, may be the best choice for a Texas home loan. USDA loans are government-guaranteed home mortgages for borrowers living in rural and suburban communities in Texas.

There are many benefits to Texas USDA loans. In addition to low fixed rates and no mortgage insurance, USDA loans are the only home mortgage available to the general public that will allow borrowers to finance up to 100%. In other words, USDA loans offer no-money-down home loans. Simply put, if you live in a suburban or rural community, you will not find a better home mortgage option.

### Reverse Mortgage Financing

A reverse mortgage is special financing for people over the age of 62. Some facts about reverse mortgage purchases include the following:

- They have a very low loan-to-value ratio based on age of the borrower. They require a large down payment. Up-front fees can be large.
- The property must remain owner occupied. Taxes and insurance must be paid.
- There are no monthly payments. Interest is added to the loan balance monthly so the balance increases, rather than decreases, each month.
- The buyer does not have to qualify.
- The owner still owns the property, and it passes to the heirs at the time of the owner's death. The heirs can pay off the mortgage and keep the property or let the lender take it back.
- It is a nonrecourse loan, so all the lender gets is the property.
- It may enable a buyer with $100,000 cash to buy a much more expensive home and still have no monthly payments.

## LET'S PRACTICE #1

Sales price: $250,000

80% conventional loan, 30-year fixed rate at 7%

20% cash down payment

Contract will be contingent upon financing

2 discount points, 1% origination fee

Using this information, how would the following sections of the One to Four Family Residential Contract and the Third Party Financing Addendum be filled out?

**One to Four Family Residential Contract**

**3. SALES PRICE:**
A. Cash portion of Sales Price payable by Buyer at closing ..... $_____
B. Sum of all financing described in the attached: ❑ Third Party Financing Addendum,
❑ Loan Assumption Addendum, ❑ Seller Financing Addendum ..... $_____
C. Sales Price (Sum of A and B)..... $_____

**Third Party Financing Addendum**

❑ A. CONVENTIONAL FINANCING:
❑ (1) A first mortgage loan in the principal amount of $_____ (excluding any financed PMI premium), due in full in _____ year(s), with interest not to exceed _____% per annum for the first _____ year(s) of the loan with Origination Charges as shown on Buyer's Loan Estimate for the loan not to exceed _____% of the loan.
❑ (2) A second mortgage loan in the principal amount of $_____ (excluding any financed PMI premium), due in full in _____ year(s), with interest not to exceed _____% per annum for the first _____ year(s) of the loan with Origination Charges as shown on Buyer's Loan Estimate for the loan not to exceed _____% of the loan.

## LET'S PRACTICE #1 ANSWERS

**One to Four Family Residential Contract**

**3. SALES PRICE:**
A. Cash portion of Sales Price payable by Buyer at closing ..... $ 50,000
B. Sum of all financing described in the attached: ☑ Third Party Financing Addendum,
❑ Loan Assumption Addendum, ❑ Seller Financing Addendum ..... $ 200,000
C. Sales Price (Sum of A and B)..... $ 250,000

**Third Party Financing Addendum**

☑ A. CONVENTIONAL FINANCING:
☑ (1) A first mortgage loan in the principal amount of $ 200,000 (excluding any financed PMI premium), due in full in 30 year(s), with interest not to exceed 7 % per annum for the first 30 year(s) of the loan with Origination Charges as shown on Buyer's Loan Estimate for the loan not to exceed 3 % of the loan.

## LET'S PRACTICE #2

Sales price: $185,000

80% conventional first-lien mortgage, 25 years at 6.5% and

10% second lien, 15 years at 8%

10% cash down payment

Contract will be contingent upon financing

0 discount point, 1% origination fee

Using this information, how would the following sections of the One to Four Family Residential Contract and the Third Party Financing Addendum be filled out?

**One to Four Family Residential Contract**

**3. SALES PRICE:**
A. Cash portion of Sales Price payable by Buyer at closing ..... $_____
B. Sum of all financing described in the attached: ❑ Third Party Financing Addendum,
❑ Loan Assumption Addendum, ❑ Seller Financing Addendum ..... $_____
C. Sales Price (Sum of A and B)..... $_____

**Third Party Financing Addendum**

❑ A. CONVENTIONAL FINANCING:
❑ (1) A first mortgage loan in the principal amount of $_____ (excluding any financed PMI premium), due in full in _____ year(s), with interest not to exceed _____% per annum for the first _____ year(s) of the loan with Origination Charges as shown on Buyer's Loan Estimate for the loan not to exceed _____% of the loan.
❑ (2) A second mortgage loan in the principal amount of $_____ (excluding any financed PMI premium), due in full in _____ year(s), with interest not to exceed _____% per annum for the first _____ year(s) of the loan with Origination Charges as shown on Buyer's Loan Estimate for the loan not to exceed _____% of the loan.

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## LET'S PRACTICE #2 ANSWERS

**One to Four Family Residential Contract**

**3. SALES PRICE:**
A. Cash portion of Sales Price payable by Buyer at closing ..... $ 18,500
B. Sum of all financing described in the attached: ☑ Third Party Financing Addendum,
❑ Loan Assumption Addendum, ❑ Seller Financing Addendum ..... $ 166,500
C. Sales Price (Sum of A and B)..... $ 185,000

Third Party Financing Addendum

☑ A. CONVENTIONAL FINANCING:
☑ (1) A first mortgage loan in the principal amount of $ 148,000 (excluding any financed PMI premium), due in full in 25 year(s), with interest not to exceed 6.5 % per annum for the first 25 year(s) of the loan with Origination Charges as shown on Buyer's Loan Estimate for the loan not to exceed 1 % of the loan.
☑ (2) A second mortgage loan in the principal amount of $ 18,500 (excluding any financed PMI premium), due in full in 15 year(s), with interest not to exceed 8 % per annum for the first 15 year(s) of the loan with Origination Charges as shown on Buyer's Loan Estimate for the loan not to exceed 0 % of the loan.

## LET'S PRACTICE #3

Sales price: $295,000

80% conventional loan, 4.5% ARM, adjustable after one year

20% cash down payment, 30-year loan

Contract will be contingent upon financing

1 discount point, 1% origination fee

Using this information, how would the following sections of the One to Four Family Residential Contract and the Third Party Financing Addendum be filled out?

**One to Four Family Residential Contract**

**3. SALES PRICE:**
A. Cash portion of Sales Price payable by Buyer at closing ..... $_____
B. Sum of all financing described in the attached: ❑ Third Party Financing Addendum,
❑ Loan Assumption Addendum, ❑ Seller Financing Addendum ..... $_____
C. Sales Price (Sum of A and B)..... $_____

**Third Party Financing Addendum**

❑ A. CONVENTIONAL FINANCING:
❑ (1) A first mortgage loan in the principal amount of $_____ (excluding any financed PMI premium), due in full in _____ year(s), with interest not to exceed _____% per annum for the first _____ year(s) of the loan with Origination Charges as shown on Buyer's Loan Estimate for the loan not to exceed _____% of the loan.
❑ (2) A second mortgage loan in the principal amount of $_____ (excluding any financed PMI premium), due in full in _____ year(s), with interest not to exceed _____% per annum for the first _____ year(s) of the loan with Origination Charges as shown on Buyer's Loan Estimate for the loan not to exceed _____% of the loan.

## LET'S PRACTICE #3 ANSWERS

**One to Four Family Residential Contract**

**3. SALES PRICE:**
A. Cash portion of Sales Price payable by Buyer at closing ..... $ 59,000
B. Sum of all financing described below (excluding any loan funding fee or mortgage insurance premium) ..... $ 236,000
C. Sales Price (Sum of A and B)..... $ 295,000

**Third Party Financing Addendum**

☑ A. CONVENTIONAL FINANCING:
☑ (1) A first mortgage loan in the principal amount of $ 236,000 (excluding any financed PMI premium), due in full in 30 year(s), with interest not to exceed 4.5 % per annum for the first 1 year(s) of the loan with Origination Charges as shown on Buyer's Loan Estimate for the loan not to exceed 2 % of the loan.

## LOAN ASSUMPTION ADDENDUM

If the buyer is going to assume the seller's existing loan, check Loan Assumption Addendum in paragraph 3B on the One to Four Family Residential Contract and attach the Loan Assumption Addendum.

Paragraph A of the Loan Assumption Addendum (Credit Documentation) gives the parties the opportunity to negotiate for the buyer to provide the seller with items to establish creditworthiness. The items must be delivered to the seller within the time negotiated in the blank.

Paragraph B (Credit Approval) starts off by giving the seller the right to terminate if the items are not received within the time frame. If the seller is going to terminate, the seller must do so within seven days after expiration of the time for delivery and give notice to the buyer. In this case, the seller receives the earnest money.

The seller also has the right to terminate if the items are received within the time frame, but the seller determines that the buyer's credit is not acceptable. The seller must terminate within seven days after expiration of the time for delivery. In this event, the buyer receives the earnest money.

If the seller does not terminate within these seven-day periods, the seller loses the right to terminate and is deemed to have approved the buyer's creditworthiness.

Paragraph C of the Loan Assumption Addendum (Assumption) describes the note(s) that is/are being assumed and cautions the buyer that the obligations imposed by the deed of trust securing these notes will continue.

Paragraph C(1) describes any first lien note being assumed, and paragraph C(2) describes any second lien note being assumed. Because the payments on an assumed loan are already set up, the buyer will follow the same payment schedule, starting with the first payment after the closing. For example, if the seller has paid the January 1 and February 1 payments and then the loans are assumed on February 15, the buyer's first payment will be March 1.

The paragraph at the bottom of this section addresses two things:

1. It discusses what will happen if the balance varies. Because the cash + the loan balance = the sales price, if the loan balance varies, either the cash or the sales price must be adjusted. The parties check the appropriate box to make that choice.
2. It gives either party the right to terminate if the variance exceeds $500, unless the other party elects to pay the excess. If the parties terminate the contract for this reason, the earnest money will be refunded to buyer.

Paragraphs D and E of the Loan Assumption Addendum (Loan Assumption Terms and Consent by Noteholder) protect the buyer in the event the lender should charge an assumption fee or an interest rate more than what was agreed to or refuses to consent to the assumption. In any of these events, the earnest money will be refunded to the buyer.

Paragraph F of the Loan Assumption Addendum states, "SELLER'S LIENS. Unless seller is released from liability on any assumed note, a vendor's lien and deed of trust to secure assumption will be required. The vendor's lien will automatically be released on delivery of an executed release by noteholder." This protects the seller in the event the lender does not release the seller from liability. The seller would have a lien on the property and the ability to pay any delinquency to get the property back. The vendor's (seller's) lien is released when the lender relieves the seller of future liability.

Paragraph G of the Loan Assumption Addendum states, "TAX AND INSURANCE ESCROW. If noteholder maintains an escrow account for ad valorem taxes, casualty insurance premiums or mortgage insurance premiums, Seller shall transfer the escrow account to Buyer without any deficiency. Buyer shall reimburse Seller for the amount in the transferred accounts." This protects both parties. If there is a deficiency in the tax and insurance escrow account, the seller has to pay the deficiency. The buyer reimburses the seller for the amount in the account, so if there is any overage in the account, the seller is paid for it.

In the notices and signatures section of the Loan Assumption Addendum, both the buyer and the seller need to read and pay attention to the important information in the notices. These are things that sometimes the parties do not understand, and it is critical information.

### LET'S PRACTICE #4

Sales price: $185,000

Buyer is going to assume seller's existing mortgage with ABC Lenders. The principal balance of the loan is $123,655. The seller's current monthly payments are $875.91. If the balance varies at closing, the parties agree to adjust the cash down payment. The 30-year loan has a 5.5% fixed rate and is assumable at the current rate. The lender says the assumption fee will be 1% of the loan amount.

Using this information, how would the following sections of the One to Four Family Residential Contract and the Loan Assumption Addendum be filled out?

**One to Four Family Residential Contract**

**3. SALES PRICE:**
A. Cash portion of Sales Price payable by Buyer at closing ..... $_____
B. Sum of all financing described in the attached: ❑ Third Party Financing Addendum,
❑ Loan Assumption Addendum, ❑ Seller Financing Addendum ..... $_____
C. Sales Price (Sum of A and B)..... $_____

**Loan Assumption Addendum**

**C. ASSUMPTION.** Buyer's assumption of an existing note includes all obligations imposed by the deed of trust securing the note.
❑ (1) The unpaid principal balance of a first lien promissory note payable to_____ _____which unpaid balance at closing will be $ _____. The total current monthly payment including principal, interest and any reserve deposits is $ _____. Buyer's initial payment will be the first payment due after closing.

❑ (2) The unpaid principal balance of a second lien promissory note payable to _____ _____which unpaid balance at closing will be $ _____. The total current monthly payment including principal, interest and any reserve deposits is $ _____. Buyer's initial payment will be the first payment due after closing.

If the unpaid principal balance of any assumed loan as of the Closing Date varies from the loan balance stated above, the ❑ cash payable at closing ❑ Sales Price will be adjusted by the amount of any variance. If the total principal balance of all assumed loans varies in an amount greater than $500 at closing, either party may terminate this contract and the earnest money will be refunded to Buyer unless the other party elects to pay the excess of the variance.

**D. LOAN ASSUMPTION TERMS.** Buyer may terminate this contract and the earnest money will be refunded to Buyer if the noteholder requires:
(1) payment of an assumption fee in excess of $ _____in C(1) or $ _____in C(2) and Seller declines to pay such excess, or
(2) an increase in the interest rate to more than _____% in C(1) or_____% in C(2), or
(3) any other modification of the loan documents.

## LET'S PRACTICE #4 ANSWERS

**One to Four Family Residential Contract**

**3. SALES PRICE:**

A. Cash portion of Sales Price payable by Buyer at closing ..... $ 61,345

B. Sum of all financing described in the attached: ❑ Third Party Financing Addendum,
☑ Loan Assumption Addendum, ❑ Seller Financing Addendum ..... $ 123,655

C. Sales Price (Sum of A and B) ..... $ 185,000

**Loan Assumption Addendum**

**C. ASSUMPTION.** Buyer's assumption of an existing note includes all obligations imposed by the deed of trust securing the note.

☑ (1) The unpaid principal balance of a first lien promissory note payable to ABC Lenders which unpaid balance at closing will be $ 123,655. The total current monthly payment including principal, interest and any reserve deposits is $ 875.91. Buyer's initial payment will be the first payment due after closing.

❑ (2) The unpaid principal balance of a second lien promissory note payable to _____ which unpaid balance at closing will be $ _____. The total current monthly payment including principal, interest and any reserve deposits is $ _____. Buyer's initial payment will be the first payment due after closing.

If the unpaid principal balance of any assumed loan as of the Closing Date varies from the loan balance stated above, the ☑ cash payable at closing ❑ Sales Price will be adjusted by the amount of any variance. If the total principal balance of all assumed loans varies in an amount greater than $500 at closing, either party may terminate this contract and the earnest money will be refunded to Buyer unless the other party elects to pay the excess of the variance.

**D. LOAN ASSUMPTION TERMS.** Buyer may terminate this contract and the earnest money will be refunded to Buyer if the noteholder requires:

(1) payment of an assumption fee in excess of $ 1,236.55 in C(1) or $ NA in C(2) and Seller declines to pay such excess, or

(2) an increase in the interest rate to more than 5.5 % in C(1) or NA % in C(2), or

(3) any other modification of the loan documents.

# SELLER FINANCING ADDENDUM

If Seller Financing is being used, either alone or in conjunction with an Assumption or Third Party Financing, check Seller Financing Addendum in paragraph 3B in the One to Four Family Residential Contract and attach the Seller Financing Addendum.

The first few paragraphs of the Seller Financing Addendum are like those in the Loan Assumption Addendum. Paragraph A of the Seller Financing Addendum gives the parties the opportunity to negotiate for the buyer to provide the seller with items to establish creditworthiness. The items must be delivered to the seller within the time negotiated in the blank.

Paragraph B starts off by giving the seller the right to terminate if the items are not received within the time frame. If the seller is going to terminate, the seller must do so within seven days after expiration of the time for delivery and give notice to the buyer. In this case, the seller receives the earnest money.

The seller also has the right to terminate if the items are received within the time frame, but the seller determines that the buyer's credit is not acceptable. The seller must terminate within seven days after expiration of the time for delivery. In this event, the buyer receives the earnest money.

If the seller does not terminate within these seven day periods, the seller loses the right to terminate and is deemed to have approved the buyer's creditworthiness.

Paragraph C of the Seller Financing Addendum describes the amount of the promissory note, the rate of interest for the loan, the buyer's right of prepayment of the loan, and the seller's right to collect late charges if payments are not received on time. It also provides the parties with three choices for loan repayment.

Paragraph D(1) of the Seller Financing Addendum discusses what will happen if the property is sold. Most sellers will want the right to give their consent to any sale of the property while they still have an outstanding loan secured by the property. D(1)(b) describes the seller's right to declare the balance of the loan due if the property is sold without consent.

The note under D(1)(b) reminds buyers that their liability continues until the loan is paid in full unless they receive a **release of liability** from the seller.

Paragraph D(2) of the Seller Financing Addendum gives the parties an option to negotiate a requirement for a tax and insurance escrow account. Because seller financing can be used in many situations and in conjunction with other financing, many times there is not a need for an escrow account. For example, if a buyer is assuming a seller's first lien mortgage, with XYZ Savings and the seller financing is a second lien, only for a portion of the seller's equity, XYZ Savings might already be collecting a monthly escrow payment.

The same situation may exist if the buyer is getting new financing and the first lien mortgage company is carrying an escrow account. For example, on an 80/10/10, the first lien company may have an 80% loan and the seller may have a 10% loan. In this case, there may be no need for the seller to carry an escrow account because the first lien mortgage company is doing so.

If the seller financing is the only loan, and the seller wants to make sure the money will be there to pay the taxes and insurance when they are due, the seller may require a monthly amount to cover payments of those items.

Paragraph D(3) protects the seller by making a default on any superior lien a default under the seller's lien.

### LET'S PRACTICE #5

Sales price: $325,000

80%, 15-year, new conventional loan, 6% fixed rate

10% cash down payment

10% seller financing for 120 payments, no escrow required

7% fixed rate, $543.12 monthly, including interest

Consent required for transfer

Contract will be contingent upon financing

1 discount point, 1% origination fee

Using this information, how would the following sections of the One to Four Family Residential Contract, Third Party Financing Addendum, and Seller Financing Addendum be filled out?

**One to Four Family Residential Contract**

**3. SALES PRICE:**

A. Cash portion of Sales Price payable by Buyer at closing ..... $_____

B. Sum of all financing described in the attached: ❑ Third Party Financing Addendum, ❑ Loan Assumption Addendum, ❑ Seller Financing Addendum ..... $_____

C. Sales Price (Sum of A and B)..... $_____

**Third Party Financing Addendum**

❑ A. CONVENTIONAL FINANCING:

❑ (1) A first mortgage loan in the principal amount of $_____ (excluding any financed PMI premium), due in full in _____ year(s), with interest not to exceed _____% per annum for the first _____ year(s) of the loan with Origination Charges as shown on Buyer's Loan Estimate for the loan not to exceed _____% of the loan.

❑ (2) A second mortgage loan in the principal amount of $_____ (excluding any financed PMI premium), due in full in _____ year(s), with interest not to exceed _____% per annum for the first _____ year(s) of the loan with Origination Charges as shown on Buyer's Loan Estimate for the loan not to exceed _____% of the loan.

**Seller Financing Addendum**

**C. PROMISSORY NOTE.** The promissory note in the amount of $_____(Note), included in Paragraph 3B of the contract payable by Buyer to the order of Seller will bear interest at the rate of _____% per annum and be payable at the place designated by Seller. Buyer may prepay the Note in whole or in part at any time without penalty. Any prepayments are to be applied to the payment of the installments of principal last maturing and interest will immediately cease on the prepaid principal. The Note will contain a provision for payment of a late fee of 5% of any installment not paid within 10 days of the due date. Matured unpaid amounts will bear interest at the rate of 1½% per month or at the highest lawful rate, whichever is less. The Note will be payable as follows:

❑ (1) In one payment due _____ after the date of the Note with interest payable ❑ at maturity ❑ monthly ❑ quarterly. (check one box only)

❑ (2) In monthly installments of $ _____ ❑ including interest ❑plus interest (check one box only) beginning _____ after the date of the Note and continuing monthly thereafter for_____ months when the balance of the Note will be due and payable.

❑ (3) Interest only in monthly installments for the first _____ month(s) and thereafter in installments of $_____ ❑ including interest ❑ plus interest (check one box only) beginning _____ after the date of the Note and continuing monthly thereafter for_____ months when the balance of the Note will be due and payable.

**D. DEED OF TRUST.** The deed of trust securing the Note will provide for the following:

(1) PROPERTY TRANSFERS: (check one box only)

❑ (a) Consent Not Required: The Property may be sold, conveyed or leased without the consent of Seller, provided any subsequent buyer assumes the Note.

❑ (b) Consent Required: If all or any part of the Property is sold, conveyed, leased for a period longer than 3 years, leased with an option to purchase, or otherwise sold (including any contract for deed), without Seller's prior written consent, which consent may be withheld in Seller's sole discretion, Seller may declare the balance of the Note to be immediately due and payable. The creation of a subordinate lien, any conveyance under threat or order of condemnation, any deed solely between buyers, or the passage of title by reason of the death of a buyer or by operation of law will not entitle Seller to exercise the remedies provided in this paragraph.

NOTE: *Under (a) or (b), Buyer's liability to pay the Note will continue unless Buyer obtains a release of liability from Seller.*

(2) TAX AND INSURANCE ESCROW: (check one box only)

❑ (a) Escrow Not Required: Buyer shall furnish Seller, before each year's ad valorem taxes become delinquent, evidence that all ad valorem taxes on the Property have been paid. Buyer shall annually furnish Seller evidence of paid-up casualty insurance naming Seller as a mortgagee loss payee.

❑ (b) Escrow Required: With each installment Buyer shall deposit in escrow with Seller a pro rata part of the estimated annual ad valorem taxes and casualty insurance premiums for the Property. Buyer shall pay any deficiency within 30 days after notice from Seller. Buyer's failure to pay the deficiency will be a default under the deed of trust. Buyer is not required to deposit any escrow payments for taxes and insurance that are deposited with a superior lienholder. The casualty insurance must name Seller as a mortgagee loss payee.

(3) PRIOR LIENS: Any default under any lien superior to the lien securing the Note will be a default under the deed of trust securing the Note.

## LET'S PRACTICE #5 ANSWERS

**One to Four Family Residential Contract**

**3. SALES PRICE:**

A. Cash portion of Sales Price payable by Buyer at closing ..... $ 32,500

B. Sum of all financing described in the attached: ☑ Third Party Financing Addendum, ☐ Loan Assumption Addendum, ☑ Seller Financing Addendum ..... $ 292,500

C. Sales Price (Sum of A and B) ..... $ 325,000

**Third Party Financing Addendum**

☑ 1. Conventional Financing:

☑ (a) A first mortgage loan in the principal amount of $ 260,000 (excluding any financed PMI premium), due in full in 15 year(s), with interest not to exceed 6 % per annum for the first 15 year(s) of the loan with Origination Charges as shown on Buyer's Loan Estimate for the loan not to exceed 2 % of the loan.

☐ (b) A second mortgage loan in the principal amount of $_____(excluding any financed PMI premium), due in full in _____year(s), with interest not to exceed _____% per annum for the first _____year(s) of the loan with Origination Charges as shown on Buyer's Loan Estimate for the loan not to exceed _____% of the loan.

**Seller Financing Addendum**

**C. PROMISSORY NOTE.** The promissory note in the amount of $ 32,500 (Note), included in Paragraph 3B of the contract payable by Buyer to the order of Seller will bear interest at the rate of 7 % per annum and be payable at the place designated by Seller. Buyer may prepay the Note in whole or in part at any time without penalty. Any prepayments are to be applied to the payment of the installments of principal last maturing and interest will immediately cease on the prepaid principal. The Note will contain a provision for payment of a late fee of 5% of any installment not paid within 10 days of the due date. Matured unpaid amounts will bear interest at the rate of 1½% per month or at the highest lawful rate, whichever is less. The Note will be payable as follows:

❑ (1) In one payment due _____ after the date of the Note with interest payable ❑ at maturity ❑ monthly ❑ quarterly. (check one box only)

☑ (2) In monthly installments of $ 543.12 ☑ including interest ❑plus interest (check one box only) beginning the first of the month after the date of the Note and continuing monthly thereafter for 120 months when the balance of the Note will be due and payable.

❑ (3) Interest only in monthly installments for the first _____ month(s) and thereafter in installments of $_____ ❑ including interest ❑ plus interest (check one box only) beginning _____ after the date of the Note and continuing monthly thereafter for_____ months when the balance of the Note will be due and payable.

**D. DEED OF TRUST.** The deed of trust securing the Note will provide for the following:

(1) PROPERTY TRANSFERS: (check one box only)

❑ (a) Consent Not Required: The Property may be sold, conveyed or leased without the consent of Seller, provided any subsequent buyer assumes the Note.

☑ (b) Consent Required: If all or any part of the Property is sold, conveyed, leased for a period longer than 3 years, leased with an option to purchase, or otherwise sold (including any contract for deed), without Seller's prior written consent, which consent may be withheld in Seller's sole discretion, Seller may declare the balance of the Note to be immediately due and payable. The creation of a subordinate lien, any conveyance under threat or order of condemnation, any deed solely between buyers, or the passage of title by reason of the death of a buyer or by operation of law will not entitle Seller to exercise the remedies provided in this paragraph.

NOTE: *Under (a) or (b), Buyer's liability to pay the Note will continue unless Buyer obtains a release of liability from Seller.*

(2) TAX AND INSURANCE ESCROW: (check one box only)

☑ (a) Escrow Not Required: Buyer shall furnish Seller, before each year's ad valorem taxes become delinquent, evidence that all ad valorem taxes on the Property have been paid. Buyer shall annually furnish Seller evidence of paid-up casualty insurance naming Seller as a mortgagee loss payee.

❑ (b) Escrow Required: With each installment Buyer shall deposit in escrow with Seller a pro rata part of the estimated annual ad valorem taxes and casualty insurance premiums for the Property. Buyer shall pay any deficiency within 30 days after notice from Seller. Buyer's failure to pay the deficiency will be a default under the deed of trust. Buyer is not required to deposit any escrow payments for taxes and insurance that are deposited with a superior lienholder. The casualty insurance must name Seller as a mortgagee loss payee.

While the contract form provides for a late fee of 5% of the late payment if the monthly payment is a note made within 10 days of the due date, neither the 10-day grace period nor the 5% fee is mandatory. The parties are free to negotiate whatever terms are mutually acceptable with respect to these issues.

An awkward situation can arise if a portion of the property is condemned by the local municipality. For example, suppose the city takes a strip of land 20 feet wide off the front yard of the home for purposes of widening the street. It is important that paragraph 7D(1)(b) has been checked; otherwise, because a "part of the property" is being sold, the original

seller would have the option to call the note due in full, something the buyer likely did not anticipate at the time the property was purchased.

If the promissory note contains the language allowed by 7D(1)(b), the note will not be called. However, there may be some concern on the part of the seller that the value of the security has been diminished because the parcel has been reduced in size and may be less desirable as a residence given the widening of the street. This can be handled at the outset by an agreement stating that the lien on the portion that is taken will be released by payment of either some fixed sum or by an amount arrived at by a formula based on the percentage of the property taken, or perhaps by some percentage of the amount paid by the city. This can be particularly important if the property is located on a major thoroughfare or a street that may be expanded due to a shift from residential to retail or commercial use.

This is obviously a situation that should be handled by the lawyers for the buyer and the seller, but a license holder should be sufficiently knowledgeable to recognize the potential in cases of seller financing and to recommend legal counsel to be certain his buyer or seller client is not caught by surprise.

## ADDENDUM FOR RELEASE OF LIABILITY ON ASSUMED LOAN AND/OR RESTORATION OF SELLER'S VA ENTITLEMENT

Assumption of existing financing requires the use of the Loan Assumption Addendum. If, as a condition of permitting assumption of existing financing, the seller wants to make the assumption subject to the seller being released from future liability for the loan, the parties will need to use the Addendum for Release of Liability on Assumed Loan and/or Restoration of Seller's VA Entitlement.

### LET'S PRACTICE #6

Barbara and Ken Johnson are interested in assuming a VA loan on a property they are buying from Mac Smith, a veteran. The unpaid balance on the loan is $125,000 and Smith is asking $145,000 for the property. The Johnsons have the additional $20,000 to put down. The principal and interest payments on the loan are $925 a month with a 5% interest rate. The loan will be paid off in 20 years. The loan company is Wells Fargo and the parties agree that the buyer will make application to assume the loan within 3 days. Smith would like to be released from liability on the loan and is not willing to close unless that can happen. He would also like to have his VA benefits restored but is willing to close even if that does not happen. Since the Johnsons are making application with Wells Fargo to assume the loan, Smith is not asking for any other credit information. The assumption fee will be 1% of the loan balance, and if the balance varies slightly, the parties would like the sales price to be adjusted.

Using this information, how would the following sections of the One to Four Family Residential Contract, Loan Assumption Addendum, and the Addendum for Release of Liability on Assumed Loan and/or Restoration of Seller's VA Entitlement be filled out?

**One to Four Family Residential Contract**

**3. SALES PRICE:**
A. Cash portion of Sales Price payable by Buyer at closing ..... $_____
B. Sum of all financing described in the attached: ❑ Third Party Financing Addendum,
❑ Loan Assumption Addendum, ❑ Seller Financing Addendum ..... $_____
C. Sales Price (Sum of A and B)..... $_____

**Loan Assumption Addendum**

**C. ASSUMPTION.** Buyer's assumption of an existing note includes all obligations imposed by the deed of trust securing the note.

❑ (1) The unpaid principal balance of a first lien promissory note payable to_____ _____which unpaid balance at closing will be $ _____. The total current monthly payment including principal, interest and any reserve deposits is $ _____. Buyer's initial payment will be the first payment due after closing.

❑ (2) The unpaid principal balance of a second lien promissory note payable to _____ _____which unpaid balance at closing will be $ _____. The total current monthly payment including principal, interest and any reserve deposits is $ _____. Buyer's initial payment will be the first payment due after closing.

If the unpaid principal balance of any assumed loan as of the Closing Date varies from the loan balance stated above, the ❑ cash payable at closing ❑ Sales Price will be adjusted by the amount of any variance. If the total principal balance of all assumed loans varies in an amount greater than $500 at closing, either party may terminate this contract and the earnest money will be refunded to Buyer unless the other party elects to pay the excess of the variance.

**D. LOAN ASSUMPTION TERMS.** Buyer may terminate this contract and the earnest money will be refunded to Buyer if the noteholder requires:

(1) payment of an assumption fee in excess of $ _____in C(1) or $ _____in C(2) and Seller declines to pay such excess, or
(2) an increase in the interest rate to more than _____% in C(1) or_____% in C(2), or
(3) any other modification of the loan documents.

**Addendum for Release of Liability on Assumed Loan and/or Restoration of Seller's VA Entitlement**

❑ **A. RELEASE OF SELLER'S LIABILITY ON LOAN TO BE ASSUMED:**

Within _____ days after the effective date of this contract Seller and Buyer shall apply for release of Seller's liability from (a) any conventional lender, (b) VA and any lender whose loan has been guaranteed by VA, or (c) FHA and any lender whose loan has been insured by FHA. Seller and Buyer shall furnish all required information and documents. If any release of liability has not been approved by the Closing Date: (check one box only)

❑ (1) This contract will terminate and the earnest money will be refunded to Buyer.

❑ (2) Failure to obtain release approval will not delay closing.

❑ **B. RESTORATION OF SELLER'S ENTITLEMENT FOR VA LOAN:**

Within _____ days after the effective date of this contract Seller and Buyer shall apply for restoration of Seller's VA entitlement and shall furnish all information and documents required by VA. If restoration has not been approved by the Closing Date: (check one box only)

❑ (1) This contract will terminate and the earnest money will be refunded to Buyer.

❑ (2) Failure to obtain restoration approval will not delay closing.

## LET'S PRACTICE #6 ANSWERS

**One to Four Family Residential Contract**

**3. SALES PRICE:**

A. Cash portion of Sales Price payable by Buyer at closing ..... $ 20,000

B. Sum of all financing described in the attached: ☐ Third Party Financing Addendum,
☑ Loan Assumption Addendum, ☐ Seller Financing Addendum ..... $ 125,000

C. Sales Price (Sum of A and B)..... $ 145,000

**Loan Assumption Addendum**

**C. ASSUMPTION.** Buyer's assumption of an existing note includes all obligations imposed by the deed of trust securing the note.

☒ (1) The unpaid principal balance of a first lien promissory note payable to Wells Fargo which unpaid balance at closing will be $ 125,000. The total current monthly payment including principal, interest and any reserve deposits is $ 925. Buyer's initial payment will be the first payment due after closing.

☐ (2) The unpaid principal balance of a second lien promissory note payable to _____ which unpaid balance at closing will be $ _____. The total current monthly payment including principal, interest and any reserve deposits is $ _____. Buyer's initial payment will be the first payment due after closing.

If the unpaid principal balance of any assumed loan as of the Closing Date varies from the loan balance stated above, the ☐ cash payable at closing ☒ Sales Price will be adjusted by the amount of any variance. If the total principal balance of all assumed loans varies in an amount greater than $500 at closing, either party may terminate this contract and the earnest money will be refunded to Buyer unless the other party elects to pay the excess of the variance.

**D. LOAN ASSUMPTION TERMS.** Buyer may terminate this contract and the earnest money will be refunded to Buyer if the noteholder requires:

(1) payment of an assumption fee in excess of $ 1,250 in C(1) or $ _____ in C(2) and Seller declines to pay such excess, or

(2) an increase in the interest rate to more than 5 % in C(1) or _____ % in C(2), or

(3) any other modification of the loan documents.

**Addendum for Release of Liability on Assumed Loan and/or Restoration of Seller's VA Entitlement**

☒ **A. RELEASE OF SELLER'S LIABILITY ON LOAN TO BE ASSUMED:**

Within 3 days after the effective date of this contract Seller and Buyer shall apply for release of Seller's liability from (a) any conventional lender, (b) VA and any lender whose loan has been guaranteed by VA, or (c) FHA and any lender whose loan has been insured by FHA. Seller and Buyer shall furnish all required information and documents. If any release of liability has not been approved by the Closing Date: (check one box only)

☒ (1) This contract will terminate and the earnest money will be refunded to Buyer.

☐ (2) Failure to obtain release approval will not delay closing.

☒ **B. RESTORATION OF SELLER'S ENTITLEMENT FOR VA LOAN:**

Within 3 days after the effective date of this contract Seller and Buyer shall apply for restoration of Seller's VA entitlement and shall furnish all information and documents required by VA. If restoration has not been approved by the Closing Date: (check one box only)

☐ (1) This contract will terminate and the earnest money will be refunded to Buyer.

☒ (2) Failure to obtain restoration approval will not delay closing.

## KEY POINT REVIEW

Paragraphs 1 through 3 of the TREC One to Four Family Residential Contract cover the details of the transaction for the parties, the property description, the sales price, and the financing.

Three types of financing are discussed in paragraph 3 (third party, assumption, and seller financing). Each type of financing requires a special addendum to verify the details.

# UNIT 3 QUIZ

1. When property owned by a married couple is being sold, what is the *BEST* way to identify the sellers?
   A. Mr. and Mrs. Thomas Bud Smith
   B. Thomas Bud Smith and spouse Mary Ann Smith
   C. Thomas Bud Smith and his wife
   D. Thomas Bud Smith et vir Mary Ann Smith

2. Property approval, according to paragraph 2B in the Third Party Financing Addendum, includes
   A. the appraisal.
   B. lender-required repairs.
   C. insurability.
   D. all of these.

3. If the buyer wants to be sure the fireplace screen stays with the property, the buyer's agent should
   A. write it in paragraph 11.
   B. add it the Non-Realty Items Addendum.
   C. add it at the end of paragraph 2.
   D. do nothing; it is already in the contract.

4. According to the Loan Assumption Addendum, if the buyer does not deliver the credit information within the required time, the seller has how many days to terminate after expiration for the time of delivery?
   A. 3
   B. 5
   C. 7
   D. 10

5. Under the TREC Third Party Financing Addendum, what happens if the buyer fails to give notice that the buyer cannot obtain approval within the number of days negotiated by the parties?
   A. There is no approval contingency in the contract.
   B. The buyer may give 7 days notice to extend the time period.
   C. The seller may terminate under the addendum.
   D. The buyer may terminate under the addendum.

6. If the seller is doing all of the financing and is furnishing the buyer with an owner's policy of title insurance, who will pay for a mortgagee policy of title insurance and who does it protect?
   A. The buyer will pay, and it protects the third-party lender.
   B. The seller will pay, and it protects the third-party lender.
   C. The buyer will pay, and it protects the seller.
   D. The seller will pay, and it protects the buyer.

7. In paragraph 3 of the One to Four Family Residential Contract, the sales price is the sum of the cash portion of the sales price
   A. plus all the closing costs.
   B. plus loan funding.
   C. and the sum of all financing.
   D. plus the mortgage insurance premium.

8. According to the Seller Financing Addendum, if the buyer delivers his credit information to the seller timely, and the seller determines it is unacceptable, how many days after the date for the expiration of the time for delivery does the seller have to terminate?
   A. 3
   B. 5
   C. 7
   D. 12

9. The date in the upper right corner of the promulgated contract form is the date
   A. the Broker-Lawyer Committee drafted the form.
   B. TREC approved and promulgated the form.
   C. license holders must begin using the form.
   D. the form will be reviewed in the future.

10. According to the Third Party Financing Addendum, which one of the following is NOT necessary for buyer approval?
    A. The terms of the loan described must be available.
    B. An appraisal for at least the sales amount must be received.
    C. The buyer's assets and income meet the lenders underwriting requirements.
    D. The buyer's credit history meets the lender's underwriting requirements.