Oklahoma Residential Sales Contract Information Pamphlet

Oklahoma Real Estate Commission
2401 N.W. 23rd Street, Suite 18
Oklahoma City, Oklahoma 73107

November 2010

FOREWORD

This pamphlet was developed by the Oklahoma Real Estate Contract Form Committee which was created by the legislature in 2001. The Committee was to create real estate purchase and/or lease contracts and related addenda for use by real estate licensees. The Committee consisted of a total of 11 members: three (3) from the Oklahoma Real Estate Commission; three (3) from the Oklahoma Bar Association; and five (5) members from the Oklahoma Association of REALTORS.

The information in this pamphlet is dedicated to the residential sales contract and related addenda; however, the information in the pamphlet would also be useful for portions of the New Home and Vacant Lot contracts and related addenda. This publication does not constitute legal advice. Legal advice should be sought from competent legal counsel.

First Printing, March 2006
Revised January 2008
Revised November 2009
Revised November 2010

Copies of this pamphlet and the contract form and related addenda are available at www.orec.ok.gov,
and then click on contract forms (right margin).

This publication, produced by the University of Oklahoma Printing Services, is issued by the Oklahoma Real Estate Commission as authorized by Anne M. Woody, Executive Director at no cost to the taxpayers of the State of Oklahoma. The entire cost of preparing this publication has been borne by the Real Estate Licensees through their Education and Recovery Fund fees. Copies have been deposited with the Publication Clearinghouse of the Oklahoma Department of Libraries.

Oklahoma Residential Sales Contract Information Pamphlet

Bolded italic words are defined at the end of this pamphlet.

The Offer. Negotiations to purchase a home begin when the Buyer makes a written ***Offer*** to purchase the Seller's home. The Seller may accept, reject or make a ***Counteroffer*** to the Buyer's offer. The offer may go back and forth until both parties have agreed to all terms in writing, and the document has been delivered to both Buyer and Seller (or their Broker as authorized.) At this point, the offer becomes a ***Contract*.**

During the Offer and Counteroffer process, the ***Listing Broker*** (if applicable) is required by law to continue presenting all offers to the Seller up until the time the Seller accepts an offer in writing. Further, during the offer/counteroffer process, the Seller may withdraw the Seller's counteroffer and accept another contract if the Seller's counteroffer has not been accepted and signed by the Buyer and delivered back to Seller, or if authorized, Listing Broker. Likewise, Buyer may withdraw Buyer's offer and purchase a different property if the Buyer's offer has not been accepted and signed by the Seller and delivered back to Buyer, or if authorized, ***Selling Broker***. All items of a Contract are negotiable between the Buyer and Seller.

Prior to the Buyer submitting an Offer, the Buyer should try to obtain a ***Conditional Loan Approval*** from a valid lending institution. This will assist the Buyer to determine the Buyer's housing price range. It is not a guarantee that a loan will be given; however, it does check the Buyer's credit worthiness and known history. A Buyer or Seller should not confuse this with a Final Loan Commitment that is not obtained until prior to closing to ensure all of the Buyer's financials are considered.

The Contract consists of the Contract form and any related addenda and/or attachments. Once signed by both Buyer and Seller, the contract is valid and binding upon each party — if the contract is not understood by either party, the party should seek advice from an attorney. Each party, both Buyer and Seller, should read the entire contract and related addenda and attachments. The Contract shall be executed by original signatures of the parties or by signatures as reflected on separate identical Contract ***counterparts*** (carbon, photo or fax copies).

Legal Description **[1]** area should contain the legal and physical property address. The contract, unless altered, shall include all fixtures and improvements, and all appurtenances and all underlying groundwater and rights to use groundwater, subject to existing zoning ordinances, plat or deed restrictions, utility easements serving the Property; less and except all the oil, gas and other

minerals associated with oil and gas extraction in and under and that may be produced from the Property.

Purchase Price, Earnest Money and Source of Funds. **[2]** This paragraph sets out the purchase price and the amount of earnest money. The earnest money will be deposited in the appropriate escrow account immediately following a fully executed and delivered contract. The contract is designed for a cash transaction unless a Financing Supplemental Agreement is attached.

Early on in the home search process it is advantageous to seek out a lender to get pre-qualified for a home loan. Although not required this process does allow you to understand the loan process and what price home you can qualify for. A home loan may be obtained from a mortgage company, credit union, or bank.

It is the responsibility of the lending institution to disclose State and Federal Regulations concerning the terms and conditions of the real estate loan for which the Buyer applies.

Should your contract be contingent on qualification of a FHA, VA or Conventional loan then a Financing Supplemental should be attached to your contract. Per the OREC Contract you will have 5 days from the Time Reference Date to make application for a home loan deemed acceptable to you.

The provisions of the Financing Supplemental Agreement require the following:

1) Review and approval of Buyer's credit worthiness, income and funds necessary to Close.
2) Confirmation that Buyer has paid initial processing fees.
3) Property appraisal has been ordered.
4) Loan approval is not subject to sale or closing of Buyer's current property unless stated elsewhere in this Contract.

The Buyer should be aware of "predatory lenders." These lenders charge excessive fees or charge higher interest than is required based on Buyer's credit history. To learn more about predatory lending, the Buyer can check the Department of Consumer Credit: website: www.okdocc.state.ok.us. The Buyer may also check with Consumer Credit (800) 448-4904 to determine if a mortgage broker is licensed. It is recommended that the Buyer investigate the reputation and stability of the lender. Also the Commission has a publication on its website at www.orec.ok.gov regarding predatory lending under Publications (left margin) entitled "Don't be a Victim of Loan Fraud."

Closing, Funding and Possession. **[3]** The Buyer will be required to pay the balance of the purchase price with cash, cashier's check, wire transfer, or other funds acceptable to the Seller. The Closing Company may not accept payment of the balance with the following: personal check, corporate check, employer's

check, investment account check or asset management check. Most closing companies will not accept cash because the companies have no way to secure the cash.

It is recommended that the Buyer contact the Closing Company prior to the Closing to determine the acceptable form of payment for the balance of the purchase price. The Buyer will need a photo identification (i.e. driver's license, etc.) at Closing.

Proceeds to the Seller from the Closing are generally paid by the Closing Company's check. A Closing Company's check may not be cashed by the bank as readily as a cashier's check. The bank may not release the funds to the Seller until the Closing Company's check clears. If Seller prefers a cashier's check, the Seller should contact the Closing Company at least 48 hours prior to the closing and request that Seller's proceeds be paid by cashier's check.

Accessories, Equipment and Systems **[4]** lists items that will remain with the Property. If there are additional item(s) the Buyer wants included, the item should be specifically listed under "Additional Inclusions." The Seller is bound only by what is stated in the Contract, and Buyer should not rely on anything other than what is written in the Contract. If the Seller is not including an item in the purchase price, the item(s) should be specifically listed under "Exclusions."

Time Periods as Specified in the Contract **[5]** shall commence on the ***Time Reference Date***. The day after the Time Reference Date shall be counted as day one (1) of the Contract regardless of date the Contract is signed by the Buyer and Seller.

Residential Property Condition Disclosure Act **[6]** requires the Seller, unless exempt, prior to the Seller accepting an offer to purchase, to complete and make available to the Buyer a ***Residential Property Condition Disclosure Statement Form*** or ***Disclaimer Form***. The *Disclosure Form* requires the Seller to disclose a vast amount of information regarding the Property.

The *Disclaimer Form* indicates that the Seller has no knowledge regarding the condition of the property; has no actual knowledge of any defects; and has never occupied the Property.

The Real Estate Licensee has the duty to obtain the Disclosure or Disclaimer form, and any amendments from the Seller and provide them to the Buyer prior to a Seller accepting an offer to purchase. The real estate licensee has the duty to disclose to the Buyer any defects in the Property actually known to the licensee which are not included in the disclosure statement or any amendment. The real estate licensee does not have a duty to conduct an independent inspection of the Property and has no duty to verify the accuracy or completeness

of the statements made by the Seller. Both parties should read the "Residential Property Condition Disclosure Act" for other information. The publication can be found at http://ok.gov/OREC/Publications/

Investigations, Inspections and Reviews. **[7]** The Buyer is encouraged to have a professional with appropriate qualifications conduct inspections of the entire property during the time period stated in the Contract. The Buyer should accompany the inspector during the inspection. The Buyer should not rely on a friend or themselves to make these inspections. The Contract language makes reference to a person the Buyer deems qualified—the Buyer should be aware that no one can receive compensation for performing an inspection unless they have obtained the appropriate license from the Construction Industries Board or other applicable State licensing board, commission or department. Accordingly, a person deemed qualified by the buyer to perform an inspection must perform the inspection without compensation unless they are appropriately licensed or regulated under Oklahoma law. The Oklahoma Home Inspection Licensing Act provides that a Home Inspection of an existing home can only be performed for compensation by a licensed home inspector or an architect as part of their practice. Certain other specialized inspections, which are not considered "Home Inspections" as defined in the Oklahoma Home Inspection Licensing Act, may be performed by individuals holding certain occupational licenses, licensed termite inspectors, individuals inspecting new homes, certain government employees, engineers, professional craftsmen performing limited inspections within the expertise of a specific area or persons qualified by education or training to conduct limited inspections. (For more information see Title 59, Oklahoma Statutes, Section 858-623.) To insure you are hiring a licensed home inspector, please contact the Construction Industries Board at 1-877-484-4424 or verify a home inspector's license yourself at www.ok.gov/cib/.

A real estate licensee may provide the Buyer with a list of professionals from which to choose; however, the Buyer is responsible for choosing a qualified professional that accommodates the Buyer's needs. Further, if a licensee refers a Buyer to a particular service for which the licensee will receive compensation due to such referral, the licensee is required to make written disclosure to the Seller and Buyer regarding such compensation.

In addition to the items listed, the Buyer can write in additional item(s) that are of concern to the buyer at the time of making the Offer and have these items investigated, inspected or reviewed. Further, if the Buyer plans to obtain a federally-insured loan (FHA), the Department of Housing and Urban Development requires the Buyer to be given a form that encourages obtaining a home inspection. The form can be obtained from the Commission's website under Contract forms.

If the Property is not connected to a public sewer system (property that is on a septic tank, aerobic or lagoon system), Buyer should have the system inspected

by a qualified expert. The Oklahoma Department of Environmental Quality performs inspections on existing septic systems for approximately [$200.00]. You can order this online at www.deq.state.ok.us, under environmental complaints & local service, online payments. If you need further information, please contact a local DEQ representative or call 1-800-869-1400.

Flood Notice. The City of Tulsa has an Ordinance that requires a Seller to notify a Buyer if the Seller's property is located in an area designated by the City as a flood hazard area. Other cities or communities may have similar ordinances. The seller needs to contact city officials or the designated floodplain administrator where the property is located to determine whether there is a similar flood notification ordinance.

It is Buyer's responsibility to investigate the property's flood zone, storm run off water, storm sewer backup or water history. To obtain a written Flood Hazard Evaluation based on the Federal Emergency Management Agency's Flood Insurance Rate Maps (FIRM's) contact the U.S. Army Corps of Engineers, Flood Plain Management Services (FPMS), 1645 South 101st East Avenue, Tulsa, Oklahoma 74128. The charge for this flood hazard evaluation is a minimum of $55.00. The Buyer can also call (918) 669-7197 and obtain an appointment with the Tulsa District, U.S. Army Corps of Engineers office and examine the maps and information. The FIRM's are also available on line at www.msc.fema.gov.

The U.S. Army Corps of Engineers handles all of the State of Oklahoma, and there are Floodplain Administrators in every community that participates in the National Flood Insurance Program to assist you also at no charge. The U.S. Army Corps of Engineers can supply the Buyer with the name and phone number of the floodplain administrator in the community where the property is located. The Oklahoma Water Resources Board also maintains a list of all floodplain administrators on their website at www.owrb.ok.gov/hazard.

For more information on the nature of the water condition as it relates to the Property being purchased, the Buyer may contact neighbors to determine if they have noticed any water problems or the tax assessor's office in their community.

Flood Insurance. If there is a flood risk, the Lender may require the Buyer to obtain federal flood insurance. Flood insurance may also be purchased on personal property (carpets, drapes, furniture, etc), and the Buyer should seek advice from an insurance agent.

The Oklahoma Insurance Department regulates all insurance agencies, appraisers and title companies for fair pricing, discrimination practices, business practices and public awareness. Their contact information is www.oid.ok.gov and 1-800-522-0071.

Treatments, Repairs, Replacements and Reviews. The **Treatments for Termites and/or other Wood Destroying Insects** paragraph [7C1] specifically addresses the treatment of ***Termites*** and/or other ***Wood Destroying Insects***. The Buyer, during the time period stated in the Contract, is advised to have the Property inspected for Termites and/or other wood destroying insects. Any repairs caused by termites or other wood destroying insects are addressed in the Treatments, Repairs, Replacements, and Reviews paragraph of the Contract.

The Treatments, Repairs, Replacements and Reviews paragraph [7C2] addresses what the Buyer should do if the Buyer [based on inspections] determines that items need to be treated, repaired and/or replaced due to their not being in normal working order. If costs [***Repair Cap***] to the Seller exceed those as agreed to in the Contract, and if a written agreement to pay any excess costs is not reached between the parties within the time as stated in the Contract, the Contract is null and void and the ***Earnest Deposit*** is to be returned to the Buyer.

Expiration of Buyer's Right to Cancel Contract [7D] paragraph contains several important notices to the Buyer:

- If the Buyer fails to perform Investigations, Inspections and Reviews, or fails to deliver a written list of items to be treated, repaired and replaced or cancel the Contract within the time period as specified in the Contract, the Buyer forfeits the right to cancel the Contract and accepts the Property in its condition regardless of its condition.

- Failure of the Buyer to obtain hazard insurance coverage on the Property within the time period as specified in the Contract shall not relieve the Buyer of the obligation to close the transaction. The Buyer is required to check into the availability and costs of coverage during the time period specified in the Contract (7A). In the event hazard insurance coverage is unavailable, or too costly to the Buyer, the Buyer may cancel the Contract under paragraph (7C2) within the appropriate time period.

- The Buyer cannot cancel the Contract after the time periods have expired as stated in the Contract if Buyer determines that the square footage calculation is different than previously stated. The Buyer is required to check into the square footage of the Property during the time period as specified in the Contract (7A). If the Buyer has issues with square footage, the Buyer may cancel the Contract under paragraph (7C2) within the appropriate time period.

Inspection of Treatments, Repairs and Replacements and Final Walk-Through [7E]. The Contract allows the Buyer to inspect the ***Treatments, Repairs, and Replacements*** made to the Property, and the Buyer may perform

a ***final walk-through*** regarding the overall condition of the Property prior to Closing. The Buyer shall pay for any cost incurred for any re-inspection, unless prohibited by the mortgage lender.

Risk of Loss **[8]** paragraph states that prior to transfer of Title or transfer of *Possession*, the risk of loss to the Property, shall be on the Seller; after transfer of Title or transfer of Possession, the risk of loss shall be on the Buyer.

Acceptance of Property **[9]** paragraph states, unless otherwise agreed to in writing, once the Buyer accepts title or takes possession of the Property, the Buyer shall have accepted the Property in its present condition.

No warranties, expressed or implied, by Sellers, Brokers and/or their associated licensees, with reference to the condition of the Property, shall be deemed to survive the Closing. An exception to this would be those warranties that may be available from a builder on new construction, manufacturer of a new product or a Residential Service Agreement **[12]** purchased by the Buyer or Seller for a limited time after the Closing.

Title Evidence **[10]** this paragraph outlines the Buyer's and the Seller's Expenses and time requirements for the parties. To accomplish this, the Seller must make the ***Abstract of Title*** available to the Title Closing Company so the abstract can be brought up to date. Buyer, at Buyer's expense, may obtain an ***Attorney's Title Opinion*** or a Commitment for issuance of a Title Insurance Policy.

There are two types of Title Insurance policies – a Lender's Policy and a Buyer's (Owner's) Policy. In most financed transactions, Title Insurance is required by the Lender (Lender's Policy) to cover the lender's loan. The Lender's Title Insurance does not protect the Buyer, even though the Buyer pays the title insurance premium. It is recommended that the Buyer, while purchasing the portion to protect the Lender also purchase the portion that protects the Buyer. The Owner's Title Policy for the Buyer costs very little more.

Land or Boundary (Pin Stake) Survey. Buyer can pay for a ***Pin Stake Survey*** instead of the Seller paying for and providing the Buyer with a Mortgage Inspection Certificate; however, the Buyer must initial the space provided in the Contract. A Pin Stake Survey is more expensive and seldom used in today's platted residential real estate transactions. Note: A Pin Stake Survey shows boundaries of the Property with physically located stakes.

Buyer to Examine Title Evidence. Buyer may have it examined by an attorney who will render an Attorney's Title Opinion, or Buyer may obtain a Title Insurance Policy, or both.

Seller to Correct Issues with Title, Possible Closing Delay. The Seller is to make reasonable efforts to cure title defects that have been identified. This may cause the Closing Date to be extended as referenced in the Contract. Items such as utility easements serving the property, building and use restrictions of record, set back and building lines (unless the structure extends beyond the lines), zoning regulations, and reserved and severed ***mineral rights***, are not considered objections to the Title.

Upon Closing, any existing Abstract(s) of Title, owned by Seller, shall become the property of Buyer.

Taxes, Assessments and Pro-rations. **[11]** The day of Closing shall be the responsibility of the Seller.

Residential Service Agreement. **[12]** The parties decide whether or not a ***Residential Service Agreement*** (a limited home warranty) will be included in the purchase of the Property. If included, the Seller and/or Buyer can pay an amount toward the purchase of such agreement; however, Buyer is responsible for all costs in excess of agreed amounts as outlined in the service agreement. The real estate licensee may receive a fee for services performed in connection with a Residential Service Agreement. The real estate licensee must disclose in writing, to all parties, any compensation received for compensable services (as defined by RESPA) as part of the Residential Service Agreement. The Buyer and Seller are not required to purchase a home warranty and they may purchase a home warranty from any vendor of their choice. The Buyer is advised that the limited home warranty does not replace or substitute the property inspection rights the Buyer has and the Buyer is encouraged to perform all inspections.

Additional Provisions. **[13]** Allows the Buyer to address items of particular interest that are not already addressed in the Contract.

Mediation. **[14]** If a Dispute arises regarding the Contract the Dispute shall be submitted to an ***Alternative Dispute Resolution System*** available in the county wherein the Property is located. Any Settlement Agreement shall be binding. In the event an agreement is not reached between the parties, the parties may pursue legal remedies as provided by the Contract. If the parties are unable to locate a system in the area, the parties can call the Early Settlement Program under the jurisdiction of the Oklahoma Supreme Court at 1-877-521-6677 or www.oscn.net and click on Alternative Dispute Resolution in the left margin.

Breach and Failure to Close. **[15]** If a Breach of Contract occurs by either party, the prevailing party shall have remedies as stated in the Contract.

Incurred Expenses and Release of Earnest Money. **[16]** This paragraph states that the Seller and Buyer, respectively, are responsible for any expens-

es incurred on their behalf and such shall be paid by the party incurring the expense and shall not be paid from the Earnest Money Deposit. The Earnest Money shall be disbursed in accordance with the Contract.

Delivery of Acceptance of Offer or Counteroffer. **[17]** The parties authorize their respective Brokers to accept delivery of acceptance of the offer or counteroffer.

Non-Foreign Seller. **[18] FIRPTA Explained**. FIRPTA is the Foreign Investment in Real Property Tax Act of 1980 (26 USC § 1445 et. Sec.) ("FIRPTA"). Under FIRPTA, nonresident Sellers are taxed similarly to U.S. real estate owners when selling their properties by placing the tax-remittance onus on the resident Buyer.

Buyer's Obligations Under FIRPTA. In transactions with foreign persons, the Buyer MUST submit ten percent (10%) of the amount realized from the sale of the property to the Internal Revenue Service ("IRS") within 20 days of closing. Generally speaking, the "amount realized" is the sales/purchase price of the Real Estate. The Buyer must determine the Seller's status as a foreign or non-foreign person. If the Seller is foreign, but an exemption applies, then the Buyer must obtain proof of qualification to avoid IRS sanctions. If a Seller asserts that he/she is a non-foreign person, the Buyer should obtain an Affidavit of Non-Foreign Seller or a Qualified Substitute Statement.

A "Foreign Person" Under FIRPTA. A foreign person includes: a nonresident alien individual; a foreign corporation, partnership, trust, or estate; and any other person that is not a U.S. person. A nonresident alien is defined as an individual who is neither a U.S. citizen nor a resident of the U.S. within the meaning of section 770 1 (b) of the Internal Revenue Code. Two tests apply. Under the "green-card" test, an alien individual is a resident of the U.S. if he/she has been admitted for U.S. permanent residence (i.e., has a green card) at any time during the calendar year. Under the substantial-presence test, an alien individual is a resident for U.S. federal tax purposes if the alien is physically present in the U.S. for 183 days or more during the current calendar year. Alternatively, if the alien is physically present for at least 31 days during the current year, the alien may be treated as a U.S. tax resident in the current year under a three-year look-back test which requires an analysis of the alien's presence over the preceding three years. If the alien is from a country that has an income tax treaty with the United States, the treaty may act to change these results.

Exceptions To Withholding Under FIRPTA. The following are the most common:

1) the property is purchased for less than $300,000 AND the Buyer is using the property as a primary residence;
2) the Seller has an IRS statement that specifies the Seller is exempt from withholding, is entitled to a reduced withholding amount, has provided adequate security for payment or has made arrangements with the IRS for payment;

3) **the Seller provides the Buyer with a Non-Foreign Seller Affidavit;**
4) **a Qualified Substitute provides the Buyer with a Qualified Substitute Statement; or**
5) the Seller is participating in a SIMULTANEOUS Section 1031 Exchange. In order for the home to be considered the Buyer's "primary residence" for purposes of the exception, the Buyer or a member of the Buyer's family must have definite plans to reside at the property for at least 50% of the number of days the property is used by any person during each of the first two 12-month periods following the date of transfer. When counting the number of days the property is used, do not count the days the property will be vacant.

Affidavit of Non-Foreign Seller (Form 2303) and Qualified Substitute Statement. The Affidavit of Non-Foreign Seller (Seller's Affidavit) is a sworn statement completed and signed by the Seller which includes the Seller's tax identification number (most often a Social Security number) and in which the Seller states under Penalty of Perjury that the Seller is not a foreign person as defined under FIRPTA, and thus, is not subject to tax withholding under FIRPTA. The Seller can provide a completed and signed Seller's Affidavit directly to the Buyer or to a Qualified Substitute. A Qualified Substitute is a person or entity as defined under FIRPTA that accepts a Seller's completed and signed Seller's Affidavit in the Buyer's stead. The Qualified Substitute retains the Seller's Affidavit and must provide the Buyer with a Qualified Substitute Statement. The Qualified Substitute Statement is a sworn statement made under Penalty of Perjury in which the Qualified Substitute states that the Qualified Substitute has a completed and signed Seller's Affidavit from the Seller. The Buyer must retain the Qualified Substitute Statement in his/her records. If the Buyer receives a Qualified Substitute Statement, the Buyer never receives the Seller's Affidavit, nor the Seller's tax identification number.

Execution By Parties. **[19]** The date when parties sign the Contract.

Termination of Offer. States the date and time when the Buyer's Offer will terminate.

Earnest Money Receipt and Broker Acceptance. This section contains the amount of money the Buyer pays as an Earnest Money Deposit when making an Offer. The deposit will be held by the Listing Broker unless otherwise stated in the Contract [under Paragraph 2].

Additional Information Pertaining to the Contract

Broker Relationship Disclosure:

Written Disclosure Required that Describes Transaction Broker's Role to the Party. Prior to the signing by a party of a contract to purchase, lease, option or exchange real estate, a broker who is performing services as a transaction broker without a written brokerage agreement shall describe and disclose, in writing, the broker's role to the party. **Note**: Transaction brokerage relationship with a party does not have to be in writing; however, the transaction broker must provide the party a written disclosure describing and disclosing the broker's role to the party.

Written Brokerage Agreement Shall Disclose Relationship to Party. Prior to entering into a written brokerage agreement as either a transaction broker or single-party broker, the broker shall describe and disclose in writing the broker's relationship to the party.

Vicarious Liability. A broker assisting a party as a transaction broker shall disclose to the party that the party is not vicariously liable for the acts of the transaction broker. However, a broker assisting a party as a single-party broker shall disclose to the party that the party may be vicariously liable for the acts of the single-party broker.

Transaction Broker and/or Single-Party Broker. A broker can assist a party in a transaction as a transaction broker or a single-party broker. A broker cannot assist both parties in a transaction as a single-party broker. If a broker assists both parties in a transaction, the broker must provide services to at least one party or both parties as a transaction broker.

In-House Transactions. If a broker provided services to a party [Seller] in a real estate transaction as a single-party broker; and thereafter, another associate in the firm provided services to a party [prospective Buyer] as a single-party broker, then the broker shall obtain the consent of both parties to change the relationship [from single-party broker relationship] to assist at least one or both parties under a transaction broker relationship. Title 59, Oklahoma Statutes, Section 858-355 addresses this situation and requires specific written disclosures to be given to both parties before the broker begins to perform services as a transaction broker to either one or both of the parties and the Single-Party Broker Disclosure Form includes this disclosure. However, in the event a broker assists one party as a single-party broker and the other party as a transaction broker, an additional form is required to be completed and is titled "Written Disclosure that Broker is a Transaction Broker for One Party and a Single-Party Broker for the Other Party."

Confidential Information. Certain information as stated in Title 59, Oklahoma Statutes, Section 858-357 shall be considered confidential and shall not be dis-

closed by a broker: 1) without the consent of the party disclosing the information unless consent to disclosure is granted by the party disclosing the information; 2) the disclosure is required by law; or 3) the information is made public or becomes public from a source other than the broker.

Broker's Compensation. The broker's compensation is a matter of negotiation between the Broker and Buyer or Seller, and is not fixed, controlled, recommended or maintained by the Oklahoma Real Estate Commission.

Environmental Risks. It is the Buyer's responsibility to determine whether there are environmental hazards such as hydrocarbon, chemical, carbon, asbestos, mold, methamphetamine, radon gas, lead-based paint, or any other toxic materials that are of concern. A good resource for this information is the Department of Environmental Quality (DEQ) whose web site is www.deq.state.ok.us.

The Buyer may want to check with local authorities, police departments, etc. as these authorities have the location of properties where they have found a methamphetamine (Meth) lab on the premises. An information pamphlet on Methamphetamines is also available on the Oklahoma Real Estate Commission's Web site: www.orec.ok.gov

Lead-Based Paint Disclosure. With regard to properties built BEFORE 1978, HUD/regulations require that the Buyer receive the Seller's "Disclosure of Information on Lead-Based Paint and Lead-Based Hazards," the EPA booklet entitled "Protect Your Family From Lead in Your Home," and the following written warning:

> "Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women."

The Seller is required to provide the Buyer with any information on lead-based paint hazards from risk assessments or inspections in the Seller's possession and notify the Buyer of any known lead-based paint hazards.

If the Buyer elects to have a risk assessment for the presence of lead-based paint and/or lead-based paint hazards, the assessment is to be completed within the 10-day period for investigations, inspections, or review as stated in Paragraph 7 of the Contract. Any repairs to the property following the assessment are covered under Paragraph 7C2b of the Contract.

EPA Rules on Pre-1978 Homes that are Renovated, Repaired and Painted

Beginning April 2010, contractors who perform renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities, and schools built before 1978 must be certified and must follow specific work practices to prevent lead contamination.

If a homeowner performs renovation, repair, or painting work on their own residence, EPA's RRP rule does not apply to them; however, the rule would apply if the home they are repairing will be rented out to a tenant.

The rule was promulgated by the EPA because common renovation activities like sanding, cutting, and demolition can create hazardous lead dust and chips by disturbing lead-based paint, which can be harmful to adults and children.

Megan's Law. Oklahoma has enacted a law that requires sex offenders convicted of certain sex crimes to register with law enforcement. Record keeping and notification cover only those crimes committed since 1989. Potential homebuyers can check with law enforcement to obtain a list of those registered and living in a particular area by contacting their respective local police department or the Oklahoma Department of Corrections' website at www.doc.state.ok.us. (Click on Offenders, then on Sex Offender Lookup.)

Psychologically Impacted Property. Psychologically-impacted property is any property where certain circumstances, suspicions or facts may create emotional or psychological disturbances or concerns to a Buyer as outlined in Title 59, O.S., Section 858-513. If the items as listed in Section 858-513 are of concern to the Buyer, the law requires that the real estate Licensee adhere to the following procedure:

1. The Buyer must be in the process of making a bona fide (written) offer.
2. The real estate Licensee must receive a request in writing from the Buyer.
3. The Buyer's written request must state that such factor is important to the decision of the Buyer.
4. The real estate Licensee shall make inquiry of the owner by submitting the written request to the owner.
5. With the consent of the Seller, the real estate Licensee will furnish the Seller's response to the Buyer or Buyer's Broker.
6. If the Seller refuses to furnish the information requested, Seller's Broker shall so advise the Buyer or Buyer's Broker.
7. If the Buyer is requesting information concerning Acquired Immune Deficiency Syndrome (AIDS) disease which falls under the privacy laws, the information can only be obtained in accordance with the Public Health and Safety Statute, Title 63, Oklahoma Statutes, 1992, Section I-502.2A.

Real Estate Settlement Procedures Act (RESPA) is a consumer protection statute, first passed in 1974. The purposes of RESPA are to help: 1) consumers become better shoppers for settlement services; and 2) to eliminate kickbacks and referral fees that unnecessarily increase the costs of certain settlement services.

Details about RESPA - Corresponding with the above purposes:

1. RESPA requires that borrowers receive disclosures at various times. Some disclosures spell out the costs associated with the settlement, outline lender servicing and escrow account practices and describe business relationships between settlement service providers.

2. RESPA also prohibits certain practices that increase the cost of settlement services. Section 8 of RESPA prohibits a person from giving or accepting any thing of value for referrals of settlement service business related to a federally related mortgage loan. It also prohibits a person from giving or accepting any part of a charge for services that are not performed. Section 9 of RESPA prohibits home Sellers from requiring home Buyers to purchase title insurance from a particular company.

RESPA in General - RESPA covers loans secured with a mortgage placed on a one-to-four family residential property. These include most purchase loans, assumptions, refinances, property improvement loans, and equity lines of credit. HUD's Office of RESPA and Interstate Land Sales is responsible for enforcing RESPA.

RESPA required disclosures — At the time of loan application - When borrowers apply for a mortgage loan, mortgage brokers and/or lenders must give the borrowers:

- a Special Information Booklet, which contains consumer information regarding various real estate settlement services. (Required for purchase transactions only) and

- a Good Faith Estimate (GFE) of settlement costs, which lists the charges the Buyer is likely to pay at settlement. This is only an estimate and the actual charges may differ. If a lender requires the borrower to use a particular settlement provider, then the lender must disclose this requirement on the GFE.

- a Mortgage Servicing Disclosure Statement, which discloses to the borrower whether the lender intends to service the loan or transfer it to another lender. It also provides information about complaint resolution.

For more information regarding RESPA requirements, please go to www.hud.gov.

Termites and other Wood Destroying Insects. Oklahoma is an area where damage from termites and other wood destroying insects can be a major concern for homeowners. It is strongly recommended that the Buyer have the property inspected by a licensed termite company. FHA/VA Financing requires a termite inspection report on all existing construction. If there is evidence of active infestation or evidence of prior termite damage, the property must be treated and/or the damage repaired prior to loan closing. If the termite report indicates possible structural damage or if appraiser makes a requirement, a structural inspection should be required.

Termite inspection companies are licensed by the Oklahoma Department of Agriculture; their Consumer Service Division can be contacted at 405-522-5981. Some termite companies do offer a warranty for their reports but there is no requirement for them to do so.

GLOSSARY OF TERMS

Abstract of Title—A recorded history of a piece of land (accumulation of recorded documents) usually prepared for a mortgagee or purchaser of real property, summarizing the history of a piece of land, including all recorded conveyances, interests, liens, and encumbrances that affect title to the property.

Ad Valorem Taxes—Property taxes are ad valorem taxes; taxes that are levied annually according to the value of property.

Alternative Dispute Resolution System—The Alternative Dispute Resolution System in Oklahoma is currently made up of twelve community-based mediation centers and eleven programs developed by state agencies. This system, which was authorized (1983) and funded (1985) by the state legislature through the Oklahoma Dispute Resolution Act, Title 12, Oklahoma Statutes, Supp. 1997, Section 1801 et seq., is administered and supervised by the Administrative Director of the Courts (ADC). The purpose of the system, as stated in the Act is "to provide to all citizens of this state convenient access to dispute resolution proceedings which are fair, effective, inexpensive, and expeditious." The Act also anticipates that "such proceedings can also help alleviate the backlog of cases which burden the judicial system in this state." To locate a system in your area go to www.oscn.net .

Appurtenances—A right, privilege, or improvement belonging to and passing with a principal property, i.e., easement, a right-of-way, etc.

Assessments and Dues—Money assessed to property owners within a homeowner's association to improve and maintain common areas. An assessment can be different than a Special Assessment as defined herein.

Attorney Title Opinion—A legal opinion on the state of title for a given piece of real property, usually describing whether the title is clear and marketable or whether it is encumbered.

Breach of Contract—Violation of a contractual obligation, either by failing to perform one's own promise or by interfering with another party's performance.

Broker Relationship Act—Became effective November 1, 2000 and describes the relationships a broker can enter into with the client or customer. You can locate the Act at www.orec.ok.gov, and click on Publications.

Built in Appliances—Are appliances wherein normally a structure surrounds multiple sides of such and includes slide-in ranges**.**

Certified—Authenticated or verified in writing; attested as being true or as meeting certain criteria.

Closing—In real estate, the final transaction between the Buyer and Seller, whereby the conveying documents are concluded and the money and property are transferred, unless otherwise agreed to by the parties.

Closing Date—A date agreed upon by the parties to the Contract to close the transaction.

Comparable Market Analysis (CMA)—Prior to selling or purchasing real estate the Seller or Buyer may engage the services of a real estate licensee who will render a CMA giving the Seller or Buyer an idea of the value of the property they desire to sell or purchase. The CMA is based on sales that have occurred

recently in proximity to the subject property. The CMA should not be confused with a real estate Appraisal that must only be prepared by a person licensed with the Oklahoma Insurance Department.

Conditional Loan Approval—A letter whereby a financial institution advises that the applicant has made application for pre-approval of a loan amount and based on information, i.e., pay stubs, bank statements, credit report, etc., the institution indicates that the applicant is pre-approved for a particular loan amount.

Contract—An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law.

Counteroffer—A party's new offer that varies in terms from the original offer and therefore modifies the original offer.

Counterparts—One of two or more copies or duplicates of a legal instrument that may be executed by a party, each of which may be considered an original.

Deed—A written instrument by which title to land is conveyed. At common law, any written instrument that is signed, sealed, and delivered and that conveys some interest in real property. There are various types of Deeds, i.e., General Warranty Deed, Special Warranty Deed, Quitclaim Deed and others. Each is unique and has different provisions.

Delivery of Deed—Delivery and acceptance is required; a Deed should be recorded at the county clerk's office.

Earnest Money—A deposit paid (usually in escrow) by a prospective Buyer (especially of real estate) to show a good-faith intention to complete the transaction, and ordinarily forfeited if the Buyer defaults. Although earnest money has traditionally been a nominal sum (such as a nickel or a dollar) used in the sale of goods, it is not a mere token in the real estate context; it may amount to many thousands of dollars. As used in this Contract, Earnest Money shall also mean an item of value.

Escrow Holder—The holder of such a document, property, or deposit; a third party depositary of an escrow.

Estimated Expenses of Transaction (Net to Seller/Cost to Buyer)—Oklahoma Real Estate Commission Rule requires that a real estate licensee inform the Buyer and/or Seller, at the time an offer is presented, that the Buyer and/or Seller will be expected to pay certain closing costs, brokerage service costs, and approximate amount of said costs.

Executed—A document that has been signed.

Expiration of Offer—The date on which an offer or the like ceases to exist.

Fences—Include chain link, stockade, metal, electrical, includes sub-surface electric and components, etc.

Final Walk Through—The right given to a Buyer to re-inspect the property just prior to Closing.

Fixtures—Personal property that is attached to land or a building and that is regarded as an immoveable part of the real property, such as a fireplace built into a home.

Foundation—A fund established for charitable, educational, religious, research, or other benevolent purposes; an endowment.

Good Faith Estimate—The GFE is a three page form designed to encourage you to shop for a mortgage loan and settlement services so you can determine which mortgage is best for you. It shows the loan terms and the settlement charges you will pay if you decide to go forward with the loan process and are approved for the loan. It explains which charges can change before your settlement and which charges must remain the same. It contains a shopping chart allowing you to easily compare multiple mortgage loans and settlement costs, making it easier for you to shop for the best loan. The GFE may be provided by a mortgage broker or the lender. Until you let a loan originator know that you wish to proceed with a loan, the loan originator may only charge you for the cost of a credit report.

Homeowner's Association—An Association of people who own homes in a given area and have united to improve or maintain the area's quality due to such area not being maintained by a local city or county office. The Association normally has restrictions and covenants that all property owners abide with and which should be recorded in the County where the property resides. Further, each property owner is assessed an amount of money determined by the Association in its bylaws.

HUD-1 Settlement Statement—The **HUD-1 Settlement Statement** is a standard form that clearly shows all charges imposed on borrowers and Sellers in connection with the settlement. RESPA allows the borrower to request to see the HUD-1 Settlement Statement one day before the actual settlement. The settlement agent [of the Closing Company] must then provide the borrowers with a completed HUD-1 Settlement Statement based on information known to the agent at that time.

Improvements—An addition to real property that increases its value or utility or that enhances its appearance.

Lease—A contract by which a rightful possessor of real property conveys the right to use and occupy that property in exchange for consideration, usually rent.

Legal Description—A formal description of real property, including a description of any part subject to an easement or reservation, complete enough that a particular piece of land can be located and identified. The description can be made by reference to a government survey, metes and bounds, or lot number of a recorded plat.

Lender Required Documents—Documents the lender may require prior to processing the loan.

Liquidated Damages—This law can be found in Title 15, Oklahoma Statutes, Section 215. State law indicates that a provision in a real estate sales contract, providing for the payment for damages in the event damages are sustained by a breach of the contract, shall be limited to five percent (5%) of the purchase price.

Listing Broker—A broker licensed by the Oklahoma Real Estate Commission and who has entered into a brokerage agreement with the Seller to list their property for sale.

Mechanic Liens—A statutory lien that secures payment for labor or materials supplied for improvements to real property such as a building. It is also termed as laborer's lien (for labor) and materialman's lien (for materials.)

Mediation—The act or process of bringing about a resolution; wherein an unbiased third-party assists the parties [which are in conflict] and promotes or encourages a solution to the conflict that both parties can agree to. For more information see "Alternative Dispute Resolution System" defined herein.

Mineral Rights—Is a term encompassing all the ways a person can have a possessory interest in minerals in the ground. It includes the right to enter the land and occupy it in order to remove the minerals. Mineral rights can be retained when land is sold or conveyed, thus making it possible for someone to own the right to mine the minerals without owning the land. A right of entry onto the land can be held by the grantor who retains the mineral rights, or other arrangements can be made to gain access to the minerals. Mineral rights can be leased or sold. A landowner who leases mineral rights often receives a royalty, or a percentage of the value of the minerals which are mined by the leaseholder. "Mineral Rights" is a much broader term and is more inclusive than the term "oil and gas."

Mortgagee—A person to whom property is mortgaged.

Mortgage Inspection Certificate—Means a representation of the boundaries of a parcel of real property and the improvements thereon and shall not be designated as or construed as being a land or boundary survey.

Mortgagee's (Lender) Title Policy—A title policy designed to protect the interest of the lender against unknown defects.

Mortgagor—A person who mortgages property**.**

Normal Working Order—Normal working order is defined as a system or component function, without defect, for the primary purpose and manner for which it was installed. (Defect means a condition, malfunction or problem, which is not decorative, that would have a materially adverse effect on the value of a system or component, or would impair the health or safety or the occupants or Buyer.)

Offer—Expressed written intent of Buyer, to enter into a contract on specified terms, made in a way that would lead a reasonable person, the Seller, to understand that acceptance of such offer will result in a binding contract.

Offeree—One who recieves an offer.

Offeror—One that makes an offer.

Oklahoma Housing Foundation—In general, it is a non-profit Foundation that donates funds to charities for education, research and housing assistance for the homeless. The Foundation receives the interest accrued from broker's funds that are placed in an interest bearing account.

Owner's Title Policy (Title Insurance)—A policy protecting the equity of the Buyer against monetary loss resulting from unknown defects.

Party—The Buyer(s) or Seller(s).

Pin Stake Survey—There are different types of surveys and the Buyer's cost will depend on the type of survey selected by the Buyer. For example: A boundary (staked survey) is the physical location of boundary corners, and some de-

tails such as fence lines, platted easements and other easements given to the surveyor.

Possession—The right under which one may exercise control over something to the exclusion of all others on the date as stated in the Contract.

RESPA—The Real Estate Settlement Procedures Act (RESPA) is a consumer protection statute, first passed in 1974. The purposes of RESPA are:

1. to help consumers become better shoppers for settlement services in connection with their real estate loan, and
2. to eliminate kickbacks and referral fees that unnecessarily increase the costs of certain settlement services.

Repair Cap—The amount a Seller agrees to pay towards treatments, repairs and/or replacements in connection with the sales contract.

Residential Property Condition Disclaimer Statement Form—Seller's statement that: 1) they are unaware of any defect on the property; 2) they have no knowledge about the condition of the property; and 3) they have never lived in the property.

Residential Property Condition Disclosure Statement Form—Seller is required to disclose knowledge and information regarding the condition of the property. This form is to be given to the Buyer prior to the Seller accepting the Buyer's offer to purchase.

Residential Service Agreement—A service agreement that covers a home for a period of time against items listed in the policy.

Selling Broker—A broker who is licensed by the Oklahoma Real Estate Commission and has entered into a broker relationship with the Buyer.

Security Deposits—Funds paid in advance by a person who is leasing real property to guarantee the performance of an obligation.

Special Assessment—A tax levied for a unique special purpose.

Specific Performance—A court-ordered remedy that require precise fulfillment of a legal or contractual obligation when monetary damages are inappropriate or inadequate, as when the sale of real estate or a rare article is involved. Specific performance is an equitable remedy that lies within the court's discretion to award whenever the common-law remedy is insufficient, either because damages would be inadequate or because the damages could not possibly be established.

Square Footage—Square footage measurements of a dwelling can vary from a few feet to several hundred feet regardless of source (County Assessor's records, appraisal or appraisal measurement report, etc.). Buyer shall satisfy that the size and/or square footage of the dwelling is acceptable to the Buyer.

Termites—Any of numerous pale-colored soft-bodied insects that live in colonies consisting of winged or wingless forms that feed on wood, and are very destructive to wooden structures and trees.

Time Reference Date—The date on which a contract or other instrument becomes enforceable or otherwise takes effect, which sometimes differs from the date on which it was signed.

Title Examination Standards of the Oklahoma Bar Association—Criteria by which a real estate title can be evaluated to determine whether it is defective

or marketable. Many states, through associations or conveyancers and real estate attorneys, have adopted title standards.

Title Insurance Commitment and Policy—A comprehensive indemnity contract under which a title insurance company warrants to make good a loss arising through defects in title to real estate or any liens or encumbrances thereon.

Trust Account—An account held by a real estate broker to deposit items (monies or other valuables of others) held in regard to the real estate transaction.

Utility Districts—Private utility companies that provide service to local residents wherein no public service is available.

Warranty Deed—A deed containing one or more covenants of title; especially, a deed that expressly guarantees the grantor's good, clear title and that contains covenants concerning the quality of title, including warranties of seisin, quiet enjoyment, right to convey, freedom from encumbrances, and defense of title against all claims.

Wood Destroying Insects—Insects, other than termites, which damage or destroy wood or other cellulose materials, including but not limited to carpenter ants, carpenter bees, powder post beetles. This term shall not include other fungi which inhabit but do not damage or destroy wood or other cellulose materials, health hazard molds, or stain fungi.

Wood Infestation Report—A document issued which contains statements or certifications as to the presence or absence of termites and other wood destroying insects, and the presence or absence of damage. The Wood Infestation Report does not include a bid or proposal for treatment.

A person completing a Wood Infestation Report must be certified or licensed and is under the jurisdiction of the Oklahoma Agricultural Department (www.oda.state.ok.us). Each report prepared must be in compliance with the standards set by the Department. A person performing an inspection must be a certified applicator or a certified service technician; any person issuing such report must be certified in structural pest control. The business responsible for the Wood Inspection Report must have a current license in structural pest control.