

**OREGON PROPERTY BUYER/SELLER ADVISORY
A CONSUMER INFORMATION PUBLICATION
OF THE OREGON REAL ESTATE AGENCY**

A real estate licensee is vital to the home buying process and can provide a variety of services in locating property, negotiating the sale and advising the buyer. A real estate agent is generally not qualified to discover defects or evaluate the physical condition of property; however, a real estate agent can assist a buyer in finding qualified inspectors and provide the buyer with documents and other resources containing vital information about a prospective new home.

This Advisory is designed to assist home buyers in meeting their obligation to satisfy themselves as to the condition and desirability of property they are interested in purchasing. Common issues in real property transactions that home buyers often decide to investigate or verify are summarized in this Advisory. In addition to investigating or verifying these common issues, the buyer should tell the licensee with whom they are working about any special concerns or issues the buyer may have regarding the condition of the property or surrounding area. Such special concerns are not addressed in this Advisory.

PROPERTY CONDITION INSPECTION AND INVESTIGATION

Professional Home Inspections

OBTAINING A PROFESSIONAL HOME INSPECTION IS THE SINGLE MOST IMPORTANT THING A BUYER CAN DO FOR THEIR PROTECTION. A professional home inspection report will provide the buyer with detailed information about the home's physical condition, its systems and fixtures and usually note any potential future problems. The buyer should carefully review an inspector's proposal to determine the scope of the inspection. Some home inspectors may not inspect heating and cooling systems, the roof or other systems or components. A home inspection should be done by a home inspector or contractor licensed by the Oregon Construction Contractors Board (CCB). To inspect two or more components (i.e., roof, siding, structural), the home inspector must be certified and either be a licensed construction contractor or work for a licensed construction company. Also, a home inspector is not allowed to perform the repairs within a twelve-month period following the inspection. Buyers can review state home inspector requirements and standards of practice for inspectors on-line at: <http://ccbed.ccb.state.or.us/WebPDF/CCB/Publications/hi-s-sop.pdf>. Inspection of property is beyond the scope of expertise of a real estate licensee, but real estate licensees can provide buyers with a list of local inspectors. Licensees ordinarily will not recommend a specific inspector. Before hiring an inspector, the buyer should check with the CCB to determine the inspector's current license status and whether there are any past or pending claims against the inspector. This can be done by visiting: http://www.ccb.state.or.us/New_Web/new_search_bak.htm

Buyers should not rely upon reports done for others (previous buyers and/or sellers), because the report may not be accurate and buyers may have no recourse against an inspector they have not retained. Most residential sale contracts contain a clause that allows the buyer to withdraw from the agreement if a professional inspection they have done shows defects in the property. You will want to take advantage of this important right by obtaining your own professional home inspection report from a licensed professional inspector within the time frame specified in the sale contract.

Pest and Dry Rot Inspection

Pest and dry rot inspections are done in many residential real estate transactions and may be required by the lender. A pest and dry rot inspection may or may not be included in a whole home inspection. If a pest and dry rot inspection is desired or required and the buyer is obtaining a whole home inspection, the buyer should verify that the inspection obtained covers pest and dry rot and the inspector is properly licensed. The license status of home inspectors can be checked at: http://www.ccb.state.or.us/New_Web/new_search_bak.htm. Pest control operators who do inspections and treatment are licensed by the Oregon Department of Agriculture. Buyers can check on licensing of pest control operators and applicators by calling the Oregon Department of Agriculture at (503) 986-4635 or online at: <http://pesticide.oda.state.or.us> Real estate licensees do not have the training or expertise to inspect property for pests or dry rot. **Like any property condition report, buyers should not rely on the report of an inspector they did not hire.** A pest and dry rot inspection is a limited inspection and is no substitute for a complete whole home inspection by a licensed home inspector.

Defective Products and Materials

Some materials used in home construction are, or have been, subject to a recall, class action suit, settlement or litigation. These materials are typically, but not limited to, modern engineered construction materials used for siding, roofing, insulation or other building purposes. It is critical that a buyer carefully review any disclosures or representations of the seller regarding such materials. A real estate licensee may assist the buyer in that review, but inspection of property for defective products, systems,

fixtures or materials is beyond the scope of expertise of a real estate licensee. The buyer, therefore, should make certain inspection for such materials is within the scope of any home inspection ordered by the buyer. **Like any property condition report, buyers should not rely on the report of an inspector they did not hire.**

Similarly, homes may contain products in their systems or fixtures that are, or have been, subject to a recall, class action suit, settlement or litigation. Plumbing, heating and electrical systems, among others, may contain such products. It is critical that a buyer carefully review any disclosures or representations of the seller regarding such products. The buyer should, therefore, make certain inspection for such products is within the scope of any home inspection ordered by the buyer. A real estate licensee can help the buyer find a suitable inspector.

Repairs and Remodels

Buyers should look for signs of repairs or remodeling when viewing property. If repairs or remodeling have been done, the buyer will want to make certain the work was properly done. Buyers can ask the seller for any invoices or other documentation for the work but, as with other questions of property condition, there is no substitute for professional inspection. A real estate licensee can help the buyer assess the need for a building code compliance inspection but do not themselves have the training or expertise to evaluate building code compliance. If building permits were required for work done on the property (such permits are typically required for structural changes, new additions, and new plumbing and electrical work), the buyer should check with the city or county building department to make sure the permits are in order. If permits were not properly obtained, the new property owner could be held responsible. Ask your agent for assistance or you can find the website for the county in which the property is located by visiting: <http://www.aocweb.org/Cnty-links-frn.htm>. Websites for cities can be found at: <http://www.orcities.org/cityinfo/cityWebSites.cfm>. If repairs or remodels have been completed very recently, the buyer should take steps to determine if there is any possibility of construction liens being filed against the property after the sale has closed. This can be done by the buyer raising the issue with their title insurance provider.

If any repairs are being required during the transaction, the buyer should insure a licensed construction contractor is doing the repairs. After the repairs have been done, the buyer should consider having a re-inspection done to assure the repairs were done properly.

Sewer and Septic Systems

Whether the property is connected to a city sewer, septic system or other on-site wastewater treatment system is important information. Even if the MLS data sheet or Seller's Property Disclosure Statement indicate that the home is connected to the city sewer, the buyer should have their home inspector, or a licensed plumber, verify the connection and its condition. Real estate licensees are not licensed to do plumbing or septic inspections. **If the property has a septic system or other on-site wastewater treatment system, the system should be inspected by a licensed septic system installer or other on-site wastewater treatment system professional hired by the buyer.** Information about on-site wastewater treatment systems, and licensed installers and pumpers, can be found on the website for the Oregon Department of Environmental Quality (DEQ) at: <http://www.deq.state.or.us/wq/onsite/onsite.htm>. Buyers should check with the appropriate county department for specific information on a particular property.

Wells

If domestic water for the property is supplied by a private well, the seller is required by state law to test the well for total coliform bacteria and nitrates. Buyers may also want to have the well tested for contaminants other than bacteria and nitrates. Buyers should verify that the seller uses proper procedures when having the well tested. More information on this state law requirement can be found at <http://www.dhs.state.or.us/publichealth/dwp/dwtfaq.cfm>. State law also requires that all private wells, that have not already been registered with the state, be registered at the time the property is transferred. Real estate forms in use in Oregon often delegate to the buyer the responsibility for registering the well. For information on the state well registration program, visit: http://www.wrd.state.or.us/publication/pdfs/well_tag_faq.pdf.

Well Flow Tests: If domestic water is supplied by a private well, the buyer should verify to the extent possible whether the well provides adequate water for domestic needs. It is strongly recommended that a well flow test be conducted prior to the purchase of any property that depends on a well for domestic water. Careful attention should be paid to any disclosures or representations by the seller. Buyers should review all available well records. More information on well logs is available at: <http://www.wrd.state.or.us/groundwater/index.shtml>. Buyers are advised to have well flow tested by a professional. While real estate licensees are not trained and do not have the expertise to test wells, they may be able to direct you to the appropriate well professionals. Even when wells are inspected and tested, it is impossible to guarantee a continued supply of water. Catastrophic events can and do occur that can change the well quality virtually overnight. Other events, such as development and drought, can affect the quality of an aquifer over time. Any test of a well is merely a snapshot in time and is not an indication of a well's performance in the future. Any kind of well report should

be viewed in this light. PROFESSIONAL INSPECTION, WELL LOG REVIEW AND FLOW TESTS ARE ABSOLUTELY CRITICAL IN DETERMINING THE CONDITION OF A PRIVATE WELL.

Underground Oil Storage Tanks

Buyers should be aware of potential problems associated with underground oil storage tanks. Although home heating oil tanks are not regulated, such tanks can cause serious problems if they have leaked oil. Advice on home heating oil tanks and the problems associated with them can be found at: <http://www.deq.state.or.us/wmc/tank/ust-lust.htm>. A buyer who knows or suspects that property has an underground storage tank should take appropriate steps to protect his own interests, including seeking information from the Department of Environmental Quality (DEQ) and, if necessary, consulting with an environmental hazards specialist or attorney. **BUYERS ARE ADVISED TO HIRE APPROPRIATELY TRAINED ENVIRONMENTAL PROFESSIONALS TO INSPECT THE PROPERTY IF AN UNDERGROUD OIL STORAGE TANK IS FOUND OR SUSPECTED.** Oil storage tank inspection, decommissioning and cleanup requires a special license from DEQ. A list of licensed providers can be found at <http://www.deq.state.or.us/wmc/tank/hotsplist.htm> or ask your real estate licensee for assistance in finding the proper professional.

Environmental Hazards

Buyers should carefully review the Seller's Property Disclosure Statement and any inspection reports available to determine if any of a number of potential environmental hazards may require further investigation. Environmental hazards include everything from expansive soils to landslides to forest fires, tsunamis, floods and earthquakes. Environmental hazards can also include indoor air quality (e.g., radon or carbon monoxide) and hazardous materials, like asbestos. Buyers concerned about external environmental hazards should check with the county in which the property is located. Oregon counties can be located at: <http://www.aocweb.org/Cnty-links-frm.htm>. Flood plain maps and information are available from the Federal Emergency Management Agency (FEMA) at: <http://www.fema.gov/fhm/>. The Environmental Protection Agency (EPA) provides a great deal of information about indoor hazards on its website at: www.epa.gov/iaq/iaqinfo.html. Superfund sites are areas that have been listed by the federal government as contaminated. A wealth of information on superfund sites, including their locations, is available by visiting the EPA's website at: <http://www.epa.gov/superfund/sites/>. Information on Oregon superfund sites can be obtained from the Oregon Department of Human Services at: <http://www.dhs.state.or.us/publichealth/superfund/sites.cfm>. Real estate licensees are not trained, and do not have the expertise, to discover and evaluate environmental hazards. Buyers, therefore, are advised to hire appropriately trained environmental professionals to inspect the property and its systems or fixtures for environmental hazards.

Woodstoves

DEQ has developed the statewide woodstove program to promote the use of cleaner-burning woodstoves and to help homeowners to burn wood more efficiently and with less pollution. Your community may have additional rules governing the use of woodstoves and fireplaces. Check with your city or county government to ask about local wood smoke ordinances. Buyers should contact their insurer early in the home buying process to determine what, if any, effect, a fireplace or woodstove may have on the availability or cost of fire insurance. For more information on woodstoves, visit: <http://www.deq.state.or.us/aq/woodstoves/index.htm>. Inspection of fireplaces and woodstoves requires special training and expertise. Although a real estate licensee may be able to help you find a local woodstove professional, they cannot themselves inspect or evaluate a woodstove.

Mold

Molds are one of a variety of biological contaminants which can be present in human structures, including in residential housing. Mildew is perhaps the most common and best known of the molds. Less well known, and far less common, are certain molds identified as possible contributors to illness, particularly in people with allergies. Such cases usually involve property with defective siding, poor construction, water penetration problems, improper ventilation or leaking plumbing. In a few cases, these problems have led to the growth of molds which caused medical conditions in some people. Buyers, if concerned about potentially harmful molds, should arrange for inspection by a qualified professional. Information on moisture intrusion and mold problems associated with human structures can be found at: <http://www.epa.gov/iaq/molds/moldresources.html>. Inspection, discovery and evaluation of specific water intrusion or mold problems requires extremely specialized training and is well beyond the scope of a real estate licensee's expertise. Buyers are, therefore, advised to hire appropriately trained professionals to inspect the property if the buyer is concerned about the possibility of harmful molds.

Smoke Alarms

In Oregon, no person may sell a dwelling unless there is installed in the dwelling unit an approved smoke detector or smoke alarm installed in accordance with the rules of the State Fire Marshall. Because of this state law requirement, most residential real estate sale forms contain a representation by the seller that, at the earlier of possession or closing date, the dwelling will have an operating smoke detector as required by law. In Oregon, ionization smoke alarms (the most common type) must have a 10-year battery and a "hush" mechanism which allows a person to temporarily disengage the alarm. All dwellings must have the proper type, number and placement of alarms as required by the building codes at the time the dwelling was constructed but not less than one alarm adjacent to each sleeping area and at least one alarm on each level of the dwelling. (Additional rules apply to rented property.) For information about smoke alarm and detector requirements in Oregon, you should visit the State Fire Marshall's web site at: <http://www.sfm.state.or.us/CommEd/FireSafety/Smoke%20Alarm/smoke.htm>. Real estate licensees are not trained in building code compliance, therefore, if there is doubt about whether a smoke alarm or detector system complies with building and fire code requirements, a licensed home inspector, or the home alarm or detector company that installed the system, should be able assist you. Your real estate agent may be able to assist you in finding the right code compliance professional.

Deaths, Crimes and External Conditions

In Oregon, certain social conditions that may be of concern to buyers are considered not to be "material" by state law. Oregon Revised Statutes 93.275. Ordinarily, "material facts" must be disclosed by the seller or the seller's agent. Because state law declares certain facts that may be important to a buyer to be not material, buyers cannot rely on the seller disclosing this kind of information. Buyers should undertake their own investigation if concerned that the property or a neighboring property has been the site of a death, crime, political activity, religious activity, or any other act or occurrence that does not adversely affect the physical condition of, or title to, real property, including that a convicted sex offender resides in the area. Concerned buyers can contact their local police for more information. Websites for Oregon counties can be found at: <http://www.aocweb.org/Cnty-links-frm.htm>. Websites for cities can be found at: <http://www.orcities.org/cityinfo/cityWebSites.cfm>. Some large cities (e.g., Portland) publish crime maps (e.g. www.portlandmaps.com) on their website. Information about registered sex offenders can be found by visiting http://www.doc.state.or.us/faq/sex_offender_reg.shtml. Buyers concerned that neighborhood properties may have been used for illegal drug manufacture can visit <http://www.oregonbcd.org/druglabs/druglabs.html>, the website of the Building Codes Division, for more information. Under Oregon law, neither the seller nor their agent is allowed to disclose that an owner or occupant of the real property has or had human immunodeficiency virus or acquired immune deficiency syndrome.

Neighborhoods

Neighborhoods change over time so a buyer cannot expect the area surrounding their home to stay as it is. Buyers concerned about potential development in the surrounding area should check with governmental authorities to determine if any large scale building projects are scheduled for the area. Building permits, zoning applications and other planning actions are a matter of public record. In Oregon, local governments must develop comprehensive plans that guide development over long periods of time. These plans may include "overlay zones" that can have a significant effect upon development. If concerned about development, buyers should check with local government planning departments. Information about planning departments can be found on the county or city website: <http://www.aocweb.org/Cnty-links-frm.htm> or <http://www.orcities.org/cityinfo/cityWebSites.cfm>. For information on state road building projects, check with the Oregon Department of Transportation at: <http://www.odot.state.or.us/stip/>. Location within a school district can be an important attribute of a neighborhood. School boundaries, however, are subject to change. If location within a particular school district is material to the purchase of real property, the buyer should investigate the boundaries and the likelihood of change by contacting the school district directly.

DOCUMENT INSPECTION AND INVESTIGATION

Information Generally

Information from third parties contained in the many documents associated with a real property transaction is not independently verified by real estate licensees. It is the responsibility of the buyer to read the documents provided and ask questions if uncertain or concerned. Interpretation of many real property transaction documents involves the practice of law and is, therefore, beyond the scope of a real estate licensee's expertise. BUYERS UNCERTAIN ABOUT THE LEGAL EFFECT OF DOCUMENTS SHOULD CONSULT AN ATTORNEY.

MLS Information

Most properties marketed for sale by real estate licensees are listed in a Multiple Listing Service (MLS). Information about the listing, provided to the MLS by the listing broker, is made available to all subscribing members of the MLS. This information is typically contained in what is called an MLS "printout" or "data sheet." Most of the information contained in an MLS data sheet or printout is obtained from the seller or third-parties like the county assessor's office or other governmental entity. MLS data may be incomplete, an approximation or otherwise inaccurate. Personal property cited on the MLS data sheet should be included in the purchase agreement if the buyer wishes to have the personal property included in the sale. **BUYERS SHOULD NOT RELY ON MLS PROVIDED INFORMATION IF THAT INFORMATION IS CONSIDERED IMPORTANT UNLESS THE BUYER VERIFIES THE INFORMATION.**

Seller's Property Disclosure Statement

In most cases, residential property sellers in Oregon must provide a Seller's Property Disclosure Statement to each residential buyer who makes a written offer. The form used by the seller is mandated by state law. The seller's representations regarding the property are based upon the seller's actual knowledge at the time the disclosure statement is made and are not the representations of any financial institution that may have made or may make a loan pertaining to the property, or that may have a security interest in the property, or any real estate licensee engaged by the seller or buyer. Licensees are not responsible for misrepresentations by the seller unless they know of the misrepresentation and fail to disclose it. A buyer should carefully review the seller disclosures and verify, or ask their licensee to verify, any statements of concern. **REVIEW OF THE SELLER'S PROPERTY DISCLOSURE STATEMENT IS NO SUBSTITUTE FOR PROFESSIONAL INSPECTIONS.**

Real Estate Sale Form

A contract for the sale of real property must be in writing to be enforceable in an Oregon court. **A VERBAL OFFER OR ACCEPTANCE SHOULD NOT BE MADE OR RELIED UPON.** Contracts for the sale of property are often called "earnest money" or "sale" agreements. They are legally binding contracts. Buyers and sellers should seek competent legal advice before signing any contract they do not fully understand. Sale agreements usually include provisions concerning who will hold the earnest money and under what conditions it may be refunded to the buyer or forfeited to the seller. Both buyers and sellers should carefully review these provisions. The amount of earnest money pledged and the conditions under which it may be refunded or forfeited are important matters that should be carefully negotiated between the buyer and the seller.

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

BUYERS AND SELLERS ARE RESPONSIBLE FOR SELECTING THE TERMS AND CONDITIONS OF THEIR AGREEMENT. REAL ESTATE LICENSEES CAN GIVE BUYERS IMPORTANT MARKETING, BUSINESS AND NEGOTIATING ADVICE AND INFORMATION AND CAN ASSIST IN PREPARATION OF THE SALE AGREEMENT BUT ONLY PURSUANT TO THE CLIENT'S INSTRUCTIONS. REAL ESTATE LICENSEES ARE NOT ATTORNEYS AND ARE PROHIBITED BY LAW FROM GIVING LEGAL ADVICE. To obtain a referral for a real estate attorney, visit the Oregon State Bar at: <http://www.osbar.org/public/legalhelp.html> or contact by phone at 503-684-3763 (Portland metro) or 800-452-7636 (greater Oregon).

Financing

The buyer's ability to finance the property is an important contingency in most residential transactions. Buyers must act in good faith and use best efforts to obtain a loan if the sale is contingent upon obtaining a loan. Buyers often seek pre-approval from a lender prior to writing an offer. A pre-approval letter should state that the lender has reviewed the buyer's credit report, income requirement and cash to close and pre-approves the buyer for the loan, subject to an acceptable appraisal of the property. The appraiser will normally work for the lender, not the buyer. To check the status of an appraiser, visit the Appraiser Certification and Licensure Board at: http://www.oregonaclb.org/app_search.lasso. Once the appraisal has been received, the underwriter authorizes final loan approval. *Only* when the underwriting process is completed will an actual loan be secured. The entire financing process normally takes approximately 30-45 days. If the seller is asked to finance any part of the transaction, the buyer's financial status will become material to the transaction. Any material defect in the buyer's financial status must be fully disclosed to the seller. Because of the risks involved for the seller, the buyer should anticipate that the seller will fully investigate the buyer's credit worthiness prior to agreeing to carry financing for the buyer. A real estate licensee cannot hide material information from any party to a real estate transaction and should not be asked to do so by the buyer or seller.

Title Report and Commitment

The title report, or commitment to insure, produced by a title insurance company contains important information that must be reviewed by the buyer. In particular, the report will list certain “exceptions” to the policy the company will issue. Buyers should request copies of any documents mentioned in the report that are not understood or raise concerns about the state of the title. General information about title issues can be found at: <http://www.titlelawannotated.com>. **Questions about the title report and associated documents can be directed to the title or escrow officer issuing the report or to the buyer’s attorney or surveyor.** Review of title reports for legal deficiencies involves the practice of law.

Homeowners’ Insurance

The insurance claims history for a home may affect the cost of homeowners’ insurance, or even its insurability. Most insurance companies use a database service called the Comprehensive Loss Underwriting Exchange (CLUE) to track claims made. Depending on the content of the CLUE report, and the insurance company’s policy, home insurance may prove more difficult to get than expected. The buyer’s claims history and credit report may also be used to determine insurability. Insurers have used CLUE reports and other information, coupled with termination provisions in the policy, to cancel coverage after closing. **IT IS CRITICAL THAT BUYERS ARRANGE FOR HOMEOWNERS’ INSURANCE EARLY IN THE PROCESS OF PURCHASING PROPERTY RATHER THAN WAITING UNTIL CLOSING TO GET INSURANCE.** If difficulty is experienced in obtaining the insurance, the buyer can ask the seller to furnish them with a copy of the CLUE report on the property. Homeowners can obtain a copy of the report for their property online at: <http://www.choicetrust.com>. Buyers may want to talk to the licensee they are working with about whether obtaining suitable homeowners’ insurance should be made a contingency of the sale. More information on homeowners insurance in Oregon can be found at: <http://www.insuranceoregon.org/>.

Square Footage and Acreage

The square footage of structures and acreage data found in MLS printouts, assessor records and the like are usually just estimates and should not be relied upon. Many Oregon properties have not been surveyed and their exact boundaries are not known. **If square footage or land size is a material consideration in a purchase, all structures and land should be measured by the buyer or a licensed surveyor prior to entering into a sale agreement, or should be made an express contingency of the agreement.** You can find a licensed surveyor in your area by visiting their website at: <http://www.osbeels.org/>.

Homeowners’ Association Documents, Covenants, Conditions and Restrictions

Covenants, conditions and restrictions, called “CC&Rs,” are formally recorded private limitations on the right to use real property. Often, but not always, CC&Rs are enforced by a homeowners’ association. Review of the CC&Rs is typically part of a real estate sale. Although real estate licensees are familiar with common CC&R provisions, determining the legal effect of specific provisions is considered the practice of law in Oregon and, therefore, beyond the expertise of a real estate licensee. If the subdivision in which the property is located is governed by a homeowners’ association, the CC&Rs may be very restrictive. Homeowners’ associations are often governed by their own articles of incorporation, bylaws, rules and regulations. Homeowners’ association rules and regulations can significantly impact a buyer’s plans for the property the buyer wants to purchase. Planned communities and condominiums are very likely to have detailed homeowners’ association governing documents, mandatory fees and ongoing homeowner obligations. Governing documents, fees and homeowner obligations should be reviewed by the buyer during the transaction. If you have questions about CC&Rs or your legal rights and remedies under a homeowners’ association governing documents, you should have your attorney review the documents for you. A real estate licensee is prohibited by law from giving legal advice. For more information on homeowners’ associations and CC&Rs, visit <http://www.realtor.com/BASICS/condos/ccr.asp>.

Lead-Based Paint Disclosure Form

Residential property built before 1978 (called “target” housing) is subject to the Residential Lead-Based Paint Disclosure Program administered by the Environmental Protection Agency (EPA) and the Department of Housing and Urban Development (HUD). The Act requires sellers of target housing to provide the buyer with a lead-based paint disclosure and the pamphlet entitled *Protect Your Family From Lead in Your Home*. Information about the requirements and samples of the forms can be found on EPA’s website at: <http://www.epa.gov/opptintr/lead/leadbase.htm> If you make an offer on a home built before 1978 and do not receive the disclosure and pamphlet, you should ask your real estate licensee about lead-based paint disclosures. For more information and

to locate companies certified and licensed to conduct lead-based paint testing or perform abatement, visit <http://www.dhs.state.or.us/publichealth/leadpaint/index.cfm> for the Department of Human Resources.

Arbitration and Mediation Provisions

This firm uses a standard real estate sale agreement from that, like most standard real estate sales forms, contains “alternative dispute resolution” clauses. Alternative dispute resolution is the name given a number of processes by which potential legal disputes may be resolved without having to file a civil suit and go to court. By private agreement, parties to contract may agree to resolve future disputes by arbitration. They may also agree to mediation before turning to arbitration to resolve the dispute.

Mediation is a form of assisted settlement negotiations. A trained mediator is selected by mutual agreement of the parties to contract. The parties then meet together with the mediator in an attempt to work out a mutually acceptable solution to a dispute. Mediators are trained to help people find common ground and avoid anger, personal attacks and other problems that can make settlement of disputes difficult. Mediation is usually just one step in an alternative dispute resolution process. No one is ever forced to settle in mediation. Mediated settlements are always mutual in agreement.

Unlike mediation, arbitration is a binding process in which a neutral third party decides who wins and who loses. Arbitration is a lot like having a judge decide a lawsuit. The process is formal. One party to the contract must bring specific legal claims against another party and prove those claims to the satisfaction of the arbitrator by presentation of reliable evidence.

A big difference between arbitration and litigation is that arbitration is private, not public. By mutual agreement, the parties to the dispute select the arbitrator (it may be an individual or a panel) from a list of qualified individuals (usually retired judges or experienced lawyers). A hearing is then held so the evidence can be presented to the arbitrator. Following the hearing, the arbitrator’s decision is final and binding. That means there are no appeals or second chances to prove the claim. The advantages to arbitration, as a means of resolving disputes, is that it is generally much faster, it is private and it is usually far less expensive than a civil lawsuit.

The dispute resolution process called for in the standard sale agreement used by this firm uses both mediation and arbitration. Unless the dispute falls in with the jurisdiction of the Small Claims Department of the state court system, all disputes must be resolved by arbitration. By agreeing to the dispute resolution provisions of the contract, both parties give up the right to sue each other in court and agree to resolve all disputes by private arbitration. The arbitration is final and binding on all parties. In addition, if either party is represented by a Realtor® who belongs to an association which makes available a mediation program, the sale agreement requires (at the penalty of loss of attorney fees in subsequent arbitration) that the parties first try to resolve their dispute by mediation.

Generally, the types of disputes that arise in real estate transaction are very amenable to resolution by arbitration or mediation. The savings in time and money can be substantial and have made alternative dispute resolution the norm in real estate contracts of all kinds. Nevertheless, you may still wish to discuss the legal consequences of agreeing to arbitration and mediation with your lawyer. As with any term in a binding contract, the dispute resolution clauses do affect legal rights.

It is always the parties to the contract who must evaluate the usefulness of the terms of the contract and reach mutual agreement on those terms. Please do not hesitate to discuss with me any questions you may have about the operation of dispute resolution provisions found in the standard sale agreement. I will do my best to answer your questions, but I am not licensed to give legal advice. Please seek competent legal advice if you are uncertain as to the legal effect of the dispute resolution clauses.

For Additional Information, Visit:

Oregon Real Estate Agency: <http://www.rea.state.or.us/>
Oregon State Government: <http://www.oregon.gov/>
Association of Oregon Counties: <http://www.aocweb.org>
League of Oregon Cities: <http://www.orcities.org>
Oregon Association of REALTORS®: <http://or.realtorplace.com>