

CLAUSE BOOK



December 2016


nova scotia real estate
COMMISSION

Acknowledgements

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The Mandatory Forms Committee wishes to acknowledge the submissions and suggestions received from licensees on how this document can be improved.

Purpose

These clauses are provided to licensees to assist them in determining the appropriate language for basic conditions in agreements. They have been written in a standard format that are in conformity with the Act and Bylaw and may be amended to better reflect unique situations.

Broker Responsibility

Brokers must take all reasonable means to make sure that the licensees using the provided clauses or amended versions thereof, continue to be consistent with the Act and Bylaw.

Disclaimer

The Commission assumes no legal or other responsibilities whatsoever for any damages or claims in connection with, or arising out of the use of the clauses or phrases contained herein.

The information in this document is not intended as a substitute for legal advice. When in doubt, licensees are advised to contact their legal counsel.

The use of NSREC mandatory forms is governed by the provisions of the Real Estate Trading Act and the Commission Bylaw. Licensees are strongly urged to carefully review Sections 26 and 31 of the Act and Section 712 of the Bylaw. The material in this document is not meant to override any of the provisions of the Act or Bylaws.

Something missing?

Send your suggestions for additions to the clause book at forms@nsrec.ns.ca

For further information

If after reading the enclosed information you have any further questions on clauses or their use, please contact the Commission's compliance team at compliance@nsrec.ns.ca.

The following clauses are listed alphabetically by agreement.

Clauses for Agreement of Purchase and Sale

Appraisal clause

This agreement is subject to the Buyer at their expense having the property appraised by a member of the Nova Scotia Real Estate Appraisers Association. The appraisal shall be deemed to be satisfactory unless the Seller or the Seller's agent is notified to the contrary, in writing, on or before **[DATE]**. If notice to the contrary is given, it shall be accompanied by a copy of the written appraisal, following which either party shall be at liberty to terminate this contract and the deposit shall be returned to the Buyer.

Assumption of betterment charges

The Buyer agrees to assume, over and above the purchase price, the outstanding betterment charges for _____ in the approximate principal amount of **[AMOUNT]**. The Seller agrees that any arrears of principal or interest shall be the responsibility of the Seller and shall be adjusted at the time of closing.

Backup offers

It is understood by all parties that this offer shall only become valid if the current accepted offer on said property becomes null and void on or before **[DATE OF LAST CONDITION OF FIRST OFFER]**. Failing which, the Seller will provide written notice to the Buyer, this offer shall be deemed null and void and the deposit shall be returned to the Buyer without interest or penalty.

Building containing unauthorized accommodation

The Buyer acknowledges that **[AMOUNT]** unit(s) within the building have not been issued Occupancy Permits by the appropriate municipal authorities and further acknowledges that there is no representation or warranty made by the Seller as to the usage of those units. The Buyer acknowledges having been advised of the ramifications of such unauthorized use.

Cost per acre after survey

The Seller and Buyer acknowledge that the purchase price is based upon the property containing **[AMOUNT]** acres at a cost of **[PRICE]** per acre. The parties further agree that if the property is found to contain either more or less than that amount of land, the purchase price shall increase or reduce accordingly with the acreage to be based on a certificate provided by the mutually chosen Nova Scotia Land Surveyor and which certificate shall be final and binding on the Seller and Buyer. The cost of such survey shall be divided equally between the parties. The survey is to be completed on or before **[DATE]**.

Disclosure clause for licensee purchasing property

The Seller acknowledges that the Buyer holds a licence to trade in real estate from the Nova Scotia Real Estate Commission and that the property is being acquired for the following purpose: _____.

Disclosure clause for licensee selling property

The Buyer acknowledges that the Seller holds a licence to trade in real estate from the Nova Scotia Real Estate Commission.

Disclosure clause for licensee representing immediate family member

[NAME] holds licence to trade in real estate from the Nova Scotia Real Estate Commission and is representing an immediate family member in this transaction. The property is being acquired for the following purpose: _____.

Disclosure of Traumatic or Horrific Events

The Seller warrants to the Buyer that, to the best of their knowledge, the following traumatic or horrific events or illegal activities have not occurred on the property: _____.

Environmental inspection by the Buyer

This Agreement is subject to the Buyer, at the Buyer's expense, carrying out an environmental audit to the Buyer's satisfaction. In conducting the environmental audit, the seller shall be given written notification if the nature of work is deemed invasive. The seller shall give reasonable access to the buyer to the property in carrying out environmental audits.

The audit shall be deemed satisfactory unless the Seller or Seller's agent is given written notification to the contrary on or before **[DATE]**. If written notice to the contrary is received, either party shall be at liberty to terminate this contract, and the deposit shall be returned to the Buyer.

Environmental recycling equipment (*green bins*)

It is agreed and understood that the green compost bin(s) provided by the local municipality are to remain with the property.

Environmental warranty from the Seller

The Seller warrants that they are not aware:

(i) of any un-rectified spills, disposals, releases or discharges of hydrocarbons, oil, solvents or other hazardous or toxic substances, polychlorinated biphenyl (PCBs), pollutants, or contaminants on or in the property and improvements, which may contravene any applicable federal, provincial or municipal laws, bylaws, regulations or ordinances respecting management, control, reporting, disposal and transportation of contaminants, pollutants, hydrocarbons, oil, hazardous materials and wastes (collectively referred to herein as "environmental laws");

(ii) of any releases or discharges of any hazardous or toxic substances or pollutants or contaminants into the air or into any municipal or other sewer or drain water systems arising from the lands and improvements in violation of environmental laws; and the Seller has not received a notice that the Seller or its agents have violated any environmental laws with respect to the property.

Homeowners Association

This Agreement is subject to the Seller providing to the Buyer, on or before **[DATE]**, a copy of the Homeowners' Association Bylaws. The Buyer shall be deemed to be satisfied with the Bylaws unless the Seller or Seller's agent is notified to the contrary, in writing, on or before **[DATE]**. If notice to the contrary is received then either party shall be at liberty to terminate this Agreement and the deposit shall be returned to the Buyer.

Property conveyed subject to restrictive covenants

The Buyer acknowledges the property shall be conveyed subject to restrictive covenants (attached hereto as Schedule "___").

Property to be subject to an easement

The Buyer acknowledges that the property shall be conveyed subject to an easement in favour of _____ allowing the following use: _____.

Right of First Refusal

This Agreement is conditional upon the Seller giving the Buyers a recorded right of first refusal for the property located at [CIVIC ADDRESS/PID] should the Seller offer the property for sale at any time in the future. The terms of this right of first refusal shall be agreed upon by both parties and their lawyers prior to the closing date. Failing which, either party shall be at liberty to terminate this Agreement and the deposit shall be returned to the Buyer.

Schedule of Leased/Rented Equipment Request

This Agreement is subject to the Seller providing to the Buyer, on or before [DATE], a completed Schedule of Leased/ Rented Equipment (Form 210). The Buyer shall be deemed to be satisfied with this Schedule and contracts unless the Seller or the Seller's Agent is notified to the contrary, in writing, on or before: [DATE]. If notice to the contrary is received, either party shall be at liberty to terminate this Agreement and the deposit shall be returned to the Buyer.

Seller Takeback Mortgage

The Seller agrees, on or before the closing date, to take back a first/second mortgage in the principal amount of \$ _____ at an interest rate of _____% for a _____ year term and a _____ year amortization period. The mortgage document shall, (**choose one of the following**):

Option A: be drafted at the cost of the Buyer in a form satisfactory to the Seller.

Option B: be drafted at the cost of the Buyer in a form satisfactory to the Seller containing a clause allowing prepayment in part or in full at any time without notice, bonus or penalty.

Option C: be drafted at the cost of the Buyer in a form satisfactory to the Seller containing a clause requiring payment in full in the event the Buyer sells, mortgages or conveys the property in any way.

If notice to the contrary is received, either party shall be at liberty to terminate this Agreement and the deposit shall be returned to the Buyer.

Seller Takeback Mortgage – Buyer Credit and Reference Check

The Buyer consents to a credit and reference check by the Seller and the Seller shall give written notification to the Buyer by [DATE] as to whether the Seller is satisfied. If unsatisfied, the Seller shall be at liberty to terminate this Agreement and the deposit shall be returned to the Buyer.

Seller to pay buyer's brokerage remuneration

The Seller agrees to pay the Buyer's brokerage a remuneration of **[AMOUNT]** + HST upon successful closing. The Buyer's brokerage will provide the seller's brokerage representative **[NAME]** a copy of the Brokerage Remuneration clause from the Buyer's Brokerage Agreement on or before **[DATE]** which stipulates the Buyer's obligation to pay remuneration.

Shared driveways

The Buyer acknowledges that the driveway is shared with the property located at **[CIVIC NUMBER/PID]**.

This Agreement is subject to the Seller providing to the Buyer, on or before **[DATE]**, a copy of the registered driveway agreement and that agreement meeting the Buyer's satisfaction. The Buyer shall be deemed to be satisfied with the Agreement unless the Seller or the Seller's agent is notified to the contrary, in writing, on or before **[DATE]**. If notice to the contrary is received, either party shall be at liberty to terminate this Agreement and the deposit shall be returned to the Buyer.

Shared wells

The Buyer acknowledges that the well, situated on the property, is shared with the property located at **[CIVIC NUMBER/PID]**.

OR

The Buyer acknowledges that the well, servicing the property, is situated on and shared with the property located at **[CIVIC NUMBER/PID]**.

This Agreement is subject to the Seller providing to the Buyer, on or before **[DATE]**, a copy of the registered shared well agreement and that agreement meeting the Buyer's satisfaction. The Buyer shall be deemed to be satisfied with the Agreement unless the Seller or Seller's agent is notified to the contrary, in writing, on or before **[DATE]**. If notice to the contrary is received, either party shall be at liberty to terminate this Agreement and the deposit shall be returned to the Buyer.

Vacant possession subject to tenancy - no schedule (one unit)

The Buyer is to be given vacant possession on closing except for the **[UPPER/LOWER FLAT/ BASEMENT APARTMENT]** which is presently rented on a **[TYPE]** term to **[NAME]** for **[AMOUNT]** per month, inclusive of _____ and payable on the **[DATE]** day of each month with the leased term to expire on **[DATE]**.

Vacant possession subject to tenancy - with schedule (multiple units)

The Buyer is to be given vacant possession on closing subject to tenancy, the details of which are listed on Schedule "___", attached to and forming part of this Agreement of Purchase and Sale.

Waiver of Conditions

The Seller and Buyer agree that clause(s) _____ have been inserted for the sole benefit of the [Buyer/Seller] and may be waived, in writing, at their option.

Zoning and Permit Verification

This Agreement is subject to the Buyer being satisfied that the property is not in violation of any applicable government bylaws or regulations respecting zoning and authorized use of the property. It

shall be deemed that all bylaws and regulations have been complied with unless the Seller or Seller's agent is notified to the contrary on or before **[DATE]**. If written notice to the contrary is received, then either party shall be at liberty to terminate this contract, and the deposit shall be returned to the Buyer.

Clauses for an Amendment to the Agreement of Purchase and Sale or Counter Offer

Adding a buyer/seller

It is agreed and understood that **[NAME OF NEW BUYER/SELLER]** is added to this Agreement as a **[BUYER/SELLER]**. By signing this amendment **[NAME OF NEW BUYER/SELLER]** confirms acceptance of all terms and conditions of the Agreement.

Removing a buyer/seller

It is agreed and understood that **[NAME OF REMOVED BUYER/SELLER]** is removed from this Agreement as a **[BUYER/SELLER]**. By signing this amendment **[NAME OF REMOVED BUYER/SELLER]** is released from all terms and conditions of the Agreement.

Excess Deposit

The Seller and the Buyer agree that on **[DATE]**, **[BROKERAGE]** will release **[AMOUNT]** in excess deposit from their trust account to the seller's lawyer, **[NAME]**, to be held with **[LAW FIRM]** in trust for the completion of this transaction scheduled for **[CLOSING DATE]**.

Increasing the Trust Deposit

The Buyer shall increase the deposit by **[AMOUNT]** to a total of **[AMOUNT]** on or before **[DATE]**. If the increase is not received, the Seller shall be at liberty to terminate this Agreement and the deposit shall be returned to the Buyer.

Seller to pay buyer's brokerage remuneration

The Seller agrees to pay the Buyer's brokerage a remuneration of **[AMOUNT]** + HST upon successful closing. The Buyer's brokerage will provide the seller's brokerage representative **[NAME]** a copy of the Brokerage Remuneration clause from the Buyer's Brokerage Agreement on or before **[DATE]** which stipulates the Buyer's obligation to pay remuneration.

Clauses for Brokerage Agreements

Remuneration reduction

If the brokerage representative for the Buyer and Seller is **[NAME]**, in a successful transaction, the total remuneration payable to the Brokerage shall be reduced to _____%, except in a competing offer situation, in which case the remuneration payable will remain as stated in the brokerage agreement.

Retainer

The Buyer will pay the Brokerage on the signing of this Agreement a retainer fee of **[AMOUNT]** which ***(choose one of the following)***:

Option A: will be credited

Option B: will not be credited

towards any remuneration payable by the Buyer to the as stated in the Brokerage Agreement.

Clauses for Amending Brokerage Agreements

Appointing a new designated agent

[NAME OF CURRENT DESIGNATED AGENT] is removed as Designated Agent for the **[BUYER/SELLER]**.

The Broker appoints **[NAME OF NEW DESIGNATED AGENT]** as the Designated Agent to serve as sole agent for the **[BUYER/SELLER]**.