



# 2018 MANDATORY FORMS UPDATE





2018 MANDATORY FORMS UPDATE

Agreement of Purchase and Sale and Related Forms  
Approved by NSREC Board of Commissioners  
December 14, 2017

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Course Objectives

Ensure all licensees practicing residential real estate:

- Are fully aware of and **familiar with** recent **form changes** before the go live date of **July 1, 2018**
- Fully understand the **mechanics of use** of all Agreement of Purchase and Sale and related forms to ensure use in accordance with RETA & NSREC Bylaw
- Understand the **transition rules** relating to the new forms
- Understand the **“why”** behind the **major changes** to the forms

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Process & Expectations

- **Class time limited to 4 hours – cannot review all 14 new forms in full detail**
- All **major changes** to APS & related forms will be reviewed **in class**
- **Mechanics** of how forms used will be reviewed **in class**
- **Minor changes** not covered in class – **refer to slides** for reference
- Copies of **forms & course slides available** on NSREC website

**Licensees responsible for all forms and slides content, whether covered in class or not**

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Process For Forms Revision

- Work is done by the NSREC Mandatory Forms Committee
- Forms are reviewed, changed, drafted, developed by this committee
- Drafts are shared with focus groups of licensees, consumers, and RELANS
- Final focus group is the NSREC Board of Commissioners
- Final version approved by NSREC Board of Commissioners

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Scope of Course - Updated Forms

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|--|---|
| • 400 - Agreement of Purchase and Sale         | • 420 - Addendum Schedule " ___ "               |
| • 210 – Equipment Schedule                     | • 421 - Amendment to the APS                    |
| • 402 - Resale Condominium Schedule            | • 430A – SOBP Schedule                          |
| • 404 - Vacant Land Schedule                   | • 430B – SOBP Seller Notice to Buyer            |
| • 406 - Mini/Mobile Home Schedule              | • 430C – SOBP Buyer Notice to Seller            |
| • 407 – Multi-Unit Res. Inc. Property Schedule | • 431 - Water and Septic Schedule               |
| • 410 - Counter Offer                          | • 440 - Termination of APS & Release of Deposit |

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Order of Review

- Review overall "big picture" system changes
- Review Agreement of Purchase & Sale (APS) 400, highlighting changes
- Review NEW Equipment Schedule 210 and mechanics of use
- Review changes to other most commonly used Schedules - Water and Septic 431, SOBP 430s, Addendum 420
- Review changes and mechanics of use for Counter Offer 410, Amendment 421, Termination 440

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Order of Review

- **Review Transition Rules** for agreements spanning the July 1, 2018 transition date
- **If class time permits**, review remaining “property type” Schedules  
(Condo 402, Vacant Land 404, Mini/Mobile 406, Multi-unit 407)
- **Question & Answer**, as time permits

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Agreement of Purchase and Sale System

**Old System** - Two Part Agreement of Purchase and Sale

- Part 1 APS – Form 400 Basic APS clauses
- Part 2 APS – One of Forms 401, 402, 404, 405, 406, 407  
(Specific groups of clauses depending on type of property)
- Needed a Part 2 to be complete
- Schedules – 420 (general), 430A (SOBP), 431 (water & septic)

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Changed Overall APS System

**New System** – One Part Agreement of Purchase and Sale

- APS – Form 400 Agreement of Purchase and Sale
- **No Part 2** – 400 complete as is unless schedules needed
- **Specific Property Type clauses now in Schedules**
- Schedules – 402 (Condo), 404 (Vacant), 406 (Mini), 407 (Multi)
- Schedules – 420 (general), 430A (SOBP), 431(water & septic)
- **New Equipment Schedule 210 is major change**

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Agreement of Purchase and Sale (Form 400)

- For use with all types of residential properties
- Form 400 used to be Part One of Agreement of Purchase & Sale
- Form 400 now Agreement of Purchase & Sale
- Many clauses from old Part Two forms are now included in Form 400
- Much more streamlined, concise, less repetition
- Minimum number of pages used to be five (3 pg. Part 1 + 2 pg. Part 2)
- Minimum now 3 pg. (i.e. resale house with no leased equipment on municipal services, with no other schedules needed)

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Agreement of Purchase and Sale (Form 400)

- Indicate which of eight (8) Schedules attached by ticking boxes at top of APS
- Equipment       Mini/Mobile Home     Multi-Unit Res. incl. Properties  
 Resale Condominium  Vacant Land       Sale of Buyer's Property (SOBP)  
 Water & Septic       Other \_\_\_\_\_
- Form 420 Addendum Schedule to be cross-referenced with  Other
  - If  Other is ticked, write "Addendum Schedule A", Addendum Schedule B", etc. on blank line

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Number of Pages

- Highlighted in pink box
- Do **NOT** leave blank
- Important to complete accurately
- Refers to number of pages in the Offer document
- Minimum will be three (3) (if no schedules)
- REDUCES RISK OF PAGES BEING MISSED BY VARIOUS PARTIES AND PREVENTS MORTGAGE FRAUD AND/OR ACCUSATIONS THEREOF

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Intro Section: other changes/highlights

- Reference to listing brokerage and co-operating brokerage removed
- Complete both civic address and lot number, if applicable
- Complete PID(s) unless mobile/mini on leased pad
- Include all PIDs, if more than one
- Do not use MLS# here
- If mobile/mini, fill in civic address and Serial #
- Uses singular format for Buyer and Seller (later clause 11.7 addresses change of number to account for plural)

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Deposit

- Deleted reference to cash or cheque
- Deleted reference to Seller Brokerage, **entity to hold deposit must now be explicitly named**
- Norm will be to insert name of Seller Brokerage in space provided
- If No Seller Brokerage (i.e. FSBO) insert name of Buyer Brokerage in space provided
- Includes reference to "In-Trust"
- Includes reference to "subject to the terms of Commission Bylaw"(replaces RETA reference)

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Deposit

- New clause 1.3
- Addresses release of "excess deposit" to Seller's lawyer before closing
- Parties agreeing to this up front – avoids amendment later
- Applicable only when amount of deposit is greater than the TOTAL remuneration including HST
- If not applicable, this does NOT need to be struck
- If it is applicable, ensure Buyer is comfortable with this advance approval

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Closing and Conveyance

- Simplifies and streamlines
- Organizes like clauses together
- Replaces old clauses
  - 4. Closing Date & Possession (now 2.1 and 2.2)
  - 7. Damage Prior to Closing (now 2.3)
  - 8. Adjustments (now 2.4)
  - 5. Conveyance (now 2.5)

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Closing and Conveyance

- Pre-close requirement used to say “empty”
- Now says “clean and vacant”
- What does clean mean? This could be an issue
- Added “subject to” reference in 2.1 pre-close section to tie into the “otherwise” vacancy exception in 2.2
- Still says “on or before” but expectation is amendment to be done if closing moved up earlier

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Closing and Conveyance

- Changes from old 7. to new 2.3 re: Seller’s Insurance
- 2.3. All lands, buildings, fixtures and all other property being purchased hereby shall remain at the risk of the Seller. **The Seller shall be responsible to keep the Property insured until closing.** In the event of damage to the Property, the Buyer, **having been advised of the insurance policy details**, may either agree to accept the proceeds of the insurance and complete the purchase, or may terminate this Agreement and the deposit shall be returned to the Buyer (not applicable to Resale Condominium Schedule – see clause 4 of the Schedule).

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Closing and Conveyance

- Changes from old 7. to new 2.3 re: Seller's Insurance
- New version requires seller to "keep" the property insured
- Seller will need to **counter this clause if property not insured at time of responding to offer**
- Buyer has right to see insurance claim details before deciding whether to proceed if damaged

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Closing and Conveyance

- No changes from old 8. to new 2.4 re: adjustments
- All properties will have an adjustment for property taxes
- Fuel adjustment - heating fuel such as furnace oil or propane
- Rentals adjustment - pro-ration of mini/mobile pad rent, tenant rents, etc.
- Leases adjustment - equipment leases assumed by buyer
- Interest adjustment - financed equipment where loan taken over by buyer

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Closing and Conveyance

- Changes from old 5. to new 2.5 re: conveyance
- "enjoyment of the property" replaced with "enjoyment and use" of the property
- "subject to clause 12. Additional Terms and Conditions" removed
- Added "(not applicable to Resale Condominium Schedule – see clause 3. of the Schedule)" to the "free from encumbrances" section to acknowledge and accept that there are additional restrictions inherent in condominium ownership

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Offer Date and Initials

- Offer date still at bottom of each page
- Seller's initials directly under offer date, careful to use correct spaces
- **No longer requires initials of the licensee as a witness**
- Only the transacting parties buyer(s) and seller(s) initial each page at the bottom only
- Requirement for transacting parties to initial certain specific clauses is gone
- Streamlines the form & emphasizes that **all clauses are important**

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Seller's Obligations

Documents that Buyer is requesting from Seller are listed in a single clause with one date

- Property Disclosure Statement (PDS)
- Any restrictive covenants that may affect the property
- Equipment Schedule, if not attached, and all related contracts
- Location certificate and/or survey, if available, without representations or warranties
- Other: \_\_\_\_\_

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Seller's Obligations

- No reference here to PDS being current but covered in PDS form
- Tick Equipment box unless **SURE** there is no leased/financed equipment
- Other could include property taxes, utilities costs, etc.
- Use 7. or an Addendum Schedule if require more
- **Do Not** include water & septic documents here, use Schedule 431

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Buyer's Conditions

- Buyer's "due diligence conditions" grouped in one clause with deemed satisfaction by a single specified date
- **This is an overall "big picture" change made throughout the APS and related forms**, more similar to how commercial market works
- Buyer has many options for getting out of the agreement and does not have to "prove" anything (less hassle to walk away)
- Important to ensure Sellers understand this up front – do not think of property being sold until all conditions dates have passed

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Buyer's Conditions

- No reference here to PDS being current but covered in PDS form
- No longer any specific terms re: financing
- No longer any requirement for Buyer to provide copy of pertinent section of inspection report if terminating on inspection
- **These changes add more risk to Seller - may tighten in counter offer**
- Need to add location certificate here if Buyer wants satisfaction thereof to be a condition (specified in 3. but not in 4.)

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Buyer's Conditions

- If **written notice of dissatisfaction** is provided before date specified in clause 4. Buyer's Conditions, Buyer or Seller may terminate
- Written notice of dissatisfaction is a separate thing that can be given independent of or in the absence of an amendment
- Written notice of dissatisfaction **CAN** be provided as part of an amendment but does **NOT** have to be
- Written notice of dissatisfaction can be in the form of an email from the Buyer to the Seller communicated through the licensees
- Amendment form changed accordingly (no built-in reference to notice)

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Notice of Dissatisfaction of Condition

- Must be in writing which can include email
- Must be communicated before deadline or condition deemed met
- Must be explicit and contain the words "Notice of Dissatisfaction" and include reference to the specific condition
- Examples:
  - "In reference to clause 4.1, the Buyer hereby provides Notice of Dissatisfaction with respect to Property Inspection"
  - "In reference to clause 4.1, the Buyer hereby provides Notice of Dissatisfaction with respect to Financing"

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Notice of Dissatisfaction of Condition

- Once such notice is provided, either party is at liberty to terminate
- "At liberty to terminate" does **NOT** mean "has terminated"
- Agreement is "in limbo" until either one party terminates or one proposes an amendment that the other accepts that deals with the condition
- An amendment could be put forward at the same time as notice given, days later or anytime before one of the parties terminates

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Buyer's Conditions

- New clause added requiring Seller to provide reasonable assistance and access
- 4.2. The Seller agrees to **provide all reasonable assistance and access** to the Buyer to allow completion of the above investigations and inspection(s) outlined in clause 4.1 and any schedule(s) attached to this Agreement
- May be ambiguous - Seller may want to limit, Buyer may want to specify to make this clearer

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Harmonized Sales Tax (HST)

- New clause 5. replaces old clause 9. re: HST
- Clearly places responsibility with Seller for determining applicability of HST
- First part of clause is less detailed, instead refers directly to the Excise Tax Act
- 5.1 Allows for five (5) possibilities versus three (3)  
(previously didn't address partially subject to HST)
- Content of 5.2 and 5.3 unchanged from content of old 9.(b) and (c)

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Fixtures & Chattels

- 6.1 states **ALL fixtures to remain** so need a separate clause if any to be excluded
- If Equipment Schedule indicates that a particular fixture is to be removed, it contradicts this ALL statement so may want to add "subject to equipment schedule" to end of 6.1 in these cases
- 6.2 **specifically identifies chattels** to be included
- States owned by seller and in good working order so may need additional clause in offer or counter offer if not true

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Additional Conditions

- Blank space for extra clauses
- Use only if adequate space (clearly worded and complete)
- Otherwise use an Addendum Schedule 420

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Lawyer Review

- New 8. Lawyer **Review** replaces old 8. Lawyer **Approval**
- Otherwise, no change from the previous clause
- Acceptability by lawyers is deemed unless notice to contrary in writing before date specified
- Either party at liberty to terminate, if such notice given

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Property Migration

- New 9. replaces migration part of old 5. of APS Part 2
- Migration kept separate from title investigation
- Much more concise
- Check appropriate box
- No initials required
- Migration must be done at least seven (7) business days prior to closing
- If known issues indicate could take longer, Seller may counter

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Title Investigation

- New 10. replaces title investigation part of old 5. of APS Part 2
- Standard clause allows ten (10) business days for PID(s) to be provided to Buyer's lawyer by Seller's lawyer
- Standard clause allows five (5) business days after the later of migration completion and PID(s) received for Buyer's lawyer to investigate title
- Keep these dates in mind when agreeing to a closing date
- Consult with Seller's lawyer as required

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Miscellaneous Provisions

- **New 11.** Miscellaneous Provisions replaces old 10. General of APS Part 1
- 11.1 Electronic transfer added as an option of payment method
- 11.2 old wording “warranties and representations” replaced with new wording “representations given by the Seller”
- 11.3 Time of the essence clause added “Failure to act within the time required constitutes a breach of the contract”

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Miscellaneous Provisions (continued)

- 11.4 Bound by electronic transmissions clause updated to include electronic signatures to be treated as originals
- 11.5 “No amendment to the terms of this agreement shall be effective unless it is in writing and signed by all parties” is a new clause that replaces the old “this agreement shall constitute the entire agreement” – clearer and more specific
- 11.6 New clause saying added provisions supersede standard provisions

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Miscellaneous Provisions (continued)

- 11.7 Changes of number and gender clause unchanged (new forms use singular of Buyer and Seller, this clause covers for plural)
- 11.8 New clause saying agreement governed by laws and courts of NS
- 11.9 agreement is to be “binding upon heirs, etc.” now a separate clause, but wording unchanged
- 11.10 New clause **defines business days as Monday-Friday, excluding statutory, provincial and civic holidays in the province of NS**

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NS Statutory, Provincial & Civic Holidays

- New Year's Day – January 1<sup>st</sup>
- Heritage Day – 3<sup>rd</sup> Monday in February
- Good Friday – date varies
- Victoria Day – Monday on or before May 24<sup>th</sup>
- Canada Day – July 1<sup>st</sup>
- Civic Day – 1<sup>st</sup> Monday in August
- Labour Day – 1<sup>st</sup> Monday in September
- Remembrance Day – November 11<sup>th</sup>
- Christmas Day – December 25<sup>th</sup>

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Agency Relationship

- Complete both 12.1 (Seller) and 12.2 (Buyer) unless in a transaction brokerage relationship
- Do not complete 12.3 if 12.1 and 12.2 are completed
- The **“do”** have agency is ticked for a **Client**
- The **“do not”** have agency is ticked for a **Customer**
- Only one of 12.1 or 12.2 can be a **“do”** have agency if there is only one brokerage involved and it is a CLA brokerage (no dual agency)
- **Confirming what is already addressed** in the S(D)BA, B(D)BA, TBA, Customer Status Acknowledgement, as applicable

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Agency Relationship

- If in a transaction brokerage relationship, complete 12.3 only
- Do not complete either 12.1 or 12.2 if 12.3 is completed
- Identify the brokerage (will only be one) by complete name
- If the brokerage is CLA, may be one or more representatives involved, fill in the individual name(s) of licensees
- If the brokerage is DA, fill in name of single individual licensee (also team name, if applicable)

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Time for Seller's Response

- Complete "open until" blanks of time, day, month and year and circle/select the "am" or "pm"
- **Specifies Atlantic Time** (covers AST or ADT, whichever in effect)
- Complete the offer date blanks of day, month and year
- All named Buyer(s) sign
- Add more lines if more than two (2) Buyers
- Signatures of witnesses is best practice but **not required to make contract binding or for NSREC audit purposes** (but lenders may require this)

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Seller's Response

- Seller to choose Accept, Reject or Counter
- **Acceptance** must be before offer "open until" time in clause 13.
- Complete Seller response blanks of time, day, month and year and circle/select the "am" or "pm"
- All Seller(s) sign
- Add more lines if more than two (2) Sellers
- Signatures of witnesses is best practice but **not required to make contract binding or for NSREC audit purposes** but lenders may require this

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Seller's Response

- **Lack of response by deadline means no acceptance is possible**
- Seller does not have to respond at all if rejecting, but courteous and best practice to do so
- Seller may reject after deadline (already presumed but clarifies that no counter offer being prepared)
- Seller may counter after deadline since counter is a new offer but not best practice since lack of response at deadline will cause Buyer to presume rejection
- **AN ACCEPTANCE AFTER DEADLINE IS INVALID**
- **A COUNTER OFFER AFTER DEADLINE IS VALID** (but not encouraged)

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Equipment Schedule (Form 210)

- Replaces old form 210 Leased/Rented Equipment
- **SIGNIFICANT CHANGES – UNDERSTANDING USE IS CRITICAL**
- **Main part** with details and comments as well as **Part 1. Assumption, Payouts or Removal** is to be **completed by Seller at time of listing**
- At this stage it is essentially part of the SB(D)A
- Seller details any equipment not owned free and clear and proposes what is to be done with each by ticking boxes and initialling
- Seller also authorizes it be shared with prospective buyers (i.e. MLS®)
- If Seller wishes otherwise, modify the form accordingly

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Equipment Schedule (Form 210)



**EQUIPMENT SCHEDULE**

This Schedule is attached to and forms part of the Seller Designated Brokerage Agreement and the Agreement of Purchase and Sale Approved by the New York State Real Estate Commission (NSREC) for use by licensees under the Real Estate Trading Act. NSREC is the regulatory body for real estate in New York State.

NSREC APPROVED  
12/14/2017  
FORM 210  
PAGE 1 OF 1

This Schedule for the Property known as \_\_\_\_\_ PID(s)/Serial # \_\_\_\_\_ identifies the financed/leased/rented equipment located on the Property. The Seller is to provide this Schedule and copies of all financed/leased/rented equipment contracts to their Brokerage.

**Seller to complete ALL applicable sections in the table below:**

Equipment	Financing/Leasing/Rental Company	Term	Expiry Date	Amount (inc. HST/ Payment Frequency)
Furnace/Bosler				
Heat Pump				
Hot Water Tank				
Propane Tank				
Security System				
Area/Yard Light				

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Equipment Schedule (Form 210)

**1. Assumption, Payouts or Removal**

1.1. The Seller authorizes their Brokerage to provide this Schedule to prospective Buyer(s). The Seller further agrees to immediately disclose, in writing, any changes to the above information.

1.2. The disposition of any financed/leased/rented equipment shall be as follows:

- a)  Buyer to assume \_\_\_\_\_
  - b)  Seller to pay out \_\_\_\_\_
  - c)  Seller to remove \_\_\_\_\_
- Date: \_\_\_\_/\_\_\_\_/\_\_\_\_ Seller's initials: \_\_\_\_/\_\_\_\_

**DISCLOSURE:** The information contained in this Schedule has been provided by the Seller of the Property and is believed to be accurate; however, the brokerage, its licensees, and the New York State Real Estate Commission assumes no responsibility or liability for its accuracy.

**2. Buyer Acknowledgement and Disposition**

2.1. The Buyer agrees that the disposition of the equipment as indicated in clause 1.2 is either:

- a)  acceptable
- OR
- b)  to be as follows: \_\_\_\_\_

PUBLISHED BY THE NEW YORK STATE ASSOCIATION OF REALTORS®  
MEMBERS AND LICENSEES ARE ADVISED THAT THE REAL ESTATE BROKERAGE  
(REB) IS NOT A PARTY TO THIS TRANSACTION AND IS NOT A MEMBER OF NSREC.  
NSREC IS NOT A PARTY TO THIS TRANSACTION AND IS NOT A MEMBER OF NSREC.

DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_ DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_  
BUYER'S INITIALS: \_\_\_\_/\_\_\_\_ SELLER'S INITIALS: \_\_\_\_/\_\_\_\_

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Equipment Schedule (Form 210)

- Buyer will have access to partially completed (by Seller) Schedule **BEFORE** drafting offer
- Clause 2. will be completed by the Buyer at time of preparing offer
  - The Buyer can accept Sellers proposed disposition by checking the acceptable box (only check this if Buyer agrees with ALL of what Seller proposes)
- OR
- The Buyer can propose alternative disposition
- Completed Schedule is included as part of the offer document, cross referenced and included in total number of pages at top of first page of the Agreement of Purchase and Sale

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Equipment Schedule (Form 210)

- If the Seller does not agree with Buyer's proposed disposition as detailed in 2.1b of the Schedule, the Seller will need to counter this in a counter offer (or reject the offer)
- The clause in the counter offer, in such a case, might read something like this if Seller wants original proposal:  
***"Disposition of financed/leased/rented equipment to be as originally proposed by the Seller in clause 1.2 of the Equipment Schedule 210"***
- If Seller is proposing something different than both the Buyer's proposal and the Seller's original proposal, the counter offer clause should be drafted accordingly

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Equipment Schedule (Form 210)

- If the Seller **does not** provide the Equipment Schedule before the offer:
- It will be provided with other documents requested under clause 3. and Buyer shall review and respond before conditions date in clause 4.
  - If Buyer agrees, they will tick **Acceptable** box in 2.1a and initial bottom
  - If Buyer disagrees, they will tick **To be as Follows:** box in 2.1b but say **"REFER TO AMENDMENT"** in space provided (if proposing alternative disposition) and initial bottom
  - **Buyer's proposed disposition must be in an amendment using Form 421**
  - **BUYER'S ALTERNATIVE PROPOSAL CANNOT BE DETAILED ON THIS FORM 210 (only appropriate when form 210 was part of original offer)**

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Equipment Schedule (Form 210)

In these cases where Equipment Schedule is **provided as a document for review AFTER Acceptance of offer**, Seller's proposed disposition is deemed accepted by Buyer by the clause 4. condition date

- unless written notice to contrary provided

OR

- an amendment initiated by the Buyer, proposing an alternative disposition, is accepted by the Seller

**Process is more complicated and more risky for parties, therefore:  
BEST PRACTICE IS FOR SELLER TO COMPLETE 210 & PROVIDE IN ADVANCE**

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Water and Septic Schedule (Form 431)

- Replaces old form 431 - Schedule \_\_\_ re: Water and Septic
- Reference to date of agreement removed
- References Buyer, Seller and Property Address
- Content is reorganized to group Seller's obligations in clause 1. and Buyer's conditions in clause 2.
- A blank clause 3. is available for additional conditions
- Ensure clearly worded and complete if drafting additional clauses

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Water and Septic- Seller's Obligations

- 1.1 Provide documents
  - Provide documents by specified date (not date from APS clause 3.)
  - Refers to "all reports and certificates in the seller's possession"
- 1.2 Mark & Make Accessible
  - Well(s)
  - Septic cover(s)
  - By date in clause 3 of APS page 1 (same as date for general docs)
- 1.3 Provide proof septic pumped
  - Within time specified (fill in number **AND** specify months, years, etc.)

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Water and Septic- Buyer's Conditions

- 2.1 Conduct tests/inspections at Buyer's expense to determine
  - a) **Water Quality** – “including meeting NS health standards” not limited to this
  - b) **Water Quantity** – sufficient for Buyer's needs
  - c) **Septic System** – condition & function
- Acceptance deemed by specified date unless written notice to contrary
- If written notice, either party may terminate

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Addendum Schedule “\_\_” (Form 420)

- “Catch-all” Schedule, variety of uses
- May form part of APS, Counter Offer, Amendment, Other
- **Never a stand alone document, always part of something else**
- Not signed, initials only, since only a part of another doc
- Date same as date of whatever it is part of

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Addendum Schedule “\_\_” (Form 420)

- If part of APS 400, cross-reference at top of Page 1 as follows:
  - Other **Addendum Schedules “A”, “General”, “X”**
- For clarity, do not use the same Schedule name more than once for the same agreement
- If there is a Schedule A attached to the main APS, don't label an Addendum Schedule attached to an amendment also as a Schedule A
- Using descriptive names versus arbitrary letters creates more clarity
- If Addendum requires more than one page, change page references accordingly (1 of 2, 2 of 2, etc.)

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Addendum Schedule “\_\_” (Form 420)

- May contain clauses from NSREC clause book or “free-form” clauses
- If contains “free-form” clauses, ensure they are contractually sound (lawyer), compliant (NSREC), grammatically accurate, unambiguous
- Ensure **not duplicating** any standard clauses
- Ensure **not contradicting** any standard clauses
- Applies whether a “brokerage specific general use schedule” or a “one-off transaction specific schedule”

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Sale of Buyer’s Property (SOBP) – 3 Forms

- 430A – SALE OF BUYER’S PROPERTY SCHEDULE
  - Initiated by Buyer as part of offer, inserts SOBP condition into the APS
- 430B - SALE OF BUYER’S PROPERTY SELLER NOTICE TO BUYER
  - Initiated by Seller when (if) they accept another offer
  - Buyer responds by removing condition or terminating
- 430C - SALE OF BUYER’S PROPERTY BUYER NOTICE TO SELLER
  - Initiated by Buyer when (if) they remove the SOBP condition

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430A – SALE OF BUYER’S PROPERTY SCHEDULE

- Initiated by Buyer as part of offer, inserts SOBP condition into the APS
- Buyer identifies subject property by address
- Buyer proposes deadline
- Buyer proposes the number of hours notice
- Buyer and Seller initial **only at bottom**, like any other schedule
- Seller’s initials do not indicate acceptance, just acknowledgement
- Seller can counter deletion of entire schedule in counter offer
- Seller can counter the deadline date and/or hours notice in counter offer

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430B - SALE OF BUYER'S PROPERTY SELLER NOTICE TO BUYER

- Initiated by Seller when (if) they accept another offer
- Buyer responds by
  - A) Removing condition (**willing AND able**)
  - or
  - B) Terminating (unable OR unwilling to remove)
- If Removing condition, **must provide financing letter to prove ABLE**
- **IF NO BUYER RESPONSE WITH FINANCING APPROVAL LETTER ATTACHED WITHIN AGREED NUMBER OF HOURS, AGREEMENT DEEMED TO BE TERMINATED, DEPOSIT WILL BE RETURNED**

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430C - SALE OF BUYER'S PROPERTY BUYER NOTICE TO SELLER

- Initiated by Buyer when (if) they choose to remove the SOBP condition (without being prompted by Seller)
- Buyer may remove when (if) they have **firm** sale  
**OR**
- Buyer may remove without a firm sale **BUT** only if they provide financing approval letter
- Wording identical to Buyer's response in 430B

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430A – SALE OF BUYER'S PROPERTY SCHEDULE

- 430B or 430C will not be used in every case
- Seller may not get another offer they wish to accept
- Buyer may be unable or unwilling to remove SOBP
- If deadline specified in 430A is approaching, either party may propose an amendment to extend the deadline
- **IF BUYER DOES NOT REMOVE CONDITION BY DEADLINE, AGREEMENT DEEMED NULL AND VOID, DEPOSIT WILL BE RETURNED**

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TERMINATING AN SOBP OFFER

- **If Buyer is responding to Seller's Notice (430B)** and is unable or unwilling to remove the condition, 430B Clause 2.1b effects the termination and addresses the release of deposit so **NO Termination Form 440 is required**
- **If Buyer is terminating because the condition has expired** without being met, **Termination Form 440 IS required** to effect the termination and address the release of deposit

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Counter Offer (Form 410)

- No significant changes from old form
- Streamlined, organized into Seller's Offer and Buyer's Response
- First date refers to offer date (not date of counter, if different)
- Second date is date/time counter is open until
- Third date is date counter is being written
- Still irrevocable per form (modify if Seller requests)
- Acceptance must be delivered to Seller or Agent by time specified
- Changed "null and void" to "withdrawn" but neither needed since specified "irrevocable until" time will cover this

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Amendment to Agreement of Purchase and Sale (Form 421)

- Simplified from old form to remove Notice section at top
- Old form tried to be both Notice and Amendment, problematic when no notice was being given
- **Amendment does NOT constitute Notice of Dissatisfaction with a condition unless it explicitly states this**
- Simply suggests a change which can be accepted or rejected
- Does not, in itself "open up a deal to rejection" by the other party
- **Unless accepted by other party within timeline given, or unless contains Notice, nothing in APS changes**

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Amendment Versus Notice

**Amendment**

- A change to the terms of APS
- Must be in writing
- Must be on mandatory form 421
- Proposed & signed by one party
- No change if rejected or ignored
- Accepted and signed by other party (to take effect)
- Two directional communication
- Can relate to any contract term, clause or condition

**Notice of Dissatisfaction**

- Buyer alerting a Seller or Seller’s Agent
- Must be in writing
- **NOT** required to be on a form
- Effected by one party
- Does not require a response
- “Opens” up agreement to allow termination
- One directional communication
- Can relate only to specific type of condition

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Notice of Dissatisfaction with Condition

- Relates to Buyer’s “Due Diligence” conditions
- Can be given in relation to ANY CONDITION IN AGREEMENT containing the following type of phrase  
 “This/these condition(s) shall be **deemed to be satisfactory** to the Buyer **unless the Seller or the Seller’s Agent is notified to the contrary in writing on or before** \_\_\_\_\_. 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.”
- Examples: Inspection, Insurance, Financing, Review of Documents (clause 4. of APS, clause 2 of Water & Septic, etc.)
- Given when Buyer is seriously not satisfied to the point of being willing to put deal at risk, usually when nearing deadline

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Termination of Agreement of Purchase and Sale and Release of Deposit (Form 440)

- Streamlined compared to old version – two distinct parts
- Can be effected by either party – terminating party signs clause 1.
- If no deposit, only clause 1. used, no response needed
- Ensure initiating party has liberty, ensure other party has received, notify lawyer
- If deposit, terminating party completes and signs clause 2. as well
- Only need other party’s signature for release of deposit

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Termination of Agreement of Purchase and Sale and Release of Deposit (Form 440)

- Old termination form had a section to indemnify
- New version no longer indemnifies parties (or brokerages)
- If party wants indemnification, it needs to be modified/amendment
- **Involve lawyer – getting into a risky legal area**

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Transition – July 1, 2018

- New forms not to be used until July 1, 2018
- Old forms not to be used beyond June 30, 2018
- Use New 420, 421, 430B, 430C, 440 even if old 400, 420, 430A, 431 had been used (for offers written in June with conditions in July)
- Copy of inspection report still required (since old APS)
- Mechanics of notice versus amendment – separate as per new forms
- **On July 1, any listings with leased or financed equipment should have a new Schedule 210 prepared and available for use with offers written July 1 and forward**

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Property Type Schedules

- **402 - Resale Condominium Schedule**
- **404 - Vacant Land Schedule**
- **406 - Mini/Mobile Home Schedule**
- **407 – Multi-Unit Res. Inc. Property Schedule**
  
- Following slides highlight changes only. If not familiar with old Part 2 forms which these replace, you may need more detailed training
- Licensees reminded to not work outside their area of experience and expertise – seek additional training and/or assistance from brokerage as required

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Resale Condominium Schedule (Form 402)

- Mostly reorganizational changes from previous version
- Conditions re: Insurance, Inspection, Fixtures & Chattels, Leased/Financed Equipment, Migration and Title Investigation now addressed in main agreement (no specific clauses in condo schedule for these)
- More detail captured re: parking spaces & storage units
- Seller warrants no “major change” meetings, agrees to update Buyer in writing and Buyer has liberty to terminate

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Resale Condominium Schedule (Form 402)

**Documentation requirement changes (now in 2.1) include:**

- “Seller’s Deed” removed from list of documents
- More detail re: minutes (last 12 months BOD & members plus most recent AGM)
- Specify dates received by and date deemed acceptable by (replaces five (5) days + five (5) days previously hardcoded)
- More open ended, Buyer must be satisfied (versus Seller having option to address)

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Resale Condominium Schedule (Form 402)

**Changes re: Estoppel certificate (now in 2.3) include:**

- Seller now to provide within seven (7) business days before closing (versus ten (10) days in previous version)
- Buyer now has three (3) business days after receipt to be satisfied (versus five (5) days in previous version)
- Wording now more consistent with other conditions re: “deemed satisfaction and unless written notice to the contrary, either party at liberty to terminate”

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Resale Condominium Schedule (Form 402)

- New Damage clause contains consistent wording as in re: 2.3 of main agreement
- Requires seller to “keep” the property insured until closing
- Seller will need to counter this clause if they do not have unit insurance at time of responding to offer
- Rest of this clause is similar to previous condo version (specifies unit damage versus overall, unit policy versus master policy)

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Resale Condominium Schedule (Form 402)

**Adjustments (now in 5.1) include:**

- Special Assessments to be paid by Seller
- Credit balance in Reserve or Contingency fund still included in purchase price
- Condo common expense fees to be adjusted to closing
- Deficiency balances in Reserve or Contingency funds no longer addressed (previously stated to be paid by Seller)

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Vacant Land Schedule (Form 404)

- Schedule 404 replaces old Part 2 forms 404 (Urban) and 405 (Rural)
- Streamlined and reorganized into four (4) clauses on a single page
  1. Seller’s Obligations
  2. Buyer’s Conditions
  3. Improvements
  4. Additional Conditions (blank space)
- A few significant changes to content

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