



## CLAUSE BOOK

## Disclaimer and use of client legal counsel

---

The clauses in this document have not been approved by the Commission's Board of Directors. 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.

These clauses are suggestive guidelines and can be altered to protect the client's interest(s). The information in this document is not intended as a substitute for legal advice. When in doubt, licensees are to advise their clients 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 By-law. Carefully review Sections 26 and 31 of the Act and Section 712 of the By-law. The material in this document is not meant to override any of the provisions of the Act or By-laws.

## Acknowledgements

---

The Nova Scotia Real Estate Commission wishes to thank the members of the 2015-16 Forms Committee for their diligent work on this document.

## 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 By-law 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 By-law.

## Filling in the Blanks

---

Many clauses in this document use provided spaces to clearly identify items such as dates, dollar amounts, or specific parties in the transaction. These instructions are bolded, capitalized text in square brackets. (For example "[FILL IN DATE]") After filling in the required information, remove the instructions provided.

Some clauses have options that the licensee and client must choose. Include only one appropriate option, and remove the instructions.

## For Further Information

---

If after reading the enclosed information you have any further suggestions or questions on clauses or their use, please contact the Commission's compliance team at [cmacdonald@nsrec.ns.ca](mailto:cmacdonald@nsrec.ns.ca).

**The following clauses are listed alphabetically by agreement.**

# Clauses for Agreement of Purchase and Sale

---

## Appraisal

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 \_\_\_\_\_ **[FILL IN 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 \_\_\_\_\_ **[FILL IN DOLLAR 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.

## Back-up offers\*

It is agreed and understood by the Seller and the Buyer that this Agreement shall be a backup to an Agreement already in place on the property. This Agreement shall only become effective if the first Agreement is terminated on or before \_\_\_\_\_ **[FILL IN DATE]**, or such other date as amended by the Seller and the first Buyer, which shall be no later than \_\_\_\_\_ **[FILL IN DATE]**, failing which, the Seller will provide written notice to the Buyer that this Agreement is deemed null and void and the Buyer's deposit, if applicable, will be returned without interest or penalty.

[\\*See the following article on backup offers](#)

## Building containing unauthorized accommodation

The Buyer acknowledges that \_\_\_\_\_ **[FILL IN DOLLAR 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 \_\_\_\_\_ **[FILL IN NUMBER OF ACRES]** acres at a cost of \_\_\_\_\_ **[FILL IN PRICE PER ACRE]** 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 \_\_\_\_\_ **[FILL IN DATE]**.

## Disclosure clause for licensee buying or selling property on their own behalf or on behalf of a family member

The parties acknowledge that \_\_\_\_\_ [FILL IN NAME OF LICENSEE] is licensed to trade in real estate as a \_\_\_\_\_ [FILL IN NAME OF LICENCE CLASS] with \_\_\_\_\_ [FILL IN NAME OF BROKERAGE].

**\*Note: If representing a family member (see definition in the By-law), also insert:** The parties acknowledge that \_\_\_\_\_ [FILL IN NAME OF LICENSEE] is representing a family member in this transaction.

**\*Note: If the licensee or their family member is the Buyer, also insert:** The Seller further acknowledges that the Buyer intends to use the property for the following purpose: \_\_\_\_\_ [INSERT PERSONAL USE, INVESTMENT, AND/OR RESALE].

**\*Note: If the licensee is the owner of a company that is buying/selling, also insert:** The Seller further acknowledges that \_\_\_\_\_ [FILL IN NAME OF LICENSEE] is also the owner of \_\_\_\_\_ [FILL IN NAME OF COMPANY].

**\*Note: Licensees are also required to disclose any interest, direct or indirect, that the licensee or licensee's family member has in the transaction, and/or, if the other party is not represented by a licensee, any information known to the licensee that could materially affect the value of the real estate.**

## Disclosure of the following 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: \_\_\_\_\_ [PROVIDE SPECIFIC EXAMPLES, SUCH AS MURDER OR PARANORMAL ACTIVITY].

## 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 \_\_\_\_\_ [FILL IN 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, by-laws, 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 \_\_\_\_\_ **[FILL IN DATE]**, a copy of the Homeowners' Association By-laws. The Buyer shall be deemed to be satisfied with the By-laws unless the Seller or Seller's agent is notified to the contrary, in writing, on or before \_\_\_\_\_ **[FILL IN 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 "\_\_\_" **[FILL IN SCHEDULE NAME]**).

## Property to be subject to an easement

The Buyer acknowledges that the property shall be conveyed subject to an easement in favour of \_\_\_\_\_ **[FILL IN APPLICABLE PARTY]** allowing the following use: \_\_\_\_\_ **[FILL IN SPECIFIC PROPERTY ACCESS]**.

## 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 \_\_\_\_\_ **[FILL IN 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 \_\_\_\_\_ **[FILL IN 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: \_\_\_\_\_ **[FILL IN 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 \$ \_\_\_\_\_ [FILL IN DOLLAR AMOUNT] at an interest rate of \_\_\_\_\_ [FILL IN PERCENTAGE] % for a \_\_\_\_\_ [FILL IN NUMBER OF YEARS] year term and a \_\_\_\_\_ [FILL IN NUMBER OF YEARS] 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 \_\_\_\_\_ [FILL IN 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 and Buyer agree that the Buyer Brokerage remuneration shall be \_\_\_\_\_ [FILL IN AMOUNT AND/OR PERCENTAGE OF PURCHASE PRICE] plus HST, to be paid by the Seller out of the proceeds of the sale on the date of closing.

### Shared driveways

The Buyer acknowledges that the driveway is shared with the property located at \_\_\_\_\_ [FILL IN CIVIC NUMBER/PID]. This Agreement is subject to the Seller providing to the Buyer, on or before \_\_\_\_\_ [FILL IN 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 \_\_\_\_\_ [FILL IN 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 \_\_\_\_\_ [FILL IN CIVIC NUMBER/PID].

### OR

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

This Agreement is subject to the Seller providing to the Buyer, on or before \_\_\_\_\_ [FILL IN 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 \_\_\_\_\_ [FILL IN 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 \_\_\_\_\_ **[FILL IN UPPER/LOWER FLAT/ BASEMENT APARTMENT]** which is presently rented on a \_\_\_\_\_ **[FILL IN TERM TYPE]** term to \_\_\_\_\_ **[FILL IN NAME]** for \_\_\_\_\_ **[FILL IN AMOUNT]** per month, inclusive of \_\_\_\_\_ **[IF APPLICABLE, FILL IN UTILITIES]** and payable on the \_\_\_\_\_ **[FILL IN DATE]** day of each month with the leased term to expire on \_\_\_\_\_ **[FILL IN 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 "\_\_\_" **[FILL IN SCHEDULE NAME]**, attached to and forming part of this Agreement of Purchase and Sale.

### Waiver of conditions

The Seller and Buyer agree that clause(s) \_\_\_\_\_ **[FILL IN CLAUSE NUMBER OR TITLE]** have been inserted for the sole benefit of the Buyer/Seller **[CIRCLE ONE]** 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 by-laws or regulations respecting zoning and authorized use of the property. It shall be deemed that all by-laws and regulations have been complied with unless the Seller or Seller's agent is notified to the contrary on or before \_\_\_\_\_ **[FILL IN 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 \_\_\_\_\_ [FILL IN NAME OF NEW BUYER/SELLER] is added to this Agreement as a Buyer/Seller [CIRCLE ONE]. By signing this amendment \_\_\_\_\_ [FILL IN NAME OF NEW BUYER/SELLER] confirms acceptance of all terms and conditions of the Agreement.

[\\*See the following article on how to add a buyer/seller](#)

## Excess deposit

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

## Holdback

The Buyer and Seller agree that the Buyer shall hold back the amount of \_\_\_\_\_ [FILL IN DOLLAR AMOUNT] from the proceeds of sale on the closing date if the following has not been completed on or before the closing date. [BE SPECIFIC, INCLUDE PRICE QUOTES IF AVAILABLE]: \_\_\_\_\_

---

All work to be completed by professionals. The holdback shall be held by the lawyer for the Buyer/Seller [CIRCLE ONE], to be released to the Seller upon confirmation of the above-noted items being completed with receipts and any applicable warranties provided to the Buyer's Lawyer.

The Buyer/Seller [CIRCLE ONE] shall be responsible for arranging for the completion of the above-noted items. The Buyer shall cooperate with the Seller and/or the contractors to allow access to the property to have the above items completed.

Any costs above the holdback amount shall be the sole responsibility of the Buyer/Seller [CIRCLE ONE].

## [AND CHOOSE ONE OF THE FOLLOWING]:

Option A: If work is not completed on or before \_\_\_\_\_ [FILL IN DATE] through no fault of the Buyer, any remaining holdback funds, less the Seller's expenses incurred for the work up to that date, are to be transferred to the Buyer and the Buyer shall take on all responsibility for completion of the work.

## OR

Option B: If work is not completed on or before \_\_\_\_\_ [FILL IN DATE] through no fault of the Buyer, the Buyer may at the Buyer's option opt to complete the work and the holdback funds shall be applied to any costs associated with that work, with any remaining balance upon completion to be released to the Seller.

## Increasing the trust deposit

The Buyer shall increase the deposit by \_\_\_\_\_ [FILL IN AMOUNT] to a total of \_\_\_\_\_ [FILL IN AMOUNT] on or before \_\_\_\_\_ [FILL IN 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.

### Removing a buyer/seller

It is agreed and understood that \_\_\_\_\_ **[FILL IN NAME OF REMOVED BUYER/SELLER]** is removed from this Agreement as a Buyer/Seller **[CIRCLE ONE]**. By signing this amendment \_\_\_\_\_ **[FILL IN NAME OF REMOVED BUYER/SELLER]** is released from all terms and conditions of the Agreement.

## Clauses for Brokerage Agreements

---

### Appointing a team as the designated agent

In the event a licensee is added or removed from a team (designated agent), the brokerage will relay notice of this change in writing to the buyer/seller. This change will not require an amendment to the SDBA/BDBA.

### Refusal of transaction brokerage representation-to be used to amend BBA/BDBA

The buyer has not agreed a Change in Representative Capacity of the Brokerage clause in the BBA/BDBA to enter into transaction brokerage between the brokerage and the seller. In order to receive full agency, they are being referred to \_\_\_\_\_ **[FILL IN NAME OF BROKERAGE OR DESIGNATED AGENT]** for sole agency representation in the purchase of \_\_\_\_\_ **[FILL IN CIVIC NUMBER/PID]** property. In the event the buyer is not successful in the purchase of the property, the parties will revert back to the original terms of the BBA/BDBA Agreement.

### Remuneration reduction

If the brokerage representative for the Buyer and Seller is \_\_\_\_\_ **[FILL IN NAME]**, in a successful transaction, the total remuneration payable to the Brokerage shall be reduced to \_\_\_\_\_% **[FILL IN PERCENT]**, 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 \_\_\_\_\_ **[FILL IN 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

\_\_\_\_\_ **[FILL IN NAME OF CURRENT DESIGNATED AGENT]** is removed as Designated Agent for the Buyer/Seller **[CIRCLE ONE]**. The Broker appoints \_\_\_\_\_ **[FILL IN NAME OF NEW DESIGNATED AGENT]** as the Designated Agent to serve as sole agent for the Buyer/Seller **[CIRCLE ONE]**.